Vol. 838
No. 99

Tuesday
21 May 2024

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2024-05-21

The abbreviation [V] after a Member's name indicates that they contributed by video call.

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

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

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

House of Lords

Tuesday 21 May 2024

2.30 pm

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

Water Companies: Failure

Question

2.37 pm

Asked by ***Baroness Jones of Moulsecoomb***

To ask His Majesty's Government whether they have a plan for Thames Water and other water companies if they fail.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Douglas-Miller) (Con): My Lords, I declare my interests as in the register. As set out in statute, if a water company became insolvent or were in serious breach of its principal statutory duties or an enforcement order, it would enter special administration. The statutory purpose of special administration is to ensure that the company continues to operate and that customers continue to receive their water and wastewater services.

Baroness Jones of Moulsecoomb (GP): I thank the Minister for his Answer, but it does not sound like much of a plan—there is not much detail there. I declare an interest as a member of the advisory board of River Action. I will put a plan forward; I am happy to share it with the Government because it is better than that one. The plan is that, as soon as any water company fails—and several are looking as if they are on that path now—we take it back into public ownership. We do not make taxpayers and bill payers pay extortionate amounts—we would keep it very cheap; I can explain how—and we stop the pollution as soon as possible, because we have all had enough.

Lord Douglas-Miller (Con): I thank the noble Baroness for her very comprehensive plan and look forward to talking to her in detail. In the meantime, I assure her that the Government and Ofwat, the financial regulator of the water sector, carefully monitor the situation. Ofwat continues to engage with Thames Water to support it in improving its resilience within the context of its licence and broader statutory obligations. Fundamentally, it is the companies' responsibility to continue to raise capital, and they should continue to explore this while fulfilling their statutory obligations of providing water and wastewater services to their customers.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, the noble Lord referred to the statutory instrument that sets out the action to be taken when water companies are teetering on the verge of bankruptcy, which was debated on 19 February and subsequently passed in the Chamber. The mechanisms are there, so why are the Government havering over implementation and allowing inadequate management of this vital asset to degenerate on a daily basis?

Lord Douglas-Miller (Con): My Lords, there is a high bar for the imposition of a special administration regime. A variety of options remain available to Thames Water in securing additional finance and it is vital that all of them are fully explored. The Government are prepared for a range of scenarios across our regulated sectors. If it becomes clear that any company will become insolvent or can no longer fulfil its statutory duties, we will not hesitate to use our powers to request the court to place it into special administration.

Lord Dubs (Lab): My Lords, the wording of the Question is "if they fail". Does the Minister agree that on seeing on our television sets the excrement coming into our streams and rivers so frequently, most people in the country would say that the water companies had already failed?

Lord Douglas-Miller (Con): I do not actually agree with the noble Lord fully. I accept that a number of the water companies are not performing to the right standard. The Government have been very clear that what is going on is unacceptable, but there is a huge legacy issue here. Simply renationalising water companies or stopping their chief executives from getting their pay, bonuses and all the other things—as is now in place—is not going to solve that problem straightaway. It is a long-term legacy issue which the Government have a fully funded plan to address.

Lord Sikka (Lab): My Lords, in 1990, Thames Water had net assets of £1,329 million. By 2023, they had increased to £1,435 million, which is a paltry increase of 8%, or a total of £106 million, mostly due to accounting abuses. This means that, over 33 years, Thames Water shareholders have provided little or no new equity at all, which is a major reason for its financial instability. Everyone knows that Ofwat is negligent and incompetent; what is the Government's excuse?

Lord Douglas-Miller (Con): The noble Lord cited a number of very detailed figures, which I know he is prone to doing, so forgive me if I do not know the detail on that. Since privatisation, the private water sector model has unlocked about £215 billion of investment. This is the equivalent of around £6 billion annually in investment—almost double the pre-privatisation level. This has delivered a range of benefits. Our bathing waters continue to improve—in 2023, almost 90% were classified as good or excellent. Water companies have invested £25 billion to reduce pollution from sewage and water company investment in environmental improvements has been scaled up to over £7 billion since 2020.

The Lord Bishop of St Albans: My Lords, could the Minister reassure the House that should any of the water companies fail, the ongoing monitoring of, for example, run-off from agricultural land—which is

[The Lord Bishop of St Albans]
devastating many of our rivers, including the important chalk streams in Hertfordshire in my diocese—will continue, that we will continue to seek to find improvements, and that no momentum will be lost?

Lord Douglas-Miller (Con): I absolutely assure the right reverend Prelate that this would be the case. If a water company were to go into administration, the special administrator would take control of the company and it would be regulated in exactly the same way as any other water company and subject to all the same environmental rules and regulations.

Lord Grade of Yarmouth (Non-Afl): My Lords, we have reached the end of a long period of very low interest rates, during which the regulated utilities have taken on a great deal of debt. That was not a problem when interest rates were so low but, now that interest rates have risen, does the Minister think it time that the regulators of those industries took a keener interest in the balance sheets of the regulated utilities?

Lord Douglas-Miller (Con): The noble Lord raises a very good point. Undoubtedly, mistakes were made in how water companies reacted over the past 10 or so years, when interest rates were very low. Now that interest rates have risen, so have the costs of the borrowings, which have created a number of difficult financial implications for them. However, we all hope that interest rates are falling.

Baroness Hayman of Ullock (Lab): My Lords, my noble friend Lord Dubs mentioned contaminated water, and there is now evidence that faeces-contaminated water has been detected in 10 areas of England and Wales. Is the Minister absolutely certain that nobody here today has drunk contaminated water?

Lord Douglas-Miller (Con): I will just drink this glass of water—bottled water. I assure the noble Baroness that it is very good.

Noble Lords: Oh!

Lord Douglas-Miller (Con): The noble Baroness raises a very serious point, despite all the laughter. One recent example of contaminated water has been extremely challenging, but the water company has responded pretty well. The Defra team went down there, and we have been in constant contact with South West Water. As noble Lords might expect, we have launched an investigation into the cause, and I hope that we will have the answers soon.

Lord Fox (LD): My Lords, the Minister cited a number of figures, but one he did not cite is that, since privatisation, the shareholders of 10 water companies have withdrawn £85 billion that could and should have been invested in the water industry. Whatever happens, can he undertake that those shareholders will not benefit further from the catastrophe happening to our waterways across the country?

Lord Douglas-Miller (Con): The noble Lord makes a very good point, which was touched on by the noble Lord, Lord Grade, on the behaviour of some of the previous shareholders and owners of water companies. I apologise for their behaviour—as do the Government—because I wholly agree with the noble Lord, Lord Fox, that it was not well done. I very much hope that the controls put in place since then, and the lessons learned, will satisfy him going forward.

Carer's Allowance

Question

2.47 pm

Asked by ***Baroness Pitkeathley***

To ask His Majesty's Government whether they plan to review their policy of fining carers who inadvertently break the earnings limit rule when claiming Carer's Allowance.

Baroness Pitkeathley (Lab): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and draw attention to my interests as set out in the register.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Viscount Younger of Leckie) (Con): My Lords, while fully recognising and valuing the vital contributions made by carers every day in providing significant care and support, claimants have a responsibility to ensure that they are entitled to benefits and to inform DWP of any changes in their circumstances that could impact their award. Where benefits are overpaid, it is our policy to recover that money, where reasonable, and to set affordable and sustainable repayment plans that do not cause undue hardship.

Baroness Pitkeathley (Lab): My Lords, talking of undue hardship, I hope the Minister will now confirm the figures, which were finally released last week, that more than £250 million is being clawed back from more than 134,000 carers. In 2019, the DWP promised that its new automated system would stop overpayments and warn carers in time. Does he agree that it is unacceptable that carers are being prosecuted in this way? Does he also agree that what is needed is, first, an amnesty for carers who have been overpaid through no fault of their own and, secondly, a thorough review of carer's allowance, so that carers are neither prosecuted nor persecuted for trying their best to combine paid work with their caring responsibilities, thus propping up the whole social care system on behalf of us all?

Viscount Younger of Leckie (Con): I think I should just reiterate that the Government thoroughly recognise and value the vital contribution made by carers, but it is also the case that, if a claimant incurs an overpayment due to payment error or fraud, this overpayment will need to be repaid and, in some cases, as the noble Baroness will know, a penalty will be charged. However, we carefully balance our duty to the taxpayer to recover

overpayments and safeguards are in place to manage repayments fairly. Some overpayments will attract no penalty at all, and I can certainly expand on the safeguards that we have in place.

Baroness Tyler of Enfield (LD): My Lords, is the Minister aware that the chair of the Work and Pensions Select Committee has written to the comptroller of the National Audit Office asking the NAO to conduct a second inquiry into carer's allowance overpayment, five years after the initial investigation in 2019? Would the Government welcome such an investigation and how quickly could it be set up?

Viscount Younger of Leckie (Con): I have to say that the gist of the argument that came from the noble Baroness's question is, "What is going on?" I can tell her that around 1 million people are in receipt of carer's allowance and that the vast majority of them—around 95%—were paid correctly. I do not entirely accept the statistics that the noble Baroness mentioned: the total overpayment rate for carer's allowance was 5.2%, which represents about 60,000 people. About half of them ended up being given a penalty of £50—the basic civil penalty.

Baroness Andrews (Lab): My Lords, on the statistics, can the noble Viscount tell us how many people owe more than £20,000? When he talks about responsibility, will he agree that the problem is that we have another instance where the information technology system has got away from human judgment? The IT system does not trigger action, so carers may wait months and months to be told that they owe significant amounts. The evidence now suggests that one of the effects of this is that some carers are not going to claim carer's allowance because it is too risky. They are facing so much stress and this is one element of stress that they simply cannot handle.

Viscount Younger of Leckie (Con): Although I do not have the figure to pass on to the noble Baroness, I can say that the other main category for overpayments comes under the title of "conditions of entitlement". That represents 2.8% of the total. This is when claimants have stopped caring and neglected to tell us, or when the claim has been fraudulent from the outset. I am aware of some extreme cases highlighted in the press—which, by the way, have been building up over many years—where the amount of repayment is particularly high. That amount is not particularly high, but I will certainly get the figure to the noble Baroness.

Baroness Sherlock (Lab): My Lords, let me give an example. Carer's allowance is a cliff-edge benefit. If you are caring for 35 hours a week and you earn £151 a week or less, you get the lot. If you earn £1 more, you get nothing. So the people the Minister is talking about include someone like Helen, who cared for her parents for 10 years. She breached the earnings rule because she worked in a hospital. They used to dock her wages automatically to pay for her parking. When they stopped doing that, her net pay went up. She was over the earnings limit by an average of £2 a month for two years, and she was told to pay back £1,700. DWP has known about this for years. Why is it not telling carers before they get into this kind of debt?

Viscount Younger of Leckie (Con): I think the noble Baroness will know that, each year, there is an uprating letter, so the communication is there for individuals. However, it is fair to say that we are looking at what more we can do to help our customers. I say again that it is their responsibility to tell us whether they exceed the earnings limit. Equally, we are looking to see whether, for example, under the RTI, the information that we receive instantaneously from the HMRC can be utilised so that we can send a text to customers. This is something that we are looking at very seriously—so her point is well made.

Baroness Buscombe (Con): My Lords, I have great sympathy with what the noble Baroness, Lady Sherlock, has said in terms of communication. Every department can always do better in that and use every form of technology and so on to make sure that people know where they stand. However, would my noble friend not agree, and in support of what my noble friend is saying, that the Government have to be vigilant? We will get an income tax take in this country this year of only around £279 billion, and the bill just for the Department for Work and Pensions will be £300 billion. That is one department. It is vital, is it not, that the Government are vigilant and really crack down on those people who genuinely should not receive—

Noble Lords: Oh!

Baroness Buscombe (Con): No, I am sorry, I am talking about those who should not receive. I did not say "carers"; I am saying those who should not be in receipt of benefits.

Viscount Younger of Leckie (Con): Indeed. I think I have made it clear already that we need to be fair. We need to balance carefully our duty to the taxpayer to recover the overpayments with safeguards in place to manage the repayments fairly. I am the first to say that some carers are among the most vulnerable people in society. Where they have got themselves into difficulty and gone over the limits, it is their duty to tell us and we have an important job to do in these situations to help them with their repayments. We have made some very good progress on that, but I have made the point that in terms of communications there is more to be done.

Baroness Smith of Llanfaes (PC): My Lords, I myself was a young carer for my late father and I understand how such additional responsibilities can limit your options for a stable income. Does the Minister acknowledge that unpaid carers are disproportionately affected by poverty? Will he explore longer-term solutions to bring more unpaid carers out of poverty, such as reforming the much-needed carer's allowance?

Viscount Younger of Leckie (Con): The noble Baroness makes a very good point. Each carer has his or her own responsibilities, some of which are very great, involving permanent lack of sleep. However, it is very

[Viscount Younger of Leckie]
important that, if they can, they should lead for themselves fulfilling and rewarding lives. That is why we have a number of initiatives to encourage carers to do some work. We think that it is good for them, and they acknowledge that. Clearly, this is a very important part of what we do in our department.

Baroness Watkins of Tavistock (CB): My Lords, we all acknowledge that caring is an extremely stressful occupation and that it is really good if carers can spend some time at external work. We know that it is good for their mental health. The responsibility of paying something like £1,500 back in a short period is more than stressful; it tips some people into becoming so mentally ill that they can no longer go to work. Can the Minister go back to the department and agree the number of people who should have their debt written off and that those not in that category should pay no more than £5 a week?

Viscount Younger of Leckie (Con): We certainly do not agree with the idea that any of the debt should be written off; we think that the debt is there to be repaid. However, as I have said, we have a number of plans in place on a one-to-one basis to help each individual who has got into difficulty, to help them to repay that debt. That is a very important point.

Baroness Lister of Burtersett (Lab): My Lords, my noble friend Lady Pitkeathley called for a fundamental review of carer's allowance, as has the Work and Pensions Committee. We need a review that looks not just at the cruel rules but at the purpose of carer's allowance, all the eligibility rules and the level of carer's allowance, which is one of the lowest benefits of its kind.

Viscount Younger of Leckie (Con): The noble Baroness will know that we keep these matters under constant review and that the carer's allowance is a non-means-tested benefit, with no capital rules, in England and Wales, which means it does not depend on the payment of national insurance contributions but is funded from general taxation.

I would also say that, for the claimant to be able to earn up to £151 per week, we need to take account of the allowable expenses. So that £151 can be stretched, in effect, by taking account of national insurance, tax and other allowable expenses.

Internal Drainage Boards: Levies

Question

2.58 pm

Asked by ***Baroness Taylor of Stevenage***

To ask His Majesty's Government what assessment they have made of the impact of increases in internal drainage board levies on local authorities.

The Parliamentary Under-Secretary of State, Department for Levelling Up, Housing & Communities (Baroness Scott of Bybrook) (Con): The Government are aware of the pressures that certain councils have experienced due to the increasing internal drainage board levies. In 2023-24, we assessed the impact of the levies on local authorities and provided £3 million in additional grant funding to the 15 that are most severely affected. Having listened to local authorities, the Government have announced a further £3 million of support in 2024-25. We are currently assessing the impact of this year's increase in levies on local authorities and will announce the distribution of funding in due course.

Baroness Taylor of Stevenage (Lab): My Lords, the £3 million does not touch the sides. Councils are charged this levy to manage water levels in their area. Since 2016 they have been expected to fund it through council tax. The financial impact shows that it has increased by almost £11 million in two years, beyond the council tax capping limit of 30 authorities involved, such as Boston, where the levy consumes 58% of the council tax, and Great Yarmouth, which saw 91% of its council tax increase consumed. Councils have been told repeatedly that the Government are looking for a long-term solution, so where is that solution, when is it coming, and will the Government meet the representatives to determine a solution before the end of the financial year?

Baroness Scott of Bybrook (Con): Yes, I am very happy to meet those people with the noble Baroness. If she gets in touch with my office, we will arrange that.

Baroness McIntosh of Pickering (Con): My Lords, I declare my interest as vice-president of the Association of Drainage Authorities. Does my noble friend agree that the drainage boards play a crucial role in low-lying areas to alleviate the flood risk? Given the unprecedented weather events of the past 18 months—the wettest on record since 1836—will she commit the Government to undertaking a comprehensive review of water management and flood risk resilience to ensure that low-lying areas are not placed at greater risk in the future?

Baroness Scott of Bybrook (Con): DLUHC has already committed to work with the sector and with Defra to implement, as my noble friend quite rightly says, what needs to be a long-term solution. Both departments recognise the importance of the issue and will continue to explore options. I welcome the sector's views on this and will undertake data gathering as part of the work.

Baroness Bakewell of Hardington Mandeville (LD): Internal drainage boards perform an essential function in geographically managing flood water—and this comes at a cost. If this is borne locally, other essential services will be depleted. Can the Minister comment on whether the Government would be prepared to spread this cost across all councils, not just those that habitually suffer flooding?

Baroness Scott of Bybrook (Con): I understand where the noble Baroness is coming from, but that is not what the Government had envisaged. We are looking at the data and those councils that are under

the greatest pressure because of the issues of water in their areas. That is how we will continue to do it this year—led by data.

Lord Porter of Spalding (Con): My Lords, I declare my interests on the register. Up until May last year—as some noble Lords and certainly the Minister will be aware—when the electorate unceremoniously but quite wisely decided I should have more time in my diary, I used to lead a council that suffered the unfairness of the way the drainage board levies are currently raised. Over 50% of our council tax increases used to go to pay the drainage board and over 50% of council tax in total used to go to pay the drainage board. In the last two years, over 100% of what we collected in council tax increases went to pay the drainage board. Obviously, I do not blame my noble friend's department for that, but does she agree that this is cost shunting from Defra to DLUHC and that, perhaps, a joint meeting between Defra and DLUHC to get a resolution would probably be best for the sector?

Baroness Scott of Bybrook (Con): That is exactly where we are going. As my noble friend said, it is up to DLUHC and Defra—and local authorities—to get together and work out the future of this funding.

Universities: Financial Sustainability

Question

3.03 pm

Asked by ***Lord Young of Cookham***

To ask His Majesty's Government what assessment they have made of the financial sustainability of universities in England.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, the Government recognise that the sector's financial position has become increasingly challenging. The financial health report from the Office for Students makes clear that the business models for a significant number of providers must change to ensure that they are financially sustainable. Indeed, all providers must continue to adapt to uncertainties and financial risks. Ultimately, providers are independent from government and, as such, it is for them to decide how they manage their finances.

Lord Young of Cookham (Con): I am grateful to my noble friend. As she says, the universities are independent, but the Government set the framework within which they operate—freezing student fees for seven years and controlling student visas. Government has an overall responsibility to make sure that students get a good-quality education at universities and that they remain competitive internationally. What is my noble friend's response to the rather worrying report from the Office for Students last week, which basically said that we need to review the business and funding model of universities if they are to continue to maintain their quality?

Baroness Barran (Con): The Government recognise the importance of having a thriving higher education sector which is responsive to the needs of the economy and funded in a way that is fair to taxpayers. We have demonstrated that commitment via our £1.3 billion of capital funding that was announced in this spending review, which is to support universities with teaching and research in key STEM areas and supporting roles in the NHS. As my noble friend said, the Office for Students was clear that providers need to review their business model and that there are very different business models across the sector.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, has the Minister seen that even the Foreign Secretary contacted the Prime Minister to say that a curb on graduate visas could be devastating for universities? Next time she bumps into the Foreign Secretary, could she whisper in his ear that it is easier to cross the Floor of this House than it is down there?

Baroness Barran (Con): I think the noble Lord is aware that the Government do not comment on leaks.

Lord Cromwell (CB): If the Minister is not too busy whispering on the Front Bench, could she confirm whether, if a major university—say, one of the Russell group—were to fall over financially, it would be too big to fail, or would the Government bail it out?

Baroness Barran (Con): If the noble Lord looks at the recent data that has been produced on the financial health of our universities, he will see that larger universities, such as those in the Russell group, are in very good financial health and continue to show significant surpluses. Of course the Government have a role to play in making sure that student interests are protected in the case of a university failing.

Baroness Royall of Blaisdon (Lab): My Lords, does the Minister agree that international students have a positive impact on our skills base, future workforce and international influence? Businesses recently said that they agree. If this is the case, why do the Government want to axe the graduate visa programme? Could it be that they are pandering to the right wing of the Conservative Party rather than thinking of the greater good of our country?

Baroness Barran (Con): The Government recognise the value of international students and are very proud of our international education strategy and what it has achieved. However, the Home Secretary commissioned the Migration Advisory Committee to write a report, which it published very recently, and the Government are considering its recommendations with care.

Baroness Bloomfield of Hinton Waldrist (Con): In light of the recent report from the Migration Advisory Committee—itself no pushover—can my noble friend reassure us that the Government will allow recent changes to postgraduate visas to work through the system before they make further changes, such as severely restricting

[Baroness Bloomfield of Hinton Waldrist]
graduate visas to particular subjects or universities, either of which could severely impact the already precarious financial status of some of our universities?

Baroness Barran (Con): I recognise my noble friend's concerns. We are committed to retaining the prestige and brand of UK higher education, which has been so successful in attracting international students. I repeat that the Government are reflecting on the findings of the MAC report. However, I point out that it found no widespread abuses of the system but pointed to specific concerns, including the use of recruitment agents.

Baroness Wilcox of Newport (Lab): My Lords, the system is not working for students or universities. The issue with the Office for Students is clear, and the Government have worn down relationships with universities by ignoring this impending crisis. Does the Minister believe that there is a clear duty on the Government to step back and look at the approach that they have been pursuing?

Baroness Barran (Con): I just cannot agree with the noble Baroness. Our universities are tremendously successful. Student numbers, both domestic and international, have risen year on year and funding has increased—for English universities by 50% since 2015-16. Clearly, the report was very helpful, constructive and nuanced in the way that it set out some of the risks for the sector, which need to be worked through.

Baroness Smith of Newnham (LD): My Lords, I declare my interests at Cambridge and the Oxford International Education Group. Could the Minister explain to the House how the Government can say that they feel that higher education and its reputation is very important, and yet the Home Office keeps changing policies? Does that not send mixed messages to potential international students? Could UK plc not be doing a rather better job in terms of international higher education?

Baroness Barran (Con): I remind the noble Baroness that our international strategy has been incredibly successful and hit its targets several years early, with 679,970 students in 2021-22. We have made some changes to the graduate route, for reasons that I think have been well articulated.

Lord Grabiner (CB): My Lords, does the Minister not think that perhaps the time has come to increase the cap? The £9,250 has been in place now for many years, and the only way that many universities are able to make it work is by charging some extortionate fees at the graduate non-regulated level.

Baroness Barran (Con): I appreciate that, but the noble Lord will also understand the pressures that students face. We also have a responsibility to students to make sure that university is affordable.

Lord Johnson of Marylebone (Con): My Lords, I declare my interest as a visiting professor at King's and chairman of FutureLearn. If the Prime Minister goes ahead with curbs to the graduate visa, would my noble friend the Minister say how we will replace the £12 billion in economic benefits that international students bring to priority category 1 levelling-up areas, including towns such as Stockton, Middlesbrough and Darlington, which receive £240 million of benefits every year from international students at Teesside University?

Baroness Barran (Con): With respect to my noble friend, he makes a very speculative statement, which makes it pretty hard for me to comment on it.

Viscount Hanworth (Lab): The Minister is doubtless aware that the pension fund of university lecturers is mainly invested in Thames Water. Traditionally, the munificence of the university pension scheme was regarded as a compensation for penurious academic salaries. Is the Minister aware of how difficult it will now be to attract people of talent into the profession, given the collapse of the pension scheme?

Baroness Barran (Con): Obviously, the pension scheme is an element, but I am not aware that the entitlement of university lecturers is changing. Clearly, it is up to individual institutions to make themselves as attractive as possible to academic staff.

Baroness Andrews (Lab): My Lords, the noble Lord opposite asked a legitimate question—how poorer areas, which are benefiting hugely because they have universities in their midst, are likely to be affected if the number of overseas students drops and the university becomes in a more precarious and even more fragile state. This morning, on the radio, one university was cited as having a drop of 40% in its overseas students over the past year. How will that affect the university and the community it serves?

Baroness Barran (Con): I think that the noble Baroness, on one level, knows the answer to her question, which is obviously that if there is less money going in, it will have a negative effect. But that is not the real question. The real question is: what are the Government doing to make sure that there is significant investment in those areas? There absolutely has been significant investment in all of the areas the noble Baroness cites, not just in relation to universities but also in colleges and institutes of technology, building the skills pipeline of the future.

Israel and Gaza

Question

3.14 pm

Asked by ***Baroness Bennett of Manor Castle***

To ask the Secretary of State for Foreign, Commonwealth and Development Affairs what assessment he has made of Israel's compliance with the summary order regarding Gaza issued by the International Court of Justice on 26 January, and what assessment he has made of the implications for the United Kingdom's obligations, particularly with regard to arms exports.

The Secretary of State for Foreign, Commonwealth and Development Affairs (Lord Cameron of Chipping Norton) (Con): We respect the ICJ's role and independence; it is up to the court to monitor Israel's compliance. We have noted our concerns previously about this case, which we do not think is helpful in the goal of achieving a sustainable ceasefire. While there has been some progress in some areas of humanitarian relief, Israel must do more to make good its promises, and I am pressing them on this, directly.

I regularly review advice about the situation in Gaza. Our position on export licences remains unchanged but, of course, we keep this under review.

Baroness Bennett of Manor Castle (GP): I thank the Minister for his Answer but of course, events have moved on since my Question was laid. The ICC prosecutor has made applications for five arrest warrants, alleging war crimes and crimes against humanity by senior Hamas leaders, the Israeli Prime Minister Benjamin Netanyahu, and Israel's Minister of Defense. The prosecutor was advised to do so unanimously by an independent panel of experts—our own noble Baroness, Lady Kennedy of the Shaws, among them—which has set out why it thinks there are reasonable grounds to believe that Mr Netanyahu and Mr Gallant have committed war crimes and crimes against humanity.

Surely it now obvious that the UK should immediately at least suspend arms exports licences to Israel, given the clear risk that continuing them would put the UK in breach of international law. Surely the Minister will confirm here that the UK accepts the jurisdiction of the court in this case, under the Rome statute that the UK helped to write and, of course, agreed to.

Lord Cameron of Chipping Norton (Con): What I would say to the noble Baroness is that the last time I was asked to make a political declaration outside our normal process of reviewing arms export licences, and to simply say that we would not sell any more arms to Israel, just a few days later Iran attacked Israel with a hail of over 140 cruise missiles. That position of acting outside our normal processes would have been completely wrong.

Let me answer very directly on the ICC's announcement yesterday. I do not believe for one moment that seeking these warrants will help get the hostages out, help get aid in, or help deliver a sustainable ceasefire. As we have said from the outset, because Israel is not a signatory to the Rome statute, and because Palestine is not yet recognised as a state, we do not think that the court has jurisdiction in this area.

I would go beyond that and say that, frankly, this is mistaken in terms of position, timing and effect. To draw a moral equivalence between the Hamas leadership and the democratically elected leader of Israel is just plain wrong. It is not just Britain saying that; countries all over Europe and the world are saying that.

On timing, I point out to your Lordships' House that the ICC was about to embark on a visit to Israel, which some of us had helped to arrange, and at the last minute decided to cancel that visit and simply go ahead with its announcement. It is not normally for the ICC to think about the effect, but as it clearly thought about the timing, maybe it should also think about the effect. As I have said, it will not help get the hostages out, and it probably makes change in Israel less likely.

Lord Robathan (Con): I am very pleased with what my noble friend has just said. Does he also agree that if we and the rest of the West were to suspend arms sales, it would allow Hamas to regroup and return to the destructive and ghastly behaviour we witnessed on 7 October?

Lord Cameron of Chipping Norton (Con): I thank my noble friend for that question. Britain and America are obviously in completely different situations in terms of arms exports to Israel. Our exports are less than 1% of the total, so not a meaningful amount, whereas the United States is a far bigger provider. As I said, I think acting outside our proper processes and guidelines —we have a process of going through Israel's commitment, capability and compliance with the rules laid out in our export criteria—would not be the right thing to, for the reasons I have given.

Lord Purvis of Tweed (LD): Does the Foreign Secretary recall that in the 2014 conflict between Israel and Hamas, during which there were just over 2,000 Palestinian casualties, he agreed with us on these Benches? As Prime Minister, he decided to pause military equipment licences to Israel on the basis of a disproportionate response by the Israeli military. That was the normal procedure, which he has referred to. Do we take it now that his view is that the current Israeli military response is proportionate?

Will the Foreign Secretary reassure me that, notwithstanding any of his opinions about the ICC, we will honour every obligation that the United Kingdom has signed up to in the Rome statute? These are treaty obligations when it comes to those who would be arraigned by the ICC.

Lord Cameron of Chipping Norton (Con): There is a bit of a difference between 2014 and now.

A noble Lord: Why?

Lord Cameron of Chipping Norton (Con): I will tell you why. Today is day 227 of the hostages still being in captivity, including British citizens. All of this relates to what happened on 7 October. There was no "7 October" in 2014, so we are in a different situation. Of course we respect the independence of the ICC, but just as we respect its independence, it should respect the independence of politicians in not suddenly losing their voice and all their opinions about these things. I have a very clear view about what has happened, and I have been happy to share it with your Lordships' House.

Lord Collins of Highbury (Lab): I welcome the fact that the noble Lord is supporting the independence of the ICC, which is vital, but I hope he can truly find his voice. The UK supported UN Security Council Resolution 2417, which states that

"unlawful denial of humanitarian access"

[Lord Collins of Highbury]
and the act of "wilfully impeding relief supply" should be condemned. The noble Lord said on the BBC that

"Israel has not had a clean bill of health"

on allowing humanitarian aid to enter Gaza. Does he accept that Israel is in breach of that resolution, and if he does, does he not think that is a breach of international humanitarian law?

Lord Cameron of Chipping Norton (Con): The noble Lord is right: I absolutely did say, and I repeat, that we have far from given Israel a clean bill of health on this issue. Not enough has been done to get aid in. We have had some recent promises, which are encouraging, about 500 trucks a day, about the opening of Ashdod port, and about the new pier adjacent to the beach in Gaza. Some of those promises are being fulfilled: Ashdod is open, the pier is working, and aid is being delivered, including British aid. But some of the promises are not being kept, and no one has been tougher on the Israelis than me in direct call after call and message after message about having to meet their obligations.

We have not given them a clean bill of health, but there is a world of difference between that and issuing arrest warrants at the same time as you are doing so for Hamas, and drawing this moral equivalence. It is not just the UK that takes this view. The Germans have said that simultaneous applications for arrest warrants gives the false impression of an equation. The Americans have called it outrageous. The Italians have called it totally unacceptable. The Austrians have said:

"The fact however that the leader of the terrorist organisation Hamas whose declared goal is the extinction of the State of Israel is being mentioned at the same time as the democratically elected representatives of that very State is non comprehensible".

The Czechs have said that it is appalling and completely unacceptable. I do not want to get too political in your Lordships' House, but the odd man out, in many ways, is the party opposite, which seems to be saying that it supports the ICC in every way.

Lord Collins of Highbury (Lab): Answer my question.

Lord Cameron of Chipping Norton (Con): I have answered your question.

Lord Harries of Pentregarth (CB): While fully supporting Israel's right to defend itself and fully supporting its desire to degrade Hamas' military capacity, would the Foreign Secretary not agree that there is a legitimate worry about the use from the very beginning of the campaign of these 2,000-pound bombs, which, in a very densely populated area, are so difficult to use in a way that is both discriminate and proportionate?

Lord Cameron of Chipping Norton (Con): I agree that, while Israel has the right to defend itself, to try to deal with Hamas and to prevent 7 October happening again, it is important, as we have said throughout, that Israel complies with international humanitarian law as it does so.

Lord Swire (Con): Does my noble friend the Foreign Secretary share my concern that the continuing withholding of the now $430 million under the Israel-Norway Accord, which is largely from Palestinian tax revenues, fatally undermines the authority of the Palestinian National Authority? What more can he do to ensure that money gets to them, and quickly?

Lord Cameron of Chipping Norton (Con): My noble friend is absolutely right. One of the most important things we can do in trying to bring this conflict to a conclusion is to work on the political measures that are going to be necessary to deal with these problems. One of them is to strengthen the Palestinian Authority, which needs the money that Israel is holding back from it. We have pressed the Israelis about that again and again. I would still say to the Israelis that you cannot fight something with nothing. You may not think the Palestinian Authority is ideal; you may think that it fails in many respects; but you need to find a partner that is not Hamas that you can work with in Gaza on the West Bank, and that partner should be the new technocratic government run by the Palestinian Authority.

Russia: Sanctions

Question

3.24 pm

Asked by ***Lord West of Spithead***

To ask the Secretary of State for Foreign, Commonwealth and Development Affairs what assessment he has made of the effectiveness of UK sanctions on Russia, and in particular on the number of tankers and other ships trading in Russian oil despite those sanctions.

The Secretary of State for Foreign, Commonwealth and Development Affairs (Lord Cameron of Chipping Norton) (Con): My Lords, sanctions by the United Kingdom and G7 partners have cost Russia an estimated $400 billion, equivalent to four years of war funding, and contributed to a 30% fall in oil tax revenues in 2023. In many ways, the existence of the shadow fleet is a sign that sanctions are working. They are forcing Russia to spend billions to try to circumvent them. The UK is investing in the Joint Maritime Security Centre to track shadow fleet activity, and we are finalising new powers to sanction individual vessels.

Lord West of Spithead (Lab): My Lords, I thank the Foreign Secretary for his Answer. There is no doubt that sanctions are having an impact. Indeed, you only need to look at the Russian-flagged tankers languishing in harbour; that is why Russia has to have this shadow fleet. My question relates directly to the shadow fleet. Thousands of these ships are being operated, many of them under flags of convenience. They are not properly insured or maintained, and they are at the bottom end of the spectrum. Many of them are going through the Great Belt without pilots, coming down the North Sea and through the channel and doing transfers in the Atlantic. It is a recipe for a disaster which will not be

properly covered. We have huge clout in this country because we run merchant shipping, really: we have the insurance, all of the lawyers who work in this area and the IMO. Is there more that we can do to screw this down to put even more pressure on Russia? The Chinese are careful because of secondary sanctions. Could we do more to try to stop this?

Lord Cameron of Chipping Norton (Con): The noble Lord is absolutely right to raise this. As he knows, we have invested money in the Joint Maritime Security Centre, and that is making a difference. We have sanctioned Turkish and Emirati shipping company owners involved in facilitating this shadow fleet. We deploy our diplomatic network to deter third countries where we can, and we are working through the IMO. We are going to have the power to sanction individual vessels and their owners. However, the noble Lord is right to say that there is more we can do. Fundamentally, these are mostly uninsured, leaky, unsafe, environmentally unsound ships, and we should be going after them whenever and wherever we can. It is possible to do more, particularly when they potentially threaten environmental disasters in the countries they are going past. One of the things we want to do at the forthcoming European Political Community meeting is to work with partners to see what more we can do to take this weapon out of Putin's hands.

Baroness Smith of Newnham (LD): My Lords, what assessment have His Majesty's Government made of the fact that oil is being sold through China and India and then being resold, so in many ways circumventing the sanctions? The fact that other ships having been sanctioned and subject to secondary sanctions does not seem to have stopped those oil sales. Is there a way of further strengthening sanctions so that they really bite?

Lord Cameron of Chipping Norton (Con): The noble Baroness makes a good point. There has been an effect on Russian revenue because of the price cap, but a lot of sales are still going through, using shadow tankers, and into other markets. One thing we are trying to do here to make sure that refined product does not leak back into the UK is to make sure that all importers of oil and oil products into the UK provide proof of origin to relevant enforcement authorities to demonstrate that the goods are not of Russian origin. We will do that, but, as I said in my earlier answer, there is probably more we can do with other countries and allies to chase down this shadow fleet wherever we can.

Lord Howell of Guildford (Con): It is of course true that the revenues for Russia from all fossil fuel exports are down considerably. However, against that, crude oil on the high seas is going up, for the simple reason that Russia cannot export processed products and therefore is concentrating on crude oil. Would it be possible to get directly at the swarm of ships on the high seas that the noble Lord, Lord West, pointed out to us by pressing to reduce the price cap from $60 to $30? That would at one stroke reduce Russian revenues and reduce the possibility of these leaky and dangerous ships wandering around the globe.

Lord Cameron of Chipping Norton (Con): The noble Lord with all his experience makes a very good point. I will certainly take it away and discuss with colleagues across government whether there is more we can do to bear down on the price and whether that would be effective. It is worth remembering that we are talking about 600 ageing oil tankers transporting predominantly Russian oil around the world. They do not have the support of any G7 services, such as insurance, so whether it is insurance, sanctions, environmental measures or the price cap, we are looking at everything we can.

Baroness Smith of Basildon (Lab): My Lords, I return to an issue that we have raised before, which slightly leads on from sanctions: the efforts that have been made—I think they have accelerated—to get interest from frozen Russian assets that we can then channel into Ukraine. The Foreign Secretary has pointed on numerous occasions to the importance of international collaboration on this issue. Can he say something in that regard about today's developments in Brussels and the upcoming meeting of the G7 Finance Ministers? How quickly could this become operational, and will there be any need for primary legislation to ensure that we can implement it?

Lord Cameron of Chipping Norton (Con): What I can say to the noble Baroness is that good progress has been made. To be frank, we would perhaps have gone for a more maximalist version of trying to use the frozen assets themselves, but the idea of taking the interest from the assets and using that for Ukraine to pay the interest on a larger loan—which could be as much as £50 billion—is the lead proposal at the moment, and is being discussed by Finance Ministers in the G7. I am confident that we will get there, but, as we do, it is very important to say that we do not rule out taking further action on the frozen assets themselves. We may well get to a time when Russia is, or should be, paying reparations to Ukraine for the damage that has been done. At that point, those underlying assets that we still hold could be very important.

Lord Sentamu (CB): My Lords, last week, in a debate on Ukraine, the noble Lord, Lord Ponsonby, and I asked the Minister about the greatest idea produced by the Foreign Secretary, which we felt was very creative, of using the assets that we have seized from Russia and turning them into money to help the war effort in Ukraine. His answer was that he agreed with us but that we would have to ask the Foreign Secretary about it, as it was his idea. Can the Foreign Secretary tell me what he has done about it?

Lord Cameron of Chipping Norton (Con): What I have done about it this. We have had discussions with the G7 Foreign Ministers, where I have been talking to all our allies about why we should be doing this—the economic case, the moral case, the political case. I think that is widely accepted, but there is nervousness, particularly in some of the European countries where a lot of the assets reside—a lot of them are held in Euroclear, for instance—about using the underlying assets straight away. That is where this idea comes in,

[Lord Cameron of Chipping Norton]
using the windfall interest from these assets to roll into something that is given to Ukraine so that it can pay the interest on a much bigger loan. That is the lead idea. We must not let the best be the enemy of the good; let us try to get the money out of the door and into the hands of Ukrainians so that they can pay for the war effort against Russia at this vital time. As I have said, that will not rule out looking at the underlying assets, which will of course still be frozen and will not be going back to Russia. We can look at those again later.

Lord Dobbs (Con): My Lords, connected to that question, I congratulate my noble friend the Foreign Secretary on his success in getting a long-term British commitment to Ukraine in military aid for its defence against Russia; I think we have committed something like £3 billion per year until 2030. On its own, of course, that will not be enough. We need other countries to make the same sort of long-term commitment. What can this Government do to persuade other Governments to back what we have done?

Lord Cameron of Chipping Norton (Con): The best thing we have done is to announce that the £3 billion—the noble Lord is right about that figure—is not just for this year and next year but for as many years as Ukraine needs it. That gives us the ability, just as with the 2.5% spending pledge, to go to other partners in NATO and elsewhere and say, "We have made this pledge. If you make this pledge too, we can give Ukrainians the certainty they need that the money will be there to support not just the munitions but the vital economic measures that they need as well".

Lord Purvis of Tweed (LD): My Lords, in previous debates on sanctions I have raised questions about the ability of Ministers to exempt British Overseas Territories from the shipping components of our sanctions. Can the Foreign Secretary reassure me that not one single member of the shadow fleet will be able to get a landing licence into a British Overseas Territory?

Lord Cameron of Chipping Norton (Con): That is an excellent question. I will double check, but my understanding is that we are trying to track this shadow fleet wherever it goes, and use that information so that countries can use environmental legislation, insurance legislation and other legislation to confiscate shipments and stop them moving. That must be the case in our overseas territories, but I will double check that it is so.

Lord Foulkes of Cumnock (Lab Co-op): The Secretary of State is quite wrong that it is in other capitals that the Russians have the greatest investment. The greatest Russian investment is here in London; it is in property, and in Abramovich's sale of Chelsea FC—all that money is here. The Secretary of State said at the previous Question Time, as he has said before, that he wants to do something about this, but he is doing nothing about it. The European Union is calling for action; at the last meeting of the Council of Europe, I took part in a debate where the Council of Europe almost unanimously asked the United Kingdom to do something about it. Why is he not doing it? What legal obstructions or impediments are stopping him taking real action?

Lord Cameron of Chipping Norton (Con): We have taken real action: we have sanctioned 2,000 individuals and entities under the Russia sanctions regime, over 1,700 of which were sanctioned since the full-scale invasion. We have taken huge steps. The point I would make is that there is a difference in scale, even with the riches of Abramovich—and we will come on to that—between the individuals who we have sanctioned and the Russian sovereign assets that are invested in things such as Euroclear and central banks in Europe and elsewhere. There is a difference in scale, and that is why the windfall interest from them is so important. On the issue of Abramovich, we are doing everything we can to try to make sure that this massive amount of money, which is in trust, can start flowing into Ukraine for the benefit of Ukrainian people and Ukrainian charities. It is a complicated issue—I can go into more detail if the noble Lord would like—but we are working very hard on it.

South Africa

Question

3.36 pm

Asked by ***The Lord Bishop of Southwell and Nottingham***

To ask the Secretary of State for Foreign, Commonwealth and Development Affairs what are his priorities for working with the government of South Africa after their forthcoming general election.

The Secretary of State for Foreign, Commonwealth and Development Affairs (Lord Cameron of Chipping Norton) (Con): The United Kingdom enjoys a long-standing and close partnership with South Africa. In November 2022, His Majesty the King welcomed the President of South Africa to London for the first state visit of his reign. We look forward to continuing this relationship after South Africa's elections on 29 May. Priorities would include boosting trade links, which are already worth £10.4 billion; tackling climate change and energy security; and working together to promote democracy and peace as South Africa looks forward to its G20 presidency in 2025.

The Lord Bishop of Southwell and Nottingham: I thank the Secretary of State for his Answer. In recognising South Africa's significant role and potential as a global partner, does he agree that with a new Government there is an opportunity to renew momentum and engagement through existing aid programmes in supporting NGO and important strategic church partnerships, particularly as they further their endeavours in ongoing reconciliation and bridge-building? Is it also an opportunity for His Majesty's Government to find additional ways to support South African aspirations for economic equality, especially in light of the extreme hardship arising from financial disparities in the country?

Lord Cameron of Chipping Norton (Con): Every new Government is an opportunity to start the partnership afresh and see what more can be done. We have to wait for the outcome of the elections in South Africa. The most promising avenues are in trade and, particularly, climate change and energy, where the Just Energy Transition Partnership is in place with South Africa. Having been to South Africa relatively recently, I think the other area where we need to help it is in the fight against corruption and state capture and the problems in its energy system that have led to the blackouts and difficulties that it has been having.

Lord Polak (Con): My Lords, at the United Nations, in stark contrast to South Africa politics under Nelson Mandela, South Africa has increasingly voted with the so-called axis of resistance as it relates to the wars either in Ukraine or in Gaza. The signing of the co-operation deal between South Africa and Iran last year shows a clear shift towards Russia, Iran and China. Will the Foreign Secretary ensure that HMG make it clear to the South African Government that this shift is both undesirable and unhelpful?

Lord Cameron of Chipping Norton (Con): As I say frequently in speeches, we are living in a competitive and contested world, so it is even more important than ever that Foreign Ministers and our diplomats get out there and compete and make the arguments for why Ukraine is in the right and Russia is in the wrong, and why investment in South Africa and elsewhere from the United Kingdom and western partners should be an alternative to that from China. I agree with the noble Lord about some of the recent South African stances. Any comparison between the liberation movement in South Africa and what Hamas represents in Israel is well wide of the mark. I cannot believe that Nelson Mandela would ever have supported anything like what Hamas did on 7 October. When he is prayed in aid, it makes me wonder.

Baroness Smith of Basildon (Lab): My Lords, 30 years ago when South Africa had its first free democratic elections, most of us watched those scenes on TV with huge emotion as people queued for hours outside polling stations to exercise their democratic vote. Many of us are quite envious that they have elections in May this year and we may have to wait a little longer. Can I put it to the Foreign Secretary that the relationship between the two countries—whether we agree or disagree—transcends elections and Governments and we should have in place a framework that allows for honest, genuine dialogue whichever Governments are in power?

Lord Cameron of Chipping Norton (Con): The noble Baroness is absolutely right. We have a framework of co-operation and a close partnership, and I met my South African opposite number in February this year. The point I was making was that when we think about how we try to build those partnerships, it is often more difficult to build them in the run-up to an election. Obviously, the South Africans are very close to their election. Waiting for that election and the new Government—whatever it may be—would be a good opportunity to re-engage on our shared agenda.

Lord Oates (LD): My Lords, does the Foreign Secretary share my regret that, notwithstanding the state visit by President Ramaphosa, over recent years the relationship between the UK and South Africa, both politically and economically, has declined significantly, with the value of UK exports less than a third of what it was when he was Prime Minister? Will he take steps to show that we value the relationship with South Africa by urging the Prime Minister to visit South Africa following its elections and by accepting the invitation himself to attend the service of thanksgiving and commemoration for 30 years of democracy in Westminster Abbey on 16 July?

Lord Cameron of Chipping Norton (Con): I will certainly look at my diary for 16 July. However, that might be the week of the EPC so I think we will be extremely busy welcoming about 50 Heads of State and Foreign Ministers to the UK. We work hard at this relationship. Obviously, where it went into reverse in some regards was during the period of President Zuma and the problems of state capture when, quite rightly, Britain sanctioned a series of individuals involved in that episode. President Ramaphosa has been trying to recover from that. That is why I said in my answer to the right reverend Prelate that we should try to help South Africa deal with some of the things that took it backwards under President Zuma.

Baroness Foster of Aghadrumsee (Non-Afl): My Lords, the Foreign Secretary will no doubt have noted with concern the growing relationship between South Africa and Iran. What is his assessment of the potential threat from that axis?

Lord Cameron of Chipping Norton (Con): When we look in Iran's region, it is obvious that it supports Hamas, the Houthis, Hezbollah and a whole series of malign actors that are responsible for terrorist attacks or attacks on navigation for destabilisation. While it is important that we try to have a dialogue with Iran and deliver some very tough messages to it, it is quite clear that its influence in the region is malign, and we make that clear at every opportunity.

Lord Morgan (Lab): My Lords, it is a pleasure to address the former MP for Witney. I taught in South Africa, in Witwatersrand, and I think that one of the important aspects of this is not so much diplomatic or political but our soft power. The links between South African universities and British universities were very powerful and people were well aware of them when I was there. For reasons we heard in an earlier debate, the number of graduate and undergraduate students from South Africa has declined and I wonder whether the Foreign Secretary has thought about how this could be improved.

Lord Cameron of Chipping Norton (Con): The noble Lord is right that soft power and people-to-people links are incredibly important. I caught the end of the previous debate. The point I would always make, even before the introduction of the graduate route with the ability to stay on for two years, is that Britain has an

[Lord Cameron of Chipping Norton]
incredibly clear offer to international students from around the world. If students have an English language qualification and a place at a British university, there is no limit on the numbers that can come. While we have important debates in this House about the rules we should put in place, that message needs to go out loud and clear to every country, including South Africa, with which we have so many great links.

Lord Vaizey of Didcot (Con): My Lords, soft power is a very important aspect of how Britain projects its power across the world. We have mentioned the remembrance service at Westminster Abbey and the links between South African and British universities. This may sound like a superficial point, but it is not. When I went to the Chelsea Flower Show yesterday, I asked a gardening expert which garden was the best to visit. She said, "It's the South African garden. It's the first time they've been here for four years". It may sound odd for me to say it, but I suspect that the Foreign Secretary would get the best headlines in South Africa this year if he went to visit that garden with the South African high commissioner. Is this not an example of how, while there are hard issues we have to debate with our friends and allies across the world, soft power also goes a long way in enabling those conversations?

Lord Cameron of Chipping Norton (Con): I am embarrassed to admit to my noble friend that I have already been. Indeed, I enjoyed a very nice glass of South African white wine while looking around it.

Lord Sentamu (CB): My Lords, the noble Lord was right when he said that we are living in a contested world. In Africa—I come from Uganda—Russia and China are the greatest investors; they build hospitals, schools and roads. A lot of money used to be spent by people in this country, but I am afraid that Russia and China are taking over. I suspect the reason is that some of the new Governments and their politics find it easier to deal with the two new colonial powers. What do we need to do to reawaken ourselves? "Made in Britain" used to be great when I was growing up as a little boy in a village in Uganda.

Lord Cameron of Chipping Norton (Con): That is a very important question. In fact, I discussed this with the Gambian Foreign Minister this morning, who made the point about how much more democratic and equal the Commonwealth was than the Francophonie, and how much he enjoyed the Gambia being back in the Commonwealth. That is one of the frameworks we can use.

Larry Summers famously quoted an African leader saying, "The trouble is that when you come, you give us a lecture and when the Chinese come, they build us a road". I think there is sense in that; we have to demonstrate that we are a willing and effective partner. Perhaps particularly on the Russian threat, we need to show that the UK can be a very effective security partner in helping to build capacity in countries that want it. Particularly in the Sahel, that could be an approach we can give some attention to.

Conflict-induced Food Insecurity

Question

3.47 pm

Asked by ***Lord Browne of Ladyton***

To ask the Secretary of State for Foreign, Commonwealth and Development Affairs what diplomatic steps he is taking to address conflict-induced food insecurity, and to hold accountable those violating international humanitarian law through the deliberate use of hunger as a weapon of war.

The Secretary of State for Foreign, Commonwealth and Development Affairs (Lord Cameron of Chipping Norton) (Con): We use all our levers to address the issue of hunger during conflict. We use our diplomatic efforts, including in countries such as Sudan and in Gaza, where we push for humanitarian access. We use our funding and expertise as a development superpower, with £365 million of bilateral overseas aid spent on food security-related sectors. We also work through multilateral organisations, including at the United Nations under Resolution 2417, to call out the perpetrators of conflict-induced food insecurity.

Lord Browne of Ladyton (Lab): My Lords, most conflict-related starvation occurs in internal and not international conflicts—most recently in South Sudan and Gaza. On 15 April, warning of famine in Sudan, the Foreign Secretary wrote that anyone

"supporting those responsible … must be held to account".

What mechanism of accountability was he referring to? Given the ICC prosecutor's action in seeking warrants, partly on the grounds of causing starvation as a weapon of war, that question is pertinent. In 2019, Article 8 of the Rome statute was unanimously amended to include deliberate starvation as a war crime, even in internal conflicts. Why, given the increasing prevalence of such acts and the UK's support for the amendment five years ago, have we not yet ratified it?

Lord Cameron of Chipping Norton (Con): The noble Lord is absolutely right that we supported the Article 8 amendment but have not yet put it in place. It is still under discussion, and we want to get it right. That does not prevent us from taking action, including in Sudan, where we are trying to restart the Jeddah process between the combatants and make sure that we get aid in. Those are steps we can take now.

Lord King of Bridgwater (Con): Does my noble friend agree that the reality is not just conflict-induced starvation? The world faces an increasing shortage of food, which will become an increasing challenge with the interaction between population explosion and climate change. Just look at one continent: Africa, in part of which crops are totally destroyed by drought and in another part of which they are totally destroyed by floods. That is replicated on other continents. Is it not clear that hunger and starvation will now be a major issue as the population increases and the weather becomes more erratic?

Lord Cameron of Chipping Norton (Con): My noble friend is completely right about that. We can see from the statistics that acute food insecurity is at a five-year high. The *Global Report on Food Crises* this year indicated that over 281 million people worldwide faced high levels of food insecurity. I agree that climate change has an impact and population can have an impact, but what is driving this insecurity at the moment across Africa and elsewhere is conflict. Trying to unlock some of the peace processes in those conflicts is where we could have the biggest influence.

Baroness Northover (LD): My Lords, the ICC chief prosecutor has said that there are reasonable grounds to accuse the Prime Minister and Defense Minister of Israel of a potential war crime, as we have heard. That war crime is the:

"Starvation of civilians as a method of warfare".

I note that the noble Lord said that he will respect the ICC process. Does he agree that 90 trucks via the sea bridge hardly matches up to the 4,500 trucks prevented from entering via Rafah? Does he agree that, as a first step, funding must be restored to UNRWA, on which the aid agencies heavily depend for logistics and delivery capacity?

Lord Cameron of Chipping Norton (Con): I will answer both parts of that question. On the entry of aid into Gaza, it is absolutely right that Israel has not met some of its promises, like the 500 trucks a day, but there are other areas, like having this new pier on the beach in Gaza, from which aid, including British aid, has been distributed. That is a step forward, as is opening Ashdod port, where flour for bakeries has been delivered. Those do not look to me like acts of a nation embarked on genocide and war crimes, but of course we must keep up the pressure elsewhere.

I totally understand and respect the fact that UNRWA is vital for the onward distribution of aid—I discussed this with the head of the World Food Programme just last week—but we have to be cognisant that reports that UNRWA staff were involved in 7 October need to be properly investigated and properly dealt with. Two reports have been commissioned, but we have had only one. I want to see that second report and I want really strong undertakings from UNRWA so that we know our money is going to the right cause.

Lord Collins of Highbury (Lab): My noble friend mentioned Sudan, and the Secretary of State is absolutely right to talk about conflict and food insecurity. One area is Tigray in Ethiopia: that conflict has spread much wider than Tigray, and food insecurity is running extremely high in Ethiopia. Certainly from the figures I have seen, 60% to 70% of pregnant and breastfeeding women in the north are experiencing malnutrition, which will affect those children for many years. Can the Secretary of State tell us exactly what we are doing with the Ethiopian Government to halt that extension of something as evil as malnutrition, which is affecting women, girls and children?

Lord Cameron of Chipping Norton (Con): We co-hosted a humanitarian pledging conference in April in response to the rapidly escalating needs in Ethiopia. The conference mobilised $610 million towards the $1 billion we think is needed. At that conference, the Deputy Foreign Secretary announced £100 million in humanitarian funding. He has travelled to the region and meets and speaks regularly with President Abiy.

Lord Bellingham (Con): My Lords, I will follow on from what the Foreign Secretary said about Sudan. This is truly a forgotten crisis, with 25 million people displaced, 25 million needing humanitarian aid, and 1.8 million fleeing into surrounding countries. Does he share my concern that the crisis moving from Darfur to Sudan's arable farming area in the al-Jazirah province will lead to even more food insecurity and refugees? With Europe facing its own refugee crisis, including the channel crossing disasters, does he agree that this underlines the need for these migrant crises to be dealt with upstream and at source? Will he redouble our diplomatic and humanitarian efforts?

Lord Cameron of Chipping Norton (Con): The noble Lord makes an extremely good point. Something like 9 million people have been displaced in the Sudan conflict, the scale of which puts other refugee crises into perspective. Eighteen million people are acutely food insecure, 5 million of whom we believe to be in an emergency situation. We need the Jeddah political process to get going; the SAF and the RSF are both at fault in their attacks on each other and the destruction they are bringing to that country. He is completely right to say that all our efforts to stabilise these situations, to provide aid and to help are good and right in themselves—they are moral acts by a country that believes in playing a moral role—but also help our own security by preventing large-scale movements of people. It is very important that we frame this in both contexts.

Baroness Blackstone (Lab): My Lords, does the Foreign Secretary agree that the other countries that initially blocked funding for UNRWA have now restored it, with the exception of the United States? Why will the UK not restore funding as well, given the urgency to get UNRWA working again and delivering the aid so desperately needed by starving members of the Gazan population?

Lord Cameron of Chipping Norton (Con): Our past pledges to UNRWA already take us up to something like the end of May, so it is not short of money on our account and has had additional funding from other countries. I want us to be meticulous on behalf of our taxpayers and all those—including myself—who are concerned about the fact that UNRWA staff took part on 7 October. We have seen the Colonna report, but we have not seen the UN Office of Internal Oversight Services report. I want to see that, and I want Philippe Lazzarini, who runs UNRWA, to make very clear statements about how that organisation will be run in future so that we can have confidence that our funding will not just deliver aid but help to deliver an organisation that is truly impartial.

Baroness Hussein-Ece (LD): My Lords, the noble Lord talked about food entering Gaza. Month after month from that Dispatch Box, he has said that Israel

[Baroness Hussein-Ece]
must do more. We have seen that it has not done more. He referred to the temporary port that has been built and there have been droppings by sea. We have seen that they are not fit for purpose; people have been killed trying to access food dropped from the air. The Rafah crossing, which is vital for the majority of aid to get through, has now been closed for 17 days. There are thousands of trucks just kilometres away waiting to deliver food. What pressure is he putting on and what diplomatic efforts are taking place to ensure that some of these crossings happen, so that people do not starve to death waiting for food that is on the other side of the crossing?

Lord Cameron of Chipping Norton (Con): I say two things to the noble Baroness. First, the Rafah crossing closed when the Israelis took over the Gazan side of it. There is a dispute now between the Egyptians, who have closed it on the other side, and the Israelis on the Gazan side. I do not want to apportion blame; all I know is that they are talking to each other and that the Americans are working extremely hard to bring them together to get a solution. We need Rafah open.

On the second point, I take issue with the noble Baroness. Yes, I am the first to say that Israel has not done as much as is needed, but it is not true that it has never responded to pressure. We asked it to open Kerem Shalom; it opened Kerem Shalom. We asked it to open a crossing in the north; Erez is now open. We pushed it again and again on the opening of Ashdod port; that is now open. There are not as many ships as I would like, but we have UK involvement in the Cyprus maritime corridor. Also, the Americans, others, and ourselves said that if it would accept a pier on the beach, we do not think it is necessarily the best way of doing things but it means that the aid goes directly into Gaza. That is now there. It is not true or fair to say that action has not been taken. It just has not been enough, and we will keep pushing. I am speaking to Minister Gantz in about half an hour, and I will have another good go then.

Procurement Regulations 2024

Motion to Approve

4 pm

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

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

Relevant document: 21st Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 20 May.

Motion agreed.

Securitisation (Amendment) Regulations 2024

Motion to Approve

4.01 pm

Moved by ***Lord Roborough***

That the draft Regulations laid before the House on 18 April be approved. *Considered in Grand Committee on 20 May.*

Motion agreed.

Agriculture (Delinked Payments) (Reductions) (England) Regulations 2024

Management of Hedgerows (England) Regulations 2024

Motions to Approve

4.02 pm

Moved by ***Lord Douglas-Miller***

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

Relevant document: 23rd Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 20 May.

Motions agreed.

Contracts for Difference (Sustainable Industry Rewards) Regulations 2024

Carbon Dioxide Transport and Storage Revenue Support (Directions and Counterparty) Regulations 2024

Carbon Capture Revenue Support (Directions, Eligibility and Counterparty) Regulations 2024

Motions to Approve

4.02 pm

Moved by ***Lord Callanan***

That the draft Regulations laid before the House on 21 March and 15 April be approved.

Relevant document: 21st Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 13 May.

Motions agreed.

Victims and Prisoners Bill

Report (4th Day)

Scottish Legislative Consent granted. Welsh Legislative Consent granted in part.

4.03 pm

Clause 41: Public protection decisions: life prisoners

Amendment 119YD

Moved by ***Lord Bellamy***

119YD: Clause 41, page 39, line 12, leave out from second "the" to end of line 13 and insert "High Court."

Member's explanatory statement

This amendment is consequential on my amendment of Clause 44, page 45, line 4.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, as noble Lords will recall, there is a power created in Clauses 44

and 45 of the Bill that will allow the Secretary of State to refer release decisions made by the Parole Board to the Upper Tribunal. When we debated this issue in Committee, I said that we were satisfied at that time that the Upper Tribunal has the necessary skills and powers to deal with these referral cases, having consulted the Judicial Office on that matter last summer.

However, the Government have listened carefully to the arguments put forward for this amendment by noble Peers in Committee, including by two former Lord Justices, and, in the light of that debate, I asked the judiciary to reconsider this matter. The unanimous view put forward was that, given how the intervention power in the Bill has evolved over the time, the High Court is the most appropriate venue to hear referred parole cases. I therefore tabled amendments that will make that change.

I take this opportunity to put on record my thanks to the members of the Upper Tribunal Administrative Appeals Chamber for their work with my officials on the measures in the Bill and to make it clear that this decision does not, in any way, reflect on the important work of that chamber; it is simply a matter of deciding where this power should best reside within the upper judiciary system.

There are two other technical amendments related to the referral power—my Amendments 122E and 122F—which will ensure that there is clear, lawful authority to detain a prisoner while the Secretary of State decides whether to refer their case to the High Court. As the decision-making process cannot be fully undertaken until the board has directed the Secretary of State to release the prisoner, it is essential to have these interim protections, so that there is a proper authority to detain the prisoner in the meantime. I beg to move.

Lord Thomas of Cwmgiedd (CB): I am very grateful to the Minister for what he said and the amendments he has put forward. For reasons that would be boring to explain, they achieve exactly the same result in practice as the amendments put forward by myself and the noble and learned Lord, Lord Burnett of Maldon. I am delighted that the Government have accepted this and I concede that their amendments are simpler.

Lord Marks of Henley-on-Thames (LD): My Lords, I simply say that we support these amendments; we argued for them in Committee. A view I expressed then was that it was bizarre that the Bill provided for the Upper Tribunal to determine Secretary of State referrals from the Parole Board of release decisions, with the High Court involved only in cases with sensitive material.

We also agree that releases should be suspended pending decisions on such referrals by both the Secretary of State and the divisional court. The only further point I will make is that I hope that the Minister will be able to indicate from the Dispatch Box that such referrals should generally be dealt with as expeditiously as possible, to minimise the anguish of people waiting and the risk of prisoners having their time in custody unjustly extended by the delay.

Lord Ponsonby of Shulbrede (Lab): My Lords, I, too, thank the Minister for the government amendments in this group. The Government have listened carefully to the two previous Lord Chief Justices and decided that the High Court is the most appropriate place to hear parole referrals. The noble and learned Lord, Lord Thomas, said that the Government's amendments in this group were better than his, which has circumscribed the debate.

The noble Lord, Lord Marks, raised an interesting point about how the courts should deal expeditiously with parole-type matters, and I will listen with interest to what the Minister has to say on that.

Lord Bellamy (Con): My Lords, on the point raised by the noble Lord, Lord Marks, once referred to the court, the timetable and listing will be a matter for the court, but I am sure that it will take account of the need for expedition and the remarks made in the Chamber just now.

Amendment 119YD agreed.

Amendment 120 not moved.

Amendment 120A

Moved by ***Lord Bellamy***

120A: Clause 41, page 39, line 32, at end insert—

"(5) In section 32ZZA (imprisonment or detention for public protection: powers in relation to release of recalled prisoners) (inserted by section 48 of this Act), after subsection (3) insert—(3A)The Secretary of State must not be satisfied as mentioned in subsection (3) unless the Secretary of State considers that there is no more than a minimal risk that, were the prisoner no longer confined, the prisoner would commit a further offence the commission of which would cause serious harm (and section 28ZA(4) applies for the purposes of that assessment)."

The Secretary of State must not be satisfied as mentioned in subsection (3) unless the Secretary of State considers that there is no more than a minimal risk that, were the prisoner no longer confined, the prisoner would commit a further offence the commission of which would cause serious harm (and section 28ZA(4) applies for the purposes of that assessment).""

Member's explanatory statement

This amendment is consequential on my amendment of Clause 48, page 52, line 27, inserting new section 32ZZA of the Crime (Sentences) Act 1997.

Lord Bellamy (Con): My Lords, I am very grateful to all noble Lords who spoke in Committee to these matters affecting IPP prisoners and to all those who have continued to engage in constructive debate with us in preparation for Report. I fully share the desire to use this opportunity to do all that we reasonably can to help offenders serving the IPP sentence to progress towards release, where that is safe to do so. To that end, we have brought forward four substantive government amendments and are taking other important measures as well. Indeed, progressing IPP licence termination and swiftly considering cases for release remain one of the top priorities for HMPPS and this Government, and I emphasise that.

The first amendment, Amendment 139A, applies where the Parole Board directs the re-release of an IPP prisoner. The amendment grants the Secretary of State

[Lord Bellamy]
the power to decide that the recall should have no effect for the purpose of the two-year automatic period, which is the period before the licence automatically terminates. Under the current measures in the Bill, the two-year clock will be reset when an offender recalled during the automatic period is subsequently re-released by the Parole Board. This would mean they would be required to serve a further two years in the community before the licence would be terminated automatically.

However, the Government's amendment would enable the Secretary of State to decide that the recall should have no effect on the automatic period if he considers it to be in the interests of justice, much as the noble Lord, Lord Carter of Haslemere, has proposed in his amendments to introduce a power of executive re-release, which I will come on to shortly. In these circumstances, if the recall is disregarded for the purposes of the automatic period, the clock will not reset on their release from prison and the offender would then be required only to remain on licence for whatever time remained of the two-year automatic period. I must stress, however, that this discretionary power would not apply to all IPP recalls in the qualifying period; it would be a matter for the decision of the Secretary of State in the light of all the circumstances.

The Government's second amendment concerns the amendments of the noble Lord, Lord Carter—Amendments 137 and 146—to grant the Secretary of State the power to re-release a recalled IPP offender without the need to go through the Parole Board process at all and for the offender to benefit from the automatic period as if the recall had not occurred. Our Amendment 139B will permit the Secretary of State to re-release recalled IPP prisoners and mirrors a power that the Secretary of State currently has to re-release offenders serving determinate sentences—now referred to as risk-assessed recall review, known colloquially as RARR. This is an executive power, and it will be for the Secretary of State to decide if and when to use it. We have also included an amendment to enable the Secretary of State to impose licence conditions in a recalled IPP offender's licence if the Secretary of State uses this power to re-release them on licence.

This amendment also, again, includes a parallel power for the Secretary of State to decide that the recall of an IPP offender should have no effect for the purposes of the two-year automatic period, again where it is considered in the interests of justice. This will ensure that the Secretary of State has the same discretionary power regardless of whether the decision to release a recalled IPP offender is taken by the Parole Board or by the Secretary of State using the RARR power. The noble Lord, Lord Carter, made a compelling case for his amendments in Committee. I hope that he will agree that the amendment introduced by the Government achieves the objectives of his amendments and that he will not press Amendments 137 and 146.

The Government's third amendment concerns the amendment of the noble Lord, Lord Blunkett—Amendment 141—to put the IPP action plan on a statutory basis and require the Secretary of State to lay an annual report before Parliament. I fully recognise the noble Lord's intention and I am particularly grateful for his significant engagement on this and other matters relating to this part of the Bill. We have therefore tabled Amendment 139C to require the Secretary of State to lay an annual report before Parliament about the steps taken by the Secretary of State in the reporting period to support the rehabilitation of IPP and DPP prisoners and their progress towards release from prison on licence termination.

The Bill includes a non-exhaustive list of the issues that it should address, including support for female offenders, those sentenced to detention for public protection and the engagement undertaken in the reporting period. The Government are committed to ensuring that the IPP action plan delivers tangible change by safely reducing over time the IPP population in custody and in the community, while still prioritising public protection. Through the IPP action plan, HMPPS is putting in place further measures to boost the support of those serving IPP sentences in custody and in the community, including a new policy to deliver multi-disciplinary progression panels to oversee cases at critical points, such as that early period following release or the period following a recall to custody. Delivery of the action plan is overseen by a senior IPP progression board chaired at a senior level which meets quarterly. I have asked that quarterly reports be supplied to Ministers, to ensure that the action plan is effective.

4.15 pm

Amendment 139C requires the Secretary of State to lay a report annually on the steps taken to support the rehabilitation of offenders serving an IPP or DPP sentence. I hope that this further demonstrates to the House our commitment to the delivery of activity to support those serving IPP and DPP sentences towards prospective safe and sustainable release, and to ensuring that the Government remain accountable to Parliament. We have also agreed to publish the IPP action plan. I hope that in due course, in these circumstances, the noble Lord, Lord Blunkett, will feel able to withdraw Amendment 141.

In addition to the senior IPP progression board, an external stakeholder challenge group has been set up to ensure that independent bodies, campaign groups and other organisations can scrutinise and hold HMPPS to account for the work that it is delivering to support IPP prisoners to progress successfully through their sentences. The external stakeholder challenge group will have representation, including UNGRIPP—an association of represented prisoners—the Prison Reform Trust, the Howard League for Penal Reform, the Prisons and Probation Ombudsman, the independent monitoring board and the Royal College of Psychiatrists. I make particularly mention of UNGRIPP, which fights independently for the interests of IPP prisoners with great tenacity and determination. This highly effective challenge group does, I trust, meet the thrust of Amendment 142, tabled by the noble Lord, Lord Blunkett.

As a further reassurance, the Parole Board is in the course of setting up a specific IPP taskforce which it is hoped will be operational to coincide with Royal Assent of this Bill, to ensure a coherent and specific approach to IPP prisoners to reduce delay and bring to bear particular experience in the treatment of these prisoners. That is in itself supported by a liaison group working hard between HMPPS, the Ministry of

Justice and the Parole Board to reduce delays and to ensure that these cases flow smoothly through the system.

Lastly, our fourth amendment, Amendment 138ZB, focuses directly on those serving a DPP sentence and is prompted by Amendment 138A, tabled by the noble Lord, Lord Blunkett, to halve the qualifying period for those sentenced as children to 18 months. We recognise the specific challenges faced by this cohort. Our amendment will therefore reduce the qualifying period for those serving the DPP sentence to two years, which I hope the noble Lord will support and accept.

I will at this point deal further with DPP prisoners, since I know that the noble Lord has tabled further amendments which aim to support the progress of those serving the DPP sentence. As already indicated, the annual report to Parliament will include a specific focus on how HMPPS has supported the needs of those sentenced as DPPs and their sentence progression. The noble Lord's Amendment 144 would require the Secretary of State to refer DPP cases annually to the Parole Board. While we understand the reasoning behind this amendment, such an annual referral could have a detrimental effect if it simply leads to increased instances of the Parole Board refusing release, as it undoubtedly would in some cases. We do not want to have a statutory commitment which could set people up to fail.

We do, however, recognise the intent behind this amendment and so we will update HMPPS operational policy so that there is a presumed annual referral of DPP cases to the board unless there is a clear reason why this would not be beneficial to the individual concerned. Moreover, the published policy of the Parole Board is to prioritise DPP cases. I also thank the noble Lord for his further DPP Amendment 143, which would require the Secretary of State to provide six-monthly sentence planning meetings for anyone serving a DPP sentence who has not been previously released by the Parole Board, setting out steps to enable release.

The noble Lord is entirely right that effective sentence planning and reviews are key to giving those serving IPP or DPP sentences the best prospect of progressing towards a safe and sustainable release. However, we see this primarily as an operational rather than a statutory matter. That said, as I have already affirmed, we recognise the need to provide tailored support for DPP offenders. So, in addition to reducing the qualifying period to two years to help those who have been released, we have extended the scope of the psychology case review initiative so that now every DPP prisoner, whether never released or recalled, has had a case review and, importantly, will be subject to quarterly reviews of their progress from now on.

Further, senior operational leaders across HMPPS have been commissioned to produce operational delivery plans, within which there must be a specific focus on supporting and progressing DPP prisoners. This means expediting any required prison transfers, or access to required services or interventions. There is now a clear expectation that senior leaders know how all the DPP prisoners in their areas are progressing and that prisons and probation are being held to account for their work with them.

Introducing a statutory requirement for six-monthly reviews to take place would remove the flexibility to deliver an approach best suited to the needs of the individual. I thank the noble Lord again for his contribution to the debate on this matter in his amendments. I hope my response and the operational changes made by HMPPS have reassured him and that he will not feel the need to press his Amendment 143. I commend the Government's amendments to the House. I beg to move.

Lord Thomas of Cwmgiedd (CB): My Lords, I rise to address the amendments that stand in my name. The purpose of these amendments can be briefly stated. It is to try to achieve a measure of justice for those on whom IPPs were imposed during the limited period 2005 to 2012. It is important to bear in mind what Lord Lloyd of Berwick, then Lord Brown of Eaton-under-Heywood, and then Lord Judge all did to try to right the problems that had been caused by this sentence. It was a sentence that Lord Judge described as the most draconian on the statute book, apart from a discretionary life sentence. I am extremely grateful for all that the Lord Chancellor and the Minister have done to try to deal with these issues, but we are side-stepping a fundamental issue: the way in which we release those who are subject to this sentence. We should not do that, and this House has a responsibility.

Of the amendments that stand in my name, in the time available, I wish to speak to only one: Amendment 149A. It is an attempt to compromise; to do at least something to give hope and provide justice. It leaves the release test as it stands but requires the Parole Board to take into account the concept of proportionality and other factors in making its determination. It is designed to give hope and a sense of justice to those who are behind bars under IPPs, and their families. There are three reasons I wish to highlight.

First, although a few were given IPPs who might have been given the most draconian sentence—a discretionary life sentence, under pre-2003 legislation, as a result of decisions of the Court of Appeal in the Kehoe and Wilkinson cases—the vast majority would have been given determinate sentences if the IPP sentence had not been put on to the statute book, or would have been released long ago without any risk assessment. The way our system worked historically and works today is what would have happened to them. Given that the vast majority of those under IPPs would have had that, how can it be just that, eight years later, we have done nothing—that is, in effect, what has happened—to revise this and put the Parole Board in a position to permit their release?

Secondly, if one looks at those who were sentenced in the period up to 2008, some were imprisoned who would have received a sentence of under four years. It is incredible to think that we are now releasing prisoners who have been sentenced to under four years because the prisons are overcrowded. Why can we not have regard to that? Again, this is unjust.

The third reason is that there can be little doubt—I referred to the evidence when I spoke in Committee—that the mental health of many of those who are still detained or have been recalled has suffered as a result of this sentence. The evidence is very strong and the

[Lord Thomas of Cwmgiedd]
effect on them is a matter on which we ought to reflect. The vital factor here is state responsibility—and, fortunately, we are beginning to live up to our responsibilities as a state. The position can be very briefly explained.

There is significant agreement that, if you do not know when you are going to be released, a long period of detention causes huge mental health problems. It is quite different for those who receive discretionary life sentences for the most serious crimes, described by Lord Bingham as sentences of a

"'denunciatory' value, reflective of public abhorrence of the offence, and where, because of its seriousness, the notional determinate sentence would be very long, measured in very many years".

Such sentences are deserved in those cases—you can understand why people receive them—but how can it be just to keep in prison those who, during this specific eight-year period, committed something for which, before and today, they would have had a determinate term? It is no wonder that they and their families feel injustice.

I am sure that, if this point were put properly to the British public, as it is now being put in the media, they would understand. Therefore, I find it difficult to follow why people cannot go along with a measure of reform.

The crux of this amendment is to require the Parole Board to take into account proportionality—that is, looking at the length of term served as proportionate to the original offence, and some of these offences were not that serious—together with other factors, when determining whether the test of public safety has been met. It is vital to appreciate that the overwhelming majority of these people would have been released without any risk assessment. Looking at the position today, how can it be just that they should be kept there?

Now, the Minister might say that there is a provision in the Act that could be relied on. It is difficult to know precisely what the Minister will say, because he has not said it, but I am sure that is no answer to what I have said, because the difficulty is that what is in the current Bill does not require the Parole Board to do what this amendment requires it to do, which is to have regard to proportionality and other factors that affect the position. To my mind, there is a very simple question. It is 11 years after the abolition and I pay particular tribute to the noble Lord, Lord Blunkett, who has led on, and accepted responsibility for, dealing with this. It is a great shame that others will not do the same. We should, as a state, accept responsibility and bring about at least one step towards reform. It is not what I believe we should do, but I put this forward and support it as a measure of compromise.

4.30 pm

If you were to ask the British public whether they believe in justice, the answer would be yes. Do they believe in being protected? The answer is yes. But should you balance protection against other factors, such as proportionality? The British public are wiser than to think that they won a one-horse race; they believe in justice as well. You can see that from what we have always had as our system—a determinate sentence for anything but the most serious offences—and most prisoners who are detained did not commit the most serious offences. Therefore, it seems clear to my mind that this proposal is one that would command the support of the public, properly explained and properly understood.

That is all I think I can say at this stage, except to say that it seems to me that this is an issue of such fundamental importance that I wish, in due course, to test the opinion of the House on the matter, as a matter of justice and of reflecting our values in the United Kingdom—or should I more technically say in England and Wales?—and also to remove a stain from our statute book. We can do no less and we must accept the state's responsibility.

I do not wish to take up more than the few seconds that are left to me on the other amendments standing in my name, so I will simply say this. First, it seems to me that I need say nothing about Amendment 138; what the Government propose deals with it. I have left Amendments 134 to 136, which stand in my name, requiring an annual review; from what I have been able to gather, there is no resource impediment to an annual review. It is plainly just that the prisoners should have an annual review; they had one and it was taken away. It seems to me incredible that the Government will not accept that, but that is their position. I hope we can find salvation in the Parole Board adopting this as I believe, from what I understand, that it is not unsympathetic and feels that it has the resources to be able to do it.

The last of my amendments, Amendment 139, is a simple, technical amendment. I hope there is no risk that anyone will try to do it, but it is to stop the statutory power to alter the minimum period of the licence being moved up as opposed to down. But those are not the critical amendments: Amendment 149A is, and on that, as I have said, I will wish to seek the opinion of the House in due course.

Lord Blunkett (Lab): My Lords, I know that we have had extensive debates on the range of issues on IPP and DPP. I will try to be brief, because everyone will want to reach the Statement on the infected blood scandal.

I want to pay tribute to those on my own Front Bench for their support in some difficult and tricky issues, and for their understanding, and to Peers from every corner of this House who have worked tirelessly together to work out how we can make progress and how we can help both those caught up in prison, those on licence and in fear of recall, and of course the families and campaigners. I too pay tribute to UNGRIPP and those who have been campaigning tirelessly alongside them. It has at last reached the public ear—in broadcast, print and online media there is now real attention to this issue, and a sympathetic hearing. That is a very good thing.

I want to say thank you to the Minister. Thank you for being prepared to engage with those committed, and for the concessions that have been outlined this afternoon in terms of my amendments. Government Amendments 133B, 138ZB, 139A, 139B and 139C deal substantially with my Amendments 41, 42, 134, 138A and 144. I am very grateful for both the sensitivity and understanding, and the ability to give, in a period leading up to a General Election, which is difficult for any Government to do on issues such as these, which

are often toxic in the public arena. Together with the current Under-Secretary of State and his equivalent in the Commons, some progress—not as much as we, or those campaigning, would like, but some—has now been made on the Bill.

My Amendment 149—I have agreed with the Minister that we might come back to this when we debate the Criminal Justice Bill—is about a technical readjustment of the Rehabilitation of Offenders Act so that IPP and DPP prisoners are not disadvantaged. This afternoon we have made progress on the action plan and how it will be updated and implemented; the progression board and its transparency and reporting; the challenge group that will be overseeing and, as it says, challenging what is happening administratively; and the commitments in relation to parole.

I just want to make one comment about probation. There is a new head of Probation—Martin Jones—who was the chief executive of the Parole Board. He understands these issues very well. I have real confidence in him, as I do in the head of the progression board, Chris Jennings; they get what we have been talking about and will move heaven and earth to make the system work. But the Probation Service has to change its outlook and risk aversion, because we have a situation at the moment, because of the enormous pressure on the Prison Service and the lack of rehabilitation that that brings, where the Government have felt it right to release people early and to slow down prosecutions, while the Probation Service recalls people on licence all the time, filling the places that the Government are unfilling. It is like having a washbasin with the tap on and the plug out.

We have to make urgent progress in both getting release, making those spaces available, and not returning people to prison—not least because Ian Acheson, a former prison governor who has been working with the Government over a number of years, said recently that 50% of those currently in prison are taking illegal substances. When they are adjudged to have taken an illegal substance, their likelihood of being able to get parole is immediately reduced. Should they revert when they are on licence, having been subject to illegal substances while they were in prison, they are brought back into a place where illegal substances are readily available. We have got to stop the cycle and we can do it only with the good will of Ministers, future Ministers and those working in the service, who need to be brave—so thank you for what has been done so far.

I turn to Amendment 149A, in the name of the noble and learned Lord, Lord Thomas, who has just spoken. I want to draw attention to a court case that took place on 9 May this year, overseen by Lord Justice Popplewell. This was the case of Leighton Williams, who was sentenced in 2008 and who, until 9 May, was in prison under an IPP because he was at the time 19, not 18 or younger. It was judged in that case—and these are all technically difficult cases—that the original judge had misunderstood and applied an IPP inappropriately when the sentence should have been for five years in a young offender institution. That having been decided, Lord Justice Popplewell released Leighton Williams immediately. This cannot be a precedent, but it indicates that the noble and learned Lord, Lord Thomas, is right in relation to the test of what is appropriate and proportionate in the work of the Parole Board. I hope that the task force that is now going to be established within the Parole Board will help provide focus. While understanding entirely the position of my own Front Bench and Whips, I feel obliged to vote for this amendment, having added my name to it, believing that it is right that there should be a better proportional test.

I repeat that the campaigns have made a difference to the work that has gone on in relation to worries about mental health and who deals with mental health provision in the service. Is it the provider or the NHS? How do we get it right for individual prisoners who really need intensive support? The campaigners have raised all those issues with all of us, and they deserve credit for it. We are not entirely there yet, but we have made some progress. I am very grateful to the Minister for his understanding and collaboration in making that possible.

Lord Moylan (Con): My Lords, it is a pleasure to follow the noble Lord, Lord Blunkett, and in particular to follow him in expressing a very large degree of gratitude to the Government. Although one is going to end up disagreeing with them on certain narrow points in the course of this short debate, the Government have introduced amendments in the Commons which are extremely helpful to IPP prisoners who are out on licence, and today amendments have been introduced which deal with the very good points made by the noble Lords, Lord Blunkett and Lord Carter of Haslemere, allowing them to withdraw their amendments.

I do not think it is at all an exaggeration to say that more has been achieved, both operationally and legally, for IPP prisoners in the past few months than in the preceding 12 years. I am sure that a great deal of that is due to the personal efforts of the Lord Chancellor and my noble and learned friend Lord Bellamy on the Front Bench. I wish to express my gratitude and a degree of congratulation.

I also want to say—here I find myself again echoing the noble Lord, Lord Blunkett—that I am very impressed with the effort and determination of the officials charged with taking responsibility for clearing up this scandal; they really wish to do something. I wish them well, and I hope that that continues for as long as it needs to, whatever the character of the Government in power.

Before I turn to Amendment 145 in my name, I wish to say that there are some amendments in this group tabled by Back-Bench Peers which have not found favour with the Government. My Amendment 145 is one of them, and so is Amendment 140, in the name of the noble Baroness, Lady Burt of Solihull, and Amendment 147, in the name of the noble Baroness, Lady Blower. It is not for me to make their speeches advocating their amendments; I simply wish to say in advance of their doing so that I am very supportive of what they are trying to do in those amendments and of their aims.

Amendment 145 in my name was not actually drafted by me. As noble Lords who were present in Committee will remember, it was in fact drafted by the late Lord Brown of Eaton-under-Heywood, who felt passionately about this and, coincidentally, whose memorial service is

[Lord Moylan]
happening later this week. On social media, it has been dubbed the "Simon Brown Memorial Amendment", as testament to the passion that he brought to this topic and the efforts that he made.

4.45 pm

I am not going to divide the House on this for two reasons. The first is that, despite indications otherwise, perhaps, in Committee, I understand that the Labour Party would abstain on this amendment if it were pressed to a Division. However, I wish to make a few remarks about it. First, I remind noble Lords what it seeks to do. There are two things, really. It would reverse —here I am going to use the words in a non-technical sense, not being a lawyer—the burden of proof in front of the Parole Board so that, instead of the prisoner having to demonstrate that he or she is safe, it would be for the Parole Board to demonstrate that they are dangerous. There is nothing radical about this proposal because the power to make that change was given to the Secretary of State in the Legal Aid, Sentencing and Punishment of Offenders Act 2012. All that this part of the amendment seeks to do is, so to speak, trigger that and oblige the Secretary of State to make a change that he is already empowered to make. The second thing that the amendment would do is introduce a test of proportionality which the Parole Board can apply. I will turn to that in just a moment.

I am not going to repeat the arguments I made in Committee in favour of the amendment, but, while the noble and learned Lord, Lord Thomas of Cwmgiedd, could not anticipate what the Minister was going to say at the end of the debate, I can refer to what he did say in Committee specifically on this question of proportionality, because it is in *Hansard* for 12 March, at col. 1965.

My noble and learned friend Lord Bellamy on the Front Bench said:

"The Government's position, frankly, is that the word 'proportionate' causes more difficulties than it solves".

The crucial words are:

"It suggests that the test should be some sort of balance between the risk that this prisoner may present to the public and some sort of fairness or other consideration of the particular interests of that prisoner".

My noble and learned friend has put it exactly as I would put it, but there is a huge difference between prisoners who have been given a determinate sentence and who, if they are refused parole, will nonetheless be released at the end of their sentence, whatever the risk, and IPP prisoners who, if they are refused parole, are returned to an indefinite sentence. Fairness is a consideration and justice is a consideration, and I think many noble Lords understand that completely. It may be the case, as my noble and learned friend went on to say, that

"the public protection test is a public protection test: that is the only criterion"—[*Official Report*, 12/3/24; col. 1965.]

as far as this Bill is concerned. While it might be appropriate for prisoners with determinate sentences to have that as the only criterion, it is not appropriate for IPP prisoners, and some sense of fairness and justice needs to be brought in to play.

The second reason that I will not be dividing the House is that, as he has already explained, the noble and learned Lord, Lord Thomas of Cwmgiedd, has tabled Amendment 149A, which drops the issue of burden of proof, as I had, and focuses solely on this point about proportionality. I am persuaded by his arguments that that is the key point. It also might be easier for noble Lords to vote for a trimmed-down amendment that focuses on that very narrow point. So, if the noble and learned Lord does, as he has indicated, divide the House on Amendment 149A, while I will not be pressing Amendment 145 to a vote, I will join him in the Lobbies on Amendment 149A.

Lord Hope of Craighead (CB): I would like to say a few words about Amendment 141 in the name of the noble Lord, Lord Blunkett, to which I have put my name, and also, briefly, about Amendment 145 in the name of the noble Lord, Lord Moylan, to which, again, I have put my name.

Before making those remarks, I join both noble Lords in paying tribute to the noble and learned Lord the Minister for all the work that he has been doing to find a way of progressing this deeply damaged group of prisoners towards safe release. I use the words "deeply damaged" because, as the noble and learned Lord, Lord Thomas, has reminded us, there is a grave effect on them of being detained for so long under preventative sentences with no prospect of release. This has had the result that many of them suffer from a variety of conditions that make the process of releasing them so much more difficult than might have been expected to be the case when they were sentenced. They have faced the trauma of detention in overcrowded prisons without the support they needed, mental health problems, substance issues and various other points that the Minister himself told us about in Committee.

It is impossible for us, who have not seen and studied the files that have been kept on the cases of each of these prisoners, to appreciate the magnitude of the problem that the prisoners themselves face and that faces the Parole Board too. All we have are the numbers: the number of those in the various groups who have never been released, the time they have remained there in comparison with the tariff which they would have faced had they been given a determinate sentence, and the number of those who have been recalled to prison because their licences have been terminated.

The bare statistics are as depressing as ever, with no end in sight for so many of them. That is why so many of your Lordships, including the two noble and learned Lords who are no longer with us, have been pressing for so long for things to be done to enable the situation to be reformed. The various amendments that the Minister has introduced have gone a long way towards mitigating the problem that these preventive-sentence prisoners have been facing for so many years. The changes that have been made to the process for the review and termination of their release from prison on licence are also especially welcome.

Amendment 141 in the name of the noble Lord, Lord Blunkett, seeks to put the Government's existing action plan for this group of prisoners on to a statutory basis. I will not go over the details, but I draw attention to the wording of one provision in the opening subsection

of the proposed new clause, which sets out in clear language the purpose of the action plan proposed by the noble Lord, Lord Blunkett. It says that its purpose is

"to ensure that all possible steps are taken to ensure the earliest possible safe release and progression"

of this group of prisoners, so it flags up at the outset what this action plan is designed to do.

When we were in Committee on 12 March, I asked the Minister whether there was some way of getting that purpose clearly identified in the existing IPP action plan and of communicating that purpose to the prisoners who are subject to the system, so that they know what the plan is designed to do. The Minister was kind enough to say that this was certainly something that he would take away when considering the Government's position. The amendment to which I was referring then was about review—not the action plan that Amendment 141 is now talking about—but the need for a stated purpose is the same point. So I would be grateful if the Minister could say whether the Government's plan as now proposed states what its purpose is, and, if not, whether he would be willing to include a purpose to that effect before the plan is finalised.

As far as Amendment 145 is concerned, I really do not need to say very much, in view of the very thorough way in which the noble Lord, Lord Moylan, has discussed the subject and plainly explained his reason for not pressing the amendment. I appreciate and agree with the various points he has made. I agree with him that Amendment 149A of the noble and learned Lord, Lord Thomas, should be preferred, because it focuses on the key issue of proportionality. It preserves the existing test but highlights proportionality as a crucial point that must be addressed. For these reasons, if the noble and learned Lord, Lord Thomas, does test the opinion of the House, I propose to vote in favour of it.

Lord Carter of Haslemere (CB): My Lords, I am going to speak to four amendments in this group: Amendments 137 and 146 on executive release, on which I can be very brief; a new amendment in my name, Amendment 148; and a few words about Amendment 149A, which was tabled by the noble and learned Lord, Lord Thomas, to which he and others have already spoken.

Starting with executive release and Amendments 137 and 146, I am delighted and grateful to the Minister for bringing forward his Amendment 139B, which incorporates neatly into one clause those two amendments, which I will now obviously not press. I have just one question on the Government's amendment: as regards the licence being treated as having remained in force following executive release if it is in the interests of justice, what sort of cases are covered by the "interests of justice", a phrase which was not in my original amendment? I would be grateful if the Minister could say a few words about that.

As I seem to be on a bit of a roll as regards my amendments being accepted, Amendment 148 is a new amendment but on the same theme of helping to reduce the time spent in prison following a recall. This is about ensuring that IPP cases will be referred by the Secretary of State to the board within 28 days, or earlier if the prisoner makes written representations about the recall. This 28-day deadline already exists in statute for determinate sentence prisoners, and my amendment simply requires the same thing for IPP prisoners, not unlike executive release. There is no reason for any difference. Many recalled determinate sentence prisoners will involve more preparation before referral to the Parole Board than IPP prisoners, so why treat them differently? Since it is currently MoJ policy, as I understand it, to refer recalled IPP prisoners to the board within 28 days, let us be consistent and make it a statutory duty, as with determinate sentence prisoners.

Your Lordships may ask what difference it will make, given that it may be many months, if not years, before the board then considers the case. On paper, it is perhaps only a little, but it is only once the case is referred to the board that the process towards a paper or oral hearing can be initiated. It is easy to forget that every day in prison matters hugely for the prisoner concerned, particularly just after the psychological trauma of a recall, with all the frustration and despair that involves.

Although this amendment is only a small step when set against the unfair delays that currently arise at the board stage, it should make some difference for IPP prisoners to know that there is at least a statutory timetable governing the immediate aftermath of a recall. A statutory deadline would also mean the Secretary of State would have to ensure adequate resources were put into ensuring that a properly documented referral can take place within that timescale. I make no apology for that. Every day in prison matters hugely to the prisoner concerned. So I very much look forward to the noble and learned Lord saying, as he did with my executive release amendments, that he sees force in that one.

5 pm

I want to say a few words about Amendment 149A, which has been spoken to by other Peers and was tabled by the noble and learned Lord, Lord Thomas. I very much support this amendment. The need for the public protection decision to take into account the proportionality of the term served to the seriousness of the offence is especially crucial in respect of IPP prisoners, because it is one of the main reasons why the sentence is so "unfair" and "indefensible"—the Government's words.

The Minister may say that proposed new Section 28ZA(9), in Clause 41, already allows the Parole Board to take into account any matters it wishes, including length of time served, when making a public protection decision. As the noble and learned Lord, Lord Thomas, explained, the problem is that, unlike the matters listed in proposed new Section 28ZA(5), the board is not required to take this into account and frankly, there is no indication it ever would. It should therefore be required to do so, and this amendment would achieve that.

The Minister may say that this is not relevant to the risk the IPP prisoner may still pose, but the risk that a prisoner may reoffend if they are released is not new or unique to IPP prisoners, as we have heard. The Government accept it daily when determinate sentence prisoners are released on licence. The Justice Committee said in its third report that some determinate sentence prisoners

[Lord Carter of Haslemere]
will have committed far more serious offences and present much more of a risk on release than an IPP prisoner. Yet, society lives with that risk because the terms of their fixed-term sentence allow them to be released, however dangerous they may still be. Why is society prepared to accept the risk in their case, but IPP prisoners are told that society is not prepared to do so in theirs? Is that justice, especially given that less than 10% of serious reoffending is by life or IPP prisoners and overall reoffending rates on release are lower for IPP prisoners?

I want to give a couple of examples that I have been given permission to use, because they vividly illustrate this point. Aaron Graham punched a man in the face when he was 25. He was convicted of GBH in 2005 and sentenced to IPP with a tariff of two-and-half years. He has now served more than 20 years. Had he committed the offence 12 months earlier, before IPP was introduced, under the law at that time he would probably have been sentenced to about five years and been out on licence after two-and-half years. Luke Ings committed two robberies and assault in 2006, when he was just 17. He was given an IPP sentence and a tariff of 18 months. He has served 18 years of a DPP sentence—longer than he had been alive at the time he committed the offence. Again, if he had committed the offence a year or two earlier, he would have been given a determinate sentence and been out on licence after 18 months.

These are two cases among many, and they amply demonstrate the need for an explicit proportionality assessment, taking into account length of time served. We must grasp this nettle now, since it could be the last chance for many IPP prisoners. If we are not to have a resentencing process, this is an essential alternative in order to mitigate continuing unfairness and injustice. I look to forward to hearing the Minister's response.

Baroness Blower (Lab): My Lords, I will briefly repeat some of the remarks I made in Committee about the issue which is now dealt with in Amendment 147. The cases the noble Lord, Lord Carter, mentioned demonstrate amply why many serving and recalled IPP prisoners have simply lost hope of ever being properly released. The purpose of Amendment 147 is to create, on a statutory basis, a mentor and advocate scheme to add to the support which may be available to IPP prisoners.

When I spoke about this in Committee, I was quite gratified by the Minister's response, notwithstanding the fact that such an amendment has not found favour. The Minister said, having listed the kinds of support that exist for IPP prisoners:

"That is not to say that there could not be better organisation of voluntary agencies or, despite what I have said, some other route to consider whether there are ways of strengthening the support of prisoners on some non-statutory basis".—[*Official Report*, 12/3/24; col. 1966.]

Since the amendment, in its current form as Amendment 147, has not found favour with the Government, I urgently ask both the Minister and the Government to look at offering the kind of additional support which would have been offered in an advocate and mentor scheme.

It is clear from everything that has been said from all sides of the House about the current situation of IPP prisoners that it is incumbent upon us to do everything we can. Although I understand that a scheme like this will not end up being statutory, it could provide added support for those prisoners and perhaps some small measure of hope that they may ultimately be treated somewhat more fairly than hitherto.

Baroness Jones of Moulsecoomb (GP): My Lords, I am very pleased that the Government and the Labour Front Bench have improved this Bill, because it was quite a difficult one when it was first presented. However, it would be so amazing if they both accepted this last little tweak of Amendment 149A. Although it applies to very few people, this is an issue of justice and of unfairness that could be put right. I know it is very late, but that amendment is very worth while.

Baroness Burt of Solihull (LD): My Lords, I will speak to Amendment 140, which is in my name, although I support all the amendments tabled by noble colleagues in the IPP group.

I thank all the groups involved in this that have supported us. I also thank the Minister himself for the huge efforts he has made on behalf of IPP prisoners, and the Government for the immense distance they have travelled so far in repairing the damage done by this sentence on the psyches and futures of the remaining rump of unfortunate individuals left serving IPP sentences. We all want to help them progress and leave this torturous situation, but we all know that it must be done in a safe way that will not endanger the public. Amendment 140 would go a huge distance towards achieving this for those the system has damaged the most: those stuck in prison three or more years after their tariff has expired, whether or not they have been released and recalled in the meantime.

Under the current law, any prisoner who is being transferred to hospital will be entitled to the same level of aftercare as any other individual who has been in hospital under qualifying sections. This is an estimated 600 prisoners out of the almost 3,000 still in the system. Section 117 of the Mental Health Act 1983, on aftercare, provides wraparound care, which can include forensic psychiatrists working with police, probation, victim liaison officers, and local health and social care practitioners, as appropriate, under MAPPA auspices in their local areas.

For prisoners who have been sectioned, the duty means that multiagency planning starts before release and that prisoners come to their parole hearings with a package of support and care ready for them. This will enable them to live safely on the outside. It is hugely successful and throws a light on a path that would lead to many more successful releases. Over 90% of IPP releases by the Parole Board of prisoners who have had Section 117s between November 2021 and August 2023 would have had aftercare plans before release. This is double the percentage of IPPs who did not have Section 117s.

If you speak to any practitioner involved in the parole process, they will tell you that the number one problem preventing the release of people stuck in prison on this sentence is the lack of a package of support in the community to give the Parole Board confidence that they can safely be managed. With an

aftercare package provided by health and social care, in consultation with probation, much more care is taken to ensure that the basics—the scaffolding on which the individual can rebuild their lives—are covered. This scaffolding may include suitable accommodation and support as needed from an allocated psychiatrist, working with police, probation, victim liaison officers, local health and social care practitioners, et cetera. Arguably, all prisoners should be entitled to this, but sadly we know that the system often lets them down.

I will give two real-life examples. Their names have been changed for obvious reasons. I am calling them John and Peter. John was sentenced when he was 15 for a minimum term of under a year, and he spent 15 years in prison. Peter was sentenced at the age of just 13. He had a DPP with a minimum of 12 months, and he spent 17 years in prison.

John had a traumatic childhood, which included abuse and being put in care. His first 10 years in prison were chaotic. Over time, it became clear that he had developed a serious mental disorder in the form of a personality disorder. In one prison, the prison psychologist suggested that he should be assessed for a transfer to hospital. He consented and was duly transferred under the Mental Health Act 1983, so he was entitled to the support afforded by Section 117. He said that

"for the first time ever I was able to go to the Parole Board with a really good and supportive release package on the table".

It has not been all plain sailing for John since his release. He was rearrested for a breach of conditions several months later, but he knows that the support is still there to help him face the Parole Board again and to succeed when he is released. The support package will last for as long as John needs it.

Contrast this with Peter's story. Peter initially did very well in custody and was first released when he was just 17. He has had long periods of stability, but then things broke down and he has been recalled five times. He now lives in a constant state of anxiety that he will be recalled to prison. He says that living at an endless risk of recall is "like living on eggshells", and that his sentence has

"given me bad anxiety and paranoia—even when I am the victim I am the one who gets arrested whenever I contact the police—I fear going out and getting recalled because something might happen".

On his latest release, Peter went to a special mental health approved premises, but was discharged from prison without his medication. After 12 weeks in a hostel, his accommodation entitlement was up and he had nowhere to go. His last recall followed a significant deterioration in his mental health and a spell of time as a voluntary patient in a mental health ward from which he was discharged without suitable accommodation and support. He said he was glad to be back in prison because at least he "couldn't be recalled". Because he has never been sectioned under the Mental Health Act 1983, he is not entitled to the same wraparound care as John. But why should he not be?

5.15 pm

The answer, obviously, is that he should, but noble Lords may justifiably wonder what the cost and resource implications might be. I am not necessarily asking for a blank cheque. It is a few hundred people in a system which is already helping tens of thousands of individuals who have never been in prison and are discharged each year from mental hospitals under Section 117. They are a drop in the proverbial ocean. To give this level of help is a once-in-a-lifetime investment for those stuck prisoners: there will be no new IPP prisoners to become even further damaged by the IPP sentence—thank goodness. This one investment would be so successful in helping that rump of poor individuals.

I have a premonition that the Minister may have some very helpful things to say in response to Amendment 140. If he cannot see his way to supporting it today, can he at least agree to meet the experts from the forensic faculty at the Royal College of Psychiatrists and me? If he is agreeable to this modest request and my premonition comes true, I could well be persuaded not to press Amendment 140 to a vote.

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

Lord Garnier (Con): My Lords, I wish I could speak as eloquently as a number of those who have already spoken—I am sure that the noble Baroness, Lady Fox, will do so in a moment. We have travelled quite some way over the last few weeks, to a large extent due to the noble Lord, Lord Blunkett, the noble and learned Lord, Lord Thomas, and other colleagues of his on the Cross Benches, and my noble friend Lord Moylan, who has been our shop steward in our discussions with my noble and learned friend the Minister.

I hope I will not embarrass my noble and learned friend by repeating what others have said about him, but it is clear that without his willingness to listen and his understanding of the deeply serious problems that IPPs present, we would not be where we are today. I salute him for his patience and kindness in listening to me and in understanding the plight of IPP prisoners. As a Government Minister—particularly one in charge of the justice system and the prison system—the most important phrase that concerns you when you get up in the morning, or go to bed at night, and think about a Bill such as this is "the protection of the public". We have heard him use that expression any number of times during our discussions. The great advantage we have had in talking to him is that we have had discussions, not rows. The whole temper of the debate this afternoon demonstrates that, across the House, we want a discussion because we want to reach a just and fair answer to this very difficult problem.

I have co-signed a number of the amendments on the Marshalled List, but I want to concentrate, reasonably briefly, on Amendment 149A, to which the noble and learned Lord, Lord Thomas, and others, have spoken. It seems to me to encapsulate the essence of what we are trying to do: yes, to ensure the protection of the public when it is necessary to do so, as the Minister wishes to do, but also to bring a degree of proportionality into the decisions that have to be taken by the Parole Board. There are no double negatives in this proposed new clause; there is a straightforward fixation upon doing what is just and fair.

Many noble Lords will have read the terms of the noble and learned Lord's proposed new clause, but really one has to read carefully only subsection (2) of it to see that it allows for the Government—any

[Lord Garnier]
Government—to protect the public, but also allows for our justice system to end the monstrosity which is the injustice and the unfairness of the IPP system. We have had two examples from the noble Lord, Lord Carter, and two more examples from the noble Baroness, Lady Burt, but there are many, many more. Those are the prisoners who have survived, but bear in mind that there are a number of IPP prisoners who have died by their own hand because they have run out of hope. The one thing that a justice system must provide is the ability for a prisoner to get better, to rehabilitate, to return to society and to make his or her way in the world.

Subsection (2) says that

"the Secretary of State must by order pursuant to section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 … direct that, following the prisoner's referral to the Parole Board they will not be released unless the Board is satisfied that, having regard to the proportionality of the term served to the seriousness of the offence or offences of which they were convicted".

Come back to the 18-month tariff, come back to the two-year tariff, and see that these men are in prison 18 years after being sentenced, nearly two decades after that tariff has expired. Importantly, the subsection also refers to "any other relevant factors". The Parole Board is not required to just open the door and release them regardless because they are still there 20 years later, well beyond their two-year or 18-month tariff. It can take into account any other relevant factors. That could be the mental instability of the prisoner concerned or any number of characteristics or behaviours that the prisoner demonstrates, which demonstrate to the Parole Board and those who advise it that this particular prisoner—albeit he has served 20 years beyond his two-year tariff—is still, none the less, unsafe to release.

The burden must surely be on us, as representatives of the state in your Lordships' House and as makers of legislation, to do things which promote fairness and justice, in a way that is transparently sensible. If I may say so, Amendment 149A speaks nothing but common sense, justice and fairness. Even at this very late stage of the Bill, I urge the Government to have one more think. This is not a matter of Labour against Conservative, Cross-Benchers ganging up on the Government, or the Liberal Democrats ganging up with the Labour Party against the Government. It is not even a matter of a couple of lily-livered, pinko Conservative drips ganging up on their Government and trying to engender a rebellion.

Noble Lords: Oh!

Lord Garnier (Con): It is a cross-party justice question. If I cannot stand up and speak for justice as a Conservative, I am in the wrong business. I will be voting with the noble and learned Lord, Lord Thomas, this evening.

Baroness Fox of Buckley (Non-Afl): My Lords, how do I follow those words about pinko commie Conservatives? Quite easily.

Perhaps we would not start from here, but as we are here, I too warmly welcome the Government's concessions. They show that the Minister has been listening in Committee and at all the meetings. I hope that his listening continues, because there are many very fine amendments in this group, as reflected by the many very fine speeches. Even if the amendments are not voted on, I still think that they are worth considering, and I hope that the officials and the department will take on board what is being said.

All the amendments in this group tackle very specific, and sometimes seemingly technical, matters that remain outstanding in trying to tackle the IPP issue. It strikes me that all these fiddly, piecemeal issues could have been dealt with historically in one fell swoop, and once and for all, by a resentencing amendment. Although I know that that is off the table for now, it will need to be brought back by some future Government. For all that, this group of amendments adds up to more than the sum of its parts, which is why I hope that the amendments will still have an impact, even if they will not all be voted on.

Before I speak to the amendments that I put my name to, I want to show my support for Amendment 145, which the noble Lord, Lord Moylan, said he cannot now press because of a lack of support. The notion of reversing the burden of proof when applying for parole made for one of the most important amendments in this group, not least because it would have had a material impact on the 3,000 IPP prisoners still in jail and it presents the most hope of the amendments here. A lot of people have rightly congratulated UNGRIPP and Donna Mooney on the work that they have done. She reminded us why she wanted Amendment 145 in particular to pass: she is worried that the IPP prisoners who are still incarcerated feel doubly abandoned by this Bill, because it does so little for them as a group. I concur, and I wanted to see that rectified.

That is why it was so gratifying in Committee to hear the noble Lord, Lord Ponsonby, welcome what the noble Lord, Lord Moylan, had described then as a "nudge" to the Parole Board that would make a significant difference. Indeed, as we speak, the words of the noble Lord, Lord Ponsonby, from the Dispatch Box are being echoed and cheered on widely in a clip featuring them in Peter Stefanovic's latest short vlog, which has had over 1 million views in a matter of days. It is interesting that those words are being cited as a positive example of cross-party co-operation on an important matter of principle about criminal justice. I hear that the Labour Front Bench is now unable to support this amendment.

I want to counter something that the noble Lord, Lord Blunkett, mentioned. He said that, in the build-up to an election, this is a toxic topic. I understand the nervousness about law and order, but I will challenge that. I do not think that it is as toxic as we in this House or the other place sometimes suggest to the public. In fact, I think that public opinion can be won over—and is being won over—on IPPs. The fear that politicians have of the public and public opinion is sometimes an underestimation of the public's sense of fairness and justice, as we have seen with the range of scandals over recent weeks and months—there have certainly been far too many.

The principle behind Amendment 145 is still important to consider, because if the state insists on retaining the power to continue incarcerating people for decades after their original tariff is spent, using a sentencing

regime that the state itself has abolished as not fit for purpose, it is only right that the burden of justifying such extraordinary power should then lie with the state.

5.30 pm

This is especially important because putting the burden of proving that they are safe on to prisoners is an added burden and injustice, because the practical barriers to acquiring proof are created by the state. As we have already discussed at length, prisoners cannot exert any agency or power in accessing, for example, rehabilitation courses if those courses are cancelled or delayed or if they are bundled from one prison to another. All that is what is used as proof of their safeness.

I am sure that noble Lords saw the very moving story of the IPP prisoner Thomas White meeting his 14 year-old son for the first time since he was a 10 month-old baby. It is all credit to the noble Lord, Lord Blunkett, for helping to organise that family reunion. Apparently, there was not a dry eye in the visiting room. Part of the media coverage revealed that Thomas had been moved 16 times since 2012, when he was put on an IPP. He had no control or choice over those moves, but as a consequence had no way of acquiring the rehabilitation courses deemed necessary to stand a chance with the Parole Board. Therefore, I would still say yes to Amendment 145, although Amendment 149A, as an elegant compromise, is one for which I will vote. What a moving and wonderful speech we heard from the noble and learned Lord, Lord Thomas of Cwmgiedd, at the beginning. It really set the tone for this discussion.

One hurdle that prisoners find hard to get over at parole hearings is proof of adequate arrangements for when they will be released, to prove that they will be safe. This brings me to Amendment 140 on aftercare. The need for this has been so well articulated by the noble Baroness, Lady Burt, but I have just a couple of additional points. If you read the excellent journalistic articles on IPP prisoners, such as those by Simon Hattenstone in the *Guardian,* or by Amy-Clare Martin in the *Independent*, or listen to the fantastic investigative documentary series "Trapped", you will know that time and again the inadequacy of post-prison arrangements is referred to as a key factor in creating an IPP version of ping-pong—slightly different from ours—where people are constantly recalled back to prison, having been let out and then made to go back in, not for any criminal activities but because they are unable to negotiate the trigger-happy licensing rules and lack of suitable aftercare, which is what made this amendment so important.

I have always thought that the main danger presented by IPP was not to the public but to IPP prisoners and licensees themselves. We know about those 90 tragic suicides, but how concerning is it that self-harm is more prevalent among IPP prisoners than among any other prisoner cohort, including lifers? They actually need this extra special support, and at the very least are owed specific, specialised multiagency aftercare, which is why I like that amendment.

In that context, Amendment 147, concerning a specialist mentor scheme, is also a worthwhile endeavour, as put forward by the noble Baroness, Lady Blower. One thing not mentioned often enough is the added work and strain that IPPs create for prison officers and probation staff, because both services are understaffed and underresourced. They have to negotiate the particular challenges of a cohort of IPP prisoners, often subsumed by despair, who are treated differently from other prisoners and licensees due to the peculiar requirements of IPP.

Perhaps it is no surprise that the new president of the Prison Governors Association, Tom Wheatley, in one of his first media interviews, called for a review of IPPs and resentencing. I think that governors and staff would really appreciate any extra support from specially trained mentors; and for those IPP prisoners and licensees, this would be an invaluable extra crutch for support when staff cannot help them because they are too busy or it is not appropriate.

Finally, there is Amendment 148, the requirement for the IPP recall cases. This is a brilliantly important amendment. There is a new documentary coming out called "Britain's Forgotten Prisoners", which will have its world premiere at the Sheffield documentary film festival in June. It features Shirley Debono, that tireless, courageous campaigner, and her son Shaun. Part of the harrowing nature of it is that he dreads being recalled because he knows that it will mean another year or two in prison, because he cannot get a Parole Board hearing. For me, that amendment is very important and I will support it.

Lord Hodgson of Astley Abbotts (Con): My Lords, I added my name to Amendments 138A, 143 and 144 in the name of the noble Lord, Lord Blunkett. These amendments are concerned with DPPs—with people who have been detained, as opposed to imprisoned, for public protection. I listened very carefully to the Minister when he explained Amendments 139A, 139B and 139C and the very sympathetic way he has addressed the issues that we raised in Committee.

All I wanted to say at this advanced stage of the Bill is that we need to remember that DPP prisoners were, when they were first detained—"detained" sounds very straightforward; when they were first convicted—under 18. We need to think very carefully about that. They are people who have had—it is almost certain—the most appalling life chances. Members of your Lordships' House who have worked in this area will have appalling stories about how these people have been unable to get their lives together. We surely have a special responsibility to people who have started out like that, and, in thanking the Minister for the changes he plans to make in procedure for this terrible situation, I hope that the fact that they were children at the outset will not be overlooked.

The Lord Bishop of Southwell and Nottingham: My Lords, it is a pleasure to follow noble Lords—and noble and learned Lords—and to benefit from their considerable wisdom on the matter at hand. I do not wish to repeat all that has already been said, but my right reverend friend the Bishop of Gloucester has added her name to several amendments in this group. She is sadly unable to be here today, but I know that, like many other noble Lords, she is dedicated to seeing the reform of the criminal justice system, particularly in respect of our prisons, for which she is the lead bishop for the Church of England.

[The Lord Bishop of Southwell and Nottingham]

I will reflect briefly on Amendment 140. As has already been said, we know that many IPP prisoners are stuck in the system, and appropriate psychiatric care in the community is not in place to manage their high-support needs. It is clear to anyone who visits prisons and meets IPP prisoners that they suffer great mental distress, reportedly more so than the wider prison population. This sentence—arguably more than any other—disrupts relationships and leads to hopelessness, anxiety and alienation, as we have heard so much about. In many cases, it can be said that the sentence itself is the very cause of that mental distress, as is reported by many chaplains in our prisons.

The changes proposed through this Bill are welcome and, as we have heard, much progress has been made; but, for the sake of both the prisoners in question and the wider community, I submit that the extended aftercare arrangements proposed in Amendment 140 are needed. Like other noble Lords, I ask the Minister to think again on this important matter.

Lord Marks of Henley-on-Thames (LD): My Lords, it has long seemed strange that, having abolished IPP sentences during the coalition in the LASPO Act, we still have nearly 3,000 prisoners, many of whom had relatively short-term tariffs, in custody or recalled to custody many years after their tariffs have expired.

In this House and elsewhere, there is unanimity that IPPs have been and remain a stain on our justice system, and that they are an inhumane mechanism, unjustly withholding from prisoners a date of release, routinely depriving them of any hope of freedom and causing them serious mental health problems. This is a fact highlighted by the noble and learned Lords, Lord Thomas of Cwmgiedd, Lord Hope of Craighead and Lord Garnier. The IPPs were frequently in the wake of offences that were not of themselves the most serious.

This is all against a background of a Government taking strange measures, almost impossible to justify, to keep down the prison population. As the noble and learned Lord, Lord Thomas, pointed out, we have prisoners on determinate sentences being released up to 93 days early, for no good reason apart from that there is no space for them. With Operation Early Dawn, we have hearings of criminal cases being delayed to avoid using up prison space by convicting and sentencing offenders expeditiously. We have a prison building programme that even on the most sanguine projections for planning and construction cannot possibly keep pace with predicted increases in prisoner numbers.

Yet we have a Government who have already been the cause of increasing prisoner numbers—with longer prescribed sentences and legislation increasing times in custody—setting their face against doing more to relieve a significant part of the pressure by releasing IPP prisoners faster and more humanely. Certainly, they have moved some way, and I join my noble friend Lady Burt in welcoming the Government's movement and in her call in Amendment 140, supported by the noble Baroness, Lady Fox of Buckley, and the right reverend Prelate, for much more and far better aftercare and support for these damaged prisoners who have suffered so much from IPPs. The action plan, so far as it goes, is welcome, as are the other government amendments, in which the Government have accepted the spirit of amendments moved by others throughout the passage of this Bill. I join those others, notably the noble Lord, Lord Blunkett, who has been mentioned and who has spoken, in appreciating the discussion and co-operation that we have all had with the Minister. However, one suspects that it has been despite the Minister's best efforts that the Government have not moved far enough.

Amendment 149A, tabled by the noble and learned Lord, Lord Thomas of Cwmgiedd, and noble Lord, Lord Blunkett, and powerfully supported today by the noble Lords, Lord Moylan, Lord Carter, and others, with its requirement for an approach that embodies proportionality, is a modest amendment. Why the Government cannot accept it I cannot imagine. The noble and learned Lord's amendment is designed to give IPP prisoners the hope that they need. The noble and learned Lord, Lord Garnier, expressed powerfully the effects of the loss of hope for IPP prisoners in the context of this amendment. If the noble and learned Lord does test the opinion of the House, we will support his amendment. I hope only that a good number of Labour Peers and Conservative Peers, in the cross-party spirit shown by the noble and learned Lord, Lord Garnier, will do the same. It would be very welcome if the Government would heed his plea to have one more think.

Lord Ponsonby of Shulbrede (Lab): My Lords, I too acknowledge the work done by the Minister on IPP and the significant movement that there has been through the government amendments.

It is right that IPP sentences were abolished. We share the concerns that lie behind many of these amendments. We have always sought to work constructively on a cross-party basis on this issue, which is why we are supporting the government amendments to bring forward a statutory action plan. Our default position will always be, where possible, to secure the safe release of IPP prisoners. However, public safety must be at the centre of our approach. It is not possible to make assessments of public safety responsibly and confidently from the opposition position without the necessary evidence on the individual needs of these offenders. In government, the Labour Party will work at pace to make progress and will consult widely to ensure that the action plan is effective and based on the evidence available.

Government Amendment 139C, the annual report amendment, is a government concession to Amendments 141 and 142 tabled by my noble friend Lord Blunkett. It places an obligation upon the Government to report annually on the progress and rehabilitation of IPP and DPP prisoners through the enhanced work of the progression board and to outline those whom they have consulted in supporting such progress. There is clear intent of prisoner release and support and progress on licence while being monitored and advised by the scrutiny panel—currently known as the external challenge group. The Minister mentioned the members of this group. Nobody could doubt their credibility.

5.45 pm

There will be no disagreement across the House that IPP sentences have become a stain on our criminal justice system and must be rectified. The evidence of

their detrimental impact has been detailed throughout the Bill and in this debate, as well as through the tireless work of colleagues across two Houses. Our priority is, and must be, public safety, a point that was made in opening by the noble and learned Lord, Lord Garnier. While reforms to IPPs are necessary, we must ensure that any actions taken are measured and safe. The creation of a scrutiny panel of experts will allow for the essential transparency and informed decision-making to ensure that any steps taken to progress a solution for those on IPP sentences is robust. I noted the point made by the noble and learned Lord, Lord Hope, about the purpose of the action plan as stated within the plan itself.

I turn to my noble friend Lord Blunkett's Amendments 138A and 143, and the Government's response to them: Amendment 138ZB. One of the most significantly impacted groups is those who were sentenced indeterminately as children. It is understood that children can learn and be rehabilitated at a significantly quicker pace than adults. Yet one of the many concerns with these sentences is that they did not appear to take this into account when the children were sentenced. As a result, we have 49 prisoners serving a DPP sentence in custody having been sentenced as children and subsequently recalled.

It is clear that IPP sentences require resolution. However, we believe that any solution must provide clear delineation for those sentenced as children and the situation should be assessed within that context. There is a need for those on DPPs to be considered within their unique context. A wider plan on IPPs cannot be expected to understand the nuances of those sentenced as children and the impact that their time in custody may have had on their development. In the meantime, reducing the qualifying period for licence determination is a decisive move in the right direction, so we will be supporting the Government's Amendment 138ZB and will abstain if my noble friend presses his amendments.

I move on to Amendment 149A, tabled by the noble and learned Lord, Lord Thomas, and Amendment 145, tabled by the noble Lord, Lord Moylan. Amendment 149A states explicitly that the release test should be proportionate to the nature of the original offence under IPP. It covers the same parameters as the amendment tabled by the noble Lord, Lord Moylan, wanting to alter the release test to make it easier for those who have served their time to be released when safe. It is applicable to those who have served in excess of the maximum determinate sentence provided by law for the offence or offences of which they were convicted, or 10 years or more beyond the minimum term of their sentence. We have said that in government we will work at pace to bring forward an effective action plan that will allow the safe release of IPP prisoners where possible. It is not possible to make assessments of public safety responsibly and confidently from opposition without the necessary evidence on the individual needs of these offenders.

We have concerns about any potential changes to the release test, and the Parole Board's ability to prioritise public safety. For that reason, we are supporting the Government's action plan rather than any changes to the release test at this time. Therefore, we would abstain if the noble and learned Lord, Lord Thomas, were to move his amendment.

My noble friend Lord Blunkett, in his generous speech, expressed understanding for the Labour Party's position. He spoke of the recall of prisoners breaching their licence conditions, and the difference between that for determinate sentences and for indeterminate sentences. I like Amendment 148, tabled by the noble Lord, Lord Carter, which would make the licence conditions between indeterminate and determinate sentences equivalent. I will say something, however, about my experience as a magistrate who sat on breach courts many times. Many of the briefings I received said that the breaches were somehow inconsequential or not serious. In my experience, offenders often do not realise the seriousness of their breaches. It is not uncommon for them to give an example of their breach that they believe to be trivial, only for the court, and the potential victim, to take a different view. Licence conditions are there for a reason, and it needs to be reinforced that the reason is public protection.

I turn to Amendment 147, tabled by my noble friend Lady Blower, and Amendment 140, tabled by the noble Baroness, Lady Burt. Amendment 140 would introduce an additional aftercare duty in respect of people on IPP who have never been released and are three or more years beyond the expiration of their tariff, and who have not yet had their licence terminated. My noble friend's Amendment 147 would enable the Secretary of State to appoint mentors to assist over-tariff IPP prisoners. They would provide practical support in formulating a release plan, support them at the Parole Board hearing and signpost relevant services, including mental health services, to enable them to get out of jail and stay out.

We support the intention behind both these amendments. We recognise that enhanced mental health support for these prisoners is likely to be needed once they are released, both for the protection of the community and to stop them breaching their licence conditions or re-offending. We do not, however, know the whole picture regarding the numbers concerned or the extent of the additional support required. While I am happy to express general support for these amendments, we would not support them if they were moved to a vote. I was intrigued to hear what the noble Baroness, Lady Burt, said about anticipating further concessions from the Minister at the Dispatch Box.

This group of amendments has been hotly anticipated by the many people who will be watching this debate, and by the IPP prisoners themselves and their wider families. Although substantial and welcome progress has been made through the Government's amendments, the step-by-step approach in this and previous Bills has led to changes and to some reduction in the number of IPP prisoners, and that must be done on a sustainable basis. The point is that if we were to press ahead too quickly and prisoners were released and serious offences were committed, that would thoroughly undermine the position of the IPP prisoners who were left behind. This therefore needs to be done in a slow, systematic and sustainable way that will be to the benefit of the existing IPP prisoners.

Lord Bellamy (Con): My Lords, I first thank noble Lords for their contributions. To those who were kind enough to refer to me personally, I respectfully say

[Lord Bellamy]
that I simply speak on behalf of the Government, not on my own behalf. This Bill, these amendments and the matters we are discussing are government-sponsored matters. It is the Lord Chancellor and my right honourable friend Mr Argar in the other place, and the Government as a whole, who have put forward this Bill and these amendments for your Lordships' consideration.

I gathered from the most eloquent speeches we heard today that a number of amendments are not going to be moved. For the record only, I will therefore touch only briefly on those amendments and then turn in more detail to those that remain in contention.

Amendments 134 to 136, proposed by the noble and learned Lord, Lord Thomas, would permit offenders to apply to the Parole Board for licence termination after at least a year had elapsed. The Government's view can be briefly stated: the relevant offenders have to complete only two years on licence, so we are talking about only one possible application to the Parole Board during that two-year period. By the time the Parole Board has determined the application, one would be very close to the end of the two-year period anyway. In the Government's view, it is not unreasonable to expect an offender to fulfil the required two-year period; that is a clear and certain test. We should not overburden the Parole Board—even more than it is burdened already—with these further applications. That is the brief answer to that point; I will not elaborate further.

On the noble and learned Lord's Amendment 138, which addresses what are described as inappropriate recalls, I simply point out that, in his recent report of December 2023 on the Probation Service and the power of recall, the chief inspector found that the power was being used in a necessary and proportionate way. I associate myself with the remarks made by the noble Lord, Lord Ponsonby, bringing to bear his experience as a magistrate, about the importance of recall and the circumstances in which it happens. It is very important that the Probation Service is not criticised for the way in which it makes recalls. Be that as it may, in the Government's view, these amendments, including Amendment 138, are now overtaken by government Amendments 139A and 139B, which provide, in effect, for re-release and for the release not to count if that is in the interests of justice.

I was asked by the noble Lord, Lord Carter, whether I can give any examples of what might be in the interests of justice in that instance. My official advice is that I cannot, because that would pre-judge particular circumstances. I can say in my personal capacity, however, that one could imagine, theoretically and hypothetically, that a recall made rather close to the expiry of the licence term, when the effect might be to restart the two-year clock—or a recall made in circumstances where there had been an arrest but subsequently there were no charges, or nothing was done to pursue the matter that led to recall—might be instances where this kind of power could be useful. I think that is as far as I can go on that matter.

Amendment 139 concerns the power in delegated legislation to change the qualifying period, which at the moment could be either reduced or released. That is a standard provision. The Government cannot imagine the circumstances in which anyone would ever want to increase the qualifying period, but one never knows. Therefore, we are not in favour of changing the statutory power to change the qualifying period.

6 pm

Following the amendments through in numerical order takes me to Amendment 140. I thank the noble Baroness, Lady Burt of Solihull, for her most moving speech on the additional aftercare duty that the amendment contemplates for prisoners who are suffering from mental health problems in particular. I also thank the right reverend Prelate the Bishop of Southwell and Nottingham for supporting the noble Baroness, Lady Burt, and other speakers likewise.

The Government agree with the noble Baroness that those entitled to the support that Section 117 of the Mental Health Act provides should indeed receive it. It is important to highlight that the purpose of Section 117 is to prevent readmission, so extending it to people who have never been admitted to a mental health hospital does not quite align with the section as it is at the moment. The amendment would widen the purpose and application of Section 117 and extend it beyond its present scope, so it is not an amendment that the Government can support.

However, I draw the noble Baroness's attention to the efforts we are taking to protect IPP prisoners' health and well-being through the IPP action plan and other initiatives. The annual report to Parliament on IPP sentences will have a dedicated section that focuses on mental health support for prisoners, so the Government will be held accountable for their actions, particularly on mental health. The Government entirely accept that this is extremely important to the matters we are discussing. HMPPS is also extending the scope of its psychology services, so that it can continue to support some of the more complex IPP cases, not just in prison but in the community.

Another important area of support is that provided by the Secretary of State for Health and Social Care, and the NHS, regarding health and particularly mental health needs provided to all offenders while in custody and as members of the public when in the community on licence. The Ministry of Justice will explore with the Department of Health and Social Care whether an up-to-date IPP offender health needs analysis could be delivered, so that we can inform future Health and Justice joint work supporting this cohort of offenders. The Lord Chancellor will work with the Secretary of State for Health and Social Care to consider what more could be done to meet IPP offenders' health needs following any such assessment. The annual report will include progress on this work, if taken forward.

In response to the question I was asked by the noble Baroness, I am very happy to meet the Royal College of Psychiatrists to discuss this. The college is already represented in the challenge group and is very familiar with the problems, and it is in the Government's interest to be as fully informed as possible about these issues. I will take that suggestion forward, as well as writing to my ministerial colleagues at the Department of Health and Social Care to begin work specifically related to the health requirements of IPP offenders.

I am sure that the input of the royal college on that kind of matter will also be of importance. So we recognise the specific health challenges faced by the IPP offender cohort and are increasing our support. I hope that, in the light of what I have just said, the noble Baroness will not feel the need to press her amendment, in due course.

I of course pay great tribute to the noble Lord, Lord Blunkett, for all his efforts on behalf of these prisoners. I have already covered his amendments, so will not say any more about them now—save that we all recognise the vital role that the noble Lord has played, centrally, in finding and working towards solutions on this difficult matter. I am sure that he has the thanks of the whole House and the nation for everything that he has done in this regard.

I come to the important amendments—Amendment 145, tabled by my noble friend Lord Moylan and Amendment 149A, tabled by the noble and learned Lord, Lord Thomas, which would modify the release test. I will deal first and briefly with Amendment 145, which introduces a change in the burden of proof. My feeling is that the House would like to address Amendment 149A rather than Amendment 145, but I will make just one comment about Amendment 145, which is about changing the so-called burden of proof and introducing a new burden of proof. On that point, there is no burden of proof in the current release test, in the Government's view. It is simply up to the Parole Board to assess whether the prisoner is considered a risk to public protection. The Government are opposed to creating a burden of proof on anybody and making this a more legalistic process.

For clarity's sake, I understand that the Parole Board is preparing to update its guidance to state explicitly that there is no burden on the prisoner to prove that he is safe to release, so that, in lay terms at least, prisoners can understand that it is not up to them to prove anything; their case will simply be considered by the Parole Board.

That leaves us with the one crucial point, stressed by the noble Baroness, Lady Jones of Moulsecoomb, as the last piece of the jigsaw: if only we could move a little on this, we would have met every conceivable suggestion that has been made. The central point about Amendment 149A, stressed in a very powerful speech by the noble and learned Lord, Lord Thomas, and supported by the noble Lord, Lord Carter, the noble and learned Lords, Lord Hope and Lord Garnier, and others, is to introduce the idea of proportionality in the release test. The prisoner may not in fact be safe to release, but he has been there for a long time, so we had better release him anyway; that is what it comes down to. I see the noble Lord, Lord Ponsonby, nodding.

Respectfully, I am pleased to adopt the arguments that the noble Lord, Lord Ponsonby, is putting to the House. We are where we are and everybody regrets it, but we have a dilemma. In almost all cases, these prisoners have been before the Parole Board many times and the Parole Board has said that they are not safe to release. So what do we do? Do we just change the release test and say that we are going to release them anyway—give permission for them to come out, in a sense—or do we take steps to enable them to pass the existing tests to qualify for safe release?

As the noble Lord, Lord Ponsonby, says, we must take this step by step. We have put enormous effort behind producing the action plan. We have dedicated resources, we have reporting systems, we have a report to Parliament, we have increased support for mental health, we have reduced the licence periods and we have special arrangements for DPP. Let that work. We cannot lose sight of the importance of public protection. Let us go step by step, as the noble Lord, Lord Ponsonby, says.

I am delighted to hear that, in the unlikely event of a change of Government, any new Government of which the Labour Party was part would work at pace to make the action plan effective. That is what this Government will do, whether before or after the election, if they are still in power or part of a Government. We have cross-party support; everybody is determined to make the action plan work. Let us not risk public protection by changing the test in a way that would effectively say that these people are unsafe but we are going to release them anyway. As the noble Lord, Lord Ponsonby, points out, if we did that and then it backfired—if something went wrong and there were serious incidents—that would be so damaging for the existing unreleased IPP population that, frankly, we would wish we had never done it. Let us not take that risk.

It is not at all clear what proportionality actually means; it is not a very easy test to apply. The Government's present view is that proportionality should not be a factor for the Parole Board. It is a very difficult ask of the Parole Board to weigh things up; we should give it one task and one task only: to decide the question of public protection. We should have that test, and that should be the right test for all IPP offenders, however long they have served and whether they are over tariff or not.

I make one final point. Noble Lords have said that this may be the last chance. It is not the last chance, by any means. There is power under the LASPO Act 2012 to change the test. If the action plan does not work out, and if, in later circumstances, a future Government decided that they were prepared to take the risk, they could still do so without any primary legislation, subject to affirmative resolution by both Houses of Parliament. We do not need to press this point now. Let the action plan work.

Lord Sentamu (CB): In a debate on public bodies, protests and funding, we wanted to use the word "reasonableness", and the Government still stuck to proportionality—in government circles, on that particular Bill, they knew what proportionality meant. Moreover, I was in the debates on the Human Rights Act; it was very clear that part of the human right is whether the decisions that have been taken are really proportionate. The Act spells this out, so I do not understand why, in this particular case, the Minister is relying on case law, particularly on the Human Rights Act. I do not see why that cannot be applied in this particular instance.

Lord Bellamy (Con): My Lords, I cannot do better than simply refer to what I have already said: the Government think that there should be a very clear, simple test of public protection, and that the way to get these prisoners out is to work in a way that enables

[Lord Bellamy]
them to meet that test, so that they and the wider community are safe. My respectful submission to this House is that that is a reasonable and responsible approach, because otherwise we run terrible risks in relation to releasing this cohort, who have already been found several times not to be safe to release. That is the Government's position.

I turn briefly to Amendment 147, tabled by the noble Baroness, Lady Blower, which relates to other support for IPP prisoners through the use of independent monitors, and in addition to the support I indicated on the last occasion. The Government will look at additional support, as the noble Baroness asked me to do, and consider whether that would be a further element that we can build into the action plan. I respectfully say to the noble Baroness and to other noble Lords who have made this point that, for prisoners who have lost hope, the Government's actions should be the start of restoring hope. We are in the business of restoring hope for this cohort of prisoners.

6.15 pm

Amendment 148, from the noble Lord, Lord Carter, would provide 28-day time limits for referral to the Parole Board. It is quite true that HMPPS is required to refer determinate prisoners within that timescale. In relation to IPP prisoners, it does its very best to refer them back to the Parole Board within 28 days, and in the majority of cases it meets this deadline. However, there may be cases, particularly complex cases, where 28 days is not enough to get all the reports together. We do not want to get ourselves into a position where we are referring matters to the Parole Board because we have a statutory deadline to do so, but where the case is not ready and we might risk disadvantaging a prisoner rather than assisting them. That is the Government's position on the statutory obligation. I reiterate that progressing IPP licence termination and swiftly considering cases for release is one of our top priorities.

Amendment 149, from the noble Lord, Lord Blunkett, is about the Rehabilitation of Offenders Act. I fully agree that this issue should be examined. I have already asked officials to explore options, with a view to amending the Act in relation to IPP sentences.

In closing, we have introduced in the course of the passage of the Bill a combination of levers to make a real impact. I respectfully say to the noble and learned Lord, Lord Hope of Craighead, that it is no longer the case that there is no end in sight. This Government have not given up on any IPP or DPP prisoner. Nobody serving an IPP or DPP sentence will be forgotten. Every one of them deserves the chance to progress towards a safe and sustainable release, and ultimately to have this sentence brought to an end.

Amendment 120A agreed.

Clause 42: Public protection decisions: fixed-term prisoners

Amendment 120B

Moved by ***Lord Bellamy***

120B: Clause 42, page 41, line 6, leave out from second "the" to end of line 7 and insert "High Court;"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 45, page 47, line 28.

Amendment 120B agreed.

Amendment 121 not moved.

Amendment 121A

Moved by ***Lord Bellamy***

121A: Before the Schedule, insert the following new Schedule—

"Schedule

Infected Blood Compensation Authority

Part 1

Constitution

Membership

1 (1) The IBCA is to consist of—

(a) a Chair (who is to be a non-executive member),

(b) at least 3, but not more than 6, other non-executive members,

(c) a chief executive, and

(d) at least 2, but not more than 5, other executive members.

(2) The members are to be appointed in accordance with paragraphs 2 to 4.

(3) A person exercising a power of appointment in accordance with those paragraphs must when doing so ensure, so far as practicable, that the number of non-executive members is at all times greater than the number of executive members.

Appointment of non-executive members

2 (1) The Chair is to be appointed by the Secretary of State or the Minister for the Cabinet Office.

(2) The other non-executive members are to be appointed by the Chair except for the first three who are to be appointed by the Secretary of State or the Minister for the Cabinet Office.

(3) A person may not be appointed as a non-executive member if the person is a member of the IBCA's staff.

Appointment of executive members

3 (1) The chief executive and the other executive members are to be appointed by the Chair.

(2) The executive members are to be members of the IBCA's staff.

Appointments of members: eligibility

4 (1) The Secretary of State or the Minister for the Cabinet Office may by regulations make provision about criteria which must be met by persons in order to be appointed as members of the IBCA.

(2) The regulations may make provision for a person to cease to be a member of the IBCA if the person no longer meets those criteria.

Terms of membership

5 (1) A member of the IBCA holds and vacates office in accordance with the terms of the member's appointment (subject to this Schedule).

(2) A member may resign from office by giving notice to the appropriate person.

(3) A member may be removed from office by notice given by the appropriate person on the grounds that the member—

(a) has without reasonable excuse failed to discharge the member's functions, or

(b) is, in the opinion of the appropriate person, unable or unfit to carry out the member's functions.

(4) A person ceases to be—

(a) a non-executive member of the IBCA upon becoming a member of its staff;

(b) an executive member of the IBCA upon ceasing to be a member of its staff.

(5) In this paragraph "appropriate person" means—

(a) in the case of the Chair, the Secretary of State or the Minister for the Cabinet Office;

(b) in the case of any other member of the IBCA, the Chair.

Non-executive members: payments

6 (1) The IBCA must pay, or make provision for the payment of, such remuneration, pensions, allowances or gratuities as the Secretary of State or the Minister for the Cabinet Office determines to or in respect of a person who is or has been—

(a) the Chair, or

(b) a non-executive member appointed by the Secretary of State or the Minister for the Cabinet Office under paragraph 2(2).

(2) The IBCA must pay, or make provision for the payment of, such remuneration, pensions, allowances or gratuities as the Chair determines to or in respect of a person who is or has been a non-executive member appointed by the Chair under paragraph 2(2).

(3) Sub-paragraph (4) applies if—

(a) a person ceases to be the Chair or a non-executive member appointed by the Secretary of State or the Minister for the Cabinet Office under paragraph 2(2), and

(b) the Secretary of State or the Minister for the Cabinet Office determines that the person should be compensated because of special circumstances.

(4) Where this sub-paragraph applies, the IBCA must pay the person compensation of such amount as the Secretary of State or the Minister for the Cabinet Office may determine.

(5) Sub-paragraph (6) applies if—

(a) a person ceases to be a non-executive member appointed by the Chair under paragraph 2(2), and

(b) the Chair determines that the person should be compensated because of special circumstances.

(6) Where this sub-paragraph applies, the IBCA must pay the person compensation of such amount as the Chair may determine.

Staffing

7 (1) The IBCA may—

(a) appoint employees, and

(b) make such other arrangements for the staffing of the IBCA as it determines.

(2) The IBCA must pay its staff such remuneration as may be determined in accordance with this paragraph.

(3) The IBCA must pay, or make provision for the payment of, such pensions, allowances, gratuities or compensation as may be determined in accordance with this paragraph to or in respect of any person who is or has been a member of staff of the IBCA.

(4) Members of staff of the IBCA are to be appointed on such other terms as may be determined in accordance with this paragraph.

(5) A matter is determined in accordance with this paragraph if—

(a) in the case of a matter which relates to an executive member, it is determined by the Chair;

(b) in the case of a matter which relates to any other member of staff, it is determined by the IBCA.

(6) Before making a determination as to remuneration, pensions, allowances, gratuities or compensation for the purposes of sub-paragraph (2) or (3), the IBCA must obtain the approval of the Secretary of State or the Minister for the Cabinet Office as to its policy on that matter.

Interim chief executive

(1) The Secretary of State or the Minister for the Cabinet Office may appoint a person as an executive member to act as chief executive of the IBCA ("an interim chief executive") until the appointment of the first chief executive by the Chair under paragraph 3(1).

(2) An interim chief executive may incur expenditure and do other things in the name of and on behalf of the IBCA until the appointment of the first chief executive by the Chair under paragraph 3(1).

(3) In exercising the power in sub-paragraph (2), an interim chief executive must act in accordance with any directions given by the Secretary of State or the Minister for the Cabinet Office.

(4) Paragraphs 3, 5 and 7 do not apply to an interim chief executive.

Committees and sub-committees

9 (1) The IBCA may appoint such committees and sub-committees as it considers appropriate.

(2) A committee or sub-committee may consist of or include persons who are neither members, nor members of staff, of the IBCA.

(3) The IBCA may pay such remuneration and allowances as it may determine to any person who—

(a) is a member of a committee or a sub-committee, but

(b) is not a member of staff of the IBCA,

whether or not that person is a non-executive member of the IBCA.

Procedure

10 (1) The IBCA may determine its own procedure and the procedure of any of its committees or sub-committees.

(2) The validity of any proceedings of the IBCA, or any committee or sub-committee of the IBCA, is not affected by any vacancy among its members or by any defect in the appointment of such a member.

Exercise of functions

11 (1) The IBCA must have regard to the need to exercise its functions effectively, efficiently and economically.

(2) The IBCA may delegate any of its functions to—

(a) a member of the IBCA,

(b) a member of the IBCA's staff authorised for that purpose, or

(c) any committee or sub-committee.

(3) A function may be delegated to the extent and on the terms that the IBCA determines.

Funding

12 (1) The Secretary of State or the Minister for the Cabinet Office must pay to the IBCA—

(a) such sums as are required to meet payments made by the IBCA under the infected blood compensation scheme, and

(b) such other sums as the Secretary of State or the Minister for the Cabinet Office considers are reasonably sufficient to enable the IBCA to carry out its functions.

(2) Payments under sub-paragraph (1)(b) may be made subject to conditions.

(3) The Secretary of State or the Minister for the Cabinet Office may by regulations make provision about what the IBCA must do with any sums repaid to it by virtue of section (Payments)(5) (which may include provision requiring the sums to be paid to the Secretary of State or the Minister for the Cabinet Office).

Annual report

13 (1) As soon as reasonably practicable after the end of each financial year the IBCA must prepare a report on the exercise of its functions during that financial year.

(2) The IBCA must send the report to the Secretary of State or the Minister for the Cabinet Office.

(3) The Secretary of State or the Minister for the Cabinet Office must lay the report before Parliament.

Accounts and audit

14 (1) The IBCA must—

(a) keep proper accounts and proper records in relation to them, and

(b) prepare a statement of accounts in respect of each financial year in the form specified by the Secretary of State or the Minister for the Cabinet Office.

(2) The IBCA must send a copy of each statement of accounts to the Secretary of State or the Minister for the Cabinet Office, and the Comptroller and Auditor General, as soon as practicable after the end of the financial year to which the statement relates.

(3) The Comptroller and Auditor General must—

(a) examine, certify and report on each statement of accounts, and

(b) send a copy of each report and certified statement to the Secretary of State or the Minister for the Cabinet Office.

(4) The Secretary of State or the Minister for the Cabinet Office must lay before Parliament a copy of each such report and certified statement.

Meaning of "financial year"

15 In this Schedule "financial year" means—

(a) the period beginning with the date on which the IBCA is established and ending with 31 March following that date, and

(b) each successive period of 12 months.

Provision of information

16 The IBCA must provide to the Secretary of State or the Minister for the Cabinet Office such information relating to the IBCA's functions as they may request.

Status

17 (1) The IBCA is not to be regarded—

(a) as the servant or agent of the Crown, or

(b) as enjoying any status, immunity or privilege of the Crown.

(2) The IBCA's property is not to be regarded as property of, or property held on behalf of, the Crown.

(3) Service as a member, or a member of staff, of the IBCA is not service in the civil service of the State.

Seal and evidence

18 (1) The application of the IBCA's seal must be authenticated by a signature of—

(a) a member of the IBCA, or

(b) another person authorised for that purpose by the IBCA.

(2) A document purporting to be duly executed under the IBCA's seal or signed on its behalf—

(a) is to be received in evidence, and

(b) is to be taken to be executed or signed in that way, unless the contrary is shown.

(3) But this paragraph does not apply in relation to any document which is, or is to be, signed in accordance with the law of Scotland.

Supplementary powers

19 The IBCA may do anything it thinks appropriate for the purposes of, or in connection with, its functions.

Part 2

Transfer schemes

Power to make transfer schemes

20 (1) The Secretary of State or the Minister for the Cabinet Office may make one or more schemes ("transfer schemes") for the purpose of transferring to the IBCA such property, rights and liabilities of a relevant person as the Secretary of State or Minister considers appropriate for the purposes of enabling the IBCA to carry out its functions under or by virtue of this Act.

(2) In this paragraph "relevant person" means—

(a) the Secretary of State;

(b) the Minister for the Cabinet Office;

(c) a Special Health Authority established under section 28 of the National Health Service Act 2006;

(d) the Welsh Ministers;

(e) a National Health Service trust established under section 18 of the National Health Service (Wales) Act 2006;

(f) a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006;

(g) the Scottish Ministers;

(h) a person who has at any time been appointed by the Scottish Ministers under section 28(4)(d) of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) to manage a scheme under that section;

(i) the Department of Health in Northern Ireland;

(j) the Regional Business Services Organisation established by section 14 of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c.1 (N.I)).

(3) A transfer scheme may not be made—

(a) in relation to a relevant person within sub-paragraph (2)(d), (e) or (f), unless the Welsh Ministers consent;

(b) in relation to a relevant person within sub-paragraph (2)(g) or (h), unless the Scottish Ministers consent;

(c) in relation to a relevant person within sub-paragraph (2)(i) or (j), unless the Department of Health in Northern Ireland consents.

(4) The things that may be transferred under a transfer scheme include—

(a) property, rights and liabilities that could not otherwise be transferred;

(b) property acquired, and rights and liabilities arising, after the making of the scheme;

(c) criminal liabilities.

(5) A transfer scheme may make supplementary, incidental, transitional or consequential provision and may, in particular—

(a) create rights, or impose liabilities, in relation to property or rights transferred;

(b) make provision about the continuing effect of things done by a relevant person in respect of anything transferred;

(c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of, or in relation to, a relevant person in respect of anything transferred;

(d) make provision for references to an interim compensation authority in an instrument or other document in respect of anything transferred to be treated as references to the IBCA;

(e) make provision for the shared ownership or use of property;

(f) make provision which is the same as or similar to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);

(g) make other supplemental, incidental, transitional or consequential provision.

(6) A transfer scheme may provide for—

(a) modifications by agreement;

(b) modifications to have effect from the date when the original scheme came into effect.

(7) For the purposes of this paragraph—

(a) references to rights and liabilities include rights and liabilities relating to a contract of employment;

(b) references to the transfer of property include the grant of a lease.

(8) For the purposes of sub-paragraph (7)—

(a) an individual who holds employment in the civil service is to be treated as employed by virtue of a contract of employment, and

(b) the terms of the individual's employment in the civil service of the State are to be regarded as constituting the terms of the contract of employment.

Tax treatment of transfer schemes

21 (1) The Treasury may by regulations make provision varying the way in which a relevant tax has effect in relation to—

(a) anything transferred under a scheme under paragraph 20, or

(b) anything done for the purposes of, or in relation to, a transfer under such a scheme.

(2) The provision which may be made under sub-paragraph (1)(a) includes in particular provision for—

(a) a tax provision not to apply, or to apply with modifications, in relation to anything transferred;

(b) anything transferred to be treated in a specified way for the purposes of a tax provision;

(c) the Secretary of State or the Minister for the Cabinet Office to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything transferred.

(3) The provision which may be made under sub-paragraph (1)(b) includes in particular provision for—

(a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of or in relation to the transfer;

(b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way;

(c) the Secretary of State or the Minister for the Cabinet Office to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer.

(4) In this paragraph references to the transfer of property include the grant of a lease.

(5) In this paragraph—

"relevant tax" means income tax, corporation tax, capital gains tax, value added tax, stamp duty or stamp duty reserve tax;

"tax provision" means any legislation about a relevant tax.

Part 3

Amendments

Public Records Act 1958 (c. 51)

22 In Part 2 of the Table in paragraph 3 of Schedule 1 to the Public Records Act 1958 (definition of public records), at the appropriate place insert—

"The Infected Blood Compensation Authority."

Public Bodies (Admission to Meetings) Act 1960 (c. 67)

23 In the Schedule to the Public Bodies (Admission to Meetings) Act 1960—

(a) in paragraph 1 (bodies in England and Wales to which the Act applies), at the end insert—

"(q) the Infected Blood Compensation Authority.";

(b) in paragraph 2 (bodies in Scotland to which the Act applies), at the end insert—

"(g) the Infected Blood Compensation Authority."

Parliamentary Commissioner Act 1967 (c. 13)

24 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments subject to investigation), at the appropriate place insert—

"The Infected Blood Compensation Authority."

House of Commons Disqualification Act 1975 (c. 24)

25 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975, at the appropriate place insert—

"The Infected Blood Compensation Authority."

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

26 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975, at the appropriate place insert—

"The Infected Blood Compensation Authority."

Freedom of Information Act 2000 (c. 36)

27 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies), at the appropriate place insert—

"The Infected Blood Compensation Authority."

Equality Act 2010 (c. 15)

28 In Part 1 of Schedule 19 to the Equality Act 2010 (authorities subject to the public sector equality duty), under the heading "Health, social care and social security", at the appropriate place insert—

"The Infected Blood Compensation Authority.""

Member's explanatory statement

This amendment makes provision about the constitution of the Infected Blood Compensation Authority, for the transfer of property, rights and liabilities to and from the Authority and for various enactments to apply in relation to the Authority.

Amendments 121B to 121F (to Amendment 121A) not moved.

Amendment 121G (to Amendment 121A) had been withdrawn from the Marshalled List.

Amendments 121GA and 121H (to Amendment 121A) not moved.

Amendment 121A agreed.

Amendment 122 not moved.

Clause 44: Referral of release decisions: life prisoners

Amendments 122A to 122F

Moved by ***Lord Bellamy***

122A: Clause 44, page 44, line 34, leave out "relevant court" and insert "High Court"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 44, page 45, line 4.

122B: Clause 44, page 44, line 35, leave out "relevant court" and insert "High Court"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 44, page 45, line 4.

122C: Clause 44, page 45, line 4, leave out "relevant court" and insert "High Court"

Member's explanatory statement

This amendment provides for the High Court to determine all prisoner release cases referred by the Secretary of State under section 32ZAA of the Crime (Sentences) Act 1997 inserted by Clause 44.

122D: Clause 44, page 45, line 8, leave out "relevant court" and insert "High Court"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 44, page 45, line 4.

122E: Clause 44, page 45, line 11, at end insert—

"(2A) The requirement for the Secretary of State to give effect to the Parole Board's direction to release the prisoner is suspended—

(a) during such period, beginning with the day on which the direction is given, as the Secretary of State reasonably requires to determine whether to direct the Parole Board to refer the prisoner's case to the High Court under this section, and

(b) if the Secretary of State gives such a direction, pending determination of the reference under section 32ZAC(1)."

Member's explanatory statement

This amendment suspends requirements to release a prisoner while the Secretary of State is considering whether to refer the prisoner's case to the High Court and until any such reference is determined.

122F: Clause 44, page 45, leave out lines 12 to 18

Member's explanatory statement

This amendment is consequential on my amendment of Clause 44, page 45, line 4.

Amendments 122A to 122F agreed.

Amendments 123 and 124 not moved.

Amendments 124A to 124E

Moved by ***Lord Bellamy***

124A: Clause 44, page 45, leave out lines 23 to 25

Member's explanatory statement

This amendment is consequential on my amendment of Clause 44, page 45, line 11.

124B: Clause 44, page 46, line 40, leave out "relevant court" and insert "High Court"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 44, page 45, line 4.

124C: Clause 44, page 46, line 41, leave out "relevant court" and insert "High Court"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 44, page 45, line 4.

124D: Clause 44, page 47, leave out lines 12 and 13

Member's explanatory statement

This amendment is consequential on my amendment of Clause 44, page 45, line 4.

124E: Clause 44, page 47, line 16, leave out "Upper Tribunal or"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 44, page 45, line 4.

Amendments 124A to 124E agreed.

Amendment 125 not moved.

Amendment 125A

Moved by ***Lord Bellamy***

125A: Clause 44, page 47, line 17, at end insert—

"(b) in subsection (3), after "subject to" insert "—

(a) section 32ZAA(2A) (suspension of duty to release prisoner pending referral to High Court or decision whether to refer), and

Member's explanatory statement

This amendment is consequential on my amendment of Clause 44, page 45, line 11.

Amendment 125A agreed.

Clause 45: Referral of release decisions: fixed-term prisoners

Amendments 125B to 125G

Moved by ***Lord Bellamy***

125B: Clause 45, page 47, line 20, leave out "relevant court" and insert "High Court"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 45, page 47, line 28.

125C: Clause 45, page 47, line 21, leave out "relevant court" and insert "High Court"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 45, page 47, line 28.

125D: Clause 45, page 47, line 28, leave out "relevant court" and insert "High Court"

Member's explanatory statement

This amendment provides for the High Court to determine all prisoner release cases referred by the Secretary of State under section 256AZBA of the Criminal Justice Act 2003 inserted by Clause 45.

125E: Clause 45, page 47, line 31, leave out "relevant court" and insert "High Court"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 45, page 47, line 28.

125F: Clause 45, page 47, line 34, at end insert—

"(2A) The requirement for the Secretary of State to give effect to the Board's direction to release the prisoner is suspended—

(a) during such period, beginning with the day on which the direction is given, as the Secretary of State reasonably requires to determine whether to direct the Board to refer the prisoner's case to the High Court under this section, and

(b) if the Secretary of State gives such a direction, pending determination of the reference under section 256AZBC(1)."

Member's explanatory statement

This amendment suspends requirements to release a prisoner while the Secretary of State is considering whether to refer the prisoner's case to the High Court and until any such reference is determined.

125G: Clause 45, page 47, line 35, leave out from beginning to end of line 3 on page 48

Member's explanatory statement

This amendment is consequential on my amendment of Clause 45, page 47, line 28.

Amendments 125B to 125G agreed.

Amendments 126 and 127 not moved.

Amendments 127A to 127F

Moved by ***Lord Bellamy***

127A: Clause 45, page 48, leave out lines 8 to 10

Member's explanatory statement

This amendment is consequential on my amendment of Clause 45, page 47, line 34.

127B: Clause 45, page 49, line 21, leave out "relevant court" and insert "High Court"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 45, page 47, line 28.

127C: Clause 45, page 49, line 22, leave out "relevant court" and insert "High Court"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 45, page 47, line 28.

127D: Clause 45, page 49, leave out lines 34 and 35

Member's explanatory statement

This amendment is consequential on my amendment of Clause 45, page 47, line 28.

127E: Clause 45, page 49, line 36, leave out "relevant court" and insert "High Court"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 45, page 47, line 28.

127F: Clause 45, page 49, line 42, leave out "Upper Tribunal or"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 45, page 47, line 28.

Amendments 127A to 127F agreed.

Amendment 128 not moved.

Amendment 128A

Moved by ***Lord Bellamy***

128A: Clause 45, page 50, line 2, at end insert—

"(b) in subsection (3), after "subject to" insert "—

(a) section 256AZBA(2A) (suspension of duty to release prisoner pending referral to High Court or decision whether to refer), and

Member's explanatory statement

This amendment is consequential on my amendment of Clause 45, page 47, line 34.

Amendment 128A agreed.

Clause 46: Licence conditions of life prisoners released following referral

Amendments 128B to 128D

Moved by ***Lord Bellamy***

128B: Clause 46, page 50, line 7, leave out subsection (2) and insert—

"(2) In subsection (3), before paragraph (b) (and the "or" before it) insert—

"(ab) in accordance with subsection (3A),"."

Member's explanatory statement

This amendment is consequential on the amendments of section 31 of the Crime (Sentences) Act 1997 made by my amendment of Clause 48, page 50, line 31.

128C: Clause 46, page 50, line 11, leave out "After subsection (3)" and insert "Before subsection (4)"

Member's explanatory statement

This amendment is consequential on the amendments of section 31 of the Crime (Sentences) Act 1997 made by my amendment of Clause 48, page 50, line 31.

128D: Clause 46, page 50, line 12, leave out "Upper Tribunal or"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 44, page 45, line 4.

Amendments 128B to 128D agreed.

Amendment 129 not moved.

Amendment 130 had been withdrawn from the Marshalled List.

Clause 47: Licence conditions of fixed-term prisoners released following referral

Amendment 130A

Moved by ***Lord Bellamy***

130A: Clause 47, page 50, line 23, leave out "Upper Tribunal or"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 45, page 47, line 28.

Amendment 130A agreed.

Amendment 131 not moved.

Amendment 132

Moved by ***Baroness Royall of Blaisdon***

132: After Clause 47, insert the following new Clause—

"Licence conditions for serial and serious harm domestic abuse and stalking perpetrators under Multi-Agency Public Protection Arrangements

(1) A condition of the release and licence of serial and serious harm domestic abuse and stalking perpetrators is that they must be included in the Multi-Agency Public Protection Arrangements.

(2) The Criminal Justice Act 2003 is amended as follows.

(3) In section 325 (arrangements for assessing etc risk posed by certain offenders)—

(a) in subsection (1), after ""relevant sexual or violent offender" has the meaning given by section 327;" insert ""relevant domestic abuse or stalking perpetrator" has the meaning given in section 327ZA;";

(b) after subsection (2)(a) insert—

"(aza) relevant domestic abuse or stalking perpetrators,".

(4) After section 327 (Section 325: interpretation) insert—

"327ZA Interpretation of relevant domestic abuse or stalking perpetrator

(1) For the purposes of section 325, a person ("P") is a "relevant domestic abuse or stalking perpetrator" if P has been convicted of a specified offence or an associate offence and meets either the condition in subsection (2)(a) or the condition in subsection (2)(b).

(2) For the purposes of subsection (1), the conditions are—

(a) P is a relevant serial offender, or

(b) a risk of serious harm assessment has identified P as presenting a high or very high risk of serious harm.

(3) An offence is a "specified offence" for the purposes of this section if it is a specified domestic abuse offence or a specified stalking offence.

(4) In this section—

"relevant serial offender" means a person convicted on more than one occasion for the same specified offence, or a person convicted of more than one specified offence;

"specified domestic abuse offence" means an offence where it is alleged that the behaviour of the accused amounted to domestic abuse within the meaning defined in section 1 of the Domestic Abuse Act 2021;

"specified stalking offence" means an offence contrary to section 2A or section 4A of the Protection from Harassment Act 1997.

(5) Within 12 months of the day on which the Victims and Prisoners Act 2024 is passed the Secretary of State must commission a review into the operation of the provisions of this section.""

Baroness Royall of Blaisdon (Lab): My Lords, in rising to speak to Amendments 132 and 133 I take the opportunity to apologise to the House. I asked a supplementary question at Question Time that related to university funding and I did not refer to my interests in the register.

The amendments are the same as those that we moved in Committee and they are similar to amendments that we have moved to other Bills, but the Government have not acted and women continue to be attacked and killed as men with violent histories are allowed to escalate their behaviour by moving from victim to victim.

In Committee, the Minister said, as many Ministers have said before, that the Government agree that the robust management of perpetrators of domestic abuse and stalking is crucial to keep the public safe and that they completely agree with the spirit of the amendments, but that the objectives can be met through current provision and policy.

I beg to disagree. All the evidence demonstrates that this is not enough. Various initiatives have been, and are being, piloted, and countless letters are written to police forces urging them to make proper use of Clare's law and stalking protection orders, but still it is clear that offences on a discretionary basis are not being treated with the same seriousness under MAPPA 2 and MAPPA 3. Where lives are at stake, a postcode lottery—which is what we have at present—is not acceptable.

This year a new report was published, following a national domestic homicide project and a Home Office-funded research project led by the National Police Chiefs Council—the NPCC. It showed that domestic abusers who went on to kill their partners were known to police in 80% of cases. Some 60% of those had been reported to the police specifically for domestic abuse, and a third of offenders were known to other agencies. The NPCC said that this highlighted the need for a "multi-agency approach to effectively safeguard victims".

The victims and perpetrators are known by many agencies and the most dangerous and serial perpetrators must be managed by MAPPA in order to close down opportunities for them to reoffend, and to ensure that their history is captured on the violent and sexual offenders register. This must be accessible whenever and wherever they move, just as with sex offenders.

The Minister might refer me to Clare's law, which is certainly welcome, but it is simply not working in the majority of cases. It leaves the onus on potential victims to protect themselves, instead of placing positive obligations on the perpetrators. It affords no protection when the abuser leaves prison, moves address and targets a new woman—or when they change their name, which many serial perpetrators do.

Women repeatedly report they have been sent away or told by police that they are not a vetting agency. Clare's law is failing because there is no duty on police to proactively identify, assess and manage serial perpetrators, or to record information about them and share it. NPCC data from October 2021 to March 2022 reveals that at least 56% of criminal background requests made by women were denied. This is truly shocking and demonstrates why the amendments are necessary.

I could cite so many examples that demonstrate the urgent need for these two amendments, but I will limit myself to six cases. I mentioned Zoe Dronfield in Committee. The man who nearly murdered her was released on 2 May. We have had to continuously push to ensure that he is managed at category 3 of MAPPA, when this should have been automatic. There are concerns about future women that he might target. We know that he has changed his appearance, but Zoe is not allowed even to see a photo. Why is it that his rights are being protected?

Chloe Holland was coercively controlled and abused by Marc Masterton. She died in hospital in March 2023 after trying to take her life because of him. Before doing so she reported him for domestic abuse and gave a two-hour video interview. He was sent to prison last year. Hearing of Chloe's case, another victim, Zoe Castle, had the courage to come forward. Masterton has just been convicted for coercively controlling her and was sentenced to a further three years and seven months.

Zoe had just turned 18 when she moved in with Masterton and she lived in constant fear of him. She had to bend to his will and was fearful that she would

lose her daughter. He hit over the head with a glass bottle, threw her into a wardrobe and, in another incident, picked her up and placed her in a freezing cold bath. When he comes out of prison, this serial perpetrator will do it again—he always does. He should go on a register, with stringent conditions.

"Danielle"—a pseudonym used to protect the victim's identity for safety reasons—met her ex-partner through work in 2022. About six months into the relationship, it became clear that her new boyfriend had an alcohol problem. She thought she could save him, or that he would change for her, but he turned out to be abusive and attacked her twice in her own home. In a drunken assault, he grabbed her by the throat and hit her head against a wall, leaving only when she managed to reach the front door and scream for help.

Danielle said that she had never heard of Clare's law when it was mentioned by her social worker soon afterwards, but she agreed to an application for information about her partner being made on her behalf. When the police arrived a few days later, she was shocked by what they told her. Her partner had a record of violent assaults on 20 other women.

In breach of the restraining order issued after the first assault, he broke into her home, seriously assaulting her again. He was sentenced to 10 weeks in prison for common assault and was released earlier this year. Naturally, she is terrified.

Holly Bramley met serial perpetrator Nicholas Metson in 2016 and they married in 2021. Holly had no idea about his previous convictions for offences against former partners in 2013, 2016 and 2017. Twenty-six year-old Holly decided to leave him and on 17 March last year he killed her, cutting her body up into 200 pieces and depositing it in a river.

Holly had a right to know about Metson's serious and serial offending history.

6.30 pm

Alexis Flavin was strangled by a serial domestic abuser, Jonathan Cole. He had just left prison for attacking his ex-partner when he met Alexis. He had 14 convictions for 16 offences—at least three against previous female partners. Alexis did not know this when she met him and she was not told when she reported him to the police. It was a whirlwind relationship and he proposed quickly. He attacked her one night, dragging her out of bed. She reported him to the police. Later he broke his bail conditions to see her and tell her that he would change. She discovered she was pregnant and dropped the charges. He abused her and tormented her throughout her pregnancy. He stopped her from breastfeeding because he was jealous. One night he was angry, smashed the baby's night light and strangled Alexis. She called the South Wales Police. He was arrested and convicted for strangulation. His lawyer asked for a suspended sentence. Alexis and the baby are lucky to be alive. His history should have been joined up and Alexis told of this when she first reported him for a serious assault. He is now out of prison and another woman is in fear for her life.

Marcus Osborne stalked and murdered Katie Higton and her new partner, Steve Harnett, on 15 May 2023. Osborne had 12 previous convictions for 27 offences. In 2011 he was jailed for 16 weeks for assaulting a girlfriend by grabbing her throat and punching her. In 2013 he was given a 54-month jail term for grievous bodily harm with intent in an assault on a woman he had been in relationship with for two weeks. The court heard that he punched her and kicked her in the head. Osborne then started a relationship with Katie Higton. When she ended their relationship, he stalked and threatened to kill her. She reported this to West Yorkshire Police and said she was in fear for her life. The police arrested Osborne and let him go on bail. He subsequently murdered her and her partner. Katie was stabbed 99 times in the frenzied assault while Steve received 24 knife wounds. Osborne was an extremely dangerous serial abuser and this was preventable. Why was his history not joined up? Why was he bailed? Why was he allowed to carry out further offences?

In 2001 the extraordinary Laura Richards began analysing domestic and other abusers. Her research revealed that there was no joining-up of the histories of violent men, and that they moved from victim to victim. Twenty years later we continue to see women living in fear, their lives blighted or ended. At least one victim commits suicide every four days and a woman is murdered every three days by a partner or a family member. Women are still not told about the histories of dangerous and violent men even when they report serious violence and abuse. Currently abusers can act with impunity, as demonstrated by the fact that only 1.1% of coercive controllers are convicted and 1.4% of stalkers. This must change. More perpetrators must be brought to justice, and those men who are known to have histories of serial and serious violence against women must not be allowed to move from victim to victim.

The system does not work. It is failing women and children. A condition of the release and licence of these perpetrators should be that they are included in MAPPA and subject to notification requirements so that this information can be shared and accessed nationally, thus saving lives and other lives from being lived in fear. I beg to move.

Lord Russell of Liverpool (CB): My Lords, I am very happy to add my name to both these amendments, and I pay tribute to the noble Baroness, Lady Royall, for the many years that she has pursued this subject—seemingly to no avail but cumulatively, the more people hear about it, the more we might finally get something done. As I was listening to the powerful examples she was giving, I was mindful of the maiden speech of my noble friend Lady Casey of Blackstock, which some noble Lords may have heard recently, where she repeated the litany of women, mainly, who have died at the hands of their male partners which Jess Phillips MP normally gives every year. The litany will go on and on until we have the moral courage to face up to this and to the fact that what we have currently is not working.

Why do we persist? I draw your attention to *Hansard* of 26 February of this year, which was our sixth day in Committee, and I will read directly from the words of the Minister, the noble Lord, Lord Roborough:

"The Government agree that robust management of perpetrators of domestic abuse and stalking is crucial to help keep the public safe. We completely agree with the spirit of these amendments; however, we believe the objectives can already be met through current provision and policy".—[*Official Report*, 26/2/24; col. 860.]

[Lord Russell of Liverpool]

We then go to the Minister again, who gives us an example of how well the current system is working:

"The VAWG strategy confirms the Home Office will work with the police to ensure all police forces make proper use of stalking protection orders. Among other actions, in October 2021, the then-Safeguarding Minister Rachel Maclean MP wrote to all chief constables whose forces applied for fewer orders than might have been expected to encourage them to always consider applying for them. In February 2023, the former Safeguarding Minister, Sarah Dines MP, did the same".—[*Official Report*, 26/2/24; col. 862.]

It goes on and on. The evidence is that the current system does not work.

In a meeting which the Minister kindly had with us to discuss some of the issues around stalking, we referred to the voluminous evidence put forward by the Suzy Lamplugh Trust in its super-complaint to the Government. This super-complaint will have a response from the Government, probably within the next two months, and in that meeting we exhorted the Government to look carefully at its evidence. Given the opportunity we have in this Bill to try and put it right now, rather than go through the charade of having the Government's reaction to the super-complaint, more discussions about it, and then perhaps more discussions about what might be done, why do we not actually pull our finger out and do it now?

I entirely agree with the two amendments that the noble Baroness has put forward and I ask all noble Lords in the Chamber to consider very carefully supporting them when, as I think she will, she divides the House to see how we feel.

Baroness Brinton (LD): My Lords, it is a pleasure to follow the noble Baroness, Lady Royall, and the noble Lord, Lord Russell. I also thank Laura Richards, Claire Waxman—the Victims' Commissioner for London—and the Suzy Lamplugh Trust for their consistently helpful briefings for us. I am very moved by the powerful examples that the noble Baroness gave us and I agree with everything that she and the noble Lord said.

I just want to reiterate the point that we as a group keep making, which is that the government arrangements often mean that stalkers are missed out. They are often mischarged with other crimes, such as harassment or malicious communication. It is common for the National Stalking Helpline to see high-risk stalking cases managed as low-level nuisance behaviours or even as isolated incidents, and as a result fewer perpetrators are convicted and even fewer sentenced to 12 months or less.

There are also some concerns. The Minister has told us that the Home Office domestic abuse and stalking perpetrator intervention fund for last year was made available for PCCs to commission services covering all forms of stalking, including non-DA. However, there were a disproportionate number of funds apportioned to DA-specific stalking services or even DA services that do not address stalking at all, or claim to address stalking but without any stalking expertise. Some 65% of awards in this grant were solely for domestic abuse interventions, with no stalking provision. The problem is that whatever we say here is not ending up on the front line, so can the Minister tell us how the Government propose to manage a more comprehensive approach for stalking perpetrators?

The Suzy Lamplugh Trust has provided plenty of evidence over the years, and indeed in its super-complaint, about how investing in perpetrator management saves money. It saves money because there is no constant repeat of crimes committed by these obsessed and manipulative stalkers, and it helps the state as well. On that basis, from these Benches we support the noble Baroness, Lady Royall, if she wishes to call a vote on these two amendments.

Baroness Thornton (Lab): My Lords, I shall be brief. My name is on this amendment, and indeed, I spoke to similar amendments in Committee. It was a great pleasure to do so, but I regarded myself, as I said at the time, as a substitute for my noble friend Lady Royall, who indeed has the most tireless record of championing this cause and taking every opportunity to remedy the problem. We are presented with an opportunity here. Guidance is not working. That is the problem. We have to put these modest amendments into the Bill because we know that guidance is not working. It is not good enough, and it means that it is a postcode lottery as to whether action is taken in the way that is necessary, and it makes a hit and miss system for whether or not women's lives are saved. That is not good enough. It is time. We need to put both these amendments in the Bill. We owe it to the victims of stalking to ensure that the police everywhere will see stalking for what it is: often a stepping stone to something worse. It is time we did that.

Lord Roborough (Con): My Lords, I thank the noble Baroness, Lady Royall of Blaisdon, for her amendments relating to the Multi Agency Public Protection Arrangements—MAPPA. Before addressing the amendments, I thank the noble Baronesses, Lady Brinton and Lady Newlove, and the noble Lord, Lord Russell of Liverpool, for making the time to meet me and my officials on this matter.

The Government agree that robust management of perpetrators of domestic abuse and stalking is crucial to help keep the public safe. We are in agreement with the spirit of these amendments. However, we believe that the objectives can already be met through current provision and policy and through separate legislation that we are taking forward. As the noble Lord, Lord Russell, kindly commented, that remains our view.

I will address Amendment 132 first. Under existing legislation, individuals who are convicted of specified violent and sexual offences and are subject to notification requirements and/or sentenced to 12 months' imprisonment or more are automatically eligible for management under MAPPA. These offences include offences which are committed in the context of domestic abuse, such as threats to kill, actual and grievous bodily harm, and attempted strangulation, as well as stalking, including fear of violence. The list of offences is kept under review and, in recognition of the seriousness of the offence, we are legislating in the Criminal Justice Bill to ensure that offenders convicted of controlling or coercive behaviour and sentenced to 12 months' imprisonment or more will automatically be managed under MAPPA. This will mean that many of the most serious domestic abuse offenders will be subject to stringent multi-agency management.

MAPPA in the 42 police force areas of England and Wales are delivered by independent strategic management boards. As well as representatives from the police, probation and prison services, SMBs will have representatives from other agencies, such as local authorities and health providers. To encourage consistency, SMBs must have due regard to guidance issued by the Secretary of State pursuant to his permissive power under the Criminal Justice Act 2003, while also responding to local needs.

As we committed to do during the passage of the Domestic Abuse Bill, we strengthened the Secretary of State's MAPPA guidance to include a chapter dedicated to domestic abuse and stalking. This mandates that all domestic abuse and stalking offenders who do not qualify for automatic MAPPA management must be considered for discretionary management, known as category 3. We have also worked with MAPPA agencies to improve practice, including the publication of additional guidance setting out the thresholds to be met for the various levels of MAPPA management to assist practitioners making these decisions, and, if we find that cases of domestic violence and stalking that need to be managed under MAPPA are still not being identified and referred for MAPPA management, to take further remedial action.

In response to the six harrowing cases that the noble Baroness, Lady Royall, mentioned earlier, while we cannot comment on individual cases, I express my and the Government's sincere condolences to all individuals and families who have been impacted by domestic abuse or stalking. The MAPPA framework is available only for convicted offenders. All individuals with convictions for domestic abuse and stalking behaviour, where not automatically eligible, must already be considered by the responsible authorities for management under MAPPA. The statutory guidance makes this clear. MAPPA is not available in cases where individuals do not have convictions, but there are other measures that are either already in place or are due to be piloted shortly that serve to protect a victim; for example, the statutory domestic violence disclosure scheme, often referred to as Clare's law, which provides a mechanism for the police to disclose information about an individual's past abusive or violent behaviour, or civil orders, such as stalking protection orders and, later this year, domestic abuse protection orders.

6.45 pm

With regard to Amendment 133, also in the noble Baroness's name, there are already provisions in place that allow information on perpetrators to be collected and used to manage risk. All individuals released on licence are subject to standard conditions for the duration of their sentence, which include the requirement for perpetrators to inform their probation officer of any change of name or contact details and to stay only at an address approved by their probation officer. There are numerous additional licence conditions which can be imposed to address specific risk factors. Breach of licence conditions can result in the individual being recalled to custody.

For individuals who are not subject to licensed supervision, noble Lords may be aware that the Domestic Abuse Act 2021 introduced provisions for domestic abuse protection orders. These orders, which will be piloted in the spring, will allow notification requirements to be imposed on perpetrators, of which breach will be a criminal offence. A domestic abuse protection order is a civil order and can be imposed without a conviction, providing an opportunity to protect a greater range of victims than the proposed amendment. Sadly, a large number of perpetrators will not have a conviction, and so domestic abuse protection orders allow us to target all perpetrators of domestic abuse, not just those who are convicted of an offence. Piloting will allow us to evaluate and test the effectiveness and impact of this new model ahead of an expected national rollout.

Similarly, we introduced stalking protection orders—SPOs—through the Stalking Protection Act 2019. These can impose any prohibition or requirements that the court considers necessary, as well as notification requirements. Breach of domestic abuse protection orders and stalking protection orders can result in up to five years' imprisonment. These orders are in addition to the domestic violence disclosure scheme, Clare's law, which is central to providing a mechanism for the police to share information on domestic abuse perpetrators with those who may be at risk from them. We have put the guidance for the scheme on a statutory footing to strengthen the operation of the scheme, and we think it is right that the police focus on delivering this important service.

In addition to this, in April this year, we announced a suite of measures to mark National Stalking Awareness Week. We updated our guidance to police officers on the burden of proof for stalking protection orders. This advises it to be lowered from criminal to civil to enable more SPOs to be granted at the earliest opportunity. The announcement also confirms that the commencement date has been set for the public sexual harassment offence: 1 October 2024. This will make public sexual harassment a specific offence.

The Government have engaged with the investigating bodies of the police super-complaint. We welcomed the theme of multi-agency working for this year's National Stalking Awareness Week, which is why we also announced that the Home Office will work across criminal justice agencies to engage openly with the findings and recommendations when they are published in the summer. I hope this also answers the specific question asked by the noble Baroness, Lady Brinton. For these reasons, we feel that the aims of these amendments are already met through existing provisions, and I therefore urge the noble Baroness to withdraw Amendment 32.

Baroness Royall of Blaisdon (Lab): My Lords, I am grateful to the Minister for his response, and to the noble Baronesses, Lady Brinton and Lady Thornton, and the noble Lord, Lord Russell. I have to say that I am not content. I have heard the word "guidance", "guidance", "guidance", and that the current provision and policy will make everything work. They will not. I repeat: they will not. Why are so many women dying? The reason is that they do not work. Pilots, guidance and Clare's law are simply not working; they are not enough. We should take the moral courage as was suggested by the noble Lord, Lord Russell, and vote in favour of this amendment. As the noble Baroness,

[Baroness Royall of Blaisdon]

Lady Brinton, said, it is not just about doing something that is right and protecting lives; investing in perpetrator management also saves money. What is not to like? I intend to test the opinion of the House.

6.50 pm

Division on Amendment 132

Contents 211; Not-Contents 208.

Amendment 132 agreed.

Division No. 1

CONTENTS

Aberdare, L.
Adams of Craigielea, B.
Addington, L.
Allan of Hallam, L.
Anderson of Ipswich, L.
Anderson of Stoke-on-Trent, B.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Berkeley of Knighton, L.
Berkeley, L.
Blackstone, B.
Blower, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Bradley, L.
Bragg, L.
Brinton, B.
Brooke of Alverthorpe, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Bryan of Partick, B.
Burnett, L.
Burt of Solihull, B.
Campbell of Surbiton, B.
Campbell-Savours, L.
Carter of Coles, L.
Cashman, L.
Cavendish of Little Venice, B.
Chandos, V.
Chapman of Darlington, B.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Colville of Culross, V.
Craigavon, V.
Crawley, B.
Cromwell, L.
Davidson of Glen Clova, L.
Davies of Brixton, L.
Dholakia, L.
Donaghy, B.
Donoughue, L.
Drake, B.
Drayson, L.
Dubs, L.
Eatwell, L.
Evans of Watford, L.
Falconer of Thoroton, L.
Featherstone, B.
Finlay of Llandaff, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Freyberg, L.
Gale, B.
Garden of Frognal, B.
German, L.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Goudie, B.
Grantchester, L.
Grender, B.
Grocott, L.
Hacking, L.
Hamwee, B.
Hannett of Everton, L.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Hayman of Ullock, B.
Hayter of Kentish Town, B.
Hazarika, B.
Healy of Primrose Hill, B.
Hendy, L.
Hogan-Howe, L.
Hollick, L.
Hope of Craighead, L.
Howarth of Newport, L.
Hughes of Stretford, B.
Humphreys, B.
Hunt of Bethnal Green, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jay of Paddington, B.
Jolly, B.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jones, L.
Jordan, L.
Kakkar, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L. [Teller]
Kennedy of The Shaws, B.
Kerr of Kinlochard, L.
Khan of Burnley, L.
Kidron, B.
Kilclooney, L.
Kinnock, L.
Knight of Weymouth, L.
Kramer, B.
Lee of Trafford, L.
Lennie, L.
Leong, L.
Lipsey, L.
Lister of Burtersett, B.
Livermore, L.
Mackenzie of Framwellgate, L.
Marks of Henley-on-Thames, L.
Mawson, L.
Maxton, L.
McConnell of Glenscorrodale, L.
McIntosh of Hudnall, B.
McNally, L.
McNicol of West Kilbride, L.
Meacher, B.
Merron, B.
Meston, L.
Miller of Chilthorne Domer, B.
Monks, L.
Morris of Yardley, B.
Murphy of Torfaen, L.
Newby, L.
Northover, B.
Nye, B.
Oates, L.
O'Grady of Upper Holloway, B.
O'Loan, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Pannick, L.
Parekh, L.
Parminter, B.
Patel of Bradford, L.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Prashar, B.
Prentis of Leeds, L.
Primarolo, B.
Quin, B.
Ramsey of Wall Heath, B.
Randerson, B.
Razzall, L.
Rebuck, B.
Reid of Cardowan, L.
Ritchie of Downpatrick, B.
Robertson of Port Ellen, L.
Rooker, L.
Rowlands, L.
Royall of Blaisdon, B.
Russell of Liverpool, L.
Russell, E.
Sahota, L.
Scriven, L.
Sentamu, L.
Shamash, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Smith of Llanfaes, B.
Smith of Newnham, B.
Snape, L.
Somerset, D.
Southwell and Nottingham, Bp.
Stansgate, V.
Stevens of Kirkwhelpington, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Suttie, B.
Taylor of Bolton, B.
Taylor of Goss Moor, L.
Taylor of Stevenage, B.
Teverson, L.
Thomas of Cwmgiedd, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Tope, L.
Touhig, L.
Trevethin and Oaksey, L.
Tunnicliffe, L.
Twycross, B.
Tyler of Enfield, B.
Vaux of Harrowden, L.
Walmsley, B.
Warner, L.
Watson of Invergowrie, L.
Wheeler, B. [Teller]
Whitaker, B.
Whitty, L.
Wilcox of Newport, B.
Young of Old Scone, B.

NOT CONTENTS

Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Altmann, B.
Altrincham, L.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Ashcombe, L.
Ashton of Hyde, L.
Attlee, E.
Balfe, L.
Banner, L.
Barran, B.
Bellamy, L.
Bellingham, L.
Benyon, L.
Berridge, B.
Bethell, L.
Black of Brentwood, L.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Booth, L.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Bray of Coln, B.
Bridgeman, V.
Brookeborough, V.
Browne of Belmont, L.
Browning, B.
Brownlow of Shurlock Row, L.
Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Cameron of Chipping Norton, L.
Cameron of Lochiel, L.
Camrose, V.
Carrington of Fulham, L.
Cathcart, E.
Chadlington, L.
Chisholm of Owlpen, B.
Choudrey, L.
Colgrain, L.

Courtown, E.
Crathorne, L.
Cruddas, L.
Davies of Gower, L.
De Mauley, L.
Deben, L.
Deighton, L.
Dobbs, L.
Douglas-Miller, L.
Duncan of Springbank, L.
Dundee, E.
Dunlop, L.
Eccles, V.
Effingham, E.
Elliott of Mickle Fell, L.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Farmer, L.
Faulks, L.
Fink, L.
Finkelstein, L.
Finn, B.
Fleet, B.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Aghadrumsee, B.
Foster of Oxton, B.
Fox of Buckley, B.
Framlingham, L.
Fraser of Craigmaddie, B.
Frost, L.
Fuller, L.
Gadhia, L.
Garnier, L.
Glendonbrook, L.
Godson, L.
Gold, L.
Goldie, B.
Grade of Yarmouth, L.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hammond of Runnymede, L.
Harlech, L. [Teller]
Haselhurst, L.
Hay of Ballyore, L.
Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hintze, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Horam, L.
Houchen of High Leven, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Jackson of Peterborough, L.
James of Blackheath, L.
Jamieson, L.
Jenkin of Kennington, B.
Johnson of Lainston, L.
Johnson of Marylebone, L.
Jopling, L.
Kempsell, L.
King of Bridgwater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lansley, L.
Lawlor, B.
Lea of Lymm, B.
Leicester, E.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lucas, L.
Magan of Castletown, L.
Mancroft, L.
Manzoor, B.
Markham, L.
Marks of Hale, L.
Marland, L.
Marlesford, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Mendoza, L.
Meyer, B.
Minto, E.
Mobarik, B.
Monckton of Dallington Forest, B.
Montrose, D.
Moore of Etchingham, L.
Morris of Bolton, B.
Morrissey, B.
Morrow, L.
Mott, L.
Moylan, L.
Moynihan of Chelsea, L.
Murray of Blidworth, L.
Naseby, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Norton of Louth, L.
Offord of Garvel, L.
Owen of Alderley Edge, B.
Parkinson of Whitley Bay, L.
Petitgas, L.
Pickles, L.
Popat, L.
Porter of Fulwood, B.
Porter of Spalding, L.
Randall of Uxbridge, L.
Reay, L.
Redfern, B.
Risby, L.
Robathan, L.
Roborough, L.
Rock, B.
Sanderson of Welton, B.
Sandhurst, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Strathclyde, L.
Sugg, B.
Swinburne, B.
Swire, L.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Udny-Lister, L.
Vaizey of Didcot, L.
Verdirame, L.
Vere of Norbiton, B.
Wei, L.
Wharton of Yarm, L.
Willetts, L.
Williams of Trafford, B. [Teller]
Wolfson of Tredegar, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

7.01 pm

Amendment 133

Moved by ***Baroness Royall of Blaisdon***

133: After Clause 47, insert the following new Clause—

"Relevant domestic abuse or stalking perpetrators' register

(1) A condition of the release and licence of serial and serious harm domestic abuse and stalking perpetrators is that they are subject to notification requirements in accordance with this section.

(2) The Sexual Offences Act 2003 is amended as follows.

(3) In section 80 (persons becoming subject to notification requirements), after subsection (1)(a) insert—

"(aa) they are a relevant domestic abuse or stalking perpetrator".

(4) After section 80, insert the following new Clause—

"80A Interpretation of relevant domestic abuse or stalking perpetrator

(1) A "relevant domestic abuse or stalking perpetrator" under section 80 means a person (P) who has been convicted of a specified offence or an associate offence and meets either condition in subsection (2)(a) or subsection (2)(b).

(2) For the purposes of subsection (1), the conditions are—

(a) P is a relevant serial offender, or

(b) a risk of serious harm assessment has identified P as presenting a high or very high risk of serious harm.

(3) An offence is a "specified offence" for the purposes of this section if it is a specified domestic abuse offence or a specified stalking offence.

(4) In this section—

"relevant serial offender" means a person convicted on more than one occasion for the same specified offence, or a person convicted of more than one specified offence;

"specified domestic abuse offence" means an offence where it is alleged that the behaviour of the accused amounted to domestic abuse within the meaning defined in section 1 of the Domestic Abuse Act 2021;

"specified stalking offence" means an offence contrary to section 2A or section 4A of the Protection from Harassment Act 1997.

(5) Within 12 months of the day on which the Victims and Prisoners Act 2024 is passed the Secretary of State must commission a review into the operation of the provisions of section 80 of this Act.""

Baroness Royall of Blaisdon (Lab): My Lords, I wish to test the opinion of the House. I beg to move.

7.02 pm

Division on Amendment 133

Contents 203; Not-Contents 198.

Amendment 133 agreed.

Division No. 2

CONTENTS

Aberdare, L.
Adams of Craigielea, B.
Addington, L.
Allan of Hallam, L.
Anderson of Ipswich, L.
Anderson of Stoke-on-Trent, B.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Berkeley of Knighton, L.
Berkeley, L.
Blackstone, B.
Blower, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Bradley, L.
Bragg, L.
Brinton, B.
Brooke of Alverthorpe, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Bryan of Partick, B.
Burnett, L.
Burt of Solihull, B.
Campbell of Surbiton, B.
Cashman, L.
Cavendish of Little Venice, B.
Chandos, V.
Chapman of Darlington, B.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Colville of Culross, V.
Craigavon, V.
Crawley, B.
Cromwell, L.
Davidson of Glen Clova, L.
Davies of Brixton, L.
Dholakia, L.
Donaghy, B.
Donoughue, L.
Drake, B.
Drayson, L.
Dubs, L.
Eatwell, L.
Evans of Watford, L.
Falconer of Thoroton, L.
Featherstone, B.
Finlay of Llandaff, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Freyberg, L.
Gale, B.
Garden of Frognal, B.
German, L.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Goudie, B.
Grantchester, L.
Grender, B.
Grocott, L.
Hacking, L.
Hamwee, B.
Hannett of Everton, L.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Hayman of Ullock, B.
Hayter of Kentish Town, B.
Hazarika, B.
Healy of Primrose Hill, B.
Hendy, L.
Hogan-Howe, L.
Hollick, L.
Hope of Craighead, L.
Howarth of Newport, L.
Hughes of Stretford, B.
Humphreys, B.
Hunt of Bethnal Green, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jay of Paddington, B.
Jolly, B.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jones, L.
Jordan, L.
Kakkar, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L. [Teller]
Kennedy of The Shaws, B.
Kerr of Kinlochard, L.
Khan of Burnley, L.
Kinnock, L.
Knight of Weymouth, L.
Kramer, B.
Lennie, L.
Leong, L.
Lipsey, L.
Lister of Burtersett, B.
Livermore, L.
Mann, L.
Marks of Henley-on-Thames, L.
Maxton, L.
McConnell of Glenscorrodale, L.
McIntosh of Hudnall, B.
McNally, L.
McNicol of West Kilbride, L.
Meacher, B.
Merron, B.
Meston, L.
Miller of Chilthorne Domer, B.
Monks, L.
Morris of Yardley, B.
Murphy of Torfaen, L.
Newby, L.
Northover, B.
Nye, B.
Oates, L.
O'Grady of Upper Holloway, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Pannick, L.
Parekh, L.
Parminter, B.
Patel of Bradford, L.
Pinnock, B.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Prashar, B.
Prentis of Leeds, L.
Primarolo, B.
Quin, B.
Ramsey of Wall Heath, B.
Randerson, B.
Razzall, L.
Rebuck, B.
Reid of Cardowan, L.
Ritchie of Downpatrick, B.
Robertson of Port Ellen, L.
Rooker, L.
Rowlands, L.
Royall of Blaisdon, B.
Russell of Liverpool, L.
Russell, E.
Sahota, L.
Scriven, L.
Shamash, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Basildon, B.
Smith of Llanfaes, B.
Smith of Newnham, B.
Snape, L.
Somerset, D.
Southwell and Nottingham, Bp.
Stansgate, V.
Stevens of Kirkwhelpington, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Suttie, B.
Taylor of Bolton, B.
Taylor of Goss Moor, L.
Taylor of Stevenage, B.
Teverson, L.
Thomas of Cwmgiedd, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Tope, L.
Touhig, L.
Trevethin and Oaksey, L.
Tunnicliffe, L.
Twycross, B.
Tyler of Enfield, B.
Vaux of Harrowden, L.
Walmsley, B.
Warner, L.
Watson of Invergowrie, L.
Wheeler, B. [Teller]
Whitaker, B.
Whitty, L.
Wilcox of Newport, B.
Young of Old Scone, B.

NOT CONTENTS

Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Altmann, B.
Altrincham, L.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Ashcombe, L.
Ashton of Hyde, L.
Attlee, E.
Balfe, L.
Banner, L.
Barran, B.
Bellamy, L.
Bellingham, L.
Benyon, L.
Berridge, B.
Bethell, L.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Booth, L.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Bray of Coln, B.
Bridgeman, V.
Brookeborough, V.
Browne of Belmont, L.
Browning, B.
Brownlow of Shurlock Row, L.
Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Cameron of Chipping Norton, L.
Cameron of Lochiel, L.
Camrose, V.
Carrington of Fulham, L.
Cathcart, E.
Chadlington, L.
Chisholm of Owlpen, B.
Choudrey, L.
Colgrain, L.
Courtown, E.
Crathorne, L.
Cruddas, L.
Davies of Gower, L.
De Mauley, L.
Deben, L.
Deighton, L.
Dobbs, L.
Douglas-Miller, L.
Duncan of Springbank, L.
Dundee, E.
Dunlop, L.
Eccles, V.
Effingham, E.
Elliott of Mickle Fell, L.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Farmer, L.
Faulks, L.
Fink, L.
Finn, B.
Fleet, B.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Aghadrumsee, B.
Foster of Oxton, B.
Fox of Buckley, B.
Framlingham, L.
Fraser of Craigmaddie, B.
Frost, L.
Fuller, L.
Garnier, L.
Glendonbrook, L.
Godson, L.
Gold, L.
Goldie, B.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.

Hammond of Runnymede, L.
Harlech, L. [Teller]
Haselhurst, L.
Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Horam, L.
Houchen of High Leven, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Jackson of Peterborough, L.
James of Blackheath, L.
Jamieson, L.
Jenkin of Kennington, B.
Johnson of Lainston, L.
Johnson of Marylebone, L.
Jopling, L.
Kempsell, L.
King of Bridgwater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lansley, L.
Lawlor, B.
Lea of Lymm, B.
Leicester, E.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lucas, L.
Lytton, E.
Magan of Castletown, L.
Mancroft, L.
Manzoor, B.
Markham, L.
Marks of Hale, L.
Marland, L.
Marlesford, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Mendoza, L.
Meyer, B.
Minto, E.
Mobarik, B.
Monckton of Dallington Forest, B.
Montrose, D.
Morris of Bolton, B.
Morrow, L.
Mott, L.
Moylan, L.
Moynihan of Chelsea, L.
Moynihan, L.
Murray of Blidworth, L.
Naseby, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Norton of Louth, L.
Offord of Garvel, L.
Owen of Alderley Edge, B.
Parkinson of Whitley Bay, L.
Petitgas, L.
Pickles, L.
Popat, L.
Porter of Fulwood, B.
Porter of Spalding, L.
Randall of Uxbridge, L.
Reay, L.
Redfern, B.
Risby, L.
Roborough, L.
Rock, B.
Sanderson of Welton, B.
Sandhurst, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Strathclyde, L.
Sugg, B.
Swinburne, B.
Swire, L.
Taylor of Holbeach, L.
True, L.
Udny-Lister, L.
Vaizey of Didcot, L.
Vere of Norbiton, B.
Wei, L.
Wharton of Yarm, L.
Willetts, L.
Williams of Trafford, B. [Teller]
Wolfson of Tredegar, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

7.13 pm

Clause 48: Imprisonment or detention for public protection: termination of licences

Amendments 133A and 133B

Moved by ***Lord Roborough***

133A: Clause 48, page 50, line 31, leave out from beginning to "is" and insert "Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (life sentences)"

Member's explanatory statement

This amendment clarifies that the amendments made by Clause 48 all relate to Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (life sentences).

133B: Clause 48, page 50, line 31, at end insert—

"(1A) In section 31 (duration and conditions of licences)—

(a) in subsection (3), after paragraph (a) (but before the "or") insert—

"(aa) in accordance with subsection (3ZA),"

(b) after subsection (3) insert—

"(3ZA) The Secretary of State may include a condition in a life prisoner's licence on release under section 32ZZA.""

Member's explanatory statement

This amendment is consequential on my amendment of Clause 48, page 52, line 27, inserting new section 32ZZA of the Crime (Sentences) Act 1997 and enables the Secretary of State to impose a condition in a prisoner's licence on release under that new section.

Amendments 133A and 133B agreed.

Amendments 134 to 138 not moved.

Amendments 138ZA and 138ZB

Moved by ***Lord Roborough***

138ZA: Clause 48, page 52, line 13, after "(5)" insert "—

(i) for the definition of "preventive sentence" substitute—

""preventive sentence" means—

(a) a sentence of imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (including one passed as a result of section 219 of the Armed Forces Act 2006), or

(b) a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003 (including one passed as a result of section 221 of the Armed Forces Act 2006);";"

Member's explanatory statement

This amendment amends the definition of "preventive sentence" in section 31A(5) of the Crime (Sentences) Act 1997 to clarify the effect of previous amendments.

138ZB: Clause 48, page 52, line 13, leave out ""ten" substitute "three"" and insert "the words from "the period" to the end of the definition substitute "—

(a) if the prisoner was not at any time in the period of two years beginning with the date of the prisoner's release serving any preventive sentence in respect of an offence for which the prisoner was convicted when aged 18 or over, that two year period;

(b) otherwise, the period of three years beginning with the date of the prisoner's release.""

Member's explanatory statement

This amendment provides for a shorter "qualifying period" for prisoners only serving preventive sentences imposed in respect of offences for which they were convicted when aged under 18.

Amendments 138ZA and 138ZB agreed.

Amendments 138A and 139 not moved.

Amendments 139ZA to 139B

Moved by ***Lord Bellamy***

139ZA: Clause 48, page 52, line 18, after "specified" insert "in paragraph (a) or (b) of the definition of "qualifying period""

Member's explanatory statement

This amendment is consequential on my amendment of Clause 48, page 52, line 13, which provides for a shorter "qualifying period" for prisoners only serving preventive sentences imposed in respect of offences for which they were convicted when aged under 18.

139A: Clause 48, page 52, line 27, at end insert—

"(b) after subsection (5A) insert—

"(5B) Subsection (5C) applies where the Secretary of State releases, under subsection (5) above, a prisoner to whom section 31A (termination of licences of preventive sentence prisoners) applies.

(5C) The Secretary of State may determine that, for the purposes of paragraph (c) of section 31A(4H) (automatic licence termination), the prisoner's licence is to be treated as having remained in force as if it had not been revoked under this section.

(5D) The Secretary of State may only make a determination under subsection (5C) if the Secretary of State considers that it is in the interests of justice to do so.

(5E) Where the Secretary of State makes a determination under subsection (5C), the Secretary of State must notify the prisoner.""

Member's explanatory statement

This amendment enables the Secretary of State, when the Parole Board directs the re-release of a preventive sentence prisoner who is recalled to prison, to disregard the revocation of the prisoner's licence for the purposes of automatic licence termination under amendments made by Clause 48(2).

139B: Clause 48, page 52, line 27, at end insert—

"(4) After section 32 insert—

"32ZZA Imprisonment or detention for public protection: powers in relation to release of recalled prisoners

(1) This section applies where a prisoner to whom section 31A (termination of licences of preventive sentence prisoners) applies—

(a) has been released on licence under this Chapter, and

(b) is recalled to prison under section 32.

(2) The Secretary of State may, at any time after the prisoner is returned to prison, release the prisoner again on licence under this Chapter.

(3) The Secretary of State must not release the prisoner under subsection (2) unless satisfied that it is no longer necessary for the protection of the public that the prisoner should remain in prison.

(4) Where the prisoner is released under subsection (2), the Secretary of State may determine that, for the purposes of paragraph (c) of section 31A(4H) (automatic licence termination), the prisoner's licence is to be treated as having remained in force as if it had not been revoked under section 32.

(5) The Secretary of State may only make a determination under subsection (4) if the Secretary of State considers that it is in the interests of justice to do so.

(6) Where the Secretary of State makes a determination under subsection (4), the Secretary of State must notify the prisoner.

(7) In this section, "preventive sentence" means—

(a) a sentence of imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (including one passed as a result of section 219 of the Armed Forces Act 2006), or

(b) a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003 (including one passed as a result of section 221 of the Armed Forces Act 2006).""

Member's explanatory statement

This amendment enables the Secretary of State to re-release a preventive sentence prisoner who is recalled to prison and to disregard the revocation of the prisoner's licence for the purposes of automatic licence termination under amendments made by Clause 48(2).

Amendments 139ZA to 139B agreed.

Amendment 139C

Moved by ***Lord Roborough***

139C: After Clause 48, insert the following new Clause—

"Imprisonment or detention for public protection: annual report

(1) The Secretary of State must, as soon as is reasonably practicable after the end of each reporting period—

(a) prepare and publish a report about the steps taken by the Secretary of State in the reporting period to support the rehabilitation of preventive sentence prisoners and their progress towards release from prison or licence termination, and

(b) lay the report before Parliament.

(2) For these purposes, in relation to a preventive sentence prisoner—

(a) "release from prison" means the prisoner's release on licence under section 28(5) or 32(5) of the 1997 Act or unconditional release under either of those sections as modified by section 31A(4G) of that Act;

(b) "licence termination" means an order, under section 31A(2) or (4H) of the 1997 Act, that the licence on which the prisoner was released from prison is to cease to have effect.

(3) The report must in particular contain details of the steps taken in relation to the following—

(a) preventive sentence prisoners who are female;

(b) preventive sentence prisoners who at any time in the reporting period were serving a sentence mentioned in paragraph (b) of the definition of preventive sentence (detention for public protection for serious offences committed by those under 18).

(4) The report must also contain details of the persons the Secretary of State has consulted in the reporting period in relation to the matters mentioned in subsection (1)(a).

(5) In this section—

"the 1997 Act" means the Crime (Sentences) Act 1997;

"life sentence" has the meaning given by section 34(2) of the 1997 Act;

"preventive sentence" means—

(a) a sentence of imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (including one passed as a result of section 219 of the Armed Forces Act 2006), or

(b) a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003 (including one passed as a result of section 221 of the Armed Forces Act 2006);

"preventive sentence prisoner" , in relation to a reporting period, means a prisoner who—

(a) was serving one or more preventive sentences at any time in the period, and

(b) was not serving any other life sentence at any time in the period;

"reporting period" means—

(a) the period beginning with the day on which this section comes into force and ending with the 31 March following that day, and

(b) each successive period of 12 months."

Member's explanatory statement

This new clause requires the Secretary of State to prepare, publish and lay before Parliament annual reports about the steps taken to support the rehabilitation of preventive sentence prisoners and their progress towards release from prison or licence termination.

Amendment 139C agreed.

Amendments 140 to 149 not moved.

Amendment 149A

Moved by ***Lord Thomas of Cwmgiedd***

149A: After Clause 48, insert the following new Clause—

"Imprisonment or detention for public protection: release test II

(1) This section applies to a prisoner serving a sentence of imprisonment or detention for public protection who has served a period of imprisonment or detention—

(a) in excess of the maximum determinate sentence provided by law for the offence or offences for which they were convicted, or

(b) 10 years or more beyond the minimum term of their sentence.

(2) In the case of a prisoner to whom this section applies—

(a) the Secretary of State must by order pursuant to section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (power to change test for release on licence of certain prisoners) direct that, following the prisoner's referral to the Parole Board they will not be released unless the Board is satisfied that, having regard to the proportionality of the term served to the seriousness of the offence or offences of which they were convicted, and any other relevant factors, it is no longer necessary for the protection of the public that they should continue to be confined;

(b) section 28ZA of the Crime (Sentences) Act 1997 (public protection decisions) does not apply."

Lord Thomas of Cwmgiedd (CB): My Lords, I wish to move this amendment. I thank all who participated in the debate we had a little while ago, but I am moving it because it is necessary to confront and deal with the problem that has occurred by reason of the imposition of IPP sentences and the effect it has had on prisoners, particularly their mental health, of which examples were given during the debate.

The Parole Board can be trusted to make proper decisions. The test will remain the protection of the public, but anyone who has experience of judging risk in relation to prisoners knows it is not an absolute and it is right to give the Parole Board guidance to take proportionality and other factors into account. I therefore wish to test the opinion of the House.

7.19 pm

Division on Amendment 149A

Contents 91; Not-Contents 192.

Amendment 149A disagreed.

Division No. 3

CONTENTS

Addington, L.
Allan of Hallam, L.
Anderson of Ipswich, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Beith, L.
Berkeley of Knighton, L.
Blunkett, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Brinton, B.
Bruce of Bennachie, L.
Burnett, L.
Burt of Solihull, B.
Carter of Haslemere, L.
Clancarty, E.
Clement-Jones, L.
Cromwell, L.
Dholakia, L.
Featherstone, B.
Finlay of Llandaff, B.
Foster of Bath, L.
Fox of Buckley, B.
Fox, L.
Freyberg, L.
Garden of Frognal, B.
Garnier, L.
German, L.
Goddard of Stockport, L.
Grender, B.
Hamwee, B.
Harris of Richmond, B.
Healy of Primrose Hill, B.
Hogan-Howe, L.
Hope of Craighead, L. [Teller]
Humphreys, B.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jolly, B.
Jones of Moulsecoomb, B.
Kerr of Kinlochard, L.
Kidron, B.
Kramer, B.
Lee of Trafford, L.
Lipsey, L.
Lister of Burtersett, B.
Marks of Henley-on-Thames, L.
McConnell of Glenscorrodale, L.
Meston, L.
Miller of Chilthorne Domer, B.
Moylan, L.
Newby, L.
Northover, B.
Oates, L.
Paddick, L.
Palmer of Childs Hill, L.
Pannick, L.
Parminter, B.
Pinnock, B.
Prashar, B.
Quin, B.
Randerson, B.
Russell, E.
Scriven, L.
Sentamu, L.
Sharkey, L.
Sheehan, B.
Shipley, L.
Smith of Llanfaes, B.
Smith of Newnham, B.
Somerset, D.
St John of Bletso, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Suttie, B.
Taylor of Goss Moor, L.
Teverson, L.
Thomas of Cwmgiedd, L. [Teller]
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Tope, L.
Trevethin and Oaksey, L.
Tyler of Enfield, B.
Vaux of Harrowden, L.
Verdirame, L.
Walmsley, B.
Warner, L.
Whitaker, B.

NOT CONTENTS

Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Altmann, B.
Altrincham, L.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Ashcombe, L.
Ashton of Hyde, L.
Balfe, L.
Banner, L.
Barran, B.
Bellamy, L.
Bellingham, L.
Benyon, L.
Berridge, B.
Bethell, L.
Bew, L.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Booth, L.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Bray of Coln, B.
Bridgeman, V.
Browne of Belmont, L.
Browning, B.
Brownlow of Shurlock Row, L.
Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Cameron of Lochiel, L.
Camrose, V.
Carrington of Fulham, L.
Cathcart, E.
Cavendish of Little Venice, B.
Chisholm of Owlpen, B.
Choudrey, L.
Colgrain, L.
Courtown, E.
Craigavon, V.

Crathorne, L.
Cruddas, L.
Davies of Gower, L.
De Mauley, L.
Deben, L.
Dobbs, L.
Douglas-Miller, L.
Duncan of Springbank, L.
Dunlop, L.
Eccles, V.
Effingham, E.
Elliott of Mickle Fell, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Farmer, L.
Faulks, L.
Finn, B.
Fleet, B.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Aghadrumsee, B.
Foster of Oxton, B.
Framlingham, L.
Fraser of Craigmaddie, B.
Frost, L.
Fuller, L.
Glendonbrook, L.
Godson, L.
Gold, L.
Goldie, B.
Grade of Yarmouth, L.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hammond of Runnymede, L.
Harlech, L. [Teller]
Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hoey, B.
Horam, L.
Houchen of High Leven, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
Jackson of Peterborough, L.
James of Blackheath, L.
Jamieson, L.
Jenkin of Kennington, B.
Johnson of Lainston, L.
Johnson of Marylebone, L.
Jopling, L.
Kempsell, L.
Kilclooney, L.
King of Bridgwater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lansley, L.
Lawlor, B.
Lea of Lymm, B.
Leicester, E.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lucas, L.
Magan of Castletown, L.
Mancroft, L.
Manzoor, B.
Markham, L.
Marks of Hale, L.
Marland, L.
Marlesford, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Mendoza, L.
Meyer, B.
Minto, E.
Mobarik, B.
Monckton of Dallington Forest, B.
Montrose, D.
Morris of Bolton, B.
Morrow, L.
Mott, L.
Moynihan of Chelsea, L.
Moynihan, L.
Murray of Blidworth, L.
Naseby, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Norton of Louth, L.
Offord of Garvel, L.
Owen of Alderley Edge, B.
Parkinson of Whitley Bay, L.
Pickles, L.
Popat, L.
Porter of Fulwood, B.
Porter of Spalding, L.
Randall of Uxbridge, L.
Reay, L.
Redfern, B.
Risby, L.
Roborough, L.
Rock, B.
Sanderson of Welton, B.
Sandhurst, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathcarron, L.
Strathclyde, L.
Sugg, B.
Swinburne, B.
Swire, L.
Taylor of Holbeach, L.
Taylor of Warwick, L.
True, L.
Udny-Lister, L.
Vaizey of Didcot, L.
Vere of Norbiton, B.
Wei, L.
Wharton of Yarm, L.
Willetts, L.
Williams of Trafford, B. [Teller]
Wolfson of Tredegar, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

7.30 pm

Lord Harlech (Con): My Lords, I beg to move that consideration on Report be adjourned until not before 8:15 pm.

Noble Lords: No!

Baroness Williams of Trafford (Con): My Lords, there is a reason my noble friend has said that. It is in case the debate finishes early.

To be helpful to the House, I will outline the procedure. Given that we are combining two Statements into one today, the length of the Statement repeat has been extended to one hour. That does not take away from what my noble friend has just said. My noble friend Lord Howe will repeat both Statements before 20 minutes of questions from the Opposition Front Benches. The Minister will then respond to 40 minutes of Back-Bench questions. My noble friend Lord Harlech said what he did just in case the debate runs a little short.

Consideration on Report adjourned until not before 8.15 pm.

Infected Blood

Statements

7.31 pm

Earl Howe (Con): My Lords, with the leave of the House, I shall now repeat in succession two Statements delivered earlier in another place. The first was made yesterday by my right honourable friend the Prime Minister. The second was made earlier today by my right honourable friend the Minister for the Cabinet Office. The first Statement, by the Prime Minister, is as follows:

"Mr Speaker, Sir Brian Langstaff has today published the final report of the Infected Blood Inquiry. This is a day of shame for the British state. Today's report shows a decades-long moral failure at the heart of our national life. From the National Health Service to the Civil Service, to Ministers in successive Governments, at every level the people and institutions in which we place our trust failed in the most harrowing and devastating way. They failed the victims and their families, and they failed this country.

Sir Brian finds a 'catalogue' of systemic, collective and individual failures, each on its own serious, and taken together amounting to 'a calamity'. The result of this inquiry should shake our nation to its core. This should have been avoided. It was known that these treatments were contaminated. Warnings were ignored, repeatedly. Time and again, people in positions of power and trust had the chance to stop the transmission of those infections. Time and again, they failed to do so.

Sir Brian finds 'an attitude of denial' towards the risks of treatment. Worse, to our eternal shame, and in a way that is hard even to comprehend, they allowed victims to become 'objects for research'. Many, including children at Lord Mayor Treloar College, were part of trials, conducted without their or their parents' knowledge or consent. Those with haemophilia or bleeding disorders were infected with HIV, hepatitis C and hepatitis B through NHS treatment, through blood clotting products

such as factor 8, including those who had been misdiagnosed and did not even require treatment. Many were infected through whole blood transfusions. Others were infected through their partners and loved ones, often after diagnoses had been deliberately withheld for months or even years, meaning that these infections should easily have been prevented.

I find it almost impossible to comprehend how it must have felt to be told that you had been infected, through no fault of your own, with HIV, hepatitis B or hepatitis C; or to face the grief of losing a child; or to be a young child and lose your mum or dad. Many of those infected went on to develop horrific conditions, including cirrhosis, liver cancer, pneumonia, TB and AIDS, enduring debilitating treatments, such as interferon, for these illnesses—illnesses the NHS had given them.

Many were treated disdainfully by healthcare professionals, who made appalling assumptions about the origin of their infections. Worse still, they were made to think that they were imagining it. They were made to feel stupid. They felt abandoned by the NHS that had infected them. Those who acquired HIV endured social rejection, vilification and abuse at a time when society understood so little about the emerging epidemic of AIDS. With illness came the indignity of financial hardship, including for carers, those widowed and other bereaved family members.

Throughout it all, victims and their loved ones have had to fight for justice, fight to be heard, fight to be believed and fight to uncover the full truth. Some had their medical records withheld or even destroyed. The inquiry finds that some government papers were destroyed in

'a deliberate attempt to make the truth more difficult to reveal'.

Sir Brian explicitly asks the question:

'was there a cover up?'

Let me directly quote his answer for the House: 'there has been'. He continues:

'Not in the sense of a handful of people plotting in an orchestrated conspiracy to mislead, but in a way that was more subtle, more pervasive and more chilling in its implications. To save face and to save expense, there has been a hiding of much of the truth'.

More than 3,000 people died without that truth. They died without an apology. They died without knowing how and why this was allowed to happen, and they died without seeing anyone held to account.

Today, I want to speak directly to the victims and their families, some of whom are with us in the Gallery. I want to make a wholehearted and unequivocal apology for this terrible injustice. First, I want to apologise for the failure in blood policy and blood products, and the devastating—and so often fatal—impact this has had on so many lives, including the impact of treatments that were known or proved to be contaminated; the failure to respond to the risk of imported concentrates; the failure to prioritise self-sufficiency in blood; the failure to introduce screening services sooner; and the mismanagement of the response to the emergence of AIDS and hepatitis viruses among infected blood victims.

Secondly, I want to apologise for the repeated failure of the state and our medical professionals to recognise the harm caused. This includes the failure of previous payment schemes, the inadequate levels of funding made available and the failure to recognise hepatitis B victims.

Thirdly, I want to apologise for the institutional refusal to face up to these failings—and, worse, to deny and even attempt to cover them up—the dismissing of reports and campaigners' detailed representations; the loss and destruction of key documents, including ministerial advice and medical records; and the appalling length of time it took to secure the public inquiry that has delivered the full truth today.

There is layer upon layer of hurt, endured across decades. This is an apology from the state to every single person impacted by this scandal. It did not have to be this way. It should never have been this way. On behalf of this and every Government stretching back to the 1970s, I am truly sorry.

Today is a day for the victims and their families to hear the full truth acknowledged by all and, in the full presence of that truth, to remember the many, many lost loved ones. But justice also demands action and accountability, so I make two solemn promises. First, we will pay comprehensive compensation to those infected and those affected by this scandal, accepting the principles recommended by the inquiry, which builds on the work of Sir Robert Francis. Whatever it costs to deliver this scheme, we will pay it. My right honourable friend the Minister for the Cabinet Office will set out the details tomorrow.

Secondly, it is not enough to say sorry or pay long-overdue compensation and then attempt to move on. There can be no moving on from a report that is so devastating in its criticisms. Of course, in some areas medical practice has long since evolved, and no one is questioning that every day our NHS provides amazing and life-saving care to the British people. But Sir Brian and his team have made wide-ranging recommendations. We will study them in detail before returning to this House with a full response. We must fundamentally rebalance the system so that we finally address this pattern, so familiar from other inquiries such as Hillsborough, where innocent victims have to fight for decades just to be believed.

The whole House will join me in thanking Sir Brian and his team, especially for keeping the infected blood community at the heart of their work. We would not be here today without those who tirelessly fought for justice for so many years. I include journalists and parliamentarians in both Houses, especially the right honourable Member for Kingston upon Hull North, but most of all the victims and their families, many of whom have dedicated their lives to leading charities and campaign groups, pouring their own money into decades of running helplines, archiving, researching and pursuing legal cases, often in the face of appalling prejudice. It is impossible to capture the full pain and injustice that they have faced. Their sorrow has been unimaginable. They have watched loved ones die, cared for them as they suffered excruciating treatments or provided their palliative care. Many families were broken up by the strain. Hundreds of thousands of lives have been knocked off course, dreams and potential unfulfilled.

But today, their voices have finally been heard. The full truth stands for all to see. We will work together across Government, our health services and civil society to ensure that nothing like this can ever happen in our country again. I commend this Statement to the House".

7.42 pm

My Lords, that concludes the first Statement, by my right honourable friend the Prime Minister. The second Statement, by my right honourable friend the Minister for the Cabinet Office, is as follows:

"With permission, Mr Speaker, I would like to make a Statement following the final report of the infected blood inquiry.

Yesterday, the Prime Minister spoke about the anguish that the infected blood scandal brought to those impacted by it. I want to reiterate his words and apologise again today. I am sorry. The Prime Minister also spoke, on behalf of the whole House, of our gratitude to Sir Brian Langstaff and his team for completing his comprehensive report—seven volumes and 2,500 pages—and of our appreciation of all those who came forward as part of the inquiry.

It was the greatest privilege of my ministerial career to have met over 40 representatives of the infected blood community in Cardiff, Edinburgh, London, Belfast, Birmingham and Leeds, as we finalised our response to compensation for this appalling tragedy. The whole community's bravery through immense suffering is what has enabled justice today. I know that many of them will be watching from the Public Gallery. I want to honour their fortitude through their unimaginable pain, as I lay out a more detailed response to Sir Brian's second interim report on compensation. We will provide the House with a further opportunity to debate the inquiry's full report after the Whitsun Recess. The Government will also respond to each recommendation in full, as quickly as possible, within our comprehensive response to the report.

The Prime Minister confirmed yesterday that the Government will pay comprehensive compensation to those who have been infected and affected as a result of this scandal. I will now set out to the House the scheme that the Government are proposing and, of course, more details of the scheme will be published online today. We are establishing the infected blood compensation authority—an arm's-length body—to administer the compensation scheme. A shadow body has already been set up and an interim CEO has been appointed. Today, I am delighted to announce the appointment of Sir Robert Francis as the interim chair of the organisation. The experience and care that Sir Robert will bring to this role will ensure that the scheme is credible and trusted by the community. His support in delivering this scheme will be invaluable.

Those who have been infected or affected as a result of this scandal will receive compensation. To be crystal clear, if you have been directly or indirectly infected by NHS blood, blood products or tissue contaminated with HIV or hepatitis C, or have developed a chronic infection from blood contaminated with hepatitis B, you will be eligible to claim compensation under the scheme. Where an infected person has died but would have been eligible under these criteria, compensation will be paid to their estate. This will include where a person was infected with hepatitis B and died during the acute period of infection.

But, Mr Speaker, Sir Brian could not have been clearer: it is not just the harm caused by the infections that requires compensation. All the wrongs suffered by those affected must also be compensated for, so when a person with an eligible infection has been accepted on to the scheme, their affected loved ones will be able to apply for compensation in their own right. That means that partners, parents, siblings, children, friends and family who have acted as carers of those who were infected are all eligible to claim. I am aware that being asked to provide evidence of eligibility will likely be distressing, so I am determined to minimise that as much as possible.

I am pleased to confirm today that anyone already registered with one of the existing infected blood support schemes will automatically be considered eligible for compensation. I give thanks for the dedication and hard work of Professor Sir Jonathan Montgomery and the other members of the expert group, who were critical in advising on how the Government could faithfully translate Sir Brian's recommendations for the scheme. In line with our previous commitment, we will publish the names of those experts today.

In his report, Sir Brian recommended that compensation be awarded with respect to the following five categories: an injury impact award, acknowledging the physical and mental injury caused by the infection; a social impact award, to address any stigma or social isolation resulting from the infection; an autonomy award, acknowledging how family and private life was disrupted during this time; a care award, to compensate for the past and future care needs of anyone infected; and, finally, a financial loss award, for past and future financial losses suffered as a result of the infection. The Government accept this recommendation with two small refinements, informed by the work of the expert group and designed for simplicity and speed—two other principles that Sir Brian asserted.

First, the care award will be directly awarded to the person with the infection, or to their estate. Secondly, the financial loss award will be paid either directly to the person with the infection or—where an infected person has, tragically, died before the establishment of the scheme—to their estate and to affected persons who were dependent on them. Sadly, many people have links to multiple individuals who were infected, or were both infected themselves and affected by another's infection, so multiple injury awards will be offered to reflect the scale of the loss and suffering. The scheme will be tariff-based, and we will be publishing an explanatory document, including examples of proposed tariffs, on GOV.UK.

However, this is not the end: over the next few weeks, Sir Robert Francis will seek views from the infected blood community on the proposed scheme before its terms are set in regulations to make sure that the scheme will best serve those it is intended for. Sir Robert has welcomed the Government's proposals as positive and meaningful. He will set out more details on engagement with the community shortly.

The inquiry recommended that the scheme should be flexible in its award of compensation, providing options for a lump sum or regular payments. We agree, which is why the awards to living infected or affected persons will be offered as either a lump sum or periodical payments.

Where the infected person has died, estate representatives will receive compensation as a single lump sum to distribute to beneficiaries of the estate, as is appropriate.

We will also guarantee that any payments made to those eligible will be exempt from income, capital gains and inheritance tax, as well as disregarded from means-tested benefit assessments. We will also ensure that all claimants are able to appeal their award both through an internal review process in the infected blood compensation authority and, where needed, a right to appeal to the First-tier Tribunal. Our expectation is that final payments will start before the end of the year. I would like to return to the House when the regulations are laid later this year to make a further statement with an update on the delivery of the compensation scheme.

I know from my discussions with the community just how important the existing infected blood support scheme payments are to them. I recognise that many people, sadly, rely on these payments, and they are rightly keen to understand what the Government's intentions are. I want to provide reassurance to all those out there today that no immediate changes will be made to the support schemes. Payments will continue to be made at the same level until 31 March 2025, and they will not be deducted from any compensation awards. From 1 April 2025, any support scheme payments received will be counted towards a beneficiary's final compensation award. This will ensure parity between support scheme beneficiaries regardless of whether they were the first or the last to have their compensation assessed by the infected blood compensation authority. We will ensure that no one—no one—receives less in compensation than they would have received in support payments.

I recognise that each week members of the infected blood community are still dying from their infections. There may be people—indeed, there will be people—listening today who are thinking to themselves that they may not live to receive compensation, so I want to address those concerns too. Today, I am announcing that the Government will be making further interim payments ahead of the establishment of the full scheme. Payments of £210,000 will be made to living infected beneficiaries—those registered with existing infected blood support schemes, as well as those who register with a support scheme before the final scheme becomes operational—and to the estates of those who pass away between now and payments being made. I know that time is of the essence, which is why I am also pleased to say that they will be delivered within 90 days, starting in the summer, so that they can reach those who are most urgently in need.

Before I conclude, I would like to turn to the matter of memorialisation. Many of those who were infected by contaminated blood or blood products have since died—died without knowing that their suffering and loss would be fully recognised either in their lifetime or at all. The lives of most of those who have died remain unrecognised. I note Sir Brian's recommendations on memorialisation across the UK, and the Government will address these recommendations in detail as part of our wider response to this report.

In conclusion, I know that the whole House will want to join me in thanking Sir Brian and the inquiry for the work that they have done, and in paying tribute to all those who have been caught up in this terrible tragedy and who have battled for justice for so long. Yesterday was a day of great humility for everyone implicated by the inquiry, and today I can hope only that, with the publication of the inquiry report and with our firm commitment to compensate those touched by this scandal, those in the infected blood community know that their cries for justice have been heard. I commend this Statement to the House".

My Lords, that concludes the Statement.

7.55 pm

Lord Collins of Highbury (Lab): My Lords, I thank the noble Earl, Lord Howe, for repeating both Statements. The infected blood scandal is, of course, one of the gravest injustices in our history and a profound moment of shame for the British state. Yesterday, Keir Starmer, leader of the Opposition, apologised on behalf of the Labour Governments of the past. The Prime Minister did the same on behalf of all Governments and the country.

The scale of the horror uncovered by Sir Brian Langstaff's report almost defies belief. As well as the apology, I repeat Keir Starmer's commitment

"to shine a harsh light upon the lessons that must be learned to make sure that nothing like this ever happens again".—[*Official Report*, Commons, 20/5/24; col. 668.]

The institutional defensiveness identified by Sir Brian is a pattern of behaviour that we must address. We must restore the sense that this country is a country that can rectify injustice, particularly when carried out by institutions of the state.

I am sure that all noble Lords join me in paying tribute to the victims and campaigners who have fought so hard on this issue, including Dame Diana Johnson and Peter Bottomley, and to Sir Brian Langstaff and his team for all the work that they have done on the independent inquiry into this scandal. The publication of Sir Brian's final report is an incredibly important moment for the victims of this injustice. Keir Starmer said yesterday that his

"experience of running a public service has made"

him

"less interested in political partisanship and more focused on getting things done".

My right honourable friend Nick Thomas-Symonds said earlier in the other place:

"One of the most powerful conclusions in this report is that an apology is meaningful only if it is accompanied by action",

as the noble Earl said. I repeat my right honourable friend's commitment for us

"to work on a cross-party basis"

to

"help deliver the compensation scheme and get the … money to victims as soon as possible".

We welcome the further details in Minister John Glen's Statement, and the appointment of an interim chair, Sir Robert Francis. The Minister's response, that Sir Robert and the expert panel will also focus on hearing the voice of victims going forward, is crucial. We welcome the payment under the five heads of loss to infected and affected persons, and the Minister's confirmation that there is no budget restriction. Time is of the essence, with one victim dying every four days. I therefore welcome the Minister's comments that there will be work throughout June on tracing additional claimants.

[Lord Collins of Highbury]

The Minister confirmed that the Commons will have the opportunity to debate and consider progress on Sir Brian Langstaff's other 11 recommendations beyond compensation, including, as the noble Earl said, consideration of appropriate and fitting memorials, which—I add—we strongly support.

On potential criminal charges, I hope the Minister will be able to confirm that all relevant evidence will be available for consideration by the prosecuting authorities and that any other necessary support will be provided.

As I said in my opening remarks, the institutional defensiveness identified by Sir Brian is a pattern of behaviour we must address. We must deliver a duty of candour and the political leadership to replace that culture of defensiveness with openness and transparency. I hope the Minister will be able to confirm that this House will be given the same opportunity to debate these issues as was given to the other place.

Baroness Brinton (LD): My Lords, from these Benches, we echo the apologies made by both the Government and the Labour Benches. We are truly sorry for what has happened. We pay tribute to everyone in the infected blood community. I particularly want to thank those watching us, whether in the Public Gallery here or online. Talking to people at Central Hall yesterday, I discovered that a number of people have watched every single time this House has debated infected blood. We may not see them, but they see us.

From these Benches, we also pay tribute to Sir Brian and his team for a truly remarkable seven-volume report which speaks truth to power for the infected blood community, and we pay tribute to the parliamentarians in both Houses who have fought for justice over the decades, including Dame Diana Johnson, who currently leads them. We also pay tribute to the many charities and organisations who have worked with the IB community, be they infected or affected.

From these Benches, we will continue to hold government to account until everything is resolved. Having said that, we certainly welcome both Statements. We echo the points made from the Labour Front Bench: we believe that there are issues relating to criminal charges for corporate manslaughter and other possible crimes, so can the Minister say whether Sir Brian's report is being forwarded to the police and the DPP for consideration?

There is one person who is not in her place today, the noble Baroness, Lady Campbell of Surbiton. She was exhausted by yesterday. She is one of the affected people in this House—but not the only one. She told me that she welcomes the government apology; her sorrow is that it took decades of personal hardship and relentless campaigning to arrive. She is delighted by the appointment of Sir Robert Francis KC, as are we; he is someone in whom the IB community has considerable trust. Finally, she said that she wants to listen hard to the community responses over the coming weeks to the events of yesterday and today in respect of the compensation intentions. Everyone will need time to process the inquiry's findings. She and many others are completely exhausted, and that is why she is unable to be with us tonight.

Today's compensation Statement sets out much welcome detail. As the Minister knows, from these Benches we welcome the establishment of the arm's-length IB compensation authority, the announcement that Sir Robert Francis is the interim chair and the clarity about who is eligible, especially the inclusion of those affected, not just infected. We also welcome the different categories of tariff. Ministers have heard repeatedly in both Houses that it is vital to recognise how people's lives have been affected in so many ways.

However, the Statement also raises some questions that are not quite so clear. First, have the Government understood that people with lived experience of infected blood must be represented at all levels on the IBCA, including the board? Both Statements were silent on that, so I wonder what guidance Ministers will give Sir Robert on involving people with lived experience.

Secondly, the Statement confirms that anyone already registered with one of the existing support schemes will automatically be considered for compensation under the new scheme. But what about those we have discussed repeatedly in debates on the Victims and Prisoners Bill: those who are known about but whose claims have not yet been recognised and therefore are not registered? The Statement yesterday talked about documents going missing and even being destroyed. I have heard today from a victim who says that her claims, made over five years ago, are stuck because the NHS has lost two or three key pages from her records, so she cannot move forward. Can the Minister say what will happen to cases such as hers? She asked, "How can we fight a machine that is still protecting itself?"

There is a second group of people who are harder to reach, as they have not yet been identified; they may have only just become aware that they are infected with hepatitis. What arrangements will there be for them? Not only are they outside the timetable for the main compensation scheme, given what the Minister said, but they appear not to be referred to under the interim scheme arrangements as announced. What is the timescale for each of those two groups? The Minister knows about them, because we have talked about them before, so it is no surprise to him that they remain concerned about their position.

It is also good to see that those receiving compensation will be disregarded from means-tested benefits assessments, but I return to my old question: can the Minister confirm that there will be no clawing back of past benefits as new compensation payments are made? That was not at all clear in the Statement.

The Statement outlines support schemes especially for widows and how they will fit into the new scheme. I thank the Minister for making sure that they will not lose out. We look forward to seeing the details of the scheme.

Finally, the increase in the interim scheme payments of a further £200,000 is welcome. As with the main scheme, what are the proposals and timescales for ensuring that those not yet registered will get speedy support, registration and payments? That is not mentioned, either, in the timetable.

Sir Brian's report is a wake-up call to government, including the Civil Service, the NHS and the Department of Health and Social Care, and to Parliament. We must

give thanks to all who have relentlessly spoken up from the community, the press and the media and in Parliament; but for them, we would not be here today. Only through fulfilling Sir Brian's recommendations —all of them—will there be vindication for the victims and corporate and state changes in culture in the future. We must all ensure that we never have to face a scandal like this again.

Earl Howe (Con): My Lords, I am grateful to the noble Lord, Lord Collins, and noble Baroness, Lady Brinton, for their supportive comments. I agree with the noble Lord, Lord Collins, that if ever a cross-party approach was warranted, it is now. I have no doubt that, going forward, his party, as well as mine, will wish to see justice fully done in the way that we—I hope—are agreed on.

Lessons must indeed be learned. The Prime Minister's Statement yesterday expressed the shock and shame that all right-thinking people will feel in response to Sir Brian Langstaff's report, the implications of which are profound. It is important that the Government take time to digest fully the gravity of its findings. The wrongs that have been done are devastating and life-altering for so many individuals, so ensuring that nothing like this can happen again is a priority. We will provide a comprehensive response in due course.

A number of questions were raised by both the noble Lord and the noble Baroness. First, the noble Lord, Lord Collins, asked about a debate in the House of Lords. I know that this proposal is currently under active consideration by the usual channels, and I would personally welcome such a debate.

Secondly, both the noble Lord and the noble Baroness asked me about the possibility of criminal charges and whether relevant evidence would be made available in such circumstances. I can certainly give that assurance, but it is a little early to say whether the report will be sent to the police or the Director of Public Prosecutions. We will consider the report in depth over the coming days and weeks, and it is no part of the Government's wish to stand in the way of justice being done across the piece.

I am delighted that Sir Robert Francis has been welcomed as the interim chair of the compensation authority. He is trusted by the community, and I know that he wishes to work very closely with representatives of the community on both the way that the scheme as proposed is validated and the way that the compensation authority is established and is working. In other words, the provision that we have made in the Victims and Prisoners Bill for committees and sub-committees to be set up within the compensation authority will allow Sir Robert to populate those committees as he wishes, and as he is asked to do, with representatives of the infected and affected communities. I have little doubt that there will be arrangements at board level to ensure that the views of those committees and sub-committees are reflected in the board's considerations going forward.

The noble Baroness asked whether there would be any clawing back of past benefits. I can assure her that there will not be.

As regards those who are not known about and who may feel that they have a claim—some, perhaps, lacking the evidence to prove a claim—we will address situations of that kind in the guidance that comes forward, and provide a means for those people on a page of GOV.UK to feed in their interest and their claim to entitlement in as simple a way as possible. The application scheme that we are setting up will be electronic; the aim is to make it as simple and as user-friendly as possible. Support will be provided for those who need it, and I will be happy to write to the noble Baroness with more specific details of how different groups of people will be able to access the compensation authority in due course.

8.12 pm

Baroness Meacher (CB): My Lords, I will say just a few words from these Benches—we are a little depleted this evening. I strongly support the words of the noble Lord, Lord Collins, and the noble Baroness, Lady Brinton. They were very constructive and helpful. I also want to say how much I personally appreciate the fact that the noble Earl, Lord Howe, is responsible for this area of work. We are incredibly lucky to have such a committed and devoted Minister who, I feel absolutely confident, will pursue this and ensure that the compensation is properly provided to the people who so desperately need it. The noble Earl will, I know, collaborate; he had a very good meeting with a small number of us and it was very clear that he will welcome continued collaboration, and I certainly look forward to that. I give a special welcome to the Front Bench for the noble Earl, Lord Howe.

Earl Howe (Con): I am, as ever, very grateful to the noble Baroness, Lady Meacher, for her kind words. I can assure her that it has been a privilege for me to be involved as a House of Lords Minister in working through these proposals and to be standing here today to announce them. I am more than ready to continue that work as we fashion the compensation scheme, together with Sir Robert Francis and those impacted by this scandal.

Lord Lansley (Con): My Lords, as a former Secretary of State for Health, I very much share the sense of failure that was forcefully expressed by the Prime Minister in the other place yesterday. From my personal point of view, I want to say how deeply sorry I am for the pain and misery that so many of the victims and their families have experienced.

I remind my noble friend that that is exactly the same expression of regret that I made in another place on 10 January 2011, and which my noble friend at this Dispatch Box repeated on the same day. At that time, as my noble friend will recall, we had conducted a review over some months, following Lord Archer of Sandwell's independent inquiry. We believed, on the basis of the ministerial review of Anne Milton, the Member of Parliament for Guildford, that we were substantially meeting—and enhancing—the level of support payment for relief that would be provided to victims and their families and meeting many of their needs. Clearly, it was inadequate, and the Prime Minister has expressed that view.

Can my noble friend say whether the Government will now focus very hard on the question of why I, he, our ministerial colleagues, and other Ministers and

[LORD LANSLEY]
other Secretaries of State—I heard Andy Burnham say more or less exactly the same thing yesterday—believed that we were doing what was needed and what was right at that time but did not share the view that we needed to make compensation payments on the scale of those that were made in Ireland because we did not share the same liability as had been accepted in Ireland?

That was clearly not true. Ministers were repeatedly advised that something was true which was not true. That is not to absolve us, because we take responsibility as Secretaries of State for our departments and for what has been done or has failed to be done during our time in office, and collectively we must accept that responsibility. However, this must be a case of never letting the scale of that failure within government be repeated in the future in any other circumstances. I hope that my noble friend can say that that internal examination, based on the inquiry, will be proceeding forthwith.

Earl Howe (Con): I am grateful to my noble friend and well remember the Statement that he refers to, which I repeated in this House in January 2011. He is exactly right. Both he and I were advised at the time that there was no comparability between the situations in the Republic of Ireland and the United Kingdom—that they were entirely different. That was not true, but it was the advice that we received. We did as much as we could, I am sure my noble friend will agree, to honour the spirit of the late Lord Archer's report, which was at the time a very thorough piece of work, although he did not have access to all the evidence, as we now are aware. So it does raise the question of how successive Secretaries of State for Health in the Labour Government, the coalition Government and no doubt beyond were advised in the way that they were by officials. This is a question that merits the closest scrutiny and I undertake that that will be done.

Baroness Featherstone (LD): I was not going to speak, because I find it very emotional. For anyone in this Chamber who does not know, my nephew died aged 35. He was a haemophiliac. He was infected with hepatitis C and exposed to CJD. He left a 10 month-old daughter. But I wanted to put on the record my admiration and heartfelt thanks to Sir Brian Langstaff. It was an absolute miracle that he chaired this inquiry, because he did not hold his punches yesterday, did he?

I also want to put on record my thanks to Theresa May, whom I worked with in the Home Office and whose ear I bent regularly. She was the first politician to do things right by commissioning this inquiry. Although it has taken five years and has been agonising for all those people—including my sister, who lost her son and now has Alzheimer's—yesterday felt at last like a day of reckoning when justice was finally done. She campaigned for 40 years for that day, against all the odds. She was treated by civil servants and Ministers as if she was dirt on their shoes, quite frankly. I cannot even begin to express it.

There is so much that I would like to say, but, as this is meant to be questions, I will just say that I had evidence. I met Sir Chris Wormald. He lied to my face then apologised in writing afterwards. This was all given in evidence to the inquiry. Yes, all the things that the Minister has said will be done must be done, but there are so many of these situations. Denial and cover-up seem to be systematic, whether it is Grenfell, Bloody Sunday, Hillsborough or any of those things. This duty of candour has to really mean "never again". I am sick and tired of hearing "never again" after all these inquiries. If it is not "never again", there will be some recompense to those who were affected but it will not change anything. In this country, when it feels like everything is going to hell, this is an opportunity to perhaps turn it around and make sure that we become the good, honest Government and citizens that we always should have been.

Earl Howe (Con): My Lords, I very much identify with the remarks of the noble Baroness and extend my personal sympathy to her with regard to the death of her nephew.

She referred to the duty of candour. It is perhaps not surprising that Sir Brian Langstaff has made such a recommendation. We need to think about it very carefully. As the noble Baroness will know, this House passed an amendment, proposed by the party opposite, to consider a duty of candour as part of the Victims and Prisoners Bill. I am still not sure that Bill is the right place for it; I think we need to take a longer run at this issue in the light of the full dimensions of Sir Brian's recommendations.

However, it is not an issue that is going away. Nothing can ever compensate those who have lost loved ones or had their lives ruined by this terrible disaster. However, we can create a scheme that delivers monetary compensation speedily, efficiently and accessibly, in a way that is consistent with the proper management of public funds. Above all, the scheme must treat people with the kind of respect, dignity and compassion that the noble Baroness says was singularly absent along the way for those who required help and support.

These are basic rights which too often people impacted by the scandal have been denied. They need to feel that there is a system there to support them that is collaborative, sympathetic, user-friendly and as free of stress as possible. I know that that is the aim that Sir Robert Francis has at the top of his mind as well.

Baroness Finn (Con): My Lords, Sir Brian's report highlighted within government a culture of evasion, chicanery and half-truths that has perpetuated the anguish of victims and relatives for decades. I was particularly disturbed to read in volume seven of Sir Brian's report his conclusions on the destruction of several key documents by civil servants that were central to both his inquiry and earlier civil litigation before the courts. He found that it was,

"more likely than not that the authorisation to destroy the files was because the documents contained material dealing with delays in the UK to the introduction of the screening of blood donations for Hepatitis C, which was anticipated (or known) to be a live issue at the time. If this is right, it was a deliberate attempt to make the truth more difficult to reveal".

Does the Minister agree, first, that it is to be condemned that civil servants sought to destroy evidence that potentially hid their own complicity in events; secondly, that it is disturbing that not a single official has been able to recall who gave the order to destroy these documents,

or why; and, thirdly, that it is a great shame on the Civil Service that not a single individual has been held accountable for destroying evidence in this way?

Earl Howe (Con): My Lords, I share my noble friend's profound disquiet and shock at some of the facts that Sir Brian Langstaff has uncovered—not only as regards the actions of civil servants but also his exposé of moral failings on the part of individuals and institutions at every level of our system of government. These failings, and in some cases cover-ups, over decades raise profound questions about how in the future we can ensure integrity, honesty and transparency in the business of government—as the Civil Service Code and the Ministerial Code currently require.

The recommendations that Sir Brian Langstaff has made, particularly in the area of learning lessons and ending what he called the "defensive culture" of the Civil Service, will receive the most serious consideration across government and we will publish a comprehensive response to all his findings in due course.

Baroness Finlay of Llandaff (CB): My Lords, my own profession is covered in shame with the findings in this report. The noble Baroness, Lady Campbell of Surbiton, should really be with us tonight. She went through everything with her first husband, who died; I remember his funeral well and the whole story was a tragedy. There will be recommendations that affect clinicians, as well, coming out of this. The Prime Minister's Statement says:

"Of course, in some areas medical practice has long since evolved".

I wish it was in every area of practice. To hear that people have been treated with disdain is frankly shameful.

I know there is a review by the Department of Health and Social Care going on at the moment. The review is taking evidence—it is on the website—on the duty of candour. I hope that that will be looked at very carefully, particularly in the light of the report. In terms of records, we have heard about Civil Service records but also patient records being lost, with patients being unable to access their own records and having to go through complex processes even today. That is something that at a personal level I feel needs to be considered as well, in order that people can access information.

I would like to ask the Minister what plans there are to work with the professional bodies to ensure that the findings here mean that there is proper candour, that whistleblowers are empowered to say what they need to say, that open conversations do occur over diagnosis and where people want access to the records, and that it is recognised that clinical studies do not need more regulation on top of them but need to be freed up to be really open and honest, because we move things forward in medicine through clinical studies and it would be really sad if the concept of trials fell into disrepute because there has been disrepute in the past and because things have been badly conducted. Some aspects, particularly of medical research, have changed and improved, but it is essential that people benefit from better care.

I know that my noble friend Lady Campbell of Surbiton welcomes the appointment of Sir Robert Francis, whose background and experience are exemplary. On behalf of her and the rest of your Lordships, I thank the noble Earl, Lord Howe, for keeping his door constantly open, seeing every one of us and managing people with great compassion.

Earl Howe (Con): I am grateful to the noble Baroness for those remarks, and I associate myself with all that she said about the noble Baroness, Lady Campbell of Surbiton. She, of all our colleagues, has been personally affected by this awful scandal, and has lost a husband in the course of it. I am by no means alone in having enormous admiration for her. Although I well understand why she cannot be with us today, following an exhausting day yesterday, we are all sorry not to see her.

The noble Baroness, Lady Finlay, was right to express a view about how we should not inadvertently turn off the tap on innovation and medical advances in the health service by adopting an overly risk-averse approach. That would be the wrong thing to do. At the same time, it is fair to remind ourselves that, since the 1990s, there have been huge changes in the way that the NHS is regulated and the checks and balances that exist for clinical trials and the like.

Certainly, our blood supply is now one of the safest in the world. Over the last decade, the Government and system partners have delivered major initiatives to advance patient safety across the NHS. They include the patient safety strategy and the Patient Safety Commissioner—thanks to my noble friend Lady Cumberlege. The NHS is subject to greater oversight and regulation today—some have said that it is perhaps excessive, but I do not agree—but with a modern focus on patient safety and on evidence-based medicine, with a constitution brought in by the last Labour Government that sets out the rights of all of us to care and to treatment free of charge.

While I am the first to echo the guilt expressed by the Prime Minister yesterday, I think that we can look forward to a period of greater transparency and openness and greater patient safety in the light of the changes that have been made in recent years.

Victims and Prisoners Bill

Report (4th Day) (Continued)

8.34 pm

Clause 49: Section 3 of the Human Rights Act 1998: life prisoners

Amendment 150

Moved by ***Lord Marks of Henley-on-Thames***

150: Leave out Clause 49

Lord Marks of Henley-on-Thames (LD): My Lords, the amendments in this group, Amendments 150 to 153, objecting to Clauses 49 to 52 standing part of the Bill, fall into two slightly different categories. The first three amendments, in my name and that of the noble Baroness, Lady Lister of Burtersett, who I am grateful

[Lord Marks of Henley-on-Thames]
to for her support, would remove the proposals in the Bill that Section 3 of the Human Rights Act be disapplied in relation to three pieces of legislation.

First, by Clause 49, the disapplication would apply to Part 2, Chapter 2 of the Crime (Sentences) Act 1997, which concerns life sentences and sentences of detention at His Majesty's pleasure, release on licence for prisoners serving such sentences, and their release on licence, recall and removal from the UK, and will include all those amendments to be introduced by Clause 41 of this Bill. Secondly, Clause 50 would disapply Section 3 to Part 12, Chapter 6 of the Criminal Justice Act 2003, which concerns the release on licence, supervision and recall of certain fixed-term prisoners, and will include all those amendments to that Act to be introduced by Clause 42 of this Bill. Thirdly, Clause 51 would disapply Section 3 to Section 128 of the LASPO Act, or any order made under that section. That is the section which, as we have heard in debate at some length in Committee and earlier today, permits the Secretary of State to change the release test for certain prisoners, importantly including IPP prisoners, to shift the balance so that if conditions are met, an IPP prisoner must be released.

As will be familiar to the House, Section 3 of the Human Rights Act requires that:

> "So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights".

The ECHR is fundamental to the protection of human rights in this country. That is and has long been an article of faith for my party and the Labour Party, which was responsible for enacting the convention as part of domestic law by the means of the Human Rights Act. Indeed, it is important for many but not all in the Conservative Party; we have all seen the fault-lines on this issue over the tenure of this Government. However, the present Secretary of State for Justice is a keen advocate for the convention.

The architecture of the Human Rights Act has been widely and, I suggest, rightly praised for striking the balance between the sovereignty of Parliament and the convention. That architecture has at its heart the combination of Section 3—the section I just read—which requires convention-compatible interpretation and application of legislation where possible, and Section 4, which provides for a court to make a "declaration of incompatibility" where a legislative provision is found to be irrevocably incompatible with the convention right. The making of such a declaration leaves it to Parliament to legislate so as to comply with the convention and remove the incompatibility.

It follows that the proposed disapplication of Section 3 represents an invitation, almost an instruction, to courts to disregard convention rights when interpreting or applying the legislation. This is not a purely academic point; in relation to IPPs, for example, the European Court of Human Rights found in the case of James, Wells and Lee v UK in 2012 that the applicants' IPP sentences were a violation of their Article 5 rights to liberty and security because the unavailability of rehabilitative courses meant that their detention after the expiry of their tariff terms was "arbitrary".

As the Prison Reform Trust put it, in its helpful briefing for this debate:

> "The introduction of specific carve-outs from human rights for people given custodial sentences contradicts one of the fundamental principles underlying human rights—their universality and application to each and every person on the simple basis of their being human. Moreover, it is precisely in custodial institutions like prisons that human rights protections are most vital, because individuals are under the control of the state".

These carve-outs represent an insidious threat to the effectiveness of the convention in this country and, I suggest, a stalking horse for future legislation, undermining the balance between parliamentary sovereignty and the convention that I spoke of. They should be resisted.

I am bound to say that I find it very disappointing that the Labour Party is not whipping Labour Peers to support these amendments. The Human Rights Act was one of the Labour Party's finest achievements. For Labour Peers to be instructed to condone by abstention the disapplication of Section 3 to these provisions is a sad portent for the future.

Before closing, I turn to Amendment 153, which seeks to remove Clause 52 from the Bill. Clause 52 does not seek to disapply any part of the convention, but it seeks to skew the court's decision-making process on the application of convention rights in a way that is underhand and unacceptable. It would provide that, in making a decision as to whether a person's convention rights have been breached in relation to a release decision:

> "The court must give the greatest possible weight to the importance of reducing the risk to the public from offenders who have"

been given prison sentences. In other words, risk reduction is to outweigh all other factors. But what does the instruction to give "the greatest possible weight" say to a judge? The answer is effectively that no other factor is to count. There is to be no careful judicial balancing exercise, because if the risk reduction factor can be outweighed in the balance, a judge cannot, by definition, give that factor "the greatest possible weight". Judicial discretion is to be removed; judges are to be compelled to reach decisions that they would not otherwise make, because they may not judge for themselves what weight to give to competing factors. That is not acceptable.

I fully intended to divide the House on these amendments, but given the Labour Party's decision not to support them but to abstain and the fact that it is now late, I have decided not to. Nevertheless these amendments raise an important point of principle for all those who believe in the convention.

Baroness Lister of Burtersett (Lab): My Lords, I was very disappointed by the Minister's response in Committee, so I felt that I ought to have another go in support of the noble Lord, Lord Marks of Henley-on-Thames, aided by the British Institute of Human Rights and Amnesty International, which were also very disappointed.

First, the Minister said that this clause is not about disapplying the Human Rights Act. Well, of course it is not about disapplying the whole Act—but not just Amnesty, the BIHR and the Howard League, but also

the EHRC, the chair of the JCHR and the Law Society take the view that it is disapplying Section 3. It feels like one of those occasions when the Government is the only marcher in step.

The BIHR challenges a number of the Minister's arguments—first, his reassurance that it is still possible to plead any breach of human rights in the usual way and to seek a declaration of incompatibility. It points out that the point of the Human Rights Act was to bring rights home and provide an accessible, practical and immediate remedy. The excision of Section 3 makes access to human rights harder. He said it was a "difficult section to apply". The BIHR argues the opposite, pointing out that it is used by lay front-line workers who see it as having given them a clear legal framework for arguing for the protection of people's rights.

8.45 pm

Likewise, the BIHR contests the view that it is necessary to provide public protection. The Human Rights Act already requires that the public interest is considered on a case-by-case basis, so this clause is not necessary to achieve that. The Minister's reading of the independent Human Rights Act review was, shall we say, creative. The review recommended not the weakening or removal of Section 3 but simply greater clarification to improve understanding of it.

Finally, as the Minister will know, the UN Human Rights Committee in its report on the UK's implementation of the International Covenant on Civil and Political Rights, while welcoming the abandonment of the wholesale abolition of the Human Rights Act, expressed concern that its diminution has been pursued through other legislation and recommended that any future amendment to the Act be restricted to the strengthening of human rights. This clause does the opposite and it is difficult not to conclude that, like the earlier asylum legislation, it is a backdoor way of weakening the Human Rights Act by undermining the fundamental principle enunciated by so many, including the noble Lord—that human rights are universal and indivisible. Weakening the Act's application to a marginalised and unpopular group such as prisoners is contrary to that principle, whatever the Minister might say.

Lord Pannick (CB): My Lords, I associate myself with the remarks of the noble Lord, Lord Marks, and the noble Baroness, Lady Lister. I am unclear whether the Government accept, as I think they must, that the reason why they wish to disapply Section 3 of the Human Rights Act is because they recognise that, without such disapplication, the substantive provisions of this Bill would plainly contradict Britain's obligations under the European Convention on Human Rights.

Lord Ponsonby of Shulbrede (Lab): My Lords, Section 3 of the Human Rights Act requires courts to interpret legislation compatibly with rights under the European Convention on Human Rights as far as is possible. Clauses 49 to 52 would disapply Section 3 to prisoners as a group when it comes to legislation about their release. It is disappointing to see this Government wasting parliamentary time and public money to remove human rights from prisoners.

There is no evidence of the Human Rights Act 1998 limiting the Parole Board from making decisions about prisoners. These clauses appear to be trying to solve a problem that does not exist, while the Government ignore the many critical problems across our criminal justice system. We in the Labour Party are proud that it was a Labour Government who brought about the Human Rights Act in 1998, and a future Labour Government will continue to be a bastion of justice and hope, unlike this current Government, who cannot bring themselves to focus on the real issues affecting the public.

The noble Lord, Lord Marks, and my noble friend Lady Lister spoke about the lack of support from the Labour Party if he were to press this matter to a vote. He said—I wrote it down—that he thought this was "a sad portent for the future". That is a harsh interpretation of our stance. I have just reiterated our commitment to the Human Rights Act. We would not have chosen to support him if he had pressed the matter, but the statement I have read out reaffirms the Labour Party's commitment to the Human Rights Act. Having said that, I think the noble Lord, Lord Pannick, has put his finger on the central question. If the Government see no diminution of the Human Rights Act, why are they disapplying Section 3 within this Bill? Do they believe that it would breach the Human Rights Act if they failed to disapply the Act in this case?

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bellamy) (Con): My Lords, I thank the noble Lord, Lord Marks of Henley-on-Thames, for his amendments, which seek to remove Clauses 49 to 52. I am extremely sorry to disappoint the noble Baroness, Lady Lister, and others, but the Government laid out their position in Committee and nothing the Government have heard since or this evening alters that position.

As I think I have said previously, Section 3 of the Human Rights Act is a procedural, not a substantive, provision. Clauses 49 to 51 effectively disapply Section 3 in relation to prisoner release legislation. Let me start by reiterating that nothing in these clauses removes or limits any convention rights enjoyed by prisoners. If I was asked, as I think I was, to confirm that the full range of substantive rights under the ECHR remain: yes, of course they do. Nothing in these clauses removes or limits any convention rights enjoyed by prisoners. A breach of human rights may still be pleaded before any domestic court or in Strasbourg in the usual way, and we would not want to prevent such action by prisoners where it is warranted.

I respectfully respond to the noble Lord, Lord Marks of Henley-on-Thames, by saying that this provision does not represent either an invitation or still less an instruction to the courts to disapply the Human Rights Act; nor does it imply, as suggested by the noble Lord, Lord Pannick, and perhaps by the noble Lord, Lord Ponsonby, that the Government believe there is any breach of the European convention in relation to this legislation. That is not the case. The Government do not accept that there is any breach whatever in this legislation. It is the Government's position that a matter as important as the public protection test should be for Parliament and that it should not be open to the so-called writing-in or reading-down provisions of

[Lord Bellamy]
Section 3, which is an interpretive position which means that the courts may be required to go further than usual in interpreting legislation that would otherwise be compatible with convention rights. Although this has happened less often in recent years, it can require courts to stray from Parliament's original intention, and the Government do not think that that is appropriate in this context. The real issue is the balance between the courts and Parliament from a procedural point of view.

Lord Pannick (CB): I am puzzled by this because it is an unusual thing in legislation to say that Section 3 is disapplied. Is it not the inevitable inference from the inclusion of that provision disapplying Section 3 in this legislation that the Government are seriously concerned, at the very least, that the substantive provisions would breach the substantive provisions of the Human Rights Act?

Lord Bellamy (Con): My Lords, that is not by any means the Government's position; nor can that inference be drawn. The Government's position on this clause is, as I understand it, in effect, that which the noble Lord himself is reported as expressing to the independent review on human rights because Section 3 requires the judge to perform a remedial function which legislation does not on its proper construction conform to convention rights. Such a role is inappropriate under our constitution and unnecessary because Section 4 provides an effective means by which Ministers and Parliament can amend the legislation. That is the Government's position on this provision.

So, totally hypothetically, if anything in the legislation from which Section 3 has been disapplied was found to be incompatible, it would be for the court to make a declaration of incompatibility under Section 4. It would then be up to Parliament to decide how to rectify it, rather than the intermediate rewriting process of the courts. It does not remove or limit convention rights. It is simply saying that in this case that is the right balance between Parliament and the courts. That is the Government's position on that.

This group of amendments also seeks to remove Clause 52, which sets out that, when considering a challenge, the court must give the greatest possible weight to the importance of reducing risk to the public from the offender. Of course, the courts already consider risk to the public. This clause does not mean that public protection will be the exclusive or only factor to be considered. The matter will be up to the judges, who are very capable of doing their independent part in construing the legislation. What the clause does is to ensure that due weight is given to the important consideration of public protection.

So, on behalf of the Government, I beg to move that Clauses 49 to 52 stand part of the Bill.

Lord Marks of Henley-on-Thames (LD): My Lords, I beg leave to withdraw Amendment 150.

Amendment 150 withdrawn.

Clause 50: Section 3 of the Human Rights Act 1998: fixed-term prisoners

Amendment 151 not moved.

Clause 51: Section 3 of the Human Rights Act 1998: power to change release test

Amendment 152 not moved.

Clause 52: Application of certain Convention rights in prisoner release cases

Amendment 153 not moved.

Clause 53: Parole Board rules

Amendment 153A

Moved by ***Lord Bellamy***

153A: Clause 53, page 54, line 14, leave out from beginning to ", for" in line 15 and insert—

"(1) Section 239 of the Criminal Justice Act 2003 (the Parole Board) is amended as follows.

(2) In subsection (5)"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 53, page 54, line 21.

Lord Bellamy (Con): My Lords, for convenience, I will start, if I may, with Amendments 154B to 154D, which relate to the role of the chair of the Parole Board. The Government have taken note of the debate in Committee regarding the original proposals affecting the Parole Board chair and the power of the Secretary of State to dismiss the Parole Board chair.

Strong leadership of the Parole Board is essential. It appears that a mechanism already exists, in the unlikely event that it is needed, for the Secretary of State to ask an independent panel to consider dismissing the chair if there are concerns about their ability to do the job effectively. On balance, the Government have decided that this existing mechanism is sufficient, so we will not be proceeding with the original proposals in the original Bill.

We have also listened to feedback that the judicial functions of the chair, including deciding whether a hearing can be held in public, would most appropriately continue to be held by the chair. It has become clear that, to lead the board effectively, the chair should retain these functions, including their ability to take part in individual cases. For these reasons, I have tabled these amendments to remove all provisions relating to the chair of the board from the Bill.

I turn next to my Amendments 153A and 154A, which seek to amend Section 239(5) of the Criminal Justice Act 2003. These amendments enable the Secretary of State to create procedural rules via secondary legislation which the Parole Board must follow when carrying out its statutory duties.

These amendments will allow the Secretary of State to create new rules that will allow the Parole Board chair to delegate certain functions, including some judicial functions, from board members to staff in its secretariat. The Government intend for this provision to be commenced immediately on Royal Assent. This is the subject of Amendments 162A and 162B, to which I shall refer briefly in a moment.

Other courts and tribunals typically have provisions in primary legislation to allow for rules permitting the delegation of certain functions but, to date, we have not had comparable provisions for the Parole Board.

The Parole Board has approximately 320 members and 200 staff in its secretariat. Its members are public appointees, including judicial members, specialist members and independent members, the specialist members typically being psychologists or psychiatrists.

The purpose of the amendment is to give the Parole Board greater flexibility in how it manages its workload. I have to say that delays in the Parole Board process are currently serious and must be tackled. Each review that the Parole Board carries out will include a range of case management decisions, such as varying or revoking certain directions, agreeing deadlines or timelines, adding or removing witnesses, or adjourning or deferring cases that are not ready to be heard. At present, these decisions are taken by Parole Board members, but that is not always necessary. There are efficiency savings to be made if some case management decisions could be delegated to appropriate staff, and the Parole Board supports this amendment, which is dedicated to improving the overall efficiency of the board and reducing delays in the system. That is particularly important in relation to IPP prisoners, whom we discussed earlier, since we can anticipate an increasing flow of IPP decisions to the Parole Board and an increasing workload accordingly.

9 pm

However, there are important safeguards for substantive decisions on whether the statutory release test has been met and whether to terminate the licence, and decisions of that kind are not delegable. The procedure rules will specify exactly what functions can be delegated by the chair of the board to appropriate members of staff.

Amendments 162A and 162B, which I mentioned a moment ago, simply allow for this provision to be commenced on Royal Assent of the Bill, so that we get on with improving the procedures of the Parole Board as fast as possible.

As I have just said, that is part of our general approach to, among other things, IPP prisoners through the action plan, the Parole Board task force and now the procedures of the Parole Board, so that the whole system works appropriately to ensure the safe release of appropriate prisoners. It would be unnecessary to delay these reforms beyond Royal Assent. I commend these amendments to the House.

Lord Pannick (CB): My Lords, I need some guidance. Today's list indicates that in this group are contained the government amendments to Clauses 55 and 56, which are the amendments relating to marriage and civil partnership. Today's list also indicates, in the next group, that we have already debated my opposition and that of other noble Lords to Clauses 55 and 56. I am very happy to delay my comments on Clauses 55 and 56 until the Minister deals with them, but I thought I should just mention where we are.

Lord Marks of Henley-on-Thames (LD): If I may help advance this, our understanding is that the Clauses 55 and 56 stand-part debates are the subject of group 6. I do not know whether that is the Minister's understanding.

Lord Bellamy (Con): My Lords, that is my understanding. I am in a slight panic at the moment—the noble Lord, Lord Pannick, having raised this matter—and I hope I have not proceeded in the wrong order. I think this is group 6, according to my instructions.

Lord Pannick (CB): I am simply referring to today's list, which is what I am working from. If the Minister looks at today's list, he will see that this group includes, for example, government Amendment 156ZB, which is an amendment to Clause 55, and government Amendments 156ZC, 156ZD, 156ZE and 156ZF. I do not mind at all whether my amendments are in another group, but I do not want to be told later that I have missed my opportunity.

Lord Meston (CB): My Lords, I associate myself with those remarks. I stayed late, expecting to debate the question of the marriage of long-term prisoners, and was a bit concerned to see that the amendment from the noble Lord, Lord Pannick, appeared to be described as "already debated", which I do not think it can possibly have been.

Lord Marks of Henley-on-Thames (LD): My Lords, I will try to help once again, because I have in front of me a copy of the groupings that were sent out. The noble Lords, Lord Pannick and Lord Meston, are absolutely right that some of the consequential government amendments have been put into group 5, but group 6 certainly includes—as we were told by the Government Whips' Office—Amendment 165ZDA and Amendment 156ZI, which is the prisoner marriage substantive stand-part amendment. If we could proceed, that would be most convenient.

Lord Pannick (CB): I am very happy to proceed on the basis that group 6 will deal with these matters.

Baroness Thornton (Lab): I have to say that I decided to ignore those and will discuss them in the next group, because they were in the wrong place.

Lord Bellamy (Con): It is also the Government's wish and position that we discuss that in the next group.

Lord Thomas of Cwmgiedd (CB): Would it be possible to say something about what I think is common ground in this group—namely, the amendments dealing with the composition and functions of the Parole Board? This is dealt with in government Amendment 153A and Amendments 154, 155 and 156, in my name and those of the noble Lord, Lord Bach, and the noble and learned Lord, Lord Burnett.

I thank the Government for what they have done. I entirely associate myself with that, and thank the Minister and the Lord Chancellor, and anyone else from the Government who accepted all of this. I am very grateful.

However, I now want to be slightly churlish about the new chair of the Parole Board—a very important position. A new chair is to be appointed, and looking at the website I see that the deadline for the applications

[Lord Thomas of Cwmgiedd]
was 24 February, sifting was 31 March, and interviews are expected to end on 31 May. I assume that the competition is largely done but current. Maybe the Minister cannot answer this now, but the provisions in relation to the Parole Board have been significantly changed as a result of this amendment.

There are two things. I imagine there are a number of people who would never contemplate taking on a quasi-judicial position; they would not touch it with a bargepole on the basis that you could make a decision that the Secretary of State thought affected public confidence in the board. No one would become a judge if you could be removed on the whim of a government Minister; it seems equally clear that no self-respecting person could agree to be chairman of the Parole Board if they could be removed on the whim of a Minister, as was in the Bill when this competition was run.

More seriously, the role of the Parole Board chair was crafted to remove the chair from the core work of the board—that is to say, deciding cases. Everyone knows that if you sit as a judge it is critical that you are not an administrator—you cannot lead and you are not respected. It seems to me very clear that the position of the chairman of the Parole Board has to be looked at in the light of the amendments that we are about to make.

I find it somewhat disappointing that this competition has been rushed ahead with without the position of the chairman being clear. I very much hope that the Minister can give some reassurance that more time will be taken to consider this in the light of the changes to the Bill, and that the competition will not go ahead without a further opportunity for people to apply and a proper assessment made of whether the persons who are in line are competent to deal with sitting on cases.

I do not know how this has happened. I am sure it has absolutely nothing to do with the Minister, but it is very disturbing that an appointment should be made on the basis of something in the Bill which has now been radically changed. I feel very churlish to be raising this point in the light of the Government's acceptance of these amendments, but it seems to me that, as the chairmanship of the Parole Board is so critical, as the Minister and all of us accept, we must get the right person to do it. I am not certain that it is possible to have the right person without taking into account the new qualifications. I apologise for being churlish and for asking this question, but it is rather important. Otherwise, I warmly welcome this and thank the Government for what they have done.

Lord Jackson of Peterborough (Con): My Lords, I concede that I am the amuse-bouche of this debate, rather than the main course, as alluded to by the noble Lord, Lord Pannick. If your Lordships' House will allow me a few minutes, I will develop my remarks on Amendment 156ZA, tabled in my name, on Parole Board hearings. I thank my noble friend Lady Lawlor for originally moving this amendment so ably in my absence—I was unavoidably detained on parliamentary business—in Committee on 25 March. Naturally, I read my noble friend Lord Howe's response on that occasion with great care.

The amendment seeks to establish the presumption that Parole Board hearings will be open to the public, but with exceptions. It endeavours to improve public faith and trust in the criminal justice system. This is both a probing and a permissive amendment. It is a natural progression that consolidates the reforms undertaken by Ministers over the last six years.

As we know, this was prompted by public disquiet over the proposed release of serial rapist John Worboys in 2018, which resulted in a review of the parole system and a public consultation, which was published in 2022. There was a finding in the High Court that the Parole Board's rule 25—a blanket ban on transparency and details of the board's deliberations—was unlawful. The Government have rightly moved to address the very serious failings identified by the Worboys case by allowing summaries of Parole Board decisions to be provided to victims and other interested parties, and to allow a reconsideration mechanism introduced in 2019. This allows a prisoner and/or the Secretary of State for Justice within 21 days to seek reconsideration of several decisions taken by the board. Victims are now also permitted to seek a judicial review on the grounds that decisions are procedurally unfair or irrational. Most significantly, the Parole Board's rule 15 was amended by secondary legislation in 2022 to enable public hearings to be facilitated, upon request to the chair of the Parole Board, "in the interests of justice"—a test utilised by the Mental Health Tribunal.

This amendment is nuanced and heavily caveated in proposed new subsections (5) and (7). It presumes no absolute right to open Parole Board hearings on the most serious cases, but it nevertheless presents a balance between the interests of the victim, prisoners and the wider criminal justice system. It imposes a statutory duty on Ministers to take note of the importance of rehabilitation, reducing recidivism, fairness and due process.

I accept that the Parole Board discharges a quasi-judicial function, but secret justice is not justice as most reasonable people would regard it. Open and transparent judicial proceedings are one of a few fundamental principles in the court system of England and Wales. Furthermore, other jurisdictions across the world, such as those in Canada and the United States, have a more open and transparent hearings regime, especially regarding the right of victims to attend and participate in such meetings.

I am not entirely convinced of the Minister's comments in the previous Committee debate: that the changes made in the 2022 regulations definitively precluded all but a few hearings from being held in public. My amendment specifically addresses concerns about sensitive evidence, and the concerns of the victims. It permits such matters to be raised as a rationale for proceedings to be held in camera.

Finally, may I respectfully disabuse the Minister of the notion that every one of the 8,000 parole cases would be held in public? This is not the aim of the amendment, the permissive nature of which means that there is an expectation that the powers will be only lightly exercised in a minority of the cases by the Secretary of State, with checks and balances in place to protect the operational independence of the Parole Board, and a requirement to publish a review of the

efficacy of the policy as it affects the interests of justice test, as well as public confidence in and support of the criminal justice system.

I look forward to hearing my noble and learned friend the Minister address these issues and explain why it is not possible to go further, in the commendable programme of reforms already undertaken, by allowing public hearings to become the default position. I thank him for engaging so positively on this important issue.

9.15 pm

Lord Marks of Henley-on-Thames (LD): My Lords, I am grateful to the Minister for explaining his amendments, which accept a number of points made in Committee. On the point raised by the noble and learned Lord, Lord Thomas, about the position of the chair of the Parole Board—he raised this with me a little earlier, so I have not considered it in great detail—I am bound to say that I take the view that he is exactly right: you cannot possibly proceed with a selection procedure and take it to a conclusion when you have completely changed the job description. I hope the Government will take that point away.

I will speak to my Amendment 156ZAA, which remains on the Marshalled List and remains unresolved. It is intended to reduce the trauma caused to bereaved families and victims by repeated unmeritorious applications to the Parole Board for parole by the perpetrators of crimes who are serving life sentences. The restriction of such applications would be implemented without in any way diminishing access to the Parole Board for applicants who have a genuine reason for making, after an earlier refusal, further applications that may, in the right circumstances, be made as little as a year after a refusal. I am grateful to the London Victims' Commissioner for her help with this amendment.

The present provision in Section 28(7)(b) of the Crime (Sentences) Act 1997 provides that a prisoner serving a life sentence may not require the Secretary of State to refer the case to the Parole Board until after they have completed their minimum tariff and after the lapse of two years after any previous reference was completed. However, in practice, the Parole Board can, and frequently does, consider parole more often than every two years. Indeed, in the case of Chris Cave, stabbed to death at the age of 17 in 2003, there have been nine parole hearings after the earliest release date. His mother describes the repeated trauma of facing those parole hearings for her son's murderer as torturing and as sometimes allowing only six months' respite before the family has to prepare psychologically for the next parole hearing and prepare further victim impact statements.

This amendment would enable the Parole Board to direct a waiting time of between 12 months and four years before a further reference could be made—so the Parole Board could make the direction. However, if there were a direction for a waiting period of more than two years, the Parole Board would have to have a reasonable belief that the prisoner's release prospects were unlikely to change over the period, and that decision would be reviewable.

The parole process is lengthy and is a potential time of stress for bereaved families and for victims and their families. Although such victims and bereaved families appreciate the opportunity to make impact statements and have them considered by the Parole Board, the strain of making them often is considerable and can often be retraumatising. This amendment is primarily aimed at preventing victims being subjected to that frequent stress when it is clear that nothing has changed.

We have considered concerns, which the Minister raised in Committee, that the rights of prisoners to reviews of their detention under Article 5(4) of the convention might be infringed. But we are satisfied that the flexible provisions in this amendment, including the review provision, are compliant with the convention and strike a fair balance between the rights of prisoners and those of their victims and their families.

At the same time as making this relatively modest change, we invite the Minister to say a bit more about what extra support can be offered through a perpetrator's parole process to make that process more manageable and less frightening for the victims and bereaved families. With more public parole hearings and the trialling of victims' attendance at closed hearings expected, the need for that support—and for sufficient resources to be allocated to providing it—is increasingly important.

The provision of further information to families is also very important and we would be grateful if the Minister would say something about the future provision of information to victims and bereaved families, either through the victim contact scheme or otherwise. Better information about the parole process is important, but such information is also needed about moves of prisoners to open conditions and their progress towards rehabilitation. That information would make the perpetrators' process towards release much less painful for the families of their victims. I look forward to hearing what the Minister has to say about that.

Baroness Thornton (Lab): My Lords, I am very glad that we have managed to sort out which are the right amendments in the right place through a collective effort across your Lordships' House.

Noble Lords will recall a discussion on this matter in Committee, which is presumably what has led to these government amendments. Like the noble and learned Lord, Lord Thomas, I welcome them, but his questions about the appointments process are absolutely legitimate and feed into what we said in Committee—that the Government need to recognise the independence of the Parole Board and understand the risks of politicisation. The original Bill seemed to be government proposals in search of an actual problem to solve. The decision on the composition of the board should be a decision for the board.

The 2019 Ministry of Justice review of the Parole Board Rules stated:

> "Restrictions on which panel members can hear particular types of case have gradually been lifted over time … to allow greater flexibility and timeliness in listing the right cases for the right panel members and we do not wish to undo the improvements this has achieved".

That was echoed by Martin Jones, the chief executive of the Parole Board, when he gave evidence to the Commons committee.

So we are in a better place than we were at the beginning of this Bill, but the issues raised by the noble Lord, Lord Marks, are very legitimate and require the

[Baroness Thornton]
Government's attention and an answer. The noble Lord, Lord Jackson, raised some very interesting points about how the board operates and its accessibility. That is a difficult issue, because it sometimes deals with sensitive and controversial matters. I will be interested to hear what the Minister has to say about that, because its decisions by their nature are sensitive and controversial and the Government should keep the new additional power in sub-paragraph (2C) inserted by Clause 54 under review. Removing the chair because a decision in an individual case is unpopular, as the noble and learned Lord, Lord Thomas, said, would influence the panel's decisions and I think is not the way the committee and the House wish to see this go.

Lord Bellamy (Con): My Lords, I begin with the amendments proposed by the noble and learned Lord, Lord Thomas. It was not in the least bit churlish to raise this point about the process for the appointment of the new chair of the Parole Board. I have no reason to believe that this is not a fully effective appointments process, but I am not informed of the detail at this moment, and I will write to all noble Lords to set out what the position is.

I take it that the amendments proposed by the Government remove the need for the noble and learned Lord, Lord Thomas, to move his Amendments 155 and 156. I was not entirely clear on whether the noble and learned Lord is still moving Amendment 154, which relates to the law enforcement members of the Parole Board. In response to the noble Baroness, Lady Thornton, I simply emphasise that nothing in the government amendments decides which individual members sit on which panel in individual cases. That remains the responsibility of the board, and that is right and proper. So I will not say anything further about that group of amendments.

I then come to Amendment 156ZA, proposed by my noble friend Lord Jackson. I thank him for the amendment because, as has been pointed out, it does raise some interesting and important issues. Once again, it is effectively a question of balance between all the various interests: victims, prisoners, confidentiality, details of health, et cetera. To recap, the provision for public parole hearings was introduced in 2022, allowing any hearing to be conducted in public if the chair of the Parole Board decides that it is in the interests of justice to do so. That changed the previous position, where all hearings were held in private. The amendment proposed by my noble friend would change that position so that all hearings would be in public by default, and a private hearing would take place only in exceptional circumstances.

The Government's position on this amendment has not changed since it was explained in Committee and, if I may put it colloquially, the Government feel that we are still in the relatively early stage of developing and gaining experience from how the Parole Board manages public hearings. We are not yet ready to go as far as my noble friend would like us to go at this point. That is the essential answer to his point—but I do not close off the question at all. As has also been pointed out, it is part of a consideration of the continuous process of updating and reviewing the workings of the Parole Board as circumstances evolve.

To respond to the specific 8,000 hearings point raised by my noble friend, the Parole Board holds more than 8,000 hearings a year. This amendment would require the Secretary of State and the Parole Board to consider the merits of having a public hearing in every case. Victims would need to be contacted in every case, which would potentially add to their trauma. It is more complex and takes longer to have public hearings, and that may well delay proceedings further. To date, the Parole Board has published decisions for just 32 public hearing applications since 2022, eight of which have been granted. That suggests to the Government that the demand for public hearings is not, in fact, especially high, but I again emphasise that the situation is still evolving and that we need to continue to learn from the practice of the day. I very much understand the desire to create more openness, transparency and trust in the parole system, but I would not wish to create new administrative burdens on the system, potentially slowing it down. On the other hand, I do not feel that this amendment can be pursued at this point in time. I therefore urge the noble Lord to withdraw it.

Amendment 156ZAA, tabled again by the noble Lord, Lord Marks of Henley-on-Thames, concerns the interval between hearings and seeks to allow the Parole Board to direct the period of time. It aims to deal with the problem, as he would put it, of repeated applications. The Government are not able to change their position from that set out in Committee. The current system already provides for flexibility in the time set for the prisoner's next parole review, and it is HMPPS—not the board—that currently sets that interval. HMPPS considers a range of factors in deciding when to refer the prisoner to the Parole Board on behalf of the Secretary of State. Reasons must be given for the length of the interval between reviews, including the Parole Board's reasons for declining to direct the prisoner's release at the conclusion of the last review and the interventions required to allow them to progress. The closer the interval length is to the two-year limit, the greater the justification required for the time between reviews.

9.30 pm

I take the point that there appear to be some examples of repeated hearings, which is a matter that I am prepared to investigate further with HMPPS. We would not want either to set hearings too soon or to change the system as it stands. In particular, the Government do not support an increase in the maximum hearing from two to four years. Where indeterminate sentence prisoners have served their tariff, unless the Parole Board is satisfied that it is no longer necessary for the protection of the public that they should be confined, they will remain in prison. While the courts have not provided a limit on the time between reviews, the Government's view is that the limit of two years strikes the right balance between allowing the prisoner time to demonstrate progress in custody and satisfying the rights that the prisoner has in law. I completely understand the question of balance and the interplay between the victims and prisoners, but the Government feel that the present position strikes the right balance.

The noble Lord asked me to say more about how we are looking after victims during this process. The victim contact scheme is the main mechanism for

helping victims through the parole process. Victims who choose to sign up to the scheme are assigned a victim liaison officer, who can guide them through the parole process, answer their questions and help them forward their views on matters such as requesting licence conditions and submitting a victim personal statement.

We are currently testing victim-observed hearings in two probation regions and will roll them out more widely in due course. When a victim is observing a parole hearing, they do so remotely by videolink and are supported in-person by a victim representative, who is a member of the probation staff with a more detailed knowledge and experience of parole hearings than most victim liaison officers. They help to make the arrangements for the hearing and prepare the victims for the experience. They are on hand to guide victims through the hearing and answer their questions and are available afterwards.

We are offering a high level of support to victims who observe hearings, and the feedback from the testing has so far been largely positive. We are currently thinking carefully about what the right package of support for victims should be and are considering other suggestions on how the victim contact scheme can be improved, so that victims are fully supported.

I hope that gives the noble Lord a little more information; I am happy to supplement it in writing, if necessary. The ministry is very aware of the need to support victims in these circumstances and, as I said, is working hard to make sure that they get the right support. For those reasons, I urge him not to press his Amendment 156ZAA.

Amendment 153A agreed.

Amendment 154 not moved.

Amendment 154A

Moved by ***Lord Bellamy***

154A: Clause 53, page 54, line 21, at end insert—

"(2) After subsection (5C) insert—

"(5D) Rules under subsection (5) may also make provision for functions of the Board (including judicial functions) to be exercised by employees of the Board, other than any function so far as its exercise involves—

(a) making a public protection decision in relation to a prisoner within the meaning of section 237A(2) of this Act or section 28ZA(2) of the 1997 Act;

(b) giving a direction for the release of a prisoner on licence under this Chapter or under Chapter 2 of Part 2 of the 1997 Act;

(c) making a decision or giving a direction under subsection (4) or (4F) of section 31A of the 1997 Act (imprisonment or detention for public protection: termination of licences);

(d) reconsidering a decision or setting aside a decision or direction under provision made by virtue of subsection (5A).""

Member's explanatory statement

This amendment allows for Parole Board Rules to provide for functions of the Board (including judicial functions) to be exercised by employees of the Board, subject to exceptions.

Amendment 154A agreed.

Clause 54: Parole Board membership

Amendments 154B and 154C

Moved by ***Lord Bellamy***

154B: Clause 54, page 54, line 23, leave out subsections (1) and (2) and insert—

"(1) Paragraph 2 of Schedule 19 to the Criminal Justice Act 2003 (membership of the Parole Board) is amended as follows."

Member's explanatory statement

This amendment is consequential on my amendment of Clause 54, page 55, line 1.

154C: Clause 54, page 54, line 28, leave out paragraph (a)

Member's explanatory statement

This amendment is consequential on my amendment of Clause 54, page 55, line 1.

Amendments 154B and 154C agreed.

The Deputy Speaker (Baroness Finlay of Llandaff) (CB): If Amendment 154D is agreed, I cannot call Amendments 155 or 156 due to pre-emption.

Amendment 154D

Moved by ***Lord Bellamy***

154D: Clause 54, page 55, line 1, leave out from beginning to end of line 25 on page 56

Member's explanatory statement

This amendment leaves out provisions relating to the appointment, resignation, dismissal and functions of the chair and vice-chair of the Parole Board.

Amendment 154D agreed.

Amendments 155 to 156ZAA not moved.

Clause 55: Whole life prisoners prohibited from forming a marriage

Lord Roborough (Con): My Lords, with the permission of the House, I suggest that we de-group this amendment and begin the next debate with Amendment 156ZB, as today's list is not giving the correct information.

Amendment 156ZB

Moved by ***Lord Bellamy***

156ZB: Clause 55, page 56, line 34, leave out "written"

Member's explanatory statement

This amendment is consequential on new subsection (3A) of section 27A of the Marriage Act 1949, inserted by my amendment of Clause 55, page 57, line 19.

The Deputy Speaker (Baroness Finlay of Llandaff) (CB): For the convenience of the House, as we have just agreed to de-group the amendments, it would be helpful if the Minister could introduce this group.

Lord Bellamy (Con): We are now on what was group 6. In any event, the Government are bringing forward Amendments 156ZB to 156ZD and 156ZE to 156ZH.

[Lord Bellamy]
These are technical amendments and do not change the policy, which remains as set out on previous stages of the Bill. The amendments make minor revisions to the drafting of Clauses 55 and 56. Importantly, they ensure that registrars have all the information they need at the point they consider an application to marry or to enter into a civil partnership. The information needed is whether an applicant or their intended spouse or civil partner is a whole-life prisoner and, if so, whether they have been granted an exemption from the Secretary of State. They also make some minor changes to clarify the procedure and to update related legislation in line with the reforms. For the reasons that I have just given, I ask that Clauses 55 and 56 stand part of the Bill and invite noble Lords to support these government amendments.

Lord Pannick (CB): My Lords, I have tabled my opposition to Clauses 55 and 56, which noble Lords know will prohibit a prisoner serving a whole-life tariff from entering into a marriage or a civil partnership with another person without the written permission of the Secretary of State, with that permission to be granted only if the Secretary of State is satisfied that there are exceptional circumstances. I am very pleased to be joined in my opposition to these clauses by the noble Lords, Lord Bach and Lord German—the latter of whom unfortunately cannot be in his place tonight—both of whom spoke very powerfully on this topic in Committee.

I am also very pleased to be joined by the noble Lord, Lord Carter of Haslemere, whom I first met when he was a legal adviser at the Home Office from 1989 to 2006. We used to travel together to Strasbourg to defend the United Kingdom against allegations that it had breached the European Convention on Human Rights. Our record in court was mediocre at best, but the lunches were excellent, and I have great admiration for his expertise and judgment. I very much look forward to what he has to say on this subject.

Why have we brought this matter back on Report? It is not because I have any expectation of changing the Government's mind, and it is not because I intend to divide the House, particularly at this late hour. My motive is simply to ensure that we record why this is an objectionable measure which has no conceivable justification. There are three reasons why I express such a critical view of these clauses. First, the Government's reason for conferring this power on the Secretary of State and imposing this disability is so weak. In Committee, the Minister, the noble Lord, Lord Roborough, suggested that these measures will

"drive up public confidence in the justice system".—[*Official Report*, 25/3/24; col. 491.]

I can think of many reasons why confidence in the criminal justice system has been undermined: the unacceptable delays in hearing trials in which defendants are accused of serious offences; the fact that so many courtrooms cannot be used because of their poor state of repair; the low rates of pay for prosecutors; and the low rates of legal aid renumeration for criminal barristers and solicitors, which has substantially reduced the number of lawyers available in criminal cases. What I have never heard anyone say is, "My confidence in the criminal justice system has been undermined because whole life prisoners are able to marry". It is preposterous.

My second reason for objecting to these provisions is that they are wrong in principle. We all know, and the Minister emphasised in Committee, that whole life orders are reserved for those who have committed the most serious crimes—awful crimes of serial or child murders involving premeditation or sexual or sadistic violence. However, this does not mean that we deny such prisoners basic rights. However repellent their crimes, whole life prisoners are allowed to eat more than a crust of bread; they are allowed to exercise; they are allowed to read books, to watch television and to send and receive letters. The right to marry another consenting adult is also a basic right. National law may limit the exercise of that right—you cannot marry your brother, a 12 year-old or your dog—but what the state cannot do, consistent with human rights, is impose restrictions so extreme that they impair the very essence of the right to marry. That is the test repeatedly stated in the consistent case law of the European Court of Human Rights.

The Minister in Committee suggested that the Government consider that Article 12 of the European convention allows for a restriction on the right to marry to be in the public interest. However, that does not assist the Government because there is a judgment of the Strasbourg court in a case concerned with prisoners. It is Frasik v Poland in 2010. The court recognised at paragraph 91:

"Imprisonment deprives a person of his liberty and… some civil rights and privileges. This does not, however, mean that persons in detention cannot, or can only very exceptionally, exercise their right to marry".

The court added, at paragraph 93, that the state cannot prevent a prisoner exercising the right to marry because of the view of the authorities as to what

"might be acceptable to or what might offend public opinion".

That is precisely the basis on which this Government purport to justify Clauses 55 and 56 of the Bill—public opinion, public confidence. I ask the Minister, how can the Government maintain the statement, made by the Secretary of State for Justice on the front of the Bill, that Clauses 55 and 56, like the rest of the Bill, are compatible with Convention rights?

9.45 pm

My third reason for opposing these clauses is that they may do real damage in prisons. If we are to lock people up for the whole of their lives, subject only to release on compassionate grounds, we must surely not remove encouragement for them to maintain relationships with the outside world, however difficult that may be. It is not just for their own self-respect; it is not just because of their mental health; it is because it will help those who manage the prison estate by reducing the risk that the inevitable frustrations of long-term prisoners erupt in violence against prison officers or other prisoners. The noble Lord, Lord Ponsonby, on the Opposition Front Bench, made this point powerfully on Second Reading and the noble Lord, Lord Bach, did so again in Committee. The Minister had no answer on either occasion. So for these reasons, Clauses 55 and 56 should be removed from the Bill. They have no coherent justification, they are objectionable in principle and they will impede good management of the prison regime.

I am very sorry indeed that a Secretary of State for Justice, Mr Alex Chalk, who I greatly admire, should think it appropriate to bring forward such proposals. I do not normally quote the Bible, but I will. The Book of Mark, Chapter 10, verse nine:

"Those whom God has joined together let no-one separate"—

not even the Secretary of State.

Lord Carter of Haslemere (CB): My Lords, it is a real privilege to support my noble friend Lord Pannick in this debate on whether these clauses should stand part of the Bill. As he has said, back in the 1990s, in another life, he and I used to travel to Strasbourg together to fight prisoners' cases on prisons law. It is no exaggeration at all to say that I acquired most of my public law knowledge from working with and learning from my noble friend on these and other issues.

Prisons issues back in the 1990s were at the very cutting edge of the development of human rights law. Here we are again, about 30 years later, discussing basic human rights for prisoners such as the right to marry and to form a civil partnership. But it is about much more than that. It is about how as a society we treat those we lock up. Someone said, it may have been Gandhi, that the way we treat those we imprison is a measure of how civilised we are—

Lord Pannick (CB): It was Winston Churchill.

Lord Carter of Haslemere (CB): It was Winston Churchill; I am corrected—both great names.

If we have progressed at all from the way prisoners were treated in the past, we should be enabling whole-life prisoners to find some meaning and purpose in a life that is certain to end in prison. This includes providing opportunities for them to have some social interaction and build relationships, even though they can never expect to be released—in fact, especially because they can never expect to be released. This reflects the long-standing legal position. It is trite law now that prisoners enjoy basic human rights, such as respect for their private and family life, their religion, freedom of expression and access to a lawyer etc. Under Article 12, prisoners have the right to marry and form a civil partnership.

My noble friend Lord Pannick has already referred to the case of Frasik. I will quote again that passage from the court's judgement, because it is so powerful. Imprisonment, the court said, does not mean that those detained

"cannot, or can only very exceptionally, exercise their right to marry".

Yet is that not exactly what Clauses 55 and 56 say? The ECHR memorandum conveniently sidesteps that by saying that marriage by whole-lifers

"undermines public confidence in the Criminal Justice System".

We have just heard from my noble friend Lord Pannick on that one; it is, in effect, code for "offends public opinion". But the Frasik judgment, as my noble friend said, says that the Bill cannot do that—it cannot automatically prevent prisoners forming marital relationships.

It is not all about the law either. Compelling legal points, such as those we have mentioned, often arise from a rotten policy, which is what we have here. The Government's justification seems to be the case of Levi Bellfield. Awful as that is as an example of the right to marry being abused, it is one case of about 70 whole-lifers in the system. They have all committed terrible crimes, but their whole-life tariffs are the punishment for that. Even Ministers have recognised that we send people to prison as punishment, not for punishment. Automatically denying prisoners, even whole-life prisoners, the right to marry or enter a civil partnership amounts to nothing more than the state imposing additional, entirely gratuitous punishment on this cohort of prisoners for no reason other than to show the public that it is tough on crime.

The noble Lord, Lord Ponsonby, expressing his personal views at Second Reading, put it well when he described it as a "petty measure". The noble Lord, Lord German, who unfortunately cannot be with us tonight, rightly called it cruel. It also punishes prisoners' partners, who are entirely innocent in all this. It punishes them emotionally, of course, but it may also affect their entitlement to, for example, a widow's pension on the death of a whole-life prisoner or a spouse's exemption from inheritance tax. Has any consideration been given to the effects of this policy on partners? I would be most grateful to know the answer to that.

There is a simple solution to the Government's wholly justified concern about the Levi Bellfield case, which would deal with all the legal and policy objections that have been mentioned. The existing law entitles a prison governor to refuse an application to marry or form a civil partnership only if it would create a security risk to the prison. Why not ditch Clauses 55 and 56 and legislate to widen the basis for refusing such applications to include cases where there are reasonable grounds for believing that the application is not made in good faith but from some improper motive? This could easily be made legally watertight to minimise the possibility of unfounded legal challenges.

In conclusion, and at this late hour, in the dying breaths of the Bill, I urge the Minister to ignore the word "reject", which is in his briefing notes in capital letters, underlined, in bold type. Why not surprise everybody, not least his officials, by agreeing now to remove Clauses 55 and 56 and adopt the more proportionate, but no less effective, solution that I have just proposed?

Lord Bach (Lab): My Lords, I do not intend to say much, for the very good reason that I do not have to. The arguments put forward by the noble Lord, Lord Carter of Haslemere, and particularly by the noble Lord, Lord Pannick, are overwhelming. I do not want to put the Minister, for whom I have huge respect, on the spot, but I have a suspicion that he has more than a bit of sympathy for the arguments that have been put.

The only point I want to make is this: commentators have said that, when the Minister and the Secretary of State came to their positions, there was likely to be a different attitude towards issues of this kind than there was under some predecessors. The evidence is that that is true, and we have seen examples tonight and this afternoon of the Minister no doubt using his influence in persuading the Secretary of State to have sensible views and change the Bill where it needed to be changed.

[LORD BACH]

This is exactly a case of a clause that is both against the European legislation we have adopted and against all common sense; it should be removed. It would be a real shame if this Bill, which contains some really excellent stuff on both prisoners and victims, has at the tail end of it, as the noble Lord said, this rather ridiculous and very anti-British way of dealing with this issue—so I do ask the Minister to please think again.

Lord Meston (CB): My Lords, I raised questions about Clause 55 and how it might operate in practice at Second Reading that were really not answered. I make no criticism; the Minister had a lot to deal with. I regret not being able to participate in Committee. But I have devoted quite a lot of my professional life to the formation and validity of marriage, and therefore in the context of this Bill I would like to point out that the question of whether and to what extent certain marriages should be restricted or governed by statute faces two underlying problems.

First, it is generally not necessary for anybody otherwise qualified to marry to have any good or creditable reason to do so. I mention that in the context of my noble friend Lord Carter's suggestion that possibly in these circumstances prison governors should question the motives and have the ability to do so, and that that may be the way through this problem. I have to say that research suggests that the decision to marry is rarely reached on rational grounds—and indeed the same research revealed that 3% of those surveyed did not know why they were getting married at all.

Secondly, and altogether more seriously, there is the fundamental right to marry, stated in Article 12 of the ECHR. That is a right that long predated that convention in this country. However, it was Article 12 that underpinned the Marriage Act 1983, which allowed for marriages of those detained in prison, for essentially pragmatic reasons. It was legislation that did not attract criticism—indeed, only newspaper headlines such as "Get Me to the Jail on Time". Article 12 also led to the extension of the Marriage (Prohibited Degrees of Relationship) Act 1986, which I had a part in, believe it or not, and which set mankind free to marry their mothers-in-law.

The restrictions proposed in this Bill on specific marriages were understandably prompted by the attention-seeking attempts by particular convicted prisoners to marry—something that many people, no doubt including their victims and their victims' families, will have found grossly offensive. Nevertheless, the underlying points emphasised by all noble Lords who have spoken so far simply cannot be ignored.

If Article 12 rights are to be curtailed and qualified simply by reference to the nature of the sentence being served or by vague concepts of public interest, the Government really should spell out more clearly the justification for the proposed restrictions and should clearly indicate the circumstances likely to satisfy the Secretary of State that they are "exceptional circumstances". At Second Reading, I suggested that they might include terminal illness, but I can see that it ought probably to go wider than that. Otherwise, we are simply going to be storing up problems and litigation for the future.

10 pm

Baroness Brinton (LD): My Lords, from these Benches, and in the absence of the noble Lord, Lord German, I want to say that we have had a fascinating, amusing, witty, but actually very important debate. We on these Benches completely support everyone who has spoken so far. I know that there is no question of moving to a vote, but it is something that we fundamentally believe in.

Baroness Thornton (Lab): My Lords, from these Benches I express irritation that we have these in the Bill at all. We have spent the last two or three months working across the House, improving and building a new framework for victims. It is, let us just say, very puzzling that these are in the Bill.

Lord Bellamy (Con): I thank the noble Lord, Lord Pannick, for tabling his amendments, and of course I thank the noble Lords, Lord Carter, Lord Meston, Lord Bach and others for their eloquence. I can well understand the feelings expressed. I of course recognise that the noble Lord, Lord Carter, together with the noble Lord, Lord Pannick, has spent many hours in Strasbourg defending the United Kingdom, and in that context, although the noble Lord, Lord Pannick, was modest enough—probably inaccurately—to say that his results had been mediocre, in fact the United Kingdom has, if not the best, at least one of the best records in Strasbourg of respecting human rights.

The question of the compatibility of this particular provision with Article 12 of the ECHR has been very carefully considered—otherwise the Secretary of State would never have given the certificate in the first place.

The Government's arguments were set out in Committee and I am not sure it is particularly useful at this late hour—especially as it is 10.01 pm—to repeat them. In the Government's view, the measures are proportionate and apply to a very small cohort of the most serious offenders who have committed the most serious crimes. As of last December, there were 67 whole-life prisoners in England. Because they will never be released, their ability to enjoy anything resembling normal married life is already lawfully and legitimately restricted in a very significant way.

In the Government's view, the measures are justified on the basis of public interest, as already set out in Committee. The public's confidence in, and respect for, the justice system is a matter for which any elected Government must have regard—and that of course includes the feelings of victims. The one cause célèbre that has been mentioned did have an important impact in that regard.

I would add only that the measures do not prevent whole-life prisoners benefiting from supportive relationships while in custody, in the same way as other prisoners. We are simply talking about being married or in a civil partnership, and not being able to do that does not have any practical impact on an individual's ability to maintain a relationship with a prisoner, and does not provide any additional rights or detriments in terms of visits or communications.

I am very sorry to disappoint the noble Lord, Lord Carter, in particular. I do not have any authority to simply drop these clauses, nor am I able to indicate

in any way what my personal views may or may not be. I hope I have provided at least some reassurance and I respectfully suggest that the noble Lord withdraws his amendment.

Lord Pannick (CB): I thank the Minister. I also ask him to give a very modest undertaking this evening that, before Third Reading, he will ask the Secretary of State to consider the proposal from the noble Lord, Lord Carter, as a way of solving the perceived problem, without including in the Bill a clause that so many of us regard as objectionable. I ask him to kindly give that undertaking—with of course no commitment whatever.

Lord Bellamy (Con): I can and will and do give that undertaking.

Amendment 156ZB agreed.

Amendments 156ZC and 156ZD

Moved by ***Lord Bellamy***

156ZC: Clause 55, page 56, line 36, leave out "written"

Member's explanatory statement

This amendment is consequential on new subsection (3A) of section 27A of the Marriage Act 1949, inserted by my amendment of Clause 55, page 57, line 19.

156ZD: Clause 55, page 57, line 19, at end insert—

"(1A) In section 27ZA of the Marriage Act 1949 (circumstances in which a notice of marriage is not to be recorded in the marriage register), in paragraph (a), at the appropriate place insert—

"section 27A(3A);"

(1B) In section 27A of the Marriage Act 1949 (additional information required in certain cases)—

(a) in subsection (3) (case where marriage intended to be solemnized at detained person's residence)—

(i) omit the "and" at the end of paragraph (a);

(ii) at the end of paragraph (b) insert "; and

(c) stating whether the person is serving a life sentence and, if so, whether the person is subject to a whole life order.";

(b) after subsection (3) insert—

"(3A) Where the relevant person is a detained person who is serving a life sentence and is subject to a whole life order, each notice of marriage required by section 27 of this Act must also be accompanied by a statement made by the Secretary of State not more than twenty-one days before the date on which notice of the marriage is given under section 27 stating that the relevant person has the permission required by section 2A(2)."

(c) in subsection (6), for "or (as the case may be) (3)" substitute ", (3) or (3A)";

(d) in subsection (7), before the definition of "medical statement" insert—

""life sentence" and "whole life order" have the meanings given by section 2A(5) of this Act and section 2A(6) (persons treated as being subject to a whole life order) applies for the purposes of this section; and""

Member's explanatory statement

This amendment makes provision about notices of marriage in consequence of Clause 55 (whole life prisoners prohibited from forming a marriage).

Amendments 156ZC and 156ZD agreed.

Amendment 156ZDA not moved.

Clause 56: Whole life prisoners prevented from forming a civil partnership

Amendments 156ZE to 156ZH

Moved by ***Lord Bellamy***

156ZE: Clause 56, page 57, line 25, leave out "as follows" and insert "in accordance with subsections (2) to (4)"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 56, page 58, line 20.

156ZF: Clause 56, page 57, line 35, leave out "written"

Member's explanatory statement

This amendment is consequential on new subsection (5A) of section 19 of the Civil Partnership Act 2004, inserted by my amendment of Clause 56, page 58, line 20.

156ZG: Clause 56, page 57, line 38, leave out "written"

Member's explanatory statement

This amendment is consequential on new subsection (5A) of section 19 of the Civil Partnership Act 2004, inserted by my amendment of Clause 56, page 58, line 20.

156ZH: Clause 56, page 58, line 20, at end insert—

"(5) In section 9F of the Civil Partnership Act 2004 (recording of information in the register: compliance with requirements), at the appropriate place insert—

"section 19(5A);"

(6) Section 19 of the Civil Partnership Act 2004 (detained persons) is amended in accordance with subsections (7) to (9).

(7) In subsection (4) (supporting statement)—

(a) omit the "and" at the end of paragraph (a);

(b) after paragraph (b) insert ", and

(c) states whether the person is serving a life sentence and, if so, whether the person is subject to a whole life order."

(8) After subsection (5) insert—

"(5A) Where the detained person is serving a life sentence and is subject to a whole life order, each notice of proposed civil partnership must also be accompanied by a statement made by the Secretary of State not more than 21 days before the day on which the notice is recorded stating that the detained person has the permission required by section 3(1A).

(5B) The fact that the registration authority to whom a notice of proposed civil partnership is given has received a statement under subsection (5A) must be recorded in the register."

(9) After subsection (7) insert—

"(7A) "Life sentence" and "whole life order" have the meanings given by section 3(3) of this Act and section 3(4) (persons treated as being subject to a whole life order) applies for the purposes of this section.""

Member's explanatory statement

This amendment makes provision about notices of proposed civil partnership in consequence of Clause 56 (whole life prisoners prohibited from forming a civil partnership).

Amendments 156ZE to 156ZH agreed.

Amendment 156ZI not moved.

Clause 58: Power to make consequential provision

Amendments 156A and 156B

Moved by ***Lord Bellamy***

156A: Clause 58, page 58, line 31, leave out "section 16, 55 or 56" and insert ", or on regulations under, Part 1, 2 or 4"

Member's explanatory statement

This amendment enables regulations to be made amending other legislation in consequence of provisions in Part 1, 2 or 4 of the Bill other than those currently listed. The affirmative Parliamentary procedure is required for amendments to primary legislation.

156B: Clause 58, page 58, line 31, at end insert—

"(1A) Each of the following may by regulations make provision that is consequential on, or on regulations under, Part 3—

(a) the Secretary of State or the Minister for the Cabinet Office,

(b) the Welsh Ministers,

(c) the Scottish Ministers, and

(d) a Northern Ireland department.

(1B) Regulations under subsection (1A)—

(a) made by the Welsh Ministers, may contain only provision which would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd;

(b) made by the Scottish Ministers, may contain only provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;

(c) made by a Northern Ireland department, may contain only provision which—

(i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and

(ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998."

Member's explanatory statement

This amendment confers power to make consequential amendments relating to Part 3 of the Bill on the Secretary of State or the Minister for the Cabinet Office, the Welsh Ministers, the Scottish Ministers and a Northern Ireland department.

Amendments 156A and 156B agreed.

Amendment 156BA

Moved by ***Earl Howe***

156BA: Clause 58, page 58, line 33, leave out from "legislation" to end of line 36 and insert "(whenever passed or made)"

Member's explanatory statement

This amendment enables legislation passed or made after the current session of Parliament to be consequentially amended by regulations under Clause 58.

Earl Howe (Con): My Lords, I shall speak to Amendment 156BA and to the three further government amendments in this group. Yesterday's publication of the infected blood inquiry's final report has laid bare the devastating tragedy and suffering that far too many people have endured as a result of the infected blood scandal. I trust and hope that the House is assured of the Government's commitment to compensate victims of this dreadful scandal, and to do so as quickly as possible. Noble Lords will have seen that I have withdrawn government Amendments 162 and 165, which would make early commencement provisions for the establishment of the infected blood compensation authority and interim payments to the estates of deceased infected people. Having done so, I am now proposing to replace those amendments with government Amendment 162AA, the effect of which is to ensure that all provisions under Part 3 will be available to government on Royal Assent. This will ensure what I know is the wish of all noble Lords: that there will be no unnecessary delay to implementation of the infected blood compensation scheme.

This group also contains further consequential amendments—government Amendments 157CB and 157CC—which allow for consequential amendments of other legislation to be made to ensure that the legislation operates as intended. I beg to move.

Baroness Brinton (LD): My Lords, from these Benches, we are very grateful that the Government have agreed to move forward with these amendments. It is extremely important that things move at pace. Obviously, there is always a bit of concern about a regulation that can revoke primary legislation, but given the circumstances, it is completely understandable. Given the lateness of the hour, I will stop there.

Lord Ponsonby of Shulbrede (Lab): My Lords, I agree with the noble Baroness, Lady Brinton. We welcome these amendments.

Earl Howe (Con): I am grateful.

Amendment 156BA agreed.

Clause 59: Regulations

Amendment 156C

Moved by ***Earl Howe***

156C: Clause 59, page 59, line 8, after "Act" insert "made by the Secretary of State, the Minister for the Cabinet Office, the Treasury or the Welsh Ministers"

Member's explanatory statement

This amendment is consequential on the regulation making powers conferred by my amendments to Part 3 of the Bill and my amendment to clause 58, page 58, line 31.

Amendment 156C agreed.

Amendment 157 had been withdrawn from the Marshalled List.

Amendments 157A to 157C

Moved by ***Earl Howe***

157A: Clause 59, page 59, line 8, at end insert—

"(2A) For regulations made under section 58(1A) by the Scottish Ministers, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (Scottish statutory instruments).

(2B) The power of a Northern Ireland department to make regulations under section 58(1A) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12))."

Member's explanatory statement

This amendment is consequential on my amendment to clause 58, page 58, line 31.

157B: Clause 59, page 59, line 8, at end insert—

"(2A) A statutory instrument containing (alone or with other provision) the first regulations made by the Secretary of State or the Minister for the Cabinet Office under section (Infected blood compensation scheme) must be laid before Parliament after being made.

(2B) Regulations contained in a statutory instrument laid before Parliament under subsection (2A) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.

(2C) In calculating the period of 28 days, no account is to be taken of any whole days that fall within a period during which—

(a) Parliament is dissolved or prorogued, or

(b) either House of Parliament is adjourned for more than four days.

(2D) If regulations cease to have effect as a result of subsection (2B), that does not—

(a) affect the validity of anything previously done under the regulations, or

(b) prevent the making of new regulations.

(2E) Any other statutory instrument containing (alone or with other provision) regulations made by the Secretary of State or the Minister for the Cabinet Office under section (Infected blood compensation scheme) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

Member's explanatory statement

This amendment provides for the first regulations about the infected blood compensation scheme to be subject to the made affirmative procedure, and subsequent regulations to be subject to the affirmative procedure.

157C: Clause 59, page 59, line 8, at end insert—

"(2A) A statutory instrument containing (alone or with other provision) regulations made by the Secretary of State or the Minister for the Cabinet Office under section (Payments to personal representatives of qualifying infected persons)(10) (unless it is a statutory instrument to which subsection (2A) applies) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

Member's explanatory statement

This amendment provides for regulations under subsection (10) of my new clause about payments to personal representatives of qualifying infected person to be subject to affirmative procedure, unless subject to made affirmative procedure under the subsection (2A) inserted by my amendment to clause 59, page 59, line 8 inserting subsections (2A) to (2E).

Amendments 157A to 157C agreed.

Amendment 157CA had been withdrawn from the Marshalled List.

Amendments 157CB to 157G

Moved by ***Earl Howe***

157CB: Clause 59, page 59, line 8, at end insert—

"(2A) A statutory instrument containing (alone or with other provision) regulations made by the Secretary of State under section (Disclosures by victims that cannot be precluded by agreement) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

Member's explanatory statement

This amendment replaces my amendment 157 with revised provision to enable a statutory instrument containing regulations under Clause (Disclosures by victims that cannot be precluded by agreement), which are subject to the affirmative Parliamentary procedure, to include consequential provision.

157CC: Clause 59, page 59, line 9, after "containing" insert "(alone or with other provision)"

Member's explanatory statement

This amendment enables a statutory instrument containing regulations under Clause 58 that amend, repeal or revoke primary legislation, which are subject to the affirmative Parliamentary procedure, to also contain the regulations on which they are consequential.

157D: Clause 59, page 59, line 9, leave out "under section 58" and insert "made by the Secretary of State or the Minister for the Cabinet Office under section 58(1) or (1A)"

Member's explanatory statement

This amendment provides for regulations made under clause 58(1A) (inserted by my amendment to clause 58, page 58, line 31) to be subject to affirmative procedure if they amend primary legislation.

157E: Clause 59, page 59, line 10, leave out "that section)" and insert "section 58) (unless it is a statutory instrument to which subsection (2A) applies)"

Member's explanatory statement

This amendment disapplies affirmative procedure to regulations which amend primary legislation if they are subject to the made affirmative procedure under the subsection (2A) inserted by my amendment to clause 59, page 59, line 8 inserting subsections (2A) to (2E).

157F: Clause 59, page 59, line 13, after "regulations" insert "made by the Secretary of State or the Minister for the Cabinet Office"

Member's explanatory statement

This amendment is consequential on the regulation making powers conferred by my amendments to Part 3 and to clause 58, page 58, line 31.

157G: Clause 59, page 59, line 14, at end insert—

"(4A) A statutory instrument containing regulations made by the Treasury under paragraph 21 of Schedule (Infected blood compensation scheme) is subject to annulment in pursuance of a resolution of the House of Commons.

(4B) A statutory instrument made by the Welsh Ministers containing regulations under section 58(1A) that amend, repeal or revoke primary legislation (within the meaning of section 58) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.

(4C) Any other statutory instrument made by the Welsh Ministers under section 58(1A) is subject to annulment in pursuance of a resolution of Senedd Cymru.

(4D) Regulations made by the Scottish Ministers under section 58(1A) that amend, repeal or revoke primary legislation (within the meaning of section 58) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).

(4E) Any other regulations made by the Scottish Ministers under section 58(1A) are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).

(4F) Regulations made by a Northern Ireland department under section 58(1A) that amend, repeal or revoke primary legislation (within the meaning of section 58) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

(4G) Any other regulations made by a Northern Ireland department under section 58(1A) are subject to negative resolution within the meaning given by section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.))."

Member's explanatory statement

This amendment specifies the procedures for regulations made by the Treasury under paragraph 21 of my new Schedule and regulations made by the Welsh Ministers, Scottish Ministers or a Northern Ireland department under clause 58(1A) (inserted by my amendment to clause 58, page 58, line 31).

Amendments 157CB to 157G agreed.

Clause 60: Extent

Amendment 158 not moved.

Amendments 159 and 160

Moved by ***Lord Bellamy***

159: Clause 60, page 59, line 24, at end insert—

"(da) Part 3;"

Member's explanatory statement

This amendment provides for Part 3 of the Bill, dealing with infected blood compensation, to have UK extent.

160: Clause 60, page 59, line 25, at end insert—

"(5) His Majesty may by Order in Council provide for any of the provisions of Part 3 to extend, with or without modifications, to—

(a) any of the Channel Islands;

(b) the Isle of Man;

(c) Gibraltar;

(d) the Falkland Islands."

Member's explanatory statement

This amendment confers power to extend Part 3 to the Channel Islands, Isle of Man, Gibraltar or the Falkland Islands by Order in Council.

Amendments 159 and 160 agreed.

Clause 61: Commencement

Amendment 161

Moved by ***Lord Bellamy***

161: Clause 61, page 59, line 27, leave out "This Part comes" and insert "The following provisions come"

Member's explanatory statement

This amendment and my other amendments of Clause 61, page 59, line 27, provide for the provisions of the Bill specified in those amendments to come into force on Royal Assent

Amendment 161 agreed.

Amendment 162 had been withdrawn from the Marshalled List.

Amendments 162A and 162AA

Moved by ***Lord Bellamy***

162A: Clause 61, page 59, line 27, at end insert—

"(a) section 53(1) and (2);"

Member's explanatory statement

This amendment provides for the amendment to the Criminal Justice Act 2003 (which allows Parole Board Rules to provide for functions of the Board to be exercised by employees of the Board) made by my amendment of Clause 53, page 54, line 21 to come into force on Royal Assent.

162AA: Clause 61, page 59, line 27, at end insert—

"(a) Part 3;

(b) this Part."

Member's explanatory statement

This amendment provides for all of Part 3 (infected blood) to come into force on Royal Assent. It replaces my amendments 162 and 165, which provided for certain provisions of Part 3 to come into force on Royal Assent and the rest to be brought into force by regulations.

Amendments 162A and 162AA agreed.

The Deputy Speaker (Lord Beith) (LD): If Amendment 162B is agreed to, I cannot call Amendment 163 in the name of the noble Baroness, Lady Brinton, by reason of pre-emption.

Amendment 162B

Moved by ***Lord Bellamy***

162B: Clause 61, page 59, line 28, at beginning insert "Except as mentioned in subsection (1)(a),"

Member's explanatory statement

This amendment is consequential on my amendment of Clause 61, page 59, line 27 that provides for provisions about the Parole Board rules to come into force on Royal Assent.

Amendment 162B agreed.

Amendment 163 not moved.

Amendment 164

Moved by ***Lord Bellamy***

164: Clause 61, page 59, line 28, leave out "The other provisions of this Act" and insert "Parts 1, 2 and 4"

Member's explanatory statement

This amendment is consequential on my amendment to Clause 61, page 59, line 29.

Amendment 164 agreed.

Amendment 165 had been withdrawn from the Marshalled List.

Amendment 166 not moved.

Amendments 167 and 168

Moved by ***Lord Bellamy***

167: Clause 61, page 59, line 31, leave out "this Act" and insert—

"(a) Parts 1, 2 or 4, or

(b) this Part."

Member's explanatory statement

This amendment is consequential on my other amendment to clause 61, page 59, line 31.

168: Clause 61, page 59, line 31, at end insert—

"(3A) The Secretary of State or the Minister for the Cabinet Office may by regulations make transitional or saving provision in connection with the coming into force of any provision of Part 3."

Member's explanatory statement

This amendment provides that the Secretary of State or the Minister for the Cabinet Office may by regulations make transitional or saving provision in connection with the coming into force of any provision of Part 3.

Amendments 167 and 168 agreed.

In the Title

Amendment 169

Moved by ***Lord Bellamy***

169: Title, line 3, after "incidents;" insert "for an infected blood compensation scheme;"

Member's explanatory statement

This amendment adds a reference to the infected blood compensation scheme to the long title.

Amendment 169 agreed.

House adjourned at 10.14 pm.

Grand Committee

Tuesday 21 May 2024

Arrangement of Business

Announcement

4.15 pm

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

Higher Education (Industry and Regulators Committee Report)

Motion to Take Note

4.15 pm

Moved by ***Baroness Taylor of Bolton***

That this House takes note of the Report from the Industry and Regulators Committee *Must do better: the Office for Students and the looming crisis facing higher education* (2nd Report, Session 2022-23, HL Paper 246).

Baroness Taylor of Bolton (Lab): My Lords, I thank the members of the committee, who put so much work into compiling this report, and our staff, who were extremely helpful. The noble Lord, Lord Hollick, was the chair of the committee when we started this report in March last year, but we also had a lot of help from our special adviser, Mike Ratcliffe, and from the committee staff of Dom Walsh, Dominic Cooper and Itumeleng Osupeng. I should also mention Alec Brand.

As I say, we started our inquiry into the OfS and higher education in March 2023, a time when we felt that the higher education sector was facing a whole raft of challenges. They have intensified since then, and I think we were right to decide that this should be our priority at that time. The challenges that higher education is facing pre-date but were exacerbated by issues such as Covid. It is important to remember that some of these are very long-standing challenges that higher education has been trying to deal with for quite some time. We had the raft of difficulties, and we have had issues such as the loss of EU research funding that have challenged universities even further. There have, of course, been industrial disputes, which have not helped, but I think that all the issues such as inflation, the cost of living and the lack of funding have made industrial action more likely.

The committee's overarching finding was that the Office for Students was performing poorly; it is important to make that basic point. We did not choose our title casually—in fact, we had many alternatives that could have been a bit more colourful, shall we say. We said it "Must do better" because this is an important institution that regulates a very important sector of the British economy, and for it to be performing poorly is extremely important and a very real problem for us all. I think that this report is one of the strongest of recent House of Lords committee reports, and therefore should be taken seriously.

The name of this organisation, the Office for Students, was chosen deliberately by the Government to imply that it would put the interests of students before the interests of providers, yet our investigations found that neither students nor providers of higher education have confidence in the OfS. There were poor relations with both providers and students, and a very clear perception of a lack of independence of the OfS from government.

I will talk about several of our conclusions; I know that colleagues will venture more widely. My overriding concern as we went through this inquiry was the complacency on the part of the OfS about what we described as "the looming crisis" in higher education. There is more discussion of it now—just recently we saw some alarming figures—but even when we were taking evidence more than a year ago, we could identify severe difficulties in the whole sector, not just the odd institution.

The freezing of tuition fees for so long meant that many universities were in real difficulty. The Russell group has suggested that its universities are losing £4,000 for every domestic student. Perhaps not surprisingly, that has pushed universities to become increasingly dependent on cross-subsidisation from international and postgraduate students, whose fees are not capped. That has been a feature for many universities, not just one or two. On the other hand, recent statements and comments from Government Ministers that there should be a reduction in the number of international students are causing real concern and may already be impacting international applications.

We raised alarms about the information we had on the financial challenges but, at the time, the OfS gave very general assurances about the health of the sector and did not share our concern about the direction in which things were going. However, in its most recent financial sustainability report, published just last week, the Office for Students says that 40% of HE institutions are expected to be in deficit this year. That is after many institutions have made severe efficiency savings—or cuts, as they are probably better called. In many institutions there is little leeway for further cuts without significant consequences, and this could affect the quality of the education they offer.

I have a couple of specific questions for the Minister. What action are the Government taking in relation to the looming—indeed, current—crisis facing the HE sector? What is the Government's attitude to international student recruitment? Clarity on that point would be very helpful all round. I wonder whether the Government really understand the danger of institutions collapsing and/or a decline in the quality of the education provided.

One of my main memories of the evidence we received was that of a vice-chancellor who said that, were his institution to see financial problems looming, he would not talk to the OfS about possible solutions and long-term viability because he thought that its attitude would not be supportive but combative, and that it would look for problems and criticisms of the institution. It is really worrying that the reputation of the OfS is so bad within the sector.

[Baroness Taylor of Bolton]

I have heard anecdotally from some in higher education that our report has prompted some change in tone and that the OfS is sometimes using different language in its visits and contacts. If that is the case, it proves that the House of Lords can have a positive impact.

I said earlier that the name OfS was deliberately chosen to imply that it was on the side of students. The committee found that, despite its name, it was unclear how the OfS defines student interests. Indeed, it was said that there was a suspicion that the term was used as a smokescreen for the political priorities of the Minister. We were given the example of free speech, which we heard was not a priority concern of students. We took direct evidence from students on the concerns about OfS engagement. We particularly heard allegations that the OfS issued veiled threats over the future of its student panel when individual students on it were making their concerns known. The OfS responded to our criticism and said that it would expand its plans for a review of its approach to student engagement. That is to be welcomed, as is the fact that it will take up our recommendation to report annually on student engagement. Does the Minister have any information about when we might see a report on that?

There is another area of real concern and puzzlement. Why has there been such a breakdown in the relationship between the Office for Students and the Quality Assurance Agency for Higher Education? The QAA, which assessed quality and standards until 2023, was widely accepted as a significant and independent body doing a very good job. Things are now being changed, and this is possibly going to result in a move away from European standards. This in turn could damage the international reputation of some of our universities, which have such a high reputation historically. The Minister needs to clarify this because I am not sure that the OfS has the capacity to assess the quality of all HE institutions. The OfS has completed only eight such studies and reports so far. Can it do it for the entire sector and in a timely way? Will it be as professional, comprehensive and reassuring as the system we had with the QAA? What happens there really matters.

Other concerns that we had were about the burden of regulatory compliance. We needed some clarity on the OfS's priorities. UUK says that in each university 17.6 staff, on average, are involved in compliance. Those people are having to deal with the bureaucracy that the Government often say they wish to reduce. It would be good if the Minister could comment.

I must also say a word about political interference. There is clearly a concept throughout higher education that the OfS is there to do the wishes of the Government, rather than act as a totally independent body. I am sure that the Minister is well aware of the criticisms that have been made—the idea that if there is a headline in the *Daily Mail*, the Minister will tell the OfS to go hard on that particular issue. That is the perception, and it rings true in many respects. I must also mention other issues because the perception of interference is not helped by the fact that the chairman of the OfS takes the Conservative Whip in this House. The all-party committee as a whole thought that anybody in such a significant role should not be taking any party Whip when it came to activities within Parliament.

Our report has shed light on the very widespread concerns that exist. The challenges in HE are intensifying and are very real indeed. The OfS is now beginning to recognise that some of the issues we raise are pertinent and need attention, but the challenges facing the sector are very significant. I have long believed, and have said for many years, that pre-legislative scrutiny is helpful to Parliament and to government in getting things right. What we have never done is sufficient post-legislative scrutiny; I have now suggested to our committee that we should do post-report scrutiny to see whether our committee's report has had a real impact and made a difference. I think it is beginning to, but the committee will return to this issue to try to make sure that the OfS improves its performance.

4.30 pm

Lord Wharton of Yarm (Con): My Lords, I draw attention to my registered interests. Clearly, as chair of the board of the OfS I am also bound by the Addison rules, so I cannot reply directly to observations that noble Lords may make or to committee reports in this House. I am rather restricted to making what will be a short contribution to this debate and I am here to speak as a Member of this House, rather than as the chair of that body. That said, there are some things that I can say. While I should not stray into comments on the day-to-day operations of the OfS, I wanted to be here to make a few general points.

Any public body must have regard to its stakeholders. There must also be a robust and honest two-way conversation and communication. A regulator cannot always be appreciated by the regulated, and one of the challenges in higher education in England is that, until recently, it did not have a regulator at all. This has been a significant transition, and a large number of people have worked extremely hard to bring it about. I pay tribute to all those who worked diligently to register providers after the Higher Education and Research Act 2017 came into operation. It is particularly good to see the noble Lord, Lord Johnson of Marylebone, here; I particularly recognise the role that he played in creating the accountability and protection that exist today.

Since the initial creation of the OfS, the pace of registrations has of course slowed. There are, though, still new entrants to the higher education system in England, and it is more important than ever, given some of the challenges that the noble Baroness mentioned, that we have a robust and thorough approvals process in place. The Office for Students regulates more than 400 higher education providers. Put another way, there is more than one higher education provider for every two noble Lords in this House. Given the range of activities they undertake and the importance of what they do, the task of regulating them is not a small one, but I think it is generally accepted that regulation of some form is much needed, even if there is debate about the shape that the regulation should take.

Any regulator must undertake a significant sector engagement programme, in this case including ongoing dialogue with students and providers. This does not mean that everyone at all times necessarily likes what needs to be said, but openness and engagement matter to any public body or regulator—and, of course, this is no exception.

We live in challenging times for higher education. Events have highlighted a range of issues for the sector and the outlook for the financial sustainability of higher education has worsened, though the sector itself predicts some, albeit limited, improvement in the short term. This is a topic on which I have had a number of conversations with the noble Lord, Lord Willetts. I do not know what comments he plans to make today, but his advice to me and ongoing support are much appreciated and I recognise his quite exceptional knowledge of the workings of the higher educational sector.

The Higher Education (Freedom of Speech) Act means that matters of free speech at higher education providers will fall under a new regime and, for the first time, student unions will also be regulated. This comes at a time of increased debate over issues such as current events in the Middle East, in particular, which can lead to quite passionate views being held and expressed. They can also lead to tensions, and it is no small task getting the balance of that regulation right. It is important that the will of Parliament is reflected, given that the Act was passed by Parliament and the requirements created in legislation, and that the correct approach is taken.

I look forward to the comments of the noble Lord, Lord Mann. I do not know what he plans to say today but, if he touches on some of his excellent work in the area of anti-Semitism, I am sure that will be of interest to noble Lords and certainly to me. Similarly, protection from harassment and sexual misconduct is a live topic and must be seen in tandem with the free-speech debate changes that are to come. The student interest is central to all this and must of course remain so in the future.

I have to be careful not to stray into what may breach convention. As much as I would like to say a lot more, these brief points are very general as a result. It is for the Minister to respond and I look forward to her contribution. It is, though, reassuring to see the continued interest in the future of higher education from across this House. I know that many in the broader higher education community will be listening to what is said today with interest, and that the words of noble Lords in here will certainly have an impact outside this place.

4.35 pm

Lord Parekh (Lab): My Lords, I congratulate the Industry and Regulators Committee on its excellent report, which raises some important issues. Precisely because it ranges over a large number of issues, different people will pick up on different bits of it. I thought I would pick up on an aspect that may not be picked up in a gathering such as this, a conversation on what is happening to the higher education system in general; on the problems that the higher education system faces; and on what we can do about it. This issue requires a national conversation about what we should be doing.

I want to contribute three ideas to that conversation today. First, it is clear that our universities are passing through a difficult phase. Some 40% of England's universities have budget deficits. Courses are being closed. Staff are being retrenched and so on. We know all this, but I think there is a danger of panicking and creating a situation where we end up following courses of action that we might regret. It is important to bear in mind that this is happening mostly with universities in England. For universities in Scotland, the score is slightly different; it is therefore difficult to arrive at a single homogeneous national perspective.

Secondly, this kind of crisis is not new. We have been hearing about it for the 40 years that I have been in this country. It is important to note that, happily, the crisis we are facing is financial, not intellectual—as I discovered when I went out to India as a vice-chancellor of one of the finest universities, where the crisis is intellectual. Teachers have few commitments. Academic pursuits are not valued. Happily, our crisis is largely financial; I say "happily" because it is in contrast to the academic and intellectual crisis that countries such as India and even China face. On the financial level, it is worth bearing in mind that we are not bankrupt: nearly £40 billion is contributed to universities from public funds. I say all this not to calm things down but simply to suggest that there is no need for immediate action. There is a need for immediate reflection. We need to look at ourselves and ask where our universities need to go.

With that in mind, I start with the three ideas that I want to propose. First, it is important to bear in mind that we need to find new sources of revenue. I will talk about overseas students in a minute. I do not like the category of overseas students, and I find the division between domestic and overseas dangerously colonial. I have objected to this in the past in writing and shall do so today, but that is a different story.

The first thing is that we need to find new sources of revenue. This can come from not only going out and getting new sources of revenue but cutting down on our expenditure. I must say that some universities—some of those that have gone bankrupt or have been talking about passing through a budget deficit—have not been administratively competent. We need to look at ourselves and ask whether universities have been administratively competent and whether university salaries have been manageable. I hate to say all this but, when vice-chancellors collect about £350,000, I ask myself, "Is this the real world in which I live?". When I went out to India as a vice-chancellor, I did not get a penny because the vice-chancellor was supposed to be sinecure. They are retired professors and eminent people so they serve for free. Here, vice-chancellors fatten themselves off the backs of their university colleagues. The first question to ask ourselves is this: is there no room for reducing our expenditure before we talk about ways to raise revenue? That is point number one.

On point number two, higher education is a basic medium for structuring the relations of power and status between different social groups. It is through higher education that one acquires a certain status, money and power. There are people in any society—certainly in our society—who have never been to university, who are poor and marginalised. The question then is: what is being done about them? In any fair system of higher education there must be a provision for the poor, the marginalised and those who have never been to university.

Therefore, the fees we charge students should be progressive, in the sense of being proportionate to the parental capacity to pay. This is how things happen in

[Lord Parekh]
many parts of the world, including provision for the blacks in the United States. It should be possible for us to say that people earning less than a certain amount of money or who have never been to university do not pay any fee or maintenance fee. As for the rest, they can be taken care of by the loan system that we operate, provided it is opened up in such a way that the period for repayment is extended over a period of time and the conditions of return are not so harsh.

This second point is important. I really want to emphasise this: there are people in any society for whom it should be possible for us to give a complete freeship—no tuition fee, no maintenance fee. That kind of provision has to be made in a society, otherwise you have a society that is totally unfair.

The third point I want to make is on the distinction between domestic and overseas students. I do not know how it came to be made. In many countries there is no such distinction. The noble Lord, Lord Willetts, will correct me if I am wrong, but I think there is no differential fee between domestic and overseas students in Germany; it is the same fee. There are other countries where the same fee is charged to domestic and overseas students.

In the mid-1970s, we introduced this distinction between domestic and overseas students. I may be mistaken, but that seems to be when it came into our vocabulary. What does it mean? It means "ours" and "theirs". These are our students; we look after them. Over there are "they", whom we do not have to look after; they come to us. The stereotype is that they are rich and loaded with money, so we can raise their fees. There is no limit to how much we can raise their fees, whereas with ours we have to be careful. The Government have to make sure that our students' fees are not increased beyond a certain point.

This distinction between ours and theirs—between domestic students, which we even call home students, and overseas students—is dangerously similar to the colonial distinction between our country and one over there. If I may say so, it smacks of the spirit of some degree of mean nationalism: that our people will benefit at the expense of them, so when we have overseas students we make sure they pay the salary of the redundant staff. I have been told that five overseas students means one lecturer. When I first heard this I was alarmed. I was asked by my vice-chancellor at the University of Hull, "Look, can you not recruit five students? You'll save the job of one university lecturer". I almost felt that I was being blackmailed into saving the job of a young lecturer by recruiting five students. We need to be careful.

The other thing is that we have become so harsh. Our attitude to overseas students is totally ambivalent and confused. At one level we want them, because one student means a fifth of a lecturer's salary or whatever. At another level, we put overseas students in the category of immigrants. We put all kinds of restrictions on visas for graduate students coming to us. We say, "They can work" or, "They cannot work", and create all kinds of wretched complexities. On the one hand we seem to resent them, while on the other hand we are anxious to have them. Where do we stand?

I go to India fairly often every year, and I am confronted by Ministers and others who ask me, "What is Britain's attitude to overseas students?". Do we want them, as the Americans do—or did until recently—when the doors are open and all kinds of facilities are thrown open? The Australians do that; Australia is now taking many of our students. What is Britain's attitude? Do we want them or not? If we do, are we being hospitable to them or are we going to be mean in terms of not wanting them, putting all kinds of restrictions on the number of visas and increasing the minimum amount of money that they should earn before they can qualify? All these categories with which we play around have been dangerously obnoxious, and I very much hope that we can take a consistent attitude to overseas students, in the sense of welcoming them subject to certain conditions. Certainly, whatever attitude we take, it has to be one on which the nation is agreed, not resentful.

4.46 pm

Lord Clement-Jones (LD): My Lords, it is a pleasure to follow the noble Lord, Lord Parekh. I declare an interest as chair of the council of Queen Mary University of London. I thank the noble Baroness, Lady Taylor, for her comprehensive and very fair introduction to our report. I thank her too for her excellent marshalling of our committee, with the noble Lord, Lord Hollick, and I add my thanks to our clerks and our special adviser during the inquiry.

I will speak in general terms rather than specifically about my own university. In higher education, there have been challenges aplenty to keep vice-chancellors and governing bodies awake at night: coming through the pandemic, industrial relations, cost of living rises for our students, pensions and research funding, to name but a few. But above all there are the ever-eroding unit of resource for domestic students, which was highlighted extremely effectively by the noble Lord, Lord Johnson of Marylebone, on the "Today" programme last week, and the Government's continual policy interventions, including, above all, their seeming determination to reduce overseas student numbers.

In the face of this, I have to keep reminding myself that in 2021-22 Queen Mary University delivered a total economic benefit to the UK economy of £4.4 billion. For every pound we spent in 2021-22, we generated £7 of economic benefit. Universities are some of our great national assets. They not only are intellectual powerhouses for learning, education and social mobility, making a huge contribution to their local communities, but are inextricably linked to our national prospects for innovation and economic growth.

The committee's report was very well received outside this House. Commentating in Wonkhe, the higher education blog—I do not know whether there are many readers of it around; I suspect there are—on the government and OfS responses to our report, its deputy editor noted:

> "If you were expecting a seasonal mea culpa from either the regulator or the government … on any of these, it is safe to say that you will be disappointed".

For him, the four standout aspects of our report were:

> "the revelations about the place of students in the Office for Students … the criticism of the perceived closeness of the independent regulator to the government of the day … the school playground

level approach to the Designated Quality Body question … and the less splashy but deeply concerning suggestion that OfS didn't really understand the financial problems the sector was facing".

As regards the DQB question, which the committee explored in some depth, the current approach being taken by the OfS is extremely opaque. We clearly need a regulatory approach to quality to align with international standards. It is clear that the quickest way to get the English system realigned with international good practice would be to reinstate the QAA—an internationally recognised agency. Most of us cannot understand what seems to be the implacable hostility of the OfS to the QAA.

It is notable that the OfS, perhaps stung by the committee's report, has now belatedly woken up to the fragility of the sector's financial model and the fact that the future of the overseas student intake is central to financial underpinning. In its 2023 report on the financial sustainability of HE providers, the OfS confirmed that the

"overreliance on international student recruitment is a material risk for many types of providers where a sudden decline or interruption to international fees could trigger sustainability concerns"

and

"result in some providers having to make significant changes to their operating model or face a material risk of closure".

Advice that they need to change their funding model and diversify their revenue streams is not particularly helpful, given the options available.

The Migration Advisory Committee's *Rapid Review of the Graduate Route*, published last week—which recommends retaining the graduate visa on its current terms and reports that the graduate route is achieving the objectives set for it by the Government, finding

"no evidence of any significant abuse"—

is therefore of crucial importance. There is absolutely no doubt about the importance of the work study visa to the sector and the broader UK economy. In answer to the question from the noble Lord, Lord Parekh, we want it, and I hope that the OfS will play its part in trying to persuade the Government to retain it.

The Wonkhe blog also asks the fundamental question about the Government's response regarding the regulatory burden on higher education. I hope the Minister can tell us: do the Government think it necessary and acceptable to keep ratcheting up regulation on universities? We are going in the wrong direction. Additional resource is required to monitor and provide returns in a whole variety of areas, such as the new freedom of speech requirements.

With the extraordinary contribution that universities make to society, communities and the economy as a whole, will university regulation benefit from the proposals set out in *Smarter Regulation: Delivering a Regulatory Environment for Innovation, Investment and Growth,* the Government's recent White Paper? We will discuss this in a future debate on the response to our subsequent report, *Who Watches the Watchdogs?* For instance, the White Paper proposes the adoption of

"a culture of world-class service"

in how regulators undertake their day-to-day activities, and the adoption by all government departments of the

"10 principles of smarter regulation".

It says:

"All government departmental annual reports must also set out the total costs and benefits of each significant regulation introduced that year",

and says that the Government will

"strengthen the role of the Regulatory Policy Committee and the Better Regulation Framework, improve the assessment and scrutiny of the costs of regulation, and encourage non-regulatory alternatives".

It says:

"The government will launch a Regulators Council to improve strategic dialogue between regulators and government, alongside monitoring the effectiveness of policy and strategic guidance issued".

Finally, it says that

"it is up to the government to better assess its regulatory agenda, to try to understand the cost of its regulation on business and society".

What is not to like, in the context of higher education regulation? Will all this be applied to the work of the OfS?

That all said, I welcome some of the way in which the OfS, if not the Government, has responded to our report. There is an air approaching contrition, in particular regarding engagement with both students and higher education providers. I welcome the OfS reviewing its approach to student engagement, empowering the student panel to raise issues that are important to students and increasing engagement with universities and colleges to improve sector relations.

As regards the Government, a dialling down of their rhetoric continually undermining higher education, a pledge to ration ministerial directions given to the OfS, and putting university finances on a more sustainable, long-term footing would be welcome.

It is clear that continued scrutiny and evaluation—I very much liked what the noble Baroness, Lady Taylor, had to say about post-scrutiny reporting—will be essential to ensure that both government and OfS actions after their responses effectively address the underlying issues raised in our report. Sad to say, I do not think that the sector is holding its breath in the meantime.

4.55 pm

Lord Norton of Louth (Con): My Lords, I declare my interests as a serving academic at the University of Hull and as chair of the independent Higher Education Commission. The commission produced a report in 2013 on regulating higher education that included a recommendation for a protection or insurance scheme to insulate institutions against possible future financial difficulties or failure.

However, my starting point today is that regulators need a mindset of existing to get the best out of the bodies that fall within their responsibility. It is not just a mindset but an issue of how regulators are trained. The same applies to administrators within universities. They are trained in a particular set of skills related to their area of responsibility. They are not necessarily trained in what the body they regulate or work within exists to achieve. In terms of this debate, they are not grounded in what universities are for, which is to teach and research. Administrators need to focus on what they can do to ensure that universities deliver the best. That means going beyond a narrow focus on tick-box exercises, and concentrating instead on how regulations and rules can be utilised to facilitate, not constrain.

[Lord Norton of Louth]

Doing so is important at all times but it is especially so now for the reasons advanced by the Industry and Regulators Committee in its excellent report. As it says:

"The higher education sector faces a looming crisis".

That crisis is already upon us, having worsened since the report was published. As the report states, given the problems facing universities,

"it is … vital that the sector's regulator is fit for purpose."

I should stress that that is necessary but not sufficient. The conditions giving rise to the crisis also need to be addressed. The committee's recommendations need to be seen as part of a wider strategy for enabling universities to thrive and remain world class, and to produce graduates who are essential to a healthy and vibrant society. If we are not proactive in addressing the problems, we will be left behind by other nations. It is not sufficient to say how many of our universities are in the top 20 globally; it is the trend that matters. The higher education sector is under threat.

On the OfS, the committee has produced a powerful and hard-hitting report. As it in essence argues, and as we have heard, the Office for Students has not lived up to its name. However, as the committee also recognises, there has been "a proliferation of regulators"—a virtual alphabet soup of bodies—in the sector, which has just added to the regulatory burden. The more regulators there are, the greater the chilling effect on universities, not to mention the demand on resources. As the noble Baroness, Lady Taylor, mentioned, research commissioned last year by Universities UK found that, on average, a university has almost 18 full-time equivalent staff dedicated solely to regulatory compliance. That is bigger than many university departments. Universities are meant to be autonomous institutions and are encouraged to be innovative, but they are notably risk averse and tend to treat guidance from regulators as fixed law, which some will then gold plate. Like the committee, I welcome the fact that the Government recognised the problem and intend to tackle it. I look forward to the findings of the review due this summer.

However, the principal value of the report is in demonstrating what is missing. The OfS lacks the power and, arguably, the mindset for enabling universities to thrive. That mindset may change but the OfS cannot expand its own powers. As we have heard, it has just published its report, in which it recognises the crisis facing universities. It is pressing them to have realistic funding models but it lacks the capacity to do much beyond that, not least in terms of protecting students in the event of some institutions failing. The Government have the power to help universities but appear to have gone AWOL. The Government constitute a significant part of the solution but they first have to recognise that they are a major part of the problem.

The report before us is hard-hitting and I endorse its recommendations. I very much agree with the argument on accountability. There need to be clearer lines of accountability. It may benefit government that the lines are not too clear, enabling it to eschew responsibility. I also very much agree with the recommendations on quality assurance. As we have heard, that is a task for the QAA or a similar body, not the OfS. We cannot continue with a situation where England, unlike the rest of the UK, is not aligned with internationally recognised standards.

I welcome the recognition that the OfS and government adopt narrow means of assessing the value of degrees. There remains a tendency to see graduates as economic units, with metrics that fail to reflect the value to the individual and to society, as well as the fact that it is difficult to measure economic value when we do not know what form future jobs will take.

The principal problem, though, is to be found in the Government's response to the report. There is a tendency to ascribe responsibility to the OfS for problems that require action on the part of government. The OfS does not have the capacity to deal with the problems that it recognises now face the sector. Its recent report highlights the risks and the fact that some HE institutions have been overly optimistic in their planning assumptions. It also acknowledges the decline in the real-term value of income from UK undergraduates. Universities are having to subsidise the teaching of home students with income from overseas students.

In their response, the Government recognise the value of overseas students. As the response says, they

"bring significant economic and social benefits to the UK".

The response welcomes the fact that universities are seeking to diversify their recruitment of international students. It then goes on to say:

"The UK continues to be an extremely attractive destination for international students, with an array of world-class universities, a competitive post-study work offer in the Graduate Route and a welcoming environment".

That no longer bears a relationship to the reality. The Government have contributed to a chilling environment for overseas students based on presumption rather than fact regarding the graduate visa route. This has been exacerbated by the comments of some Members of the other place. The Migration Advisory Committee found little evidence of abuse of the system and that it was not undermining the quality of the UK higher education system.

It is not just universities that benefit from attracting overseas students, in terms of funding and contributions to research, but local economies; many local businesses are dependent on student patronage. There is also the long-term effect on trade. The export of higher education contributes significantly to the UK economy as well as to the UK's global reach in terms of soft power. Overseas students are not taking the place of home students. The benefits are substantial—a fact recognised by the public. A recent Survation survey found that the public recognise the value of recruiting overseas students and support the retention of the graduate visa route.

People appear to recognise what separates overseas students from people who migrate to the UK. First, they pay to be here; secondly, they go home. Most return to their home country and contribute to its development. The UK benefits all round: the Treasury, the Foreign Office and the Department for Education all appear to recognise the value, but that benefit is disappearing. Applications from overseas students are declining. The Government are sending out completely the wrong signals.

The Government say there is overreliance on overseas students but make no acknowledgement of the fact that they are in large measure responsible for that situation. Despite inflation, the student fee has remained unchanged, so overseas student fees are needed to subsidise home students. The decline in recruitment of overseas students puts HE institutions in a difficult situation. Yet the Government act as if entirely detached from what is happening, putting responsibility on the OfS to monitor what is happening. That is unfair on the OfS.

The OfS can be more resilient and supportive in its approach, but it is the Government who need to act, and swiftly. Their response to the committee's report is dripping in complacency. Basically, they are monitoring the situation, saying:

"The government keeps the HE system under review … and … plans to consider"

the funding position

"ahead of the next Spending Review".

There is no self-reflection and no active recognition of their responsibilities to maintain a healthy HE sector.

I trust that my noble friend Lady Barran will not take up time telling us how good the HE sector is—we already know that—but instead devote her time to saying precisely what action the Government are taking, in relation to not just the Office for Students but the second part of the title of the committee's report: "the looming crisis facing higher education". Recognising that there is a crisis is necessary but it is not sufficient. What will the Government do, that otherwise they would not have done, because of this excellent report? That will be the measure of what my noble friend says.

5.07 pm

Lord Freyberg (CB): My Lords, it is a huge pleasure to follow the noble Lord, Lord Norton, with his wide and extensive experience in this area. I too thank the noble Baroness, Lady Taylor of Bolton, for giving us the opportunity to discuss this critical report. My contribution today will focus on the urgent need for a review of higher education funding and student outcome indicators for creative arts students.

I start by echoing the calls of several noble Lords for an urgent review of higher education funding. The near 10-year tuition fee freeze for domestic students is jeopardising the sector's long-term viability, particularly at post-1992 universities. Substantial job cuts and forced course closures are, unfortunately, becoming commonplace. The report warns that if the domestic undergraduate funding freeze continues, some universities will have to merge or, in the words of the noble Baroness, Lady Taylor, exit the sector. This is completely unacceptable and entirely preventable. At the very least, fees should rise in line with inflation. Here I entirely agree with the noble Lord, Lord Johnson, in his comments on the "Today" programme last Friday.

In addition, substantial evidence shows that the financial hardship that students have faced in recent years has been a real concern. Joint research in October 2023 by student housing charity Unipol and the Higher Education Policy Institute indicates that rent consumes nearly the entire average loan, leaving students with just 50p per week for all other expenses, including necessary resources such as textbooks. The National Student Money Survey 2023 states that the average monthly shortfall between maintenance loans and student living costs is £582. The Sutton Trust's 2023 student maintenance analysis report found that median loans of £8,500 in London and £7,000 in the rest of England do not cover the median essential spending costs of £17,287 and £11,400 respectively.

This financial strain impacts on students' education and university experience. Many students, facing significant gaps between their loan income and expenses, must work to subsidise their costs, often taking on more hours than recommended or feasible for full-time study. Opinium's 2023 poll of 1,000 university students across the UK found that seven in 10 students have considered dropping out of higher education since starting their degree, with nearly two-fifths citing rising living costs as the main reason. Research by COSMO—the COVID Social Mobility and Opportunities study—also shows that young people from working-class families are more likely to forgo university because they cannot afford it. Here I echo the second point from the noble Lord, Lord Parekh.

Maintenance grants, which provided non-repayable financial support to students from lower-income households and helped mitigate financial barriers to higher education, were abolished in 2016. Under the current system in England, the poorest students incur the highest level of debt. England is the only UK nation without some form of maintenance grant provision for students. As Victoria Tolmie-Loverseed, assistant chief executive at Unipol, said:

"We risk excluding those from poorer backgrounds, forcing middle-income students to take on unsustainable debts, and damaging the student experience for all".

Another issue identified in the committee's report was the OfS's method of evaluating value for money through its student survey results, which was described as "simplistic and narrow", particularly due to its focus on employment outcomes. This focus on employment outcomes—specifically the jobs that graduates hold just 15 months after finishing their studies—disadvantages creative degrees. The regulator uses these outcomes to measure a degree's value for money but, as noted in the House of Lords Library briefing, the current measure fails to reflect the value of creative degrees.

Outcomes are important, and it is crucial that universities equip students with the skills they need to succeed. However, this narrow focus overlooks a wide range of valuable outcomes and fails to recognise the unique nature of the creative industries, where many creative graduates find employment. The creative sector is characterised by a high proportion of start-ups and micro-businesses, with graduates often experiencing non-linear career paths, frequently working freelance or on short-term contracts. Graduates may also work part-time while pursuing creative endeavours or building portfolios. Self-employment accounts for 32% of creative industry employment in the UK, compared with 16% for the economy more broadly. Therefore, measuring employment outcomes at a fixed point shortly after graduation is ineffective for determining the success of creative degrees.

[Lord Freyberg]

This narrow measure has also contributed to the perception of creative higher education as offering low-value and poor-quality courses, despite these degrees being crucial to the UK's creative industries and the economy. The University of the Arts London, which nurtures the largest talent pipeline to the creative industries, with 22,000 students from 130 countries, advocates for a change in how the Office for Students measures high-quality provision, suggesting a broader approach beyond just graduate outcomes. This should involve a sector-wide dialogue with the Government and the regulator to develop a more holistic way of measuring the value of higher education. At the very least, the context of the non-linear careers of creative graduates should be considered.

The Government urgently need to review higher education funding. Additionally, they should embark on a major reform of the student maintenance system, and rapidly improve how student outcomes are measured by undertaking and publishing a review of this area.

5.14 pm

Lord Johnson of Marylebone (Con): My Lords, it is a pleasure to follow the noble Lord, Lord Freyberg. I echo the points he just made about the creative industries and the need to measure properly value for money in that respect. I declare my interests as a visiting professor at King's College London, chairman of FutureLearn, and someone who, in my previous ministerial role in the other place, was very much involved in the creation of the OfS and the high-level regulatory framework it is now implementing. I come at this with a certain baggage, and I lay that on the table; your Lordships do not need me to be clearer about it.

I very much want to defend the OfS rather than join the chorus of people seeking to bury it and condemn it for problems which, by and large, are not its responsibility but the responsibility of government policy. It is important that we are very clear in assigning responsibility correctly in this debate as we consider this report.

As the noble Lord, Lord Norton, said in his excellent speech, we have in the UK a world-class higher education system. It is one of our greatest national assets. However, it has some faults: some resistance to accountability, a quickness to take affront at suggestions that there are areas for improvement, and occasionally some short-sightedness in the way it opposes legitimate demands for reform. I fear that the report resulting from this inquiry is to some extent evidence of that phenomenon, because the inquiry and the report that came out of it were in part—probably quite a considerable part—the result of some very self-interested lobbying by university mission groups whose universities have over the years been very well represented in this place.

I am not saying that there is not room for improvement in the way the OfS operates—of course there is. However, it is also important that we do not lose sight of what this report is in part—not in totality—all about. We have to be honest that the report and the inquiry that led up to it are in part a continuation of battles that many in the sector and in this place waged against the very creation of the OfS in the first place.

Just to take us back a little, the fight about the OfS was actually about the change from a funding council acting on behalf of providers to an independent market regulator looking out for the student interest. This shift, as the OfS's brilliant first chair Michael Barber noted in his evidence to the committee, was very much overdue given the massification of the sector and the change in the tuition and maintenance funding regime from one of government grants to income-contingent loans. My view is that for as long as we have a mass higher education system, as we will have, and this system of funding—to my mind, these two things are very closely and inseparably linked—we will need an independent market regulator rather than a funding council model.

Many in the sector and perhaps in this place might romanticise the Higher Education Funding Council for England. Indeed, there was a lot that was great about it, including its formidable last chief executive, Madeleine Atkins. But of course, by the middle of the last decade it had long passed its sell-by date as a mode of regulation for the sector. Indeed, in some senses it did not even recognise itself as a regulator. It came out of the University Grants Committee model, which was suited to a very different world of very small, limited tertiary participation and a much smaller, narrower system of university providers.

HEFCE was good for a world that had passed, but it was no longer fit for purpose for an era of mass higher education. Its function was very limited: to spread available grant funding around the providers in the system to ensure that everybody got a fair crack at the funding that the Treasury was making available. What HEFCE was not effective at was acting as a regulator to promote quality, choice and competition in the student and taxpayer interest. It is not going too far to say that there is a general consensus that, by the end, HEFCE had become essentially captured by the sector and urgently needed reform.

That is the backdrop to why the OfS was set up. Of course, this was not a popular change in the sector. The battles leading up to the passage of the Higher Education and Research Act 2017 were ferocious. It was one of the most heavily amended bits of legislation in recent memory. We should not ignore all that history, including the way the sector and its outriders lobbied hard against the new accountability regime that the Office for Students represented. To some extent, there are undertones of all that lingering around today at the five-year to six-year mark.

The creation of the OfS represented a move away from co-regulation to something that is much sharper and has greater consequences for institutions that deliver poor quality and poor student outcomes. All the stuff about co-regulation and how it is a better approach is, to my mind, a thinly disguised plea for self-regulation—a stance that I do not think any party in government will return to. As I said at the start, as long as we have a mass higher education system funded by a system of income-contingent loans—we will have this for the foreseeable future because it is the least bad system and is the only game in town from a fiscal perspective—we will need an organisation such the OfS acting in the student and taxpayer interest.

As Michael Barber told the committee, many universities thought that, notwithstanding the clarity of its legal duties, the OfS would be HEFCE under another name. They were very wrong and were surprised to discover that it was different. Some in the sector might think that, if they undermine the OfS enough and throw enough mud at it, they will suddenly get nice old HEFCE back, with its big pot of grant money administering the teaching grant and a system of student number controls that constrains competition and choice and allocates students to providers on the basis of government quotas. That is highly undesirable as an objective and highly unlikely to arise as government policy.

Even in the unlikely event that a future Government did want to replace our current funding system of income-contingent loans and return to a world of grants, they would still want an independent regulator to ensure value for money for taxpayers and hold universities to account for quality and outcomes in a mass higher education system in pretty much the same way the Office for Students does. Although the student focus of the regulator might change in such a scenario, I do not believe that any Government will return to the funding council model of the past.

Respectfully, I disagree with the report's main contention that the Office for Students is performing poorly. To be honest, I think that Michael Barber and Nicola Dandridge did a brilliant job in leading the establishment of the new regulator in very difficult conditions, which their capable successors are continuing. I remind Members that its initial priority was to set up the new organisation. It managed the considerable task of registering a large numbers of providers at pace and putting in place the new regulatory framework in its first strategy. It then coped admirably with the challenges of the pandemic, suspending some of its regulatory requirements while providers adapted to the changed environment.

In its second strategy, the OfS has moved on to focus on quality. This has seen it reset the TEF, toughen up the B3 outcomes metrics, and reset the indicators for non-continuation, completion and progression. Again, that has generated a fair amount of angst in the sector, but this is absolutely necessary in terms of both the student interest and upholding quality and standards in the sector.

I do not want people to think that I am just a lackey praising the OfS without any self-awareness or criticism. I recognise that it has problems and is not in all respects operating as well as it might. I will be brief: there are three areas that I would focus on. The first is the question of distance from government. The problem here is not the OfS but the DfE—I say that with all respect to the Minister. The problem is clearly Ministers. It is also about where universities sit in government. The mistake is to have universities in the Department for Education, which does not understand institutional autonomy and treats universities like failing schools. My noble friend Lord Willetts made the point before.

In his great report on higher education sometime in the early 1960s, Lionel Robbins warned against moving universities to the education department because he feared that such an interventionist department would not understand or value the autonomy of universities. His warning has proved sadly accurate. The DfE treats universities like poorly performing secondary schools and now intervenes in them so much that the Office for National Statistics may well propose bringing universities back into the public sector.

When I was working on the HERA legislation, I was lucky enough to be Minister for both universities and science, like my noble friend Lord Willetts was when he was in the other place, with responsibility for both aspects of government policy towards the sector. That coherence has to some extent been lost by the move to the DfE and the splitting of ministerial responsibility in that way. It would be preferable to have universities back in a growth department of government, such as the business department or the new DSIT, where universities would be reunited with the rest of the research base.

The layering on of ever more conditions of registration has become slightly crazy. Ministers should adopt a self-denying ordinance of one in, one out—or better still, one in, two out.

My second area for improvement is that the Office for Students has to do much more to support innovation and promote new forms of provision. Now that it has established its bona fides as a tough and independent market regulator it has space to address parts of the role that Parliament has given it that have been neglected in the first five years. New providers—I have been intimately involved with a number—have been stunned by the bureaucracy they encounter in trying to get on to the register and establish new modes of provision. The consultants they have to recruit to advise them tell them that to succeed with the OfS they must, above all, look as much like an established university as possible. This is hardly the recipe for innovation that we want in our system.

My final point is that the Office for Students must make a real go of the lifelong learning entitlement. This policy is flailing at the moment. I think the name of the Office for Students should change to the office for lifelong learning, and it should grip this policy urgently so that it has a fighting chance of delivering the skills revolution that Ministers say they want for it. The detail of how that might work is for another day but that is an urgent priority.

I urge anyone in this Room who believes that the solution to the sector's troubles is to attack and dismantle the Office for Students to think again. A strong regulator that enjoys the confidence and trust of the sector and of government is vital to the future of our HE system. Everyone should focus on working hard to that end.

5.28 pm

Lord Mann (Non-Afl): My Lords, I begin by referencing my entry on the *Register of Lords' Interests*: I am the unpaid and independent adviser to government on anti-Semitism. I was warned on coming in by my advisory team—a small one—that I should attempt to persuade, not to berate. My independence may come through a little bit, but I want to reference one page only in this report of 104 pages, page 17. There is a current Office for Students consultation on draft regulatory advice arising from the Higher Education (Freedom of Speech) Act 2023, which is due to be enacted on 1 August.

[Lord Mann]
My suggestion to the Minister and the Committee is that the currently proposed guidelines appear to remove crucial and hard-won safeguards for Jewish students, potentially allowing anti-Semitism to grow on university campuses.

The OfS was directed to produce regulatory guidance on the free speech Bill. It released it at the end of March but, as of today, several questions remain unanswered about how the guidance will work in practice. It is my understanding that there are only two weeks left in the consultation process. If the proposed advice proceeds as it currently stands it will be acceptable to do and say the following things in our universities, leaving them with no power to intervene. I shall give three examples. The first is to have "intifada until victory" posters on approved university noticeboards. The second is to have a Holocaust denial society registering at a university freshers' fair, having followed the correct registration processes. The third is to have "free Palestine" graffiti on a Jewish society poster on an official noticeboard.

All three are quite separate and distinct and are serious issues that are not conducive to the establishment of good relations on university campuses, which universities are, of course, legally bound to foster. I suspect that the Government and Parliament would both be horrified to discover that, in just over two months' time, it might be possible to defend Hamas's "inalienable right" to commit the 7 October attacks, or to argue that the Holocaust never happened, in one of our universities—not just to say such things but to do so by citing the Government's own legislation on free speech, as passed by Parliament.

Over the past 30 years, we have driven Holocaust deniers out of any legitimate space for debate. The current flaw in the guidance that is circulating risks throwing away that agreed rejection of the falsification of the murder of 6 million Jewish men, women and children, and many more Nazi victims. When this legislation was going through, the Minister at the time stated that there would be an explicit—I repeat the word "explicit"—rejection of Holocaust denial, but that has not been forthcoming from the OfS. That is contrary to the promises made by the Government, in all good faith, to the House during the progress of the freedom of speech Bill.

It is not legitimate to intimidate and harass Jewish students in the name of free speech. The OfS's director for freedom of speech and academic freedom, Professor Arif Ahmed, has been one of the leading critics of the IHRA definition of anti-Semitism, which this Government were the first in the world to adopt in 2017, and which has been adopted by all political parties represented at Westminster to great impact and positive effect. The current proposals are likely to lead to some universities revoking their use of the IHRA definition as a reference point in looking at anti-Semitism. Jewish communal organisations in this country united in supporting the Government when they adopted the IHRA definition in 2017. It is a globally agreed definition, and there are no credible examples at all—not a single one—of its use in our universities prohibiting or restricting in any way any freedom of expression or of academic study, but it will fall foul of the guidance as it currently stands.

The advice as it stands will also stop the mandating of most forms of training on anti-Semitism, despite the fact that the Department for Education has tendered such work for contract in recent months. It will impede universities' ability to take action against those who intimidate, ostracise and harass Jewish students and staff. The crux of the problem for universities will then be that this approach of purist free speech, to which the guidance currently works, will lead to aggressive legal actions against universities. This will distract universities from their core role and divert their attention away from safeguarding and strengthening intercommunity relations in the university population, which become more important and more prescient by the month. I put it to the Minister that the proposed regulatory advice is not fit for purpose and that the negatives that will impact will be detrimental to Jewish students.

I listened to the noble Lord, Lord Johnson. One of the purposes of the Office for Students was to be for students. Jewish students are entitled to that right alongside—no more than but no less than—any other group of students. The safeguards that universities are using at the moment are needed now more, not less, than ever before, and have generally been working. This current draft, on which consultation is about to end and which is to be enacted by 1 August, needs a fundamental rethink. Jewish students across the country have indicated in great detail their serious concerns about how the guidance will operate. I endorse their concerns. I suggest that the Government pause the enactment of the free speech Act until these issues have been resolved.

I offer my services, as well as those of others who have worked in this field in great detail over recent years, to try to ensure that government policy on the equitable treatment of Jewish students and the objectives of the OfS can be brought together in a way that has practical application and does not undermine the good work that has gone on in universities in challenging the scourge of anti-Semitism and protecting both Jewish students and Jewish staff.

5.38 pm

Lord Agnew of Oulton (Con): My Lords, I refer to my interests in the register, which include being a member of the Industry and Regulators Committee that produced this report. I thank the noble Baroness, Lady Taylor, for her highly effective stewardship of the report to publication.

I have spent the last 14 years involved in primary and secondary education, but there are many who would tell you that there is no connection between this and tertiary education. I respectfully disagree and will try to show noble Lords why in the next few minutes. I should probably issue a trigger warning to those noble Lords who will disagree profoundly with many of my points today.

First, there are still people out there who think that the British university system is wonderful. I am sorry to be blunt but, other than a few exceptions, these people are living an illusion. The OfS was set up in 2018 to provide better governance. Perhaps it was just bad luck that it received the hospital pass, but the main outcome has been to see the future prospects of so many of our young people simply benighted.

The sixth sector hides behind the financial constraints that it suffers from. Of course, it is tough to live off the same £9,250 a year that has been the settlement for several years, but have a look at the secondary sector. I set up an academy trust in 2012. Today, we have 17 schools with 11,000 pupils and dozens of ageing buildings, many that pre-date university campuses. In our sixth forms, per student funding is £6,073 in Norwich for the so-called elite subjects of maths and science and £5,421 in Thetford.

Time and again during our inquiry, I was told by university luminaries that it was much more expensive to educate young people a year or two older than those for whom I have responsibility. This is despite a sixth-form phase providing 24 hours a week of face-to-face education in small settings of 20 or so students. How many undergraduate courses provide even two-thirds of that? Of course, the academic year of a university is substantially shorter, so why are there such differences in the operating model?

First, universities have indulged in a binge of building. Their buildings are funded on cheap debt, but they have to be maintained and interest rates have now normalised. Secondly, there is a vast bureaucracy. Vice-chancellors are broadly overpaid, in my view; they have recently awarded themselves another 5% pay rise, on average, while of course the people doing all the work at the front line—the lecturers—are underpaid. Universities have created a Ponzi scheme based on growing student numbers. Not one of the university managers we interviewed was able to provide a clear financial model of how their institution worked, other than relying on foreign students.

This year, my academy trust will receive an increase in its general annual grant of about 1.5%. The local LEA has taken a larger chunk to fund SEND. Despite this, we provide an extended school day to every secondary school pupil, costing about £1 million a year but adding a whole year of education over their five years in that school. We spend £400,000 subsidising musical instruments for pupil premium children and a further £500,000 hiring reading mentors to deal with a post-Covid literacy crisis. We have found that we have 1,500 pupils with reading ages between three and seven years behind their chronological age. Yes, we receive some odd capital sums to build a new school block, which is additional to those funds, but from September this year we will be educating around 270 children for free. So-called lagged funding means that we will not get the £1.7 million per pupil settlement that would have operated if we were paid for all those children on our campuses.

How do we achieve this? We achieve it through relentless and ruthless cost control at every level. Every photocopier is tracked for excess output of colour printing; every light bulb has been replaced with LED; every invoice has to be pre-validated via a central electronic purchase ordering system; every head teacher has to learn the principles of curriculum-led financial planning to control timetabling and resource allocation. I heard none of this during our inquiry.

No one could tell me why an undergraduate needed three years to complete a degree with six hours of contact time a week, why it was acceptable to take six weeks to mark and provide feedback on an essay or why, during the lecturers' strikes, they did not use the money that they were not paying in wages to provide alternative mechanisms for those abused young people who could not get their degrees to apply for their jobs. This is before I get going on foundation years—a cynical way of luring young people for an additional paid year of study, having failed their A-levels—or unconditional offers, removing aspiration from young people as they knew they could glide in whatever happened, or offering lower grades for pupils in so-called areas of deprivation, even though they were in private schools. This happened to my own son and the next year to the daughter of the noble Earl, Lord Leicester, at the same institution. All this is for £50,000 of debt that hangs over them for up to 40 years. There were no solutions, just an agonising moanathon about how difficult everything is.

I turn to the vexed issue of overseas students. The idea that our universities have been hoovering up the world's best and brightest is one of the most blatant sophistries of modern times. I am grateful to my honourable friend Neil O'Brien for his detailed research on this. Using data from the Migration Advisory Committee review of the graduate route to visas, he has shown that the median person on the graduate route earns about half of what the median full-time worker does. A staggering 41% earn less than £15,000 a year. Put that against the minimum wage of £24,000 and the threshold of a work visa at £30,000, and the whole grisly story unfolds.

On the point of the noble Lord, Lord Parekh, about colonialism, there is an unpleasant truth emanating from the MAC's report. Since 2005, the number of overseas post-study visas issued to the US, Canada, Australia, New Zealand and Japan has been almost utterly consistent at around 20,000 a year. However, since study visas were reintroduced in 2019, visas for India have increased by 900% and for sub-Saharan Africa by 700%. Should students from these countries really be paying a huge premium compared to domestic fees, and then earn less than the minimum wage?

I challenge the statement of the noble Lord, Lord Norton—I paraphrase—that overseas students then return to their home countries. The MAC's statistics show that, although only 6% of US students stay, that figure rises to between 25% and 35% for Pakistan, Nigeria and Bangladesh. The OfS claims, of course, that it has no remit on any of this. It seems that its energies are directed into meddling in a performative way on second-order and third-order issues, such as insisting that artwork from degree courses be stored for five years. So the full-size papier mâché Brontosaurus has to lurk in a basement serving no purpose to anyone. If the OfS had focused on demanding proper accountability in the financial management of the sector, it is possible that we would not be faced with upwards of 60 higher education institutions facing serious financial challenges.

I read today that my noble friend Lord Cameron, straying from his international brief, warns of widespread closures. Well, that is what happens if organisations are mismanaged. The problem should not be solved by dragging in hundreds of thousands of migrants and dependents to prop up a failing system. The current crisis represents a once-in-a-generation opportunity to repurpose

[Lord Agnew of Oulton]
many HE institutions into training institutions that reflect the needs of today's British society and economy —think my noble friend Lord Baker on steroids. The public debate agonises about our decline in productivity and lack of economic growth but we hear virtually nothing emanating from these organisations to lead the charge.

I have only one question for my noble friend the Minister—I know that this is not her day job—and would prefer a written answer. How aware is the DfE of the impending financial collapse of dozens of our universities, and what is it doing about it?

5.47 pm

Viscount Chandos (Lab): My Lords, it is a great pleasure to follow the noble Lord, Lord Agnew, who is a stimulating and enjoyable colleague on the committee—even if he probably classifies me as one of the madmen who believe that the British higher education system is something that we should be proud of and do everything to protect.

Being privileged to be another member of the committee, I am very grateful to my noble friend Lady Taylor for her incisive introduction and for her leadership of the committee, now and during the inquiry, along with the noble Lord, Lord Hollick. Noble Lords have already heard from other members of the committee and can judge the strength of both the individual views and the consensus that was reflected in the report. I will try not to repeat the many excellent points made by all speakers this afternoon. I will leave it to my noble friend Lady Taylor to respond, if she wishes, to the suggestion of the noble Lord, Lord Johnson, that the committee has been captured by providers, just as HEFCE allegedly was in the past.

I draw the attention of your Lordships to my entries in the register of interests, in particular as a vice-chair of LAMDA and as a co-opted member of the investment committee of Worcester College, Oxford.

If the crisis in higher education was looming at the time of the report's publication, it has well and truly arrived nine months later, although the Government are doing their best to exacerbate the crisis with new measures, most of all through the threatened change to the visa regime. We cannot, as a committee, claim paranormal levels of foresight in predicting the crisis; the evidence that we heard and received, as well as the data that we analysed, told us only too clearly that all was not well in the state of higher education. It was deeply frustrating that, in our interactions with the OfS at the time of the inquiry, it seemed to be in denial. It is hard to judge whether this was complacency —a smoothing snooze at the wheel—or a regrettable lack of transparency.

Of course, the OfS is not responsible for setting government policy. We should be careful not to attribute failures on the part of the Government to the regulator, even though, as the committee found, there was a worrying lack of distinction between the Government and the OfS—a subject to which I will return.

In its report published last week, *Financial Sustainability of Higher Education Providers in England*, the OfS writes that it

"has an important role in monitoring and reporting on financial sustainability, and intervening to protect the interests of students, as far as is possible, if a provider is at risk of closure".

It goes on to note that it does not

"have the powers or remit to intervene … in support of sustaining the system as a whole".

However, has it given, on a timely basis, firm, clear and objective advice to the Government as to the threats to the system? I do not know what may have been said behind closed doors but what the OfS said to our committee—a committee of Parliament to which it owes a duty of transparency—did not instil confidence in either its grasp of the situation or its willingness to speak truth to power.

Here we come back to the strong discomfort felt by the committee about the independence of the OfS from government, or the lack thereof. If the OfS's financial sustainability report shows belated recognition of the developing crisis, the accompanying document, *Navigating Financial Challenges in Higher Education*, is not encouraging. It says:

"A focus on cash management may help with short-term resilience but, in the longer term, more significant mitigating action is likely to be required".

That is fair enough. So, what might the mitigating action comprise? This could involve, says the OfS,

"rethinking an institution's business model, for example rebalancing the resources spent on teaching and research, phasing out some courses, or seeking to recruit different students to different types of course".

That prescription manages to combine the banal with the ominous.

My noble friend Lady Taylor referred to cuts already implemented. At Oxford Brookes University, the music and mathematics departments are being closed outright, while staff cuts are also taking place in English and creative writing, history, film, anthropology, publishing and architecture. These are not departments failing to deliver high levels of education, nor are they training for industries in which the UK is not a leader. In a dynamic society and economy, change is inevitable and to some degree desirable, but the cuts at Oxford Brookes are damaging to the institution and the sector and are a deeply worrying trailer of what the OfS is advocating in rebalancing resources.

If the OfS will not fight the higher education sector's corner, Parliament can. The committee's report challenges the Government as well as the OfS. Financial sustainability in the HE sector cannot be achieved through cuts alone; funding must be increased in real terms, whether through an increase in the cap on fees or, as I would prefer—whatever pressures on the Exchequer the next Government face—a return to the hybrid combination of fees and direct grants that existed before the Conservative-led Government, in place from 2010 onwards. Or do the Government actually agree with that profound political thinker, Rod Liddle, who argued this Sunday that the number of universities should be reduced by two-thirds and that the proportion of young people going to university should be reduced to 15%? Can the Minister reassure the Committee that that is not the Government's objective? If not, does she agree that, to avoid this happening accidentally, significant real increases in funding must be put in place?

5.55 pm

Lord Lucas (Con): My Lords, I congratulate the committee on an excellent report. However, as someone whose life revolves around schools—as in the *Good Schools Guide*—and parents, noble Lords will not be surprised if I find myself in many aspects standing, as well as sitting, beside my noble friend Lord Agnew.

I am a fan of the Office for Students. For a couple of decades, I have been trying and failing to get universities to take suicides seriously and to involve families in dealing with the problem. The OfS succeeded where I had failed. I am immensely grateful to it, as are many parents. I am pleased to see that the OfS is taking up cudgels on freedom of speech. As Jo Phoenix, the professor who was so disgracefully driven out of the Open University, said today:

> "Imagine a world where those who go to university are taught to value diversity of viewpoints and what knowledge and evidence are".

I do not have to imagine—I went to a university like that—but that is not the university my daughter is at, and nor is it the university that many of her friends are at. It is disgraceful how their ability to think, talk and discuss is depressed—and, in some subjects, absolutely excluded. We need to do something about this. I am proud of the Government for having taken steps in this direction but that has not been supported by the university sector as a whole, with some honourable exceptions, in the way that I should have hoped.

Look at the latest decision by UCAS to show for university courses the grades that people who got on to the course in the previous year achieved. I have been asking for this for 20 years. Not to provide that information is outright lying. It is misrepresenting what the course is, and this has been supported all the way through by UCAS. It has been absolutely defended, because UCAS is owned by the universities and is not independent of them. The great virtue of the Office for Students is that it is not the university's creature. That is immensely important in looking after the interests of students.

I therefore hope that the Office for Students will carry on down that course. The first thing that I would like it to focus on is getting universities to provide real information on the value of their courses. What do students who follow a particular course go on to do? When they look back, two or five years later, what do they think of the education they received? That is absolutely basic, vital information that the university should be wanting in order to improve its courses and to do better, and to understand what it is doing and achieving.

The noble Lord, Lord Freyberg, hymns UAL. It is absolutely hopeless when it comes to that. When one looks at the education it is providing, in what way does it fit its students for the life that the noble Lord describes? There is so much that universities can do to improve what they are offering students, and it will take a vibrant Office for Students to persuade it to go in that direction. However, it will be a much better place for universities. They will be selling what they really do and will be appreciated for what they achieve. Their place in all our hearts will be much stronger, and that is something really to aim for.

Another area where I hope the OfS will make improvements in universities is in their relationship with schools. Why do universities not pay attention to the references that schools give their students? Schools have looked after these children for seven years; they know and understand them. There is a whole load of information about how to help, respond to and educate each of these students as individuals, which universities just discard.

In the early days of this discussion, I asked whether universities could employ modern technology to really get under references, understand what they are saying, and, to help schools make better references, feed back to schools what they thought of the students. The response was, "We never get to know our students well enough; we couldn't do that", to which my answer is, "Yes, but you ought to have a duty of care. You ought to be doing that. You ought to be looking after students and you ought to know them well enough". If they did that, they could also help schools make better A-level predictions. At the moment, it is well known that schools are rubbish at making A-level predictions, but the universities do nothing to improve the matter.

What do universities learn when students are with them about what they could have been taught better at school so that they would succeed more at university? How is that information fed back to schools? If it is not collected, it does not get back to schools. What should universities do to influence the examination system? At the moment, they are absolutely rigid in what they expect. They expect a particular pattern of examinations; they are really narrow in what they are prepared to accept. However, when it comes to what they will take from overseas students, they will look at anything. In essence, the flexibility that universities have to respond to the way that students learn and to their differences and individuality is just not extended to our children, and it is important that it should be.

Lastly, I hope that the Office for Students will pick up on the real need to look after the interests of individual students when a university ends a course. It is not satisfactory just to offer them another course. Does that suit them? Is it right for that student? No; they are just offered the package: "We aren't doing archaeology any more. Go on to history". That should not be enough. Universities—and, in particular, we, the Government—should take responsibility for looking after the interests of these people. We need to do better than we are.

There are things that the Government should do, too. The state that we have got ourselves into on immigration is ridiculous. Collect proper data; take proper decisions. I have never won an argument with the Home Office—although I once managed to get it to collaborate with Imperial College, which took a lot of effort—but, for a university, this is a really important part in knowing where it can go, what it can do and how it can run. As the Government know, it makes a big difference to our country; they just have to run it properly. The continued impression of running around blindfolded and bumping into trees is not what we should be doing. We need to do a lot better, and I hope that that will happen soon.

[Lord Lucas]

On a more minor point, I hope that the Government will look at enabling co-funding of degree apprenticeships so that there is some blend between the debt that a university student takes on and the complete lack of debt that happens in degree apprenticeships. We need to expand degree apprenticeships much more than we are. I really hope that the Government will look seriously at lifelong learning and really involve universities in it. Obviously, the Open University is there, but the world is moving so fast that we all need to keep learning and adding to our knowledge. My university seems to think that, having spent three years studying physics, that was the end of my interest in the subject—just because I went to become a chartered accountant. It has made no effort in the past 50 years to keep me up to date. I would have paid for that. I think that most people who go to university would like to keep learning and extending their knowledge, but the sector does not seem to respond to that at all.

It is not an easy time for universities. There are many politicians, like me, who are out of love with them and extremely reluctant to burden our children with even more debt. As my noble friend Lord Agnew says, one of the first things we need universities to do is to be open about their costs. How can it cost 50% more than a sixth form? They are providing so much less. What is the reality? Be open about it. Let us see what is going on and really understand how these costs are made up: "You are asking us for more money; how do you justify it?". It is not just words; we want some figures and an understanding. Really collaborate with Alumni UK. This was something I asked for when my noble friend Lord Johnson was taking his Bill through—that universities work together to support their international alumni, make a group out of them and make them a joined voice for this country and for working with this country.

The British Council has at last launched something like this. It has some support from universities, but much less than it should have. This ought to be the universities' contribution to our national effort. They will talk to us a lot about soft power, but when it comes to providing it and sharing it, they do not seem so keen. I really hope that they will change their minds on that, get behind Alumni UK and embrace the idea of being self-critical, self-improving organisations, collecting the data they need to do that, so that they do not find it necessary to close courses in panic but close courses in the ordinary course of business when they are not doing what they should do. They should evolve new courses and be constantly trying to improve, change, evolve and—to come back to something I said to the noble Lord, Lord Freyberg—really focus on the needs of their students and make sure their courses are really fitted to that.

I enjoyed and benefited from university. I want as many of our young people as possible to do that, but we really need the universities to improve.

6.07 pm

Lord Willetts (Con): My Lords, it has been a very interesting debate, stimulated by this excellent report. I declare my interests as a visiting professor at King's College London and a member of the council of the University of Southampton. There is a lively debate about universities going on, particularly on this side. Let us have a proper debate about what is going on.

I want to comment on some of the interventions, particularly from some fellow Conservatives in this Committee. I very much agree with the key point by the noble Lord, Lord Johnson, that we need a regulator. I do not actually think that the old regime was as bad as is sometimes made out. HEFCE was the regulator, in reality, but its regulatory power was the power of the purse, because it was handing out grants. As the grants disappeared, so its capacity to exercise authority by attaching conditions to the grants was going, which is why, right from early on, I said that we needed a new legislative framework. I congratulate the noble Lord on bringing that in. In today's world, the HEFCE model of regulation was very discretionary. The regulatory regime needs to be more explicit, rules based and clear, so that people know where they stand. A rules-based, transparent regulator was another of the prizes we all wanted to see from the new regime.

Also, one of my frustrations was that, having to deal with an agenda of trying to promote new players coming in, it was incredibly frustrating that they were not properly regulated. A regulator extends the capacity to regulate new arrivals. The noble Lord eloquently made the case for the OfS, but where I think I part company from him is that one reason why this report is interesting and important is that it is not the old lags who always turn up and we all enjoy our debates on higher education. This is a committee of experts on regulation who are looking at the OfS from the perspective of people who look at how regulatory regimes operate in other sectors, in other contexts. I attach some weight to their assessment, as fellow Members of this House who devote their committee time to studying regulation in different places, of how it is working in the world of HE. I understand the frustrations of my noble friend who chairs the OfS that because of this previously unknown Addison rule, he was not able to engage directly with the points that the committee makes. I am sure that there are good answers on many of them, but having this perspective from a committee that specialises in looking at regulation is a good thing.

The funding model has come up: it came up at the beginning with the noble Lord, Lord Parekh, then with the noble Lord, Lord Johnson, and from others in referring to debt. The new funding model is here to last. It was begun under the previous Labour Government. I will turn later to some of the things that we heard from the noble Lord, Lord Agnew, but from the tone of the remarks it is absolutely clear: the Department for Education is never going to find a large public budget to fund higher education. In my experience, almost every Education Secretary who turns up cares about early years and primary school. They have no desire, in any battle with the Treasury, to say, "I'm not going to ask you for more money or primary or secondary education. Please can we have more money for universities?". They just do not, so we need another way of funding it. We have that, and it is not debt in the sense of commercial debt.

For me, it was a low point, when the argument was being made that we needed to have some increase in fees, to hear the then Minister say that we could not put up fees because it would contribute to the cost of living crisis, pandering to a deep and dangerous misconception that somehow this is money that students pay up front. It is not; what matters is the repayment formula, which of course ensures—I look again at the noble Lord, Lord Parekh—that people on low incomes do not pay back. In reality, they do not pay for their higher education; the generality of taxpayers pay for the higher education of people who are subsequently not able to afford to pay back. That is the right and progressive way of doing it.

As to how this funding compares with the money going into primary and secondary schools, I will make some quick comments on what the noble Lord, Lord Agnew, said. I can remember the negotiations with the Treasury. There used to be capital grants for higher education, in the same way as there are for schools. When people compare the figures of £6,000 for schools and £9,000 to universities, that schools figure does not include capital spend, which is a separate and substantial line item in the DfE. I remember the negotiations, and one reason why we put the fees up to such a high level was that the Treasury said, "We're getting rid of all capital grants for higher education. In future, institutions will finance capital by borrowing on the commercial markets, and one reason for the fees is to cover the interest payments on the capital now that we are stopping having a public capital budget for HE". That is part of the logic of the system. Their borrowing money to fund development is the new model; it was another form of expenditure saving.

Secondly, that £9,000 includes £1,000 of access spending, which is an absolute social mobility challenge but is not there to pay for the cost of educating a student. It is money to meet a social mobility objective. There are other extra costs. One of my regrets is that we call them tuition fees; they are university fees, for all the other activities that are provided for at a university.

When you look at the historical trends, as measured by organisations such as the Institute for Fiscal Studies, it is clear that in the English system the long-term trend, over 20 or 30 years, has been for public expenditure on primary and secondary education to rise relative to expenditure on students in higher education. That is the underlying long-term trend, so it is not a soft option for higher education.

It is, however, certainly the case that universities need to account for how they spend the money. This was done most recently in the Augar report, which was quite tough-minded. It commissioned an accountancy firm—I think it was PwC—that estimated the costs of higher education and provided an estimate which showed, even in those days, five years ago, that something like the £9,250 fee was barely sufficient to meet what an independent accountancy firm assessed as the cost of higher education. So the fee is looked at, and needs to be looked at, from time to time.

On data, one of my frustrations with the OfS is partly because of the flow of letters and requests that it gets from Ministers on every subject under the sun. Again, my noble friend Lord Johnson made a good point: a great self-denying ordnance would be a restriction in the number of ministerial letters so that there is some sense of strategy and capacity to get on with things. It is the basic information that students rightly care about that matters, as my noble friend Lord Lucas said. In every engagement that I had with students they made practical points. They want more contact hours but they did not want all them to be in incredibly crowded lectures; they had some views about the amount of direct contact that they had. They wanted their academic work back promptly with some kind of useful academic feedback. That is the kind of information that they wanted.

In the old days—looking back, it was perhaps a naive hope—we actually got the NUS to talk to the Consumers' Association about the kind of data that it and the NUS could obtain to provide to prospective students by working together. There was then an outbreak of anxiety that thinking of students as consumers and working with the Consumers' Association was ideologically incorrect. That is the kind of information that students should have good access to, and we can still do better on it. Incidentally, if one needs more information about what happens after one leaves university, the Student Loans Company is a hidden and unused resource from which the data should be liberated to make that kind of information possible.

Briefly, I have some final observations on how this argument has gone. There is an issue about promoting innovation. Again, my noble friend Lord Johnson made that point. For example, I hear that an exciting new model for engineering education in Hereford will say that showing that it has a plan for each individual student if it goes bust—it has to be a plan based on the innovative education model it is operating—is quite a barrier to it getting through the regulatory process, becoming fully entitled to give any degrees and, one hopes, getting a university title. This should be a regulatory regime that promotes innovation. That is an issue.

I turn to my noble friend Lord Agnew and his obvious unhappiness about higher education. If only some aspects of the school agenda were transported to higher education. Academies, such as the Mossbourne academy, have thrived and newcomers have come in, but the DfE assesses higher education in a different way. A Mossbourne academy higher education institution would get nowhere in the Department for Education's model because it takes prior attainment as a measure of the quality of a university. It does not use that with schools: it looks at value added. It is prior attainment that counts for status in the world of higher education, which rewards incumbents.

That model even has a specific measure of school performance in terms of getting students through to the Russell group. I love the Russell group—it is a set of research-intensive universities—but it is massive producer capture to allow a self-organised club to become a measure of performance of a school. One goes to universities that say that the prospective students turned up and rather like what they saw but the school was keen for them to go to a Russell group university. This is a system that rewards incumbency. That is completely different from the agenda at the school level.

[Lord Willetts]

Of course the Russell group is excellent and research intensive, but we need to be a bit more relaxed about the different missions of different types of university. Of course many of them will deliver training, and a university can do so. We should not have our view of universities totally shaped by the Oxbridge model. The technical Hochschule in Germany that we all love are actually universities and increasingly take the title "universities of applied science". In the Republic of Ireland, the university title is being spread. I sometimes think that if people—even, dare I say it, some on my Conservative Benches—could ritually humiliate some of these institutions and say, "You're not really a university", they would feel so much better about it. The truth is that those institutions are legitimate universities in almost every other western country. We should accept them and welcome them to the diversity of missions that we have in higher education today.

The OfS is doing a necessary and important job. It needs to be liberated from some of those ministerial letters and to be able to focus on the data that really matters to prospective students. I hope that the OfS will understand the importance of the context of the students that it recruits and I very much welcome this important report from the committee.

6.19 pm

Lord Storey (LD): My Lords, it is a great privilege to follow so many colleagues who have, or had, positions in universities. I have enjoyed listening to their detailed knowledge. I thank the noble Baroness, Lady Taylor. In a sense, her opening remarks absolutely hit on my understanding of the situation. I was slightly concerned when she used a one-word judgment about the Office for Students—I have written it down somewhere and forgotten it. I thought we were against one-word judgments and that, like Ofsted, we did not want to go down that route. I am just teasing. All the issues were very carefully and considerately focused.

We have world-class universities and we ought to be proud of them. They have amazing leadership and staff, but that should not blind us to the fact that there are major problems in some of our universities. There is a great danger that we wallow in praise but do not tackle some of the issues happening around us. One has only to look at the private higher education sector to know that there are big problems, or to listen to students talk about their experiences of simple things such as chasing up and trying to get back a thesis or assignment, or their complaints of there being hundreds of other students in lectures. Those issues may be small and insignificant to noble Lords in this Committee, but to students themselves they are really important.

I have a background as an ordinary primary teacher and headteacher. I did a certificate of education and then went on to university because I realised that I needed a university degree if I were to get a promotion. Like probably everybody in this Room, I thoroughly enjoyed my time at university. University is not just about learning; it is about playing as well. How sad it is that, these days, many students cannot afford, for example, to go to university away from their home. Students increasingly stay in their own locality. I do not know the exact figures but at Liverpool University the students increasingly come from Liverpool, Merseyside or the north-west. When I went to teacher training college, my friends came from the north-east, Northern Ireland and all over the country. I gained so much from that experience of talking to people from different regions and cultures. We have lost that. Universities also provide the opportunity to learn different things and offer extracurricular activities. We talk about the importance of extracurricular activities in schools but they are equally important in universities.

I will come to the issue of funding in a moment. I want to single out a few comments that I feel must be addressed at some stage. The noble Lord, Lord Agnew, was either bonkers or brave—or both—to raise those hugely important issues. Somebody has to address them. We cannot just say, "He would say that, wouldn't he?" I want to know the answers to his questions. Similarly, the noble Lord, Lord Lucas, went on and on, quite rightly, about linking higher education, schools and student satisfaction, but we never get any answers on that. At some stage, I would like to hear the answers. Finally in my general comments, I say to the noble Lord, Lord Johnson, that yes, I like the title, "office for lifelong learning", so let us try to make that happen. It seems to be the right phrase.

When student loans were introduced—we remember all the furore about them; I had forgotten that they were introduced by a Labour Government, of course, although the coalition Government increased them enormously—my party leader and others signed pledges that they would abolish them. However, I thought to myself, "Do you know what? If students are getting a loan and paying for their university education, they will be in the driving seat. They will actually have a say in what is going to happen". Similarly, when the Office for Students was established, I thought to myself, "Ooh, this is good: it has 'students' in its title. It will mean, again, that students are in the driving seat".

The report is quite worrying but, actually, I can look at it in a positive way. You have to know where you are to find out where you are going. Remember, the Office for Students has as its mission

"to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers".

I can tell noble Lords that, as a city councillor, I have referred three cases to the Office for Students. The first was that of a PhD student who was awarded only a master's degree, not a PhD. She complained and said, "Hang on a second. I didn't see my supervisor for three years. Covid came along and nobody from the university contacted me". The university was not at all interested. I contacted the Office for Students and it was very proactive for that young woman. It ensured that she got a year's extension and was paid some compensation. That would not have happened without the Office for Students, I guess.

The second case involved a mature student who had special educational needs and wanted another year. She had already delayed her degree by two years, and she wanted a third year. The university said no. The Office for Students sorted it out.

The final case was a failure. It involved a student at a Russell Group university. On the day of her final exam, her father died. Imagine that. The university said,

"Well, we're very sorry about that", but nobody contacted her; I mean, nobody actually said that. Her personal tutor did not contact her. What is that all about? That is another complaint from students when you talk to them. She was told that she could sit the exam in the summer. How crazy is that? She was not given a date; she just had to wait until summer came along. Then, sometime in August, she was allowed to re-sit the exam. That is not the way to treat a young woman whose father has just died. I contacted the Office for Students but, sadly, nothing happened on that occasion.

As we have heard from so many colleagues, the higher education sector faces a looming crisis. It is mainly to do with long-term financial sustainability, compounded by Covid; the freezing of student fees; inflation leading to higher costs for institutions, staff and students; a lack of EU research funding; and ongoing industrial action, as we have heard from a number of colleagues. The financial sustainability of the funding system for the higher education sector clearly needs to be sorted. Has the Office for Students paid sufficient attention to this challenge? It should be questioned on a number of issues. Has it lived up to its promise? Is it trusted by the providers it regulates? Has it acted in the real interests of students? On the last point, my experience is that it has. Have the Office for Students' duties been applied consistently and equally? Should it focus more on communicating with institutions, rather than relying on data from those institutions?

The freezing of the cap on tuition fees for domestic students and the loss of EU research funding have led to higher education providers becoming reliant on cross-body subsidy from international and postgraduate students. This dependency comes with huge risks. It will be interesting to read Robin Walker MP's inquiry into university funding's reliance on international students. As Simon Marginson, a professor in higher education at Oxford University, says:

"If today's decline in the real-terms value of fees continues … then within a decade even the UK's most elite institutions will find themselves diminished. This could be further exacerbated as countries such as China … pour money into their own higher education systems".

Vivienne Stern, the chief executive of Universities UK, says that there is a

"need to have a … conversation about how universities are funded".

Over 100,000 more young people will be seeking university education by 2030, when there is little space or incentive to accommodate them. Let us get to the real issue. Political parties, particularly in an election year, are unwilling even to acknowledge or to face up to the problems in this field. At the moment, they would rather keep quiet. Can you blame them? "Well, Mr. Starmer, Mr. Sunak and Ed Davey, how are you going to deal with the matter? Are you going to put the funds or the loans up?" Of course they are not going to say anything now. Once the election is over, whoever is in Government, whether it is a coalition Government or whatever else, I hope that those political parties will have the honesty and the integrity to realise that the funding issue is crucial to the continued success of our universities. If they do not do something about it, we will see our world-class universities become second-class universities.

We can already see how this lack of action is affecting universities. Just one recent example, if your Lordships remember, was the University of Essex, which forecast a £13.8 million shortfall, blaming the 38% drop in applications from overseas students for its plans to freeze pay and promotions. In response, the plea for more government assistance puts universities at odds with government. It is argued that the sector has become bloated, providing too many courses that do not offer a return on student investment. But we cannot just leave silence to rule. Perhaps we need to find a new funding model. Is it increasing the level of fees or allowing universities to charge what they want, or do we just let the weak wither and close, and the strong and successful prosper? Do we look—dare I say it—at Vince Cable's idea of a graduate tax? I do not know, but we have to do something about it. I hear only one or two voices, and they are not from political parties, saying, "Universities need more money".

Returning to the Industry and Regulators Committee report, I hope the Minister in her reply will want to comment—I am sure she will—on some of the quite concerning conclusions of that report. The Office for Students

"does not engage with its stakeholders",

whether students or providers; its approach to regulation seems

"arbitrary, overly controlling and unnecessarily combative";

and,

"there have been too many examples of the OfS acting like an instrument of the Government's policy agenda rather than an independent regulator".

6.33 pm

Baroness Twycross (Lab): My Lords, I commend my noble friend Lady Taylor for securing this debate on the report of the Industry and Regulators Committee, and all members of the committee. Like the noble Lord, Lord Storey, I felt privileged to hear from such well-informed contributors.

Having reread the report in preparation for this debate, its title, *Must Do Better*, felt like an understatement. The committee was damning in its criticism of the Office for Students, and, as my noble friend highlighted in her opening speech, the committee's overall finding was that it is performing poorly. I am not sure that many positive points were raised in the report, besides those attributed to the noble Lord, Lord Wharton, the chair of the Office for Students, although the noble Lord, Lord Johnson, provided a defence of the regulator in his contribution, as did the noble Lord, Lord Lucas. The examples which the noble Lord, Lord Storey, just provided in his speech gave context, with the engagement he has had with real-life examples, which was helpful.

I look forward to the Minister's response to the many points that have been raised and, in particular, to hearing what has changed in the interim since the committee's report was published. It was clear from many contributors to the debate, including my noble friend Lady Taylor, the noble Lord, Lord Clement-Jones, and others, that over recent years universities have faced many issues, from having to deal with the pandemic to research funding being limited and pressure on the funding model.

[Baroness Twycross]

The "looming crisis" the report cites is, as a number of noble Lords have stated, clearly already here. The Office for Students appears, unfortunately, be part of the problem whereas it should be a major part of the solution. A regulator should do what it says on the tin. This is a regulator that, as the noble Lord, Lord Norton, said, has not lived up to its name. It should not be rocket science: indeed, the mission statement for the Office for Students says:

"We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers".

However, despite the good intentions described by the noble Lord, Lord Johnson, the Office for Students has not delivered for students yet, or for the sector, and lacks clarity over even what it defines as a student interest.

The noble Lord, Lord Wharton, highlighted the freedom of speech Act, and its implications are significant for universities. As the noble Lord, Lord Mann, made starkly clear, the regulatory guidance proposed by the Office for Students on freedom of speech has led to a situation that, as Labour warned it could and would, will allow Holocaust deniers and their ilk to potentially spread hate on our campuses. Will the noble Baroness commit to intervene to ensure that the rollout of the regulatory guidance described by the noble Lord, Lord Mann, is paused until such time as it is fit for purpose and has appropriate safeguards for all students, not least for the protection of Jewish students? Moreover, will she explain how the Government will ensure that the Office for Students will reset its work to be less simplistic and narrow in its approach? Will the Government require the Office for Students to refresh its approach to student engagement? Will they insist that the regulator defines what it sees as student interests?

The noble Lord, Lord Willetts, spoke about the social mobility aspect of universities, which I would hope would be among the key issues that should be promoted and measured by the OfS. The committee recommended that the OfS should take on the role of providing students with clear and digestible information on costs, outcomes and contact time, which, as the noble Lord, Lord Willetts, said, is a real concern to prospective students. As the noble Lord, Lord Storey, said, there needs to be a key focus on what students want, including getting their essays and assignments back quickly. Students deserve to get the information they need to make what is a significant life decision. What conversations has the department had with the regulator to ensure that this now happens?

The noble Lord, Lord Freyberg, spoke powerfully about the impact of the cost of living on students, which leaves them with a shocking shortfall. Many have to work, and prioritise work, in order to get by, and the pressures can cause students to drop out. Surely an office that is genuinely for students must address these concerns. Labour believes that regulation matters, and questions of what regulation should look like have come up throughout the debate. As my honourable friend the Member for Warwick and Leamington, Matt Western, said in a Westminster Hall debate last year, we need

"good, fair-minded, proportional regulation, which is needed in any sector, especially the higher education sector. For a sector that benefits from £30 billion in income from public money, educates over 2 million students and contributes £52 billion to our GDP, supporting more than 800,000 jobs, the need for regulation is clearly self-evident".—[*Official Report*, Commons, 26/4/23; cols. 427-28WH.]

The need for proportionate, appropriate regulation was a point made succinctly by a number of speakers today, including the noble Lord, Lord Norton, who stated that the starting point is that regulators need a mindset that gets the best out of bodies. I welcomed the point made by the noble Lord, Lord Willetts, that this committee's view on regulation should be taken seriously because it knows what it is talking about and this is its area of expertise. The committee report found that the regulatory framework has become overly prescriptive over time, and the OfS is too willing to direct higher education providers' operations and activities, showing little regard for the need to protect institutional autonomy.

Of particular concern is the lack of co-ordination by the OfS with other regulators in the HE space, in particular in relation to degree apprenticeships. The committee recommended that the DfE should reconvene the Higher Education Data Reduction Taskforce—although a better acronym could probably be found—to address duplication and unnecessary burdens on providers. Can the Minister confirm whether the DfE will be doing this? Is she satisfied with the quality assurance agency now also being the regulator? Does she agree with the committee, and a number of speakers today, that this is a concern?

A thread through this debate has been the growing concern over recent weeks and months about the financial instability of the sector. This was also the subject of a Question that raised cross-party concern in your Lordships' House this afternoon, following the recent report published by the Office for Students. My noble friend Lord Parekh spoke of an ambivalence towards overseas students, and a number of noble Lords —including, among others, my noble friend Lord Parekh and the noble Lords, Lord Clement-Jones and Lord Norton—spoke about the sector's overreliance on international students, where their fees currently act as a subsidy for domestic students; the noble Lord, Lord Agnew, likened this model to a Ponzi scheme. What conversations has the DfE had with the Home Office on the implications for our HE institutions of further limits on international students? Even the rhetoric around limits on international students appears to be having an impact already.

The noble Lord, Lord Norton, said that the Government are sending out all the wrong signals on overseas students. Does the Minister agree with that point? Is she concerned by the fact that the Office for Students did not share the committee's concerns on the financial health of universities just over a year ago but now judges that, as my noble friend Lady Taylor said, 40% of universities are expected to be in deficit? Can the Minister outline what more the Government are doing to ensure that the unsustainable financial situation facing many higher education institutions is resolved? Does she agree with the Office for Students' report that we might see some changes to the shape and size of the sector, for example through mergers, acquisitions or increased specialisation? Does she agree with the noble Lord, Lord Johnson, that the Office for Students should be doing more to promote innovation and new forms of provision?

During today's debate, there were varied views on how universities' financial management is in practice but it is clear that cuts alone are not the solution. Many higher education institutions have already made fairly drastic efficiencies. Labour will reform the higher education funding system. It is looking at ways to make the system fairer and more progressive; it will change the system to give students, graduates and universities the support they need.

My final point is that an independent regulator must have the trust and respect of the sector in order to succeed. It was clear from most of those who gave evidence to the committee that the Office for Students does not have the respect of the sector and is not giving students the voice they need. There is considerable suspicion of the OfS's relationship with government; this appears to be in large part down to the belief among the sector and other stakeholders that the OfS is too close to government and is, in effect, acting at its direction. The noble Viscount, Lord Chandos, described this as a lack of distinction between government and the regulator; he also referred to a lack of transparency. I appreciate the fact that the Government's response to the committee indicated their view that there are already established and sufficient protections to ensure that the OfS operates independently of government; none the less, I ask the Minister to take this view seriously and ask the department not simply to dismiss this view as erroneous or unfair.

The regulator cannot succeed unless vital relationships are reset as a matter of urgency, trust is restored, and it is seen and believed to be delivering for both students and the sector as a whole. I welcome my noble friend Lady Taylor's commitment that the committee will return to this subject in future. This was an enlightening and hard-hitting report demonstrating the value of the work of the committees in your Lordships' House. I look forward to the Minister's response.

6.44 pm

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, I thank the noble Baroness, Lady Taylor of Bolton, for securing this important debate, and all members of the Industry and Regulators Committee for their work and scrutiny of the vital issues linked to the higher education sector and the Office for Students as its regulator. If I may, I also thank my noble friends Lord Johnson of Marylebone and Lord Willetts for their ministerial insights into the sector.

My noble friend Lord Johnson gave an incredibly helpful analysis and synopsis of the issues which led to the creation of an independent regulator with a focus on quality, competition, choice and value for money. I recognise some of his criticisms in relation to the way that government is structured, with part of the responsibility for the university sector sitting in the Department for Science, Innovation and Technology and part sitting in the Department for Education. I absolutely share his enthusiasm, and that of my noble friend Lord Willetts, for a real focus on innovation in the HE sector and on the lifelong learning entitlement.

I also thank my noble friend Lord Lucas for highlighting some really practical suggestions, which he brings from his experience of listening to students and parents, and the noble Lord, Lord Storey, for the examples of his interactions with the OfS in practice. It was extremely helpful for all of us to hear that.

Before I go into the report itself, I want to touch briefly on the independence of the OfS. I can honestly say that, in my experience within the department, I do not recognise the picture that noble Lords painted of political priorities driving the work of the OfS. If I may say so, I felt a tension between the calls for real independence on the part of the OfS and calls for the Government to influence its direction even more, which is, perhaps, something for all of us to take away and reflect on. I asked colleagues to check how many guidance letters we sent to the OfS in the past 12 months. We have issued four guidance letters to it: two related to the expansion of medical places and two related to funding. I am not sure quite what the threshold is for the number of ministerial letters, but that does not feel too oppressive to me.

I turn not so much to the Government's response to the committee's report, which your Lordships have obviously seen, but rather to providing updates to show the progress made against its recommendations. The noble Baroness, Lady Taylor of Bolton, the noble Lord, Lord Storey, and others, dwelled on the importance of the relationship between the Office for Students, the students themselves and providers. I am pleased to see that the OfS has reflected on the committee's recommendations regarding student interest in engagement. It has made sound progress in reaching out to students and inviting them to engage in its work, including work to reframe the OfS student panel, which I understand is now playing a key role in the development of the OfS's new strategy for 2025 and beyond.

I know that the OfS has hosted numerous round tables and webinars, inviting students to contribute on its new freedom of speech and academic freedom functions to help inform proposals and consultations. Last month, the first meeting of the OfS's new disability in higher education advisory panel—fondly known as DHEAP—took place, which will review how universities and colleges currently support disabled students and will make recommendations to improve their experience.

The noble Baroness, Lady Taylor, asked me about annual reports on student engagement. We are not aware that a commitment was made in that regard, and I am not aware that those reports are planned, but if there is a misunderstanding I am happy to pick that up with her afterwards.

Regarding the relationship with the sector, I hope that your Lordships will be pleased to hear how the OfS reflected on the committee's recommendations to enhance—

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I am sorry to interrupt the Minister so near the end of the debate, but I am afraid that a Division has been called, so the Committee will have to adjourn. I advise members of the Committee that there are likely to be two or three votes back to back, so it will be not a 10-minute adjournment. It will be substantially more, probably more like half an hour.

[Baroness McIntosh of Hudnall]
I advise members of the Committee to keep their eyes on the annunciators, particularly after the second vote has been completed.

6.50 pm

Sitting suspended for Divisions in the House.

7.32 pm

Baroness Barran (Con): My Lords, I was just starting to talk about the relationship of the OfS with the sector, which was a matter of concern to a number of your Lordships. The OfS has both reflected and acted on the committee's recommendation to enhance its relationship and engagement with the sector. Senior OfS staff have visited over 80 universities and colleges across England as part of its new sector engagement programme, as well as hosting numerous online and in-person events for vice-chancellors, finance directors, institution staff and students alike to raise awareness and understanding of its regulatory work. The OfS recently commissioned a new piece of voluntary research to gather provider views to help improve how it works with the sector.

One of the key recommendations in the committee's report was around clarity about the OfS's duties and decision-making. The Government believe that the OfS's statutory duties are clearly set out in legislation, through the Higher Education and Research Act 2017. In particular, we believe that it is right that institutional autonomy as an important principle should not always be prioritised above other important matters: for example, driving quality improvement.

The noble Baroness, Lady Taylor, talked about the new powers and duties that Parliament has given to the OfS and suggested that those were perhaps not always the priorities of students, if I followed her remarks correctly. We believe that the Higher Education (Freedom of Speech) Act is critical to protecting academic freedom. Issues around the tragic events in the Middle East give us a very recent example of that, as the noble Lords, Lord Wharton of Yarm and Lord Mann, pointed out.

Additionally, we have asked the OfS to focus on tackling harassment and sexual misconduct, in response to evidence of a serious problem in our universities. The noble Lord, Lord Mann, asked for specific reassurances. We are still in the process of the consultation. We need to let that conclude, but I would be more than happy to meet with the noble Lord if that would be helpful. To enhance the OfS as an effective regulator that safeguards students' interests, the Government announced an independent review of the regulator in December 2023, which is being conducted by Sir David Behan. It is due to conclude shortly and the Government will carefully consider its findings and recommendations.

A number of your Lordships, albeit from slightly different perspectives, talked about issues of financial sustainability in the sector, including the noble Baronesses, Lady Taylor and Lady Twycross, my noble friends Lord Norton of Louth and Lord Agnew, the noble Lord, Lord Storey, the noble Viscount, Lord Chandos, and others. It is crucial that we have a sustainable higher education funding system that meets the needs of the economy and is fair to students and to taxpayers. We keep the funding system under continuous review to make sure that this remains the case and that it offers diverse opportunities for learners to acquire vital skills.

The noble Lord, Lord Parekh, who is not in his place, was the first to focus on the cost side of universities, which is more within their power to control. I will comment on that also in response to my noble friend Lord Agnew's remarks, even though he asked me not to respond—it is an irresistible opportunity. A number of your Lordships used the term "financial crisis", and I understand why, but we should remember that in 2022-23, the total income for the higher education sector in England was £43.9 billion, up from £29.1 billion in 2015-16. Of that, approximately £16.3 billion, or about 37%, was provided by the Government. Over the current spending review period, the Government have also invested £1.3 billion in capital funding to support teaching and research through the Department for Education teaching grants and the DSIT research grants.

A number of your Lordships cited the figure of 40% of the sector being in deficit. That was cited in the recent OfS report as an expectation for this current financial year, 2023-24. The noble Viscount, Lord Chandos, asked if it was government policy to see the Rod Liddle projection of two-thirds of the sector disappearing: clearly that is not the case. That is important, I say in response to my noble friends Lord Agnew's and Lord Lucas's remarks. I think my noble friend used the term "impending financial collapse". This is a sector that has grown 50% over the past few years. The OfS report projected a surplus of £2.1 billion for 2026-27, and a margin of 3.9%. Average borrowing in the sector is 30%. While the Government absolutely recognise some of the pressures and in particular some of the risks that the sector faces, that is not the typical picture of a sector facing impending collapse.

We also need to be careful in talking about 40% of providers, or roughly a third of providers this year. I talk here about the UK rather than England only: the aggregate deficit of those providers that were in deficit was just over £330 million; the aggregate surplus of those in surplus was £3.3 billion; and 50% of the aggregate deficit was accounted for by 10 providers. There really are outliers, in both surpluses and deficits. Making sweeping statements about the whole sector is not helpful but I will, of course, write to my noble friend as he requested.

A number of your Lordships, including the noble Lord, Lord Clement-Jones, and the noble Baronesses, Lady Twycross and Lady Taylor, asked about the sector's dependency on international students and the Government's position on that. Our international education strategy is absolutely clear that diversification and the sustainable recruitment of international students remain a key strategic priority. This is a core focus of the work of Sir Steve Smith, the UK's international education champion. We are pleased that the latest figures show that providers are diversifying their recruitment of international students, with many increasing their intake from priority countries that were outlined in the *International Education Strategy*.

My noble friend Lord Norton of Louth asked me not to talk about how good the sector was, but if he will permit me just one sentence: as your Lordships noted, we have a world-class higher education sector, with four universities in the top 10 and 17 in the top 100. We have also educated 58 current and recent world leaders, and we continue to have an education system that is the envy of the world. We expect the UK to remain attractive to international students from across the globe.

In response to the question from the noble Baroness, Lady Twycross, about our work with the Home Office, we have regular conversations with the Home Office about this issue. I think it is fair to say that my noble friend Lord Norton of Louth was critical of the Government's position in many areas, including this one. We are very clear that it is important that we have a competitive offer for international students that aligns with our strategic priorities for our economy, but we also need to keep the prestige and the brand of UK higher education.

I turn to the issue of value for money, which the committee's report acknowledged could be measured in a number of different ways. I note the concerns expressed by my noble friends Lord Lucas and Lord Agnew in this regard. My noble friend Lord Lucas stressed the importance of making sure that students understand the value of and the outcomes from their courses. The noble Lord, Lord Freyberg, was concerned about a graduate's future earnings being too crude a metric and that creative degrees might get marginalised as a result. I hope he would accept that the Government have had a huge focus on our creative industries. We recognise how important they are for the economy and our well-being as a society, and the great demands for skills that there are in those industries. I hope it will reassure him that we have commissioned the Institute for Fiscal Studies to research a new way of measuring the impact that courses have on a graduate's future earnings, which we hope will be more sophisticated and incentivise the kinds of behaviours that we heard discussed today.

The noble Lord, Lord Clement-Jones, questioned the OfS approach to quality. We believe that the OfS has introduced a more rigorous and effective quality regime. It regulates quality by monitoring adherence to its conditions of registration, and of course condition B3 sets out minimum thresholds for student outcomes.

The noble Baroness, Lady Taylor of Bolton, talked about the quality assessments that the Office for Students is carrying out. I think she quoted a figure of eight, which might have been the figure published; actually, 32 have been completed in the first cycle and the office is in the process of publishing all those reports. We hope very much that they will have a real impact and provide valuable information for students and providers alike.

How can I have only two minutes? Turning to the regulatory burden, again raised by the noble Baroness, Lady Taylor, and the noble Lord, Lord Clement-Jones, the Government acknowledge the need to reduce regulatory duplication in the HE sector. We have established a new provider data forum, with the OfS and the Education and Skills Funding Agency, to identify and tackle data burden and duplication issues. We are also commissioning independent research to gain an understanding of the nature, scale and cumulative impact of data collection requirements across the sector.

The noble Lords, Lord Freyberg and Lord Parekh, talked about social mobility. I think the Grand Committee will have heard me say before that 18 year-olds in England from the most disadvantaged areas were 74% more likely to go to university in 2023 than they were in 2010.

In closing, I am grateful for the thoughtful contributions that all of your Lordships have made during this debate. There is an extraordinary amount of expertise in your Lordships' House on both regulation and higher education. The Government are absolutely committed to making sure that we continue to have a higher education sector to be proud of, and to supporting the OfS to deliver regulation that enables that sector to remain world class.

7.48 pm

Baroness Taylor of Bolton (Lab): My Lords, I think Members here will be pleased that I intend to be brief and not detain them too much longer. It has been a very wide-ranging debate and, as the Minister has acknowledged, we have a high level of expertise in the Room, which has been very useful and constructive. I hope the noble Lord, Lord Johnson, will acknowledge that the comments of the noble Lord, Lord Agnew, prove that the committee was not captured by providers. I reassure him that we took evidence from Michael Barber and Nicola Dandridge, and have followed through on all the written evidence. The weight of evidence that we had backs up what our report actually said. It was not a subject that we entered into lightly, nor did we with the criticisms.

I wish that we had more time, because I would very much like to have discussed further with the noble Lord, Lord Johnson, some of the phrases that he used, such as "mass HE sector" and "poor-quality student experience". Terms like that are bandied around far too freely, when in fact the vast majority of students get a very good experience and a worthwhile qualification at the end of it.

In fact, if we are talking about how we judge those qualifications, I chaired the council of the University of Bradford for several years and I was always frustrated because very often the quality is measured by how much graduates earn once they leave the courses. In Bradford, we wanted our graduates to stay in Bradford and the region and help to raise that region, yet, if you look at the earning potential in Yorkshire compared with London, we were always going to be at a disadvantage, which did not actually reflect the value added. I am sure that the noble Lord, Lord Norton, would say the same for Hull.

No one who gave us evidence, no one we spoke to and no one on the committee is against regulation. Everybody knows that if public money is involved, there have to be elements of accountability. The question is: what is the balance between accountability and interference? That is the main area where we did not see a situation that we would want. We produced another report recently about who regulates the regulators.

[Baroness Taylor of Bolton]
That is also something we are going to come back to because it is a very significant point: there is a need for more parliamentary accountability of regulators. Actually, I think that if we had had an ongoing drumbeat of accountability of the OfS to Parliament, we might have avoided some of the problems that have emerged more recently.

As for the "looming crisis", the Minister wants us to be cautious. I think we are seeing a trend here, and it is worrying. There are many universities that are concerned about their financial position this year and many that are looking to the future and seeing a very precarious situation in years to come, so I do not think that we can be complacent about this at all. The funding of higher education is a very difficult political issue for everyone: this is not just difficult for one party but for everyone, because it is very hard to resolve.

I still have some concerns about the marginalisation of the QAA and it being pushed out of this situation. The international reputation of our universities is desperately important and one of the reasons they are such big earners for this country. We have had some reassurance today about better relationships in the future and about a better role for students in terms of consultation, and those are to be welcomed, but there is a very long way to go before we have a satisfactory situation here. As I said in my earlier remarks, I am very keen that the committee should return to this subject and monitor what is happening in the future. That would help in having better regulation and a better balance and partnership between universities and those who are regulating. In the meantime, I beg to move.

Motion agreed.

Committee adjourned at 7.53 pm.