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HOUSE OF LORDS
OFFICIAL REPORT

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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

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House of Lords

Wednesday 6 November 2024

11 am

Prayers—read by the Lord Bishop of Bristol.

Gypsy and Traveller Communities: Accommodation

Question

11.06 am

Asked by ***Baroness Bakewell of Hardington Mandeville***

To ask His Majesty's Government what steps they are taking to ensure the provision of adequate and culturally appropriate accommodation for Gypsy and Traveller communities.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government (Baroness Taylor of Stevenage) (Lab): My Lords, as part of the recent consultation on proposed reforms to the National Planning Policy Framework, we set out changes to how we plan for the homes we need, including accommodation for Gypsy and Traveller communities. We are continuing to analyse the consultation responses and we will publish our government response later this year. We will also consider how planning policy for Traveller sites should be set out in future, including as part of wider work on the national planning policy. The Government's overarching aim is to ensure fair and equal treatment for Travellers in a way that facilitates their traditional way of life while respecting the interests of the settled community.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the Minister for her very positive response. However, I am not sure that it will meet the 2024 recommendations of the United Nations Committee on the Elimination of Racial Discrimination to create more sites and stopping places. Many sites provided are on busy roads and the outskirts of communities, often some distance from schools. Since 1994, only 30 new sites have been built. Will the Government now legislate for all local authorities to include site provision in their local plans, including bricks and mortar as culturally appropriate accommodation? Gypsy and Traveller children deserve the same rights as children in the settled community.

Baroness Taylor of Stevenage (Lab): The noble Baroness is of course right that Gypsies and Travellers deserve consideration of their lifestyle and culture in planning. Planning policy makes it clear that local authorities have a responsibility to assess the need for Gypsy and Traveller sites in their area and then plan to meet that need. When considering those applications, decision-makers should consider the existing level of provision, the availability of alternative accommodation and other personal circumstances, which could include the need for culturally appropriate accommodation. When the National Planning Policy Framework comes out, I hope she will see steps towards that.

Lord Watson of Invergowrie (Lab): My Lords, I welcome the initial comments of my noble friend in response to the noble Baroness, Lady Bakewell. However, there are far too many cases of local plans having been approved without the accommodation needs of Gypsy and Traveller communities having been met. The noble Baroness mentioned 1994. It has in fact been the policy of successive Governments since 1994 that local plans should not be approved without that provision. Will my noble friend use her position in this Government to ensure that steps are taken to enforce that requirement before local plans are approved?

Baroness Taylor of Stevenage (Lab): I thank my noble friend for that important point. Of course, it is the responsibility of local authorities to assess the need for Gypsy and Traveller sites in their area, as set out in Section 124 of the Housing and Planning Act 2016. They must plan to meet that need, and it should come under the remit of the inspectorate when it is looking at local plans to ensure that that provision is made properly and in accordance with the cultural needs of Gypsies and Travellers. We will look at that closely once the new National Planning Policy Framework is in place.

Earl Attlee (Con): My Lords, what does the planning system do to improve the education of Travellers so that they can engage in exclusively legitimate economic activity?

Baroness Taylor of Stevenage (Lab): Of course, Gypsies and Travellers have the right to education, just like every other family in this country. We make every endeavour to make sure that the opportunities that are available to all the children in this country are available to Gypsies and Travellers as well, and that we take account of their cultural needs as we do so.

Baroness Chakrabarti (Lab): My Lords, no doubt all Members of your Lordships' House engage exclusively in legitimate economic activity. Does my noble friend the Minister agree that this morning is a good time to reflect on the need to avoid demonisation of minorities and polarisation of communities? Notwithstanding the specific duties she set that local authorities have, maybe the Government could help local authorities to promote good relations.

Baroness Taylor of Stevenage (Lab): I thank my noble friend for that comment. When I was a councillor, I had a Gypsy and Traveller site in my own ward. It is important that all council officers familiarise themselves with the cultural issues around Gypsies and Travellers. Of course, we must all strive, always, to avoid division in our communities; it is very important that communities move forward together. If we are to achieve the full potential of our country, that is exactly what we must do.

Baroness Brinton (LD): My Lords, following the withdrawal of the *Gypsy and Traveller Accommodation Needs Assessments* guidance of 2007, there has been a policy vacuum for the assessment of need. This has

[Baroness Brinton]
allowed private companies, that provide most of the Gypsy and Traveller accommodation needs assessments, to develop their own—and different—methodologies, leading to discrepancies in how those are undertaken. Will the Government develop guidance for local planning authorities on how to properly undertake Gypsy and Traveller accommodation assessments in consultation with Gypsy and Traveller civil society? Can such guidance issue a pitch target for social provision in the same way as bricks and mortar housing needs are assessed?

Baroness Taylor of Stevenage (Lab): The noble Baroness makes a very important point. I will look at the National Policy Planning Framework when it comes out to see what guidance is provided. Other noble Lords have raised the issue of how this will be enacted. It is very important that local planning authorities demonstrate an up-to-date, five-year supply of deliverable sites. The planning policy for Traveller sites states that this should be a significant material consideration in any subsequent planning decision, so there will be enforcement powers to support the delivery of those sites as set out in planning guidance.

The Earl of Effingham (Con): My Lords, there are many different peoples within the Traveller community with a diverse range of cultural traditions. How do the Government intend to adequately serve this wide range of cultures when providing accommodation?

Baroness Taylor of Stevenage (Lab): I thank the noble Lord for his question. The key to all this is consultation and engagement with the communities. There has just been a significant report called *Kicking the Can Down the Road*. When we read the many changes that have been enacted in provisions for Gypsies and Travellers, it is more than clear that we need to fully engage with a wide range of those in the Gypsy and Traveller community so that we understand what their needs are and make sure they accounted for, not just in the planning process but in all public services.

Baroness O'Grady of Upper Holloway (Lab): My Lords, it was good to hear the Minister commit to the principle that everybody in every community deserves a decent home. Can the Minister also reassure us that this Government will be committed to tackling the everyday racism that Irish Traveller and Gypsy communities experience—from bullying in schools to discrimination in insurance and financial services? As a recent example, a Gypsy family were required to pay upfront in a Pizza Express branch before they were served.

Baroness Taylor of Stevenage (Lab): I thank my noble friend. That kind of discrimination is totally unacceptable. The forthcoming Renters' Rights Bill, which is currently in the other House and will be with us shortly, takes out some of the potential discrimination that could have been involved in the housing market. We will continue to do that and to look across the board at what local government can do. Some great work on this is done in local government, and we will look at sharing best practice with local authorities to ensure we tackle such discrimination.

Lord Young of Cookham (Con): My Lords, if Gypsies and Travellers are not to camp illegally then, of course, authorised sites must be provided by local councils. After legislation was introduced some 50 years ago, there was a count of how many Traveller and Gypsy caravans there were in England, and the answer was 8,045. There are now 20,000 authorised sites, but 25,000 Traveller and Gypsy caravans. What is behind this increased demand for a nomadic Gypsy and Traveller lifestyle?

Baroness Taylor of Stevenage (Lab): The noble Lord will know that we face the most acute housing crisis this country has ever had. I cannot help but feel that the issue of further caravan provision is partly to do with that. However, there is a difference between that and the culturally specific provision that needs to be made. I cannot answer directly his question about the numbers, but there may be some further insight in the department. I will ask that question and write to him if there is more information.

Baroness Blower (Lab): My Lords, is the Minister working with her noble friend at the DfE to ensure that all schools understand the culture of Gypsies and Travellers, and that they are welcoming both in their policies and in their curriculum to ensure that when Gypsy and Traveller children arrive in schools they feel welcomed and are not bullied, and that all children understand that diversity is of benefit to schools?

Baroness Taylor of Stevenage (Lab): I thank my noble friend. I have seen some wonderful examples of good practice in schools on this issue, but I will refer the question to my noble friend the Minister for Education.

Command Paper *Safeguarding the Union*

Question

11.17 am

Asked by ***Lord Lexden***

To ask His Majesty's Government what progress they have made in implementing the measures set out in the Command Paper *Safeguarding the Union* (CP 1021), published in January.

The Lord Privy Seal (Baroness Smith of Basildon) (Lab): My Lords, the Government are committed to implementing the Windsor Framework in good faith and protecting Northern Ireland's place in the UK internal market. We also continue to take forward policies as set out in the *Safeguarding the Union* Command Paper. Most recently, the Secretary of State for Northern Ireland announced members of the independent monitoring panel and underlined the Government's commitment to the establishment of InterTrade UK, which I am pleased to see will be chaired by the noble Baroness, Lady Foster. The Government will shortly be announcing a date for the next east-west council.

Lord Lexden (Con): My Lords, is it not the case that the Command Paper rests upon a principle that everyone should welcome and endorse—namely, that the union

of Great Britain and Northern Ireland should be as strong and successful as possible? The measures set out in the Command Paper to strengthen the UK internal market include scrapping the legal duties on Ministers to promote an all-Ireland economy. Is it not important that this be done and imperative to emphasise that, while cross-border co-operation in trade helps everyone, it takes place between states, and that any form of joint sovereignty and joint authority over Northern Ireland has been firmly ruled out?

Baroness Smith of Basildon (Lab): My Lords, I think the noble Lord perhaps misunderstands what is intended. The legal requirement in the report is to "have due regard", and that persists as long as the section remains in force. In practice, the contents were largely an agreement in principle that has been superseded by the more detailed arrangements of the Windsor Framework and the wider withdrawal agreement. He will know—and I think it is embedded in this House—that we are committed to the place of Northern Ireland in the United Kingdom.

Lord Dodds of Duncairn (DUP): My Lords, would the Minister accept that, whatever progress is made in *Safeguarding the Union*—and I, for one, did not believe it goes far enough—it does not deal with the fundamental problem of the Windsor Framework protocol. People in Northern Ireland, of whatever political persuasion, are disenfranchised. We have no power over 300 areas of law, including vast swathes of the economy. A foreign political entity makes those laws, develops and amends them, without any say or vote by any MP elected in Northern Ireland or any Member of the Northern Ireland Assembly. Surely that colonial status, in part of the United Kingdom, the fifth or sixth biggest economy in the world, is something that is untenable and acceptable in economic, constitutional and democratic terms.

Baroness Smith of Basildon (Lab): My Lords, the noble Lord supported Brexit at the time, and he will be aware that the way in which Brexit was undertaken brought with it enormous constitutional implications. We have always sought to safeguard the position of Northern Ireland in the UK and in the internal market, but he will understand the pressures on business. We will do all we can to reduce those pressures to make it as stable as possible. Northern Ireland is an integral part of the UK, and the internal market is an important part that we will do everything we can to safeguard.

Lord Howell of Guildford (Con): Does the noble Baroness agree that, even since the publication of this report last January, there has been considerable and important new thinking on trade facilitation of all kinds, particularly within the United Kingdom? Will she assure us that the report published today by the Trade Facilitation Commission, which contains many of these ideas, is taken full account of by the independent monitoring group or whoever is going to be driving this pattern forward?

Baroness Smith of Basildon (Lab): My Lords, the most important thing here is to safeguard the trading position and the internal market. When ideas, suggestions and reports come forward, of course they will all get the due consideration that they deserve in the best interests of the Northern Ireland.

Baroness Foster of Aghadrumsee (Non-Afl): My Lords, I thank the Minister for her answers thus far and declare my interest as chair of InterTrade UK. I asked her colleague the noble Baroness, Lady Anderson, about the removal of Section 10(1)(b) of the European withdrawal Act, as committed to in *Safeguarding the Union*. This follows on from the Question of the noble Lord, Lord Lexden. In a Written Answer, I have been told that the Government are not minded to repeal it, despite the fact that it was a commitment in *Safeguarding the Union*. My simple question is: why?

Baroness Smith of Basildon (Lab): My Lords, I apologise if I was not clear in my Answer to the noble Lord, Lord Lexden, but I thought that I was. As was also said in her Written Answer, as I understand it, in practice its contents are primarily an agreement in principle that has now been superseded by the more detailed arrangements of the Windsor Framework and the wider withdrawal agreement.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, is the noble Baroness aware that, just as the Kremlin interfered in the referendum on Brexit, because it is in its interest to see the break-up of the European Union, it is now undermining the United Kingdom in a number of ways, including through social media, particularly in supporting certain parties in Ireland and in the rest of the United Kingdom? Will she discuss with colleagues having increased activity by our intelligence services and others to try to make sure that this is stopped immediately?

Baroness Smith of Basildon (Lab): My Lords, if there is any malign influence in the elections in this country or its politics from a hostile state, or any other country that seeks to undermine our democracy, we will of course do whatever is necessary to protect our democracy, which we regard as having the utmost integrity.

Baroness Wheatcroft (CB): My Lords, is the Minister able to tell the House when we might hear a few details about what the reset of relations with the EU might actually mean?

Baroness Smith of Basildon (Lab): My Lords, there is some indication of that already by the engagement between Ministers and the EU. We are obviously engaging Northern Ireland on that, given its importance to Northern Ireland. As that proceeds further, we will give updates as and when we can.

Lord Caine (Con): My Lords, the Government's manifesto committed to implementing the Windsor Framework in good faith, but it was silent on the *Safeguarding the Union* Command Paper. Does the noble Baroness acknowledge the enormous effort that went into *Safeguarding the Union*, which, taken in its entirety, was crucial to the restoration of devolved government in Northern Ireland in February? Will she

[Lord Caine]
commit to implementing *Safeguarding the Union* in all its parts? In 2021, the then leader of the Opposition stated:

"I … believe in the United Kingdom and … want to make the case for the United Kingdom".

But in Belfast, days after becoming Prime Minister, he said that he would be an honest broker on the issue. Which is it?

Baroness Smith of Basildon (Lab): My Lords, the noble Lord is struggling there to come up with something that does not exist. This party is committed to the union; he knows that. Noble Lords just have to look at the budget for Northern Ireland, which under this Government now has the largest settlement in real terms in the history of devolution. That is one way in which we show our commitment. There have been 14 ministerial visits to Northern Ireland since the election, with the Prime Minister visiting twice. I do not think that anybody could be in any doubt about our commitment to Northern Ireland's place in the union.

Lord Elliott of Ballinamallard (UUP): My Lords, as someone who believed that the Command Paper would not do as it said on the tin, it is probably proving that way now. The document mentions the veterinary and veterinary medicine problems with the European Union on at least 15 occasions and there has been no progress on that whatever. I declare an interest as a Northern Ireland farmer. What will the Minister and her party do about progressing that issue?

Baroness Smith of Basildon (Lab): I can assure the noble Lord that this is a priority for the Government. We are continuing to work at pace. He will be aware that the veterinary medicines working group is advising the Government. It met in September and will do so again this month; we will provide an update as soon as possible.

Lord Sandhurst (Con): Presumably, the regional envoy has an important role in promoting the union. When will Sue Gray be starting her job?

Baroness Smith of Basildon (Lab): I must admit that I am quite fascinated by the noble Lord's obsession with one individual on what is a major issue for the people of Northern Ireland. As and when, I will be happy to update him when she does.

Biodiversity Net Gain

Question

11.27 am

Asked by ***Baroness Parminter***

To ask His Majesty's Government what assessment they have made of the effectiveness of the implementation of the biodiversity net gain provisions.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Baroness Hayman of Ullock) (Lab): My Lords, it is almost nine months since biodiversity net gain became mandatory for most developments. We are pleased to see stakeholders embracing this opportunity to deliver much-needed development while improving the environment at the same time. Officials are monitoring implementation closely and engaging with sectors, including developers and local authorities. We have updated guidance to provide clarification on areas of concern and will continue to refine the policy to ensure that it achieves intended outcomes.

Baroness Parminter (LD): I thank the Minister for her reply. She may know that analysis has shown that only 7% of planning applications are identifying a need for biodiversity net gain, which is massively lower than all of us, including the Government, expected. I am very pleased to hear that officials are monitoring the situation, but will they be reviewing the exceptions, some of which are proving to be rather large loopholes, to ensure that biodiversity net gain builds nature's recovery and the sustainable homes that we need?

Baroness Hayman of Ullock (Lab): The noble Baroness is referring, I assume, to the exemptions in place for applications that have no or a very limited impact on biodiversity. That was brought in to ensure proportionality and to keep the planning system moving. However, Defra is working with the Ministry of Housing, Communities and Local Government to review planning statistics and specific applications.

Lord Cromwell (CB): My Lords, I am currently involved in negotiating with a developer on biodiversity net gain. This involves boxes of huge and very expensive files, which have to be redone every time Defra changes the metric and locks the land into a commitment of 30-plus years. The developers tell me that their traditional landscaping required under planning often exceeded what is required under biodiversity net gain. Can the Minister give us any data on what real net gain is being achieved?

Baroness Hayman of Ullock (Lab): Clearly, this is still fairly new for planning applications. It came in only eight months ago, so we are considering how we move forward. I do not have data on that to hand, and I am not sure we would have it available at present, as it has been only about eight months, but I will check and get back to the noble Lord.

The Earl of Courtown (Con): My Lords, the last Government improved biodiversity monitoring, setting targets to prevent species loss and create half a million hectares of habitat by 2042. Given the important role nature-based solutions play in improving biodiversity, can the Minister confirm that the Government will encourage the use of such solutions to tackle pollution from our water sector?

Baroness Hayman of Ullock (Lab): The noble Earl makes an extremely important point. Of course, it is very important that we use nature-based solutions to tackle all kinds of pollution, not only water-based ones. We are very keen to see such solutions implemented.

Lord Teverson (LD): My Lords, the Government inherited in their departmental diary a provisional date of November 2025 by which to include biodiversity net gain for nationally significant infrastructure projects. Will the Minister confirm that they will go ahead with that on that date? I encourage them to do so.

Baroness Hayman of Ullock (Lab): I can confirm that we are planning to consult very shortly on applying biodiversity net gain to nationally significant infrastructure projects—NSIPs—without any broad exceptions.

Baroness Boycott (CB): My Lords, in all the planning applications in the biodiversity net gain provisions, are the Government paying attention to the importance of corridors that allow nature to travel between different building sites? Otherwise, it gets too isolated and dies off.

Baroness Hayman of Ullock (Lab): The noble Baroness is right—corridors for wildlife are incredibly important. Many developments have to give due regard to removing hedgerows, for example, in order that they do not stop routes for wildlife such as dormice. It is extremely important and, on all developments, Defra is working with MHCLG to ensure that the environment is taken into full consideration.

Lord Fox (LD): The Minister has spoken about biodiversity and infrastructure projects. How about marine biodiversity? Can the Minister set out the Government's position on enhancing the regaining of marine biodiversity?

Baroness Hayman of Ullock (Lab): I am sure the noble Lord is aware that restoring marine biodiversity is very complicated. In many ways, it is more complex than restoring biodiversity on land; it is a very challenging subject. Clearly, we need to look at the marine conservation zones to see what they can do, and to work internationally on this because it is a broad international area. The Government are reviewing this at the moment.

Lord Fuller (Con): My Lords, last harvest, the UK's wheat production fell by 30%—from 14 million to 10 million tonnes. One of the reasons was that so much land had been taken out of production for environmental schemes. We have heard that land for BNG must be locked away for 30 years. What assessment has been made of the long-term impact on our food security of locking land away for a generation, making it unavailable for food production?

Baroness Hayman of Ullock (Lab): I suggest that the noble Lord looks in detail at our land use framework when we put it out for consultation shortly. That is one of the things we want to look at, and it is why we are doing the framework: we need to balance our need to produce food against environmental considerations—where we plant our trees, build our houses, and so forth. I look forward to a good debate on that subject.

Baroness Boycott (CB): My Lords, is the Minister going to ban bottom trawling in marine protected areas?

Baroness Hayman of Ullock (Lab): We are looking at bottom trawling at a site-specific level because there are different challenges in different areas. As I said, marine conservation is complex and has to take many things into account. There is quite a lot going on in this area and, if the noble Baroness wants to know the details, I am happy to send them to her or to meet to discuss this further.

Baroness Redfern (Con): My Lords, in the light of the implementation of the biodiversity net gain provision, and given the need to ensure that assessments are done by competent people and that landowners are paid a fair price for their credits, so that they can deliver on their commitments, how are His Majesty's Government ensuring that the LPAs are equipped to handle the additional burden on their planning officers, and will additional planning officers need to be recruited?

Baroness Hayman of Ullock (Lab): Yes, the Government have committed over £35 million in ring-fenced funding to local planning authorities to help them prepare for and implement biodiversity net gain. We have confirmed funding up to the end of next year and further funding will be in the next review.

Lord Cromwell (CB): As we have some time left, may I ask the Minister to look into why farmers in the higher-level environmental protection scheme—the HLS—are being excluded from joining the SFI scheme, both of which she will be familiar with? I have been asking Defra for months why Ministers are not being advised of this discriminatory approach and I have yet to receive an answer.

Baroness Hayman of Ullock (Lab): I am happy to go back to the department on this. We are going to open up the high-level applications next year, as I am sure the noble Lord is aware, and we are also looking at what we do with the legacy payments. I am happy to discuss this issue with him further, because we are making quite a lot of decisions on how we move forward.

Lord Teverson (LD): My Lords, is not the answer to the question from the noble Lord on the Conservative Benches that if we do not have biodiversity and nature recovery, we will not have an agriculture industry in 30 years' time?

Baroness Hayman of Ullock (Lab): It is really important that we get the right balance between food production and environmental considerations. It is an important thing for any Government to take forward, and we are taking it very seriously. That is partly why we are doing the land use framework—to ensure that we deliver properly on both areas.

United Kingdom Declining Birth Rate

Question

11.36 am

Asked by ***Lord Farmer***

To ask His Majesty's Government what assessment they have made of the United Kingdom's declining birth rate and its likely effect on the future tax base of the country.

The Financial Secretary to the Treasury (Lord Livermore) (Lab): My Lords, in its annual fiscal risks and sustainability assessment, published on 12 September, the Office for Budget Responsibility has projected an additional 6.5 million people in employment by 2074. This will support future tax receipts.

Lord Farmer (Con): I thank the Minister for his Answer. The UK's tax system discourages childbearing; it is one of the least family-friendly in the OECD. No allowances are made for dependants, so our tax system also disadvantages single parents. The current level of marriage allowance gives scant recognition of low-earning or non-earning second parents. Child benefit reform, announced earlier this year, which took both incomes in a household into account and partly mitigated families' tax situation, was repealed in last month's Budget. How will this Government make our tax system more family-friendly?

Lord Livermore (Lab): I am very grateful to the noble Lord for his question. The example he gives of the reform that is no longer going ahead is an interesting one. It was a £1.4 billion commitment made by the previous Government but not a single penny was put behind it in the Budget that they prepared. It is exactly an example of how we got to £22 billion of unfunded spending—it simply was not affordable. If noble Lords opposite would like to find that £1.4 billion or tell us how to raise it, we would be happy to spend it. This Government are committed to family-friendly policies; it is at the core of our opportunities mission. In the Budget, we allocated £8 billion to family services because it is one of our key priorities.

Lord Sikka (Lab): My Lords, low wages, poverty, poor housing, food, the high cost of living and household debt dissuade many people from having children. the eradication of poverty must be a priority for the Government. Can the Minister ensure that, within a decade, no one on the national minimum wage will pay any income tax or national insurance, and that the cost of that policy will be borne by the ultra-rich? After all, 1% of the population has more wealth than 70% of the population combined. When will he do that?

Lord Livermore (Lab): I am afraid I cannot agree with my noble friend on that, but I agree with him that alleviating poverty should be central to the Government's objectives. Clearly, work is one of the best routes out of poverty. Equalising women's participation rates in the economy with those of men would add 1.3 million economically active people into the workforce, which is why helping women back into work is central to the Government's goals.

Baroness Kramer (LD): My Lords, our demographic profile lies at the heart of this Question. I quote from the ONS, which said that

"the population is projected to age twice as quickly under zero migration than under a high migration scenario".

Facing our dependency ratio, which is worsening by the year, should we not be resetting the conversation on immigration to recognise the role that it plays both in prosperity and in the provision of public services? Does the Minister share my fear that we are ceding this issue to a right wing that has decided that raising resentment and scapegoating is a glide path to power?

Lord Livermore (Lab): I am grateful to the noble Baroness for her question. I agree with much of the sentiment that sits behind it. The Government recognise and value the contribution that legal migration makes to our country. We will continue to strike a balance between ensuring that we have access to the skills that we need while encouraging businesses to invest in the domestic workforce.

Lord Tyrie (Non-Afl): Further to that question, what conclusions do the Government draw from the substantial evidence now that immigration at the margin increases the tax yield by more than it increases public expenditure?

Lord Livermore (Lab): It is a very important point and one that we should retain as we make policy.

Lord Hamilton of Epsom (Con): My Lords, was the Minister not moved by reports in the press that AI is going to account for 6 million jobs in this country? If that happens, will we not be quite grateful for a low birth rate?

Lord Livermore (Lab): We have to ensure that changing technology works to the benefit of all in society and contributes to our key objective of economic growth.

Lord Watts (Lab): My Lords, it appears that the major problem is the number of older people now living longer. It is not a problem for them or for us but it has economic implications. Is it not the case that it takes two working people in each household to pay tax to keep one pensioner at home? What are we going to do to bridge the gap between the number of people working and the number who are not?

Lord Livermore (Lab): Clearly, we have an ageing society and there are associated costs with that. That is why increasing the levels of economic growth in our country is so important, so that we have the resources to fund the priorities that matter to us.

Baroness Boycott (CB): My Lords, we will never get women back to work unless we have adequate childcare, which this country has failed to provide. In all the

years that I have been involved in feminist things, we have been behind the curve. Can the Minister update us on where the Government are in their provision of free childcare? Are there enough staff in the nurseries and enough places for the children of young women who would like nothing more than to get back into the workplace and pay tax?

Lord Livermore (Lab): I 100% agree with what the noble Baroness says. The ONS has said that the two biggest barriers to people having children currently are a lack of affordable housing and a lack of affordable childcare. The Government are prioritising making childcare more affordable. We will provide an additional £1.8 billion next year to continue the expansion of government-funded childcare, bringing the total spending on childcare to over £8 billion. This will support working families and help parents, particularly mothers, stay in work and return to work.

Lord Brooke of Alverthorpe (Lab): Does the Minister agree that we missed a trick, as we saw the internet develop and never found any ways in which we could start to use it as a tax base? To pick up the question of AI, can we ensure that the Treasury is doing some forward-thinking on this, not just in UK terms but about the way that we need to develop international relationships in regard to tax on a worldwide basis?

Lord Livermore (Lab): My noble friend makes some very interesting points. I assure him that the Treasury is working closely with the Department for Science, Innovation, and Technology to advance the things that he mentions.

Baroness Neville-Rolfe (Con): My Lords, we have just had a Budget which the OBR says will lead to a loss of jobs and the first ever taxes on education. What does this do for family life and for the birth rate in the shorter term?

Lord Livermore (Lab): To clarify, the OBR is very clear that, over the next five years, employment will grow by 1.2 million people.

Baroness Wheatcroft (CB): The Joseph Rowntree Foundation calculates that 30% of children are living in poverty. Does the Minister have access to any information on what that might mean for long-term fertility prospects in this country?

Lord Livermore (Lab): The noble Baroness makes a very important point, which is why reducing child poverty is central to this Government's objectives. The previous Labour Government made massive strides towards reducing child poverty and, unfortunately, we had to sit and watch while it rose under the party opposite over 14 years. We have established the Child Poverty Taskforce to ensure it falls. It is a contributing factor, but so are affordable housing and affordable childcare, as I have said, and we are prioritising all those things.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, on the birth rate, does the Minister agree that, although there are dozens of reasons for us to criticize him, this is one area in which we can be grateful to Boris Johnson?

Lord Livermore (Lab): I sympathise with my noble friend's point, but I find it hard to sympathise with that man on anything.

Baroness Walmsley (LD): My Lords—

Baroness Manzoor (Con): My Lords—

Lord Kennedy of Southwark (Lab Co-op): My Lords, it is the turn of the Lib Dem Benches.

Baroness Walmsley (LD): My Lords, in providing additional childcare places, will the Government ensure that the additional staff are well trained and highly skilled? Perhaps we should be replacing the word "childcare" with the phrase "early education", to make sure that children develop well and to give parents going back to work the confidence that their children will be properly looked after.

Lord Livermore (Lab): The noble Baroness makes an absolutely central point. All the evidence shows that the first months and years of a child's life are fundamental to the opportunities that they have throughout their life, so I agree wholeheartedly with everything that she said. Skills England, the new body that we have established, is there to make sure that exactly what the noble Baroness said about the skills available to that sector happens.

Mental Health Bill [HL]

First Reading

11.46 am

A Bill to make provision to amend the Mental Health Act 1983 in relation to mentally disordered persons; and for connected purposes.

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

Renewable Transport Fuel Obligations (Sustainable Aviation Fuel) Order 2024

Franchising Schemes (Franchising Authorities) (England) Regulations 2024

Motions to Approve

11.47 am

Moved by ***Lord Hendy of Richmond Hill***

That the draft Order and Regulations laid before the House on 24 July and 9 September be approved.

Relevant document: 1st and 3rd Reports from the Secondary Legislation Scrutiny Committee (special attention drawn to the second instrument). Considered in Grand Committee on 5 November.

Motions agreed.

Animal Welfare (Livestock Exports) Enforcement Regulations 2024

Ivory Act 2018 (Meaning of "Ivory" and Miscellaneous Amendments) Regulations 2024

Motions to Approve

11.48 am

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

That the draft Regulations laid before the House on 21 May and 12 September be approved.

Considered in Grand Committee on 5 November.

Motions agreed.

Arbitration Bill [HL]

Third Reading

11.48 am

Moved by ***Lord Ponsonby of Shulbrede***

That the Bill be now read a third time.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Ponsonby of Shulbrede) (Lab): My Lords, given the focus of the Arbitration Bill on modifying the arbitral framework, which is devolved to Northern Ireland, we are seeking the legislative consent of the Northern Ireland Assembly. We will continue to work closely with the Northern Ireland Executive to ensure that a legislative consent Motion is put to the Assembly in good time. I beg to move that the Bill is read a third time.

Bill read a third time.

11.49 am

Motion

Moved by ***Lord Ponsonby of Shulbrede***

That the Bill do now pass.

Lord Ponsonby of Shulbrede (Lab): My Lords, the Bill has now benefited from the scrutiny of two parliamentary Sessions, following its introduction in the last Parliament and examination by a Special Public Bill Committee. It has undergone further scrutiny since its reintroduction by this Government.

I take this opportunity to thank some of the noble Lords who have engaged with and supported the Bill over the past year. I begin by thanking the noble and learned Lord, Lord Thomas of Cwmgiedd, in chairing the former Special Public Bill Committee. He marshalled and managed truly expert feedback on these reforms from across the arbitration sector and the judiciary. The committee process resulted in several technical improvements to the Bill, introduced by the noble and learned Lord, Lord Bellamy. I also extend my thanks to the noble and learned Lord for his commitment to driving forward these reforms, while always recognising the importance of getting the details right.

The Bill has been improved during this Session's Committee stage too, thanks in no small part to the considered and well-informed input from the noble Lords, Lord Wolfson and Lord Verdirame, and the noble and learned Lord, Lord Mance, who advised that the previous Clause 13 did not adequately reflect the case law on arbitral appeals that it sought to codify. We remedied this issue through my amendments in Committee, fixing a long-standing error in what is otherwise considered a supremely well-drafted framework. Based on sector feedback, the Government also made an improvement to Clause 1 ahead of introducing the Bill a second time, ensuring that its default rule on governing law did not apply inappropriately to certain investor-state arbitrations.

I am also grateful to my noble friend Lord Hacking for his contributions, both as a member of the former Special Public Bill Committee and as an active participant throughout the Bill's passage. I appreciate his continued interest in full and proper arbitration law reform, after witnessing at first hand so much of its development over many years.

The legislative scrutiny provided by this House has served only to give optimal effect to the Law Commission's recommendations, made after two extensive consultations. I record my thanks to Professor Sarah Green and her colleagues at the commission, Nathan Tamblyn and Laura Burgoyne, for their brilliant work. I also thank the Bill managers, Iona Bonaventura and Harry McNeill Adams, along with the government lawyer, Wan Fan, the parliamentary counsel, Helen Hall and Neil Shah, and my policy lead, Lee Pedder. I also thank my private secretary, Paul Young.

The measures within the Bill have been much sought after by our arbitral community. I am hugely grateful for its support and engagement with these reforms since the Law Commission's first consultation.

I conclude by reminding noble Lords of the Bill's benefits. By reforming and modernising our arbitral framework, it will make dispute resolution more efficient, attract international legal business and promote UK economic growth. We pass the Bill to the Commons in excellent condition, and I hope its passage can be completed swiftly. I beg to move.

Lord Beith (LD): My Lords, the noble Lord, Lord Ponsonby, and I share the distinction of being the only people participating in the proceedings on the Bill who have neither presided over arbitration nor appeared before arbitrators. We have had a panoply of very expert noble Lords taking part in proceedings, none more so than the noble and learned Lord, Lord Thomas of Cwmgiedd, and the Public Bill Committee.

This is an important—although small—Bill, because it will effectively underpin an important export earner and an important opportunity for this country to assist in many issues across the world, because of the popularity of London as a centre for resolving disputes. It has had two Law Commission consultations, a very well-argued Law Commission report, excellent drafting and two processes through the full proceedings of this House. Not much legislation gets all that. As a consequence, we can be pleased about what has been achieved and wish it well in the Commons.

Lord Thomas of Cwmgiedd (CB): My Lords, I will briefly add to the thanks, with one exception, that the Minister gave this morning. I give particular thanks to Professor Sarah Green and to the clerk of the Special Public Bill Committee, Joey Topping, who, in the short timescale into which everything had to be compressed, did an outstanding job.

I thank the current Leader of the House and Chief Whip for getting this back when we did not get it through last time, despite their enormous efforts. They really deserve immense commendation, as does the Minister, for having put up with lawyers seeking to build perfection on perfection—something that I am sure many in this House feel inappropriate. I also thank the noble and learned Lord, Lord Bellamy, who really smoothed over some of those difficulties but did not quite get the time for matters I suspect he did not even contemplate, bringing this so speedily to a conclusion.

I will make two more general points. First, as I did not have the opportunity to thank the Senior Deputy Speaker and Duncan Sagar for getting us a bit more time in the Special Public Bill Committee—because the matter moved so quickly—if it is permissible under the rules of the House, I express on everyone's behalf our thanks for the small change to the procedure. It should make a huge difference, because the more time there is for clever lawyers to think of points in the committee, the speedier it is to get the Bill through the House—something I hope will appeal to the business managers.

Secondly, I have a hope for the future. This morning has reminded us, if we needed any reminding, of the need to remain highly competitive. This is a good day for England, Wales and Northern Ireland—I leave Scotland out because it has its own system. We have brought our law up to date. We must find a means of doing this very rapidly, as we must keep English law—I say English law deliberately—attractive and at the forefront of use internationally, for the benefit of our whole economy.

Lord Hacking (Lab): My Lords, I give personal thanks to the Minister for his very kind words to me and more general thanks to the Government for pressing forward with this Arbitration Bill. It is very befitting that the Government should have championed this Bill through, as they are at the moment, because it was a Labour Government 46 years ago who brought forward the arbitration reform that brought about the 1979 Act.

I join other noble Lords in thanking the prominent members of the Special Public Bill Committee and the prominent Members who took part in debate in this Chamber for all their contributions. I also thank the Ministers, the noble and learned Lord, Lord Bellamy, and—I keep calling him my learned friend—my noble friend Lord Ponsonby. Special thanks to the noble and learned Lord, Lord Thomas, who quite excellently presided over the Special Public Bill Committee, and to all the supporting officials.

Particular thanks should also go to the noble Lord, Lord Wolfson, and I am sorry he is not here to receive them. When he was the Minister, it was he who referred the arbitration issues to the Law Commission. That really was the beginning of the recent story on the Arbitration Bill.

This Bill is not as fundamental as the 1979 or 1996 Acts, but it deals with some very important issues. Perhaps the most important is Clause 7, giving power to arbitral tribunals to make summary awards. Those of us who practise in the courts—I am looking across the House at the moment—are well familiar with Order 14 proceedings, and this introduces into the arbitration world the Order 14 summary judgments.

It also clears up issues relating to the seat of the arbitration, arising after the unfortunate division in the Supreme Court in the Enka Insaat case, with two Supreme Court judges on one side and three on the other. I would have preferred new Section 6A(2) not to have been included, because I believe it complicates that issue, but none the less it is there, and I am very happy to support the Bill in that condition.

However, there is unfinished business. I suggest that the corruption issue should have further consideration. We know that the ICC has a commission on this and we must wait to hear what it says, but it is certainly a matter that needs further attention.

Other matters should have consideration, including expedited hearings and dealing with the length of written submissions, which sometimes stretch over 100 or 200 pages and argue every point under the sun. There is also the use of third-party funding and the question of what disclosures should be made, as well as the power to order parties into mediation, which is used successfully in litigation.

Noon

There is always a question of whether reforms are left to the arbitral institutes or to legislative reform, as we have chosen in Clause 7 with summary judgments. There was a very interesting recent case on expedited hearings. The Vienna rules were recently altered and no less than 46% of the parties took it up. This is very important, because arbitrations are too lengthy and expensive.

I had the honour, many years ago, of presiding over a committee assessing the law—

Baroness Wheeler (Lab): This is Third Reading. We do not do long speeches. Please wind up. This is not appropriate.

Lord Leong (Lab): Yes, this is Third Reading.

Lord Hacking (Lab): I am sorry if I am taking a little time; I hear the Deputy Chief Whip. But it is important that we should look to the future and realise that this Bill is unfinished business.

Lord Bellamy (Con): My Lords, I simply associate myself, on behalf of these Benches and as the previous sponsor of this Bill in the previous Government, with the thanks that have been given to the entire team, not only to the special committee and its chair but to the civil servants who have supported the work. I thank the Government and the Minister himself, who worked very hard in the special committee, collaborated very closely with the previous Government and myself and has, as has been said, managed to bring the Bill forward again with remarkable speed. As the noble Lord, Lord Hacking, said, of course there is always

[Lord Bellamy]
unfinished business and we must look to the future, but we now have an extremely good base on which to do so.

Lord Ponsonby of Shulbrede (Lab): My Lords, I thank all noble Lords who have spoken in this short debate. I continue to be glad that this Bill has the support of so many noble, and noble and learned, Lords. As I said in my opening remarks, the Bill has now enjoyed robust review and precise revision and I hope it will have swift passage through the House of Commons.

I thank the noble Lord, Lord Beith, for noting that we are the only two noble Lords without direct experience who took part in both this Bill and the previous Bill; he was right in saying that. I also thank the noble and learned Lord, Lord Thomas, and I was remiss in not thanking Joey Topping for clerking the previous Committee stage. I also thank the noble and learned Lord, Lord Bellamy, for his best wishes for the Bill.

I will address the substance of what my noble friend Lord Hacking said on arbitral corruption. Of course, we take this very seriously. We believe that it would not be appropriate to use the Bill to address these matters. However, the arbitral sector is reviewing how corruption can be better identified and dealt with. The Government will continue to support this work and push for the adoption of best practices as they are developed. I beg to move that the Bill do now pass.

Bill passed and sent to the Commons.

Flight Cancellations

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Tuesday 5 November.

"I know that the issue of connectivity across the UK is of great interest to the honourable Gentleman and many of his constituents, as connectivity strengthens the bond between our communities. Cancellations affect passengers and businesses, who rely on punctual services and connections, and have an impact on confidence. It is the responsibility of airlines and airports to work together to minimise delays and cancellations. Connectivity across our country is vital; the Government jointly fund three public service obligation routes to London, including from Derry/Londonderry.

However, the UK aviation market operates predominantly in the private sector, and it is for airports to invest in their infrastructure and for airlines to determine the routes that they operate. I recognise the importance of Belfast City and Belfast International airports for local communities and businesses. The Department for Transport is actively engaging with regional airports, including those in Northern Ireland, to understand how the Government can support and unlock opportunities for growth".

12.04 pm

Lord Moylan (Con): My Lords, I start by joining with the Prime Minister in welcoming President Trump in his restoration to office. Cancelled flights are not merely a domestic phenomenon; they affect transatlantic journeys. In the reset that the Government will no doubt undertake now with the American Administration, perhaps they could work together to improve matters for us all in that regard.

On own domestic arrangements, now that we have left the European Union, are the Government assessing whether the compensation scheme we inherited from the European Union could be improved for cancelled and delayed flights to give a better deal to the customer? Like rail nationalisation, the Minister could score it as a Brexit benefit.

The Minister of State, Department for Transport (Lord Hendy of Richmond Hill) (Lab): Regulation 261/2004 sets out the rights of passengers in the event of flight disruptions, such as cancellations and long delays. On the noble Lord's question, I have no current information about changing the arrangements, but I will certainly go away to see what can be done.

Baroness Randerson (LD): My Lords, I am interested in the noble Lord's question, because one of his predecessors was keen on simplifying and downgrading the compensation in recent months. A key factor in this week's problems and delays was staff shortages in air traffic control. Can the Minister confirm that the CAA is working to deal with this problem—a repeated problem—to ensure that sufficient staff cover is always available? Can he tell us what conversations the Government have had with our European partners at Eurocontrol, who have emphasised the need for better co-operation across countries to make sure that air passengers fly safely?

Lord Hendy of Richmond Hill (Lab): I can assure the noble Baroness that the Civil Aviation Authority is working on this and that the Department for Transport has had discussions with it. I cannot answer the question about more European co-operation, but I shall write to the noble Baroness to give her some information.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, I accept that the cancellation of flights due to weather conditions is beyond the control of airlines. However, last-minute cancellations by BA on flights from Belfast City to London City Airport surely undermine reliability and damage confidence in the business and tourism community and among the travelling public. Therefore, can the Minister commit to investigate the reasons for such cancellations on so many occasions and encourage the airlines to live up to their responsibilities?

Lord Hendy of Richmond Hill (Lab): I thank the noble Lord for his question related to the original Question. The UK aviation market operates predominantly in the private sector and it is for airports to invest in their infrastructure and airlines to determine the routes they operate. It is also for those two parties to minimise delays and cancellations. I recognise the number of cancellations in the past few days. My honourable friend the Aviation Minister recently met British Airways to discuss regional connectivity.

Baroness Foster of Aghadrumsee (Non-Afl): My Lords, I declare myself a victim of a cancellation on Monday. I was travelling from my home in Fermanagh, the most westerly part of the United Kingdom, at 7.45 am. I received an email at 8.15 am to tell me that my flight at 10.40 am had been cancelled. I was then booked on the 5 pm, which meant that I missed an entire day's business here in the House of Lords. My question to the Minister is about consumer rights. When I was told the reason for the cancellation, it was "operational challenges". Surely that is not good enough and surely there should be more clarity around cancellations.

Lord Hendy of Richmond Hill (Lab): The noble Baroness is entirely right that cancellations affect passengers and businesses relying on punctual services and connections and have an impact on confidence. Her particular case in point showed the damage done by short-notice cancellations. I will say only that that is a terrible phrase to use as an excuse, because it does not mean much—although I am familiar with other forms of transport that sometimes, sadly, also use phrases such as that. We will look at speaking to airlines to make sure that they give intelligible reasons for cancellations and delays, and their effect on the rights of passengers.

Lord Browne of Belmont (DUP): My Lords, does the Minister agree that removing UK air passenger duty on flights from Northern Ireland would encourage air carriers to open up new routes, allowing Northern Ireland airports to be more competitive with Dublin airport, which would prove beneficial for improving the economy and tourism in Northern Ireland?

Lord Hendy of Richmond Hill (Lab): The noble Lord will know that the air passenger duty on domestic flights was reduced quite recently to a relatively modest level. The Government are entirely committed to good air connections with Northern Ireland and to the promotion of its airports. I do not think that the removal of the duty—which is, in any case, a Treasury matter—would make a lot of difference. We are committed to good regional connectivity and the future prosperity of the airports in Northern Ireland.

Lord Empey (UUP): My Lords, I, too, was a passenger on the flight on Monday morning that never was. If you looked at the schedules in advance, it was not there. I took up the email at 8.10 am, although fortunately I do not have so far to travel.

On the wider point, however, this is becoming a repetitive issue. We understand operational challenges; we all have them and we all know that it is also from Covid, with the number of staff that were disposed of at the time. However, I brought a Bill through this House twice to guarantee slots for regional airports at Heathrow and it was rejected in the other place on the grounds that we were part of the European Union and therefore it could not be implemented. Now that that is no longer the case, will the Minister look with his department at ensuring that regional connectivity is guaranteed to Heathrow, because that is where the operational hub in the United Kingdom is? It also bears down on the airlines, because these slots are worth millions.

Lord Hendy of Richmond Hill (Lab): My understanding is that 18 flights were cancelled in the past four weeks, which is, of course, too many. As I have said, it is the responsibility of airlines and airports to work together to minimise delays and cancellations. The Government recognise completely the need for regional connectivity, particularly by air in Northern Ireland. My honourable friend the Aviation Minister is constantly reviewing the connectivity of Northern Ireland with all of the airports in the rest of the UK. I will take the point that the noble Lord has made and relay it to the Aviation Minister.

Baroness O'Loan (CB): My Lords, I, too, was a passenger on the cancelled aeroplane. The reality is that, on this occasion, British Airways—which was the airline in question—knew the day before, or before that, that the plane had been cancelled. The airport also knew that the plane had been cancelled. The people who did not know that the plane had been cancelled were the people who were getting up to catch the plane. Does the Minister think it would be helpful if an additional penalty was introduced, payable to the customer who is inconvenienced in that situation?

Lord Hendy of Richmond Hill (Lab): It is clearly wrong for the transport provider and the airport to know that a flight is cancelled, but for the passengers not to know. Similar circumstances sometimes apply on other transport modes and it is unacceptable there, too. I agree with the noble Baroness that it is unacceptable: what needs to be done about it is another matter. I will speak further to my honourable friend the Aviation Minister to see what needs to be done to stop this practice. It is unacceptable.

Baroness Foster of Oxton (Con): My Lords, Regulation 261 is actually a robust regulation and I do not believe that the compensation is too little. In addition, in relation to the comment made by the noble Baroness regarding air traffic control issues, I do not believe that was the case either. However, there is clearly an issue here. Given the number of times this specific flight had been cancelled, with our noble colleagues, certainly those from Northern Ireland, so badly affected, it would be quite helpful, perhaps, if the Minister could speak with the Aviation Minister and get the CAA involved with this—because it deals directly with Regulation 261—to find out the specific issue to do with this flight. I do not believe it is a slots issue. Turning round and saying to passengers that this is an operational issue and giving people two hours' notice, when they know that the flight has been cancelled the day before, means there is clearly something more going on. We would be very grateful if we could get more information on this specific issue, certainly to help our colleagues in Northern Ireland.

Lord Hendy of Richmond Hill (Lab): If I were the airline concerned, I would not cancel this particular flight. It seems to me that having your operational business discussed in this House is probably not helpful to your reputation. But I shall otherwise do exactly what the noble Baroness suggests.

Passenger Railway Services (Public Ownership) Bill

Report

Scottish legislative consent granted and Welsh legislative consent sought, 2nd and 5th Reports from the Delegated Powers Committee

12.16 pm

Amendment 1

Moved by ***Lord Gascoigne***

1: Before Clause 1, insert the following new Clause—

"Purpose: improvement of passenger railway services

(1) The purpose of this Act is to improve the performance of passenger railway services in the United Kingdom.

(2) The Secretary of State must, in taking any actions under the provisions of this Act, have regard to this purpose."

Member's explanatory statement

This amendment would place a duty on the Secretary of State to have regard to the purpose of the Act, namely the improved performance of passenger railway services in the United Kingdom.

Lord Gascoigne (Con): My Lords, I rise briefly to fire the starting gun on Report with my Amendment 1. In doing so, I express my gratitude to my noble friend Lord Moylan for his support with this amendment. I also thank the Minister for taking the time to meet me the other day. I very much appreciated the opportunity he took to address my many questions in his usual cordial way.

This amendment today flows from my first amendment in Committee. Everyone wants the trains to improve. That is a given. As I said in Committee, and when I met the Minister recently, the reason I care about this is that we need the whole rail reform package and we need it not to be piecemeal. Personally, I would like to go down the route proposed under the Williams-Shapps review, but I recognise that that ship has probably sailed. That said, the overall goal is the same: to make it more efficient; to make it easier to travel; to make it more punctual and, ultimately, to improve the passenger service.

In Committee I used the word "Ronseal": making sure that the Bill delivers what it is intended to, so that it does, in effect, what is on the tin. While I will not repeat word for word what I said, there are three technical points I want to address following on from Committee, for the benefit of the House today.

First, is this Tory language being inserted really a sort of Trojan horse, ready to pounce on the unsuspecting Minister in the Labour Government once they have welcomed it? No. In *Getting Britain Moving: Labour's Plan to Fix Britain's Railways,* published during the campaign, the then Shadow Secretary of State said in the foreword:

"We need a modern rail system—with improved services for passengers and better value for money for taxpayers—to serve as the backbone of a modern Britain".

Later, she said:

"Labour's challenge is to put our rail system back on track to sustainable growth and improvement".

This was followed by:

"Labour's vision is to deliver a unified and simplified rail system that relentlessly focuses on securing improved services for passengers and better value for money for taxpayers".

Indeed, in just the foreword alone, there are eight references to either "improve", "improving" or "improved services", not to mention countless others in the rest of the document.

The Government and Labour may argue that those references are about the whole suite of rail reform: it is only then that you will get a better service after everything has changed. However, after the election, at Second Reading, in response to questions, the Transport Minister in the Commons said:

"Let me begin by dealing with the issue of public ownership. According to the shadow Secretary of State ... we have no proof that it will improve outcomes for passengers, but that is clearly not the case. We know for a fact that this Bill will save tens of millions of pounds in fees, and if that is not a good start, I do not know what is".

A little later he went on to say:

"I am confident that public ownership will provide the right foundations to drive forward improvements for passengers".—[*Official Report*, Commons, 29/7/24; col. 1135.]

I could read out plenty of other quotes which all use the same terminology and the same rationale for this Bill, but, as I hope noble Lords can see, this is not about me inserting language into this debate: it is already there from the Labour Party, both in opposition and in government.

Secondly, are we not overlapping existing commitments? My noble friend made the inspired observation in Committee that similar references are made in the Railways Act 1993. He is, as ever, correct that the obligation to improve services is used elsewhere and is not altered by this Bill, so why cannot it, or a reference to upholding that element of the 1993 Act, be put in this Bill?

Thirdly, from a technical point of view, do we need a purpose clause given that this Bill is focused on how nationalisation will take effect? I have said before that some will question whether a purpose clause is needed, given that this is a tightly focused Bill. I will suggest later why it is needed in general terms, but, from a purely technical point of view, in Clause 2 the Secretary of State will have to take a view and make a judgment of the virtue or otherwise of a franchise when deciding whether temporarily to extend the said franchise. By inserting this purpose clause at the outset, it is a necessary barometer setting out exactly what this Bill is seeking to do and what should be the Secretary of State's overriding concern when making a decision.

This is not about stopping the Bill, nor is it about inserting assessments, reports or tests before anything can happen. There is no bureaucracy being created here, I am pleased to say to my friend the noble Lord, Lord Snape. It would not be costly—indeed, it would not cost anything—and I am not saying that it would lead to cheaper fares, although that is what people want to see and expect. It would not add anything onerous or new. As I said, this is language used elsewhere in legislation. It does not issue specific demands or expectations about cleanliness, the number of guards, ensuring decent toilets—or toilets that are open, which they absolutely should be. My amendment could talk about access and address some of the shocking things

we heard in Committee about the experience of disabled people when travelling, which I know will come up later. But it merely sets out what the goal of reform is, to ensure that everyone from top to bottom knows what the Government are doing this for. We wish them to succeed in improving the service. It is language that Labour has used, and which is used elsewhere in legislation, to make it clear what the Bill will deliver. I beg to move.

Lord Lansley (Con): My Lords, I support my noble friend on his Amendment 1 and will speak to Amendment 14 in my name. My noble friend very kindly referred to our debate on the same amendment in Committee. I note the reference in the Railways Act 1993 and that I see two merits in my noble friend's amendment.

First, it is always a good thing for Bills to be clear about their purpose. Unless I am mistaking something, this amendment accurately reflects the Government's purpose in this legislation. We may debate whether it will be successful or otherwise, but the purpose seems to be straightforward, and to have that in legislation is always helpful.

Secondly, because this Bill is essentially about amending parts of the Railways Act 1993 and nothing else, it is clearly subsidiary to the existing provisions of that Act, as amended. There are 10 general duties in that Act. The first is in Section 4(1)(zb),

"to promote improvements in railway service performance".

My noble friend has accurately reflected the first of those 10 general duties, one of which we will come to debate in a subsequent group in relation to my amendment.

It seems to me that one of the abiding issues for public agencies, often including government departments, is the multiplicity of duties that are imposed upon them and the risk of conflict between those duties. Here, for these purposes, that would be clarified if it were made very clear that this important change to the way in which the provisions of the Railways Act are structured and to be used is to improve railway service performance. To raise that general duty in importance above the others would be helpful in clarifying the balance which the Government and the other agencies should take. I support Amendment 1 for that reason.

Amendment 14 refers to the new subsection of Section 30 of the Railways Act, inserted by the Bill, which provides that the provision of railway services can be made only via

"a direct award of a public service contract to a public sector company in accordance with regulation 17 … of the 2023 Regulations".

Noble Lords will be aware of those regulations. Subsequently, the requirement for pre-award publication is disapplied by this legislation. However, paragraph (2) of Regulation 17 states:

"Where a competent authority makes a direct award of a public service contract under this regulation, the competent authority must, within one year of granting the award, and while ensuring the protection of commercially sensitive information and commercial interests, publish a notice on its website".

The information required about the contract and the contractor is then listed in the regulation. Is one year right? Is it desirable that we should, in any circumstances, wait so long to be given information about the direct award of these contracts, given that they are instrumental to an understanding of whose responsibility it is to provide passenger railway services?

I have discussed my amendments with the Minister, and I am grateful for his time and that of his officials. I hope he has had a chance to think about my amendment and that, if he will not accept it, he will at least be able to tell us that it will be the Government's intention to make new regulations quite soon, and in those new regulations to reduce to as little as three months after the granting of an award of a contract of this kind the publication of the notice and details. To assist later consideration, I say that it is certainly not my intention to press Amendment 14 when it is reached.

Lord Berkeley (Lab): My Lords, I will speak briefly to my Amendment 16, which is in this group. I am, as ever, grateful to my noble friend for sparing the time to talk about this. My amendment is designed to be helpful. It is designed from experience of previous railway legislation, in which we got bogged down in massive detail, with hundreds of amendments; we may get somewhere, but it takes longer.

Given the discussion that we had on a large number of subjects in Committee, and will probably have today on Report, I thought it would be useful to probe the Minister's view of how long it will be before what I call the definitive Bill is published. If that is going to take until spring, as some of us have been told, it might be useful to publish a draft Bill or a draft Command Paper that we could read several months before and have the opportunity to debate. That might help us resolve what the real problems are and how to deal with them, rather than on the Floor of the House for many days in Committee and on Report.

That is the purpose of my amendment, and I look forward to my noble friend's response. I am not going to press this amendment, but it will be interesting to hear what he has to say.

Lord Grayling (Con): My Lords, I will speak briefly on some of the themes that my noble friend Lord Gascoigne has been pursuing around reporting on performance. The Government seem to be a little reticent about being willing to accept amendments which increase reporting requirements. However, there is an important issue here: will public ownership do what the Government have promised it will and improve performance on the railways? I have my doubts about that. I think the challenges of the railways are much more complex and not about ownership but the complexity of our system.

I have a very simple question for the Minister. When you arrive in this House as a new Member, one thing that is very noticeable is the extraordinary level of expertise that exists on Benches on all sides. He brings a very considerable degree of expertise in this House after a long and distinguished career in the rail and transport sector. Can he set aside for a moment his ministerial hat and give us a professional judgment about the likely performance? To take a comparison, can he reassure us that the London Overground, for example, would perform better if run directly as a public body by Transport for London rather than

[LORD GRAYLING]
being contracted out to a private operator as it is at the moment? Can he reassure us on that, for the precedents that will exist elsewhere?

12.30 pm

Baroness Randerson (LD): My Lords, Amendment 1 is impossible to disagree with. It is fundamental to the survival of our railways that things improve. They have reached crisis point because of decades of under-investment, poor management and poor political decision-making. However, the presence of this reminder might be useful for the Secretary of State. It might be a statement of the obvious in some ways but useful for her because the big problem with nationalisation is that Governments in the UK have consistently failed to invest long-term. We can improve buses by investing within a couple of years, but when you invest in the railways it takes a couple of decades for it to make a big difference. That is the Government's challenge in renationalising the railways and the buck now stops with them.

On Amendment 16, I understand and strongly support the wish for thorough and transparent public consultation on the contents of the forthcoming rail Bill. I remind noble Lords of the example of the public consultation undertaken by the previous Government on their plan to close ticket offices. It led to a massive national outcry, forcing them to drop the plan, so I am a great believer in the impact of public consultations. The Bill that we are expecting in the near future is considerably more complex, but the problem with this amendment as written is that it extends the timescale that it all will take. It will take far too long before we get the legislation that we all hope will make the big difference. I will listen very carefully to the Minister. We hope that there will be some legislation by the end of next year at the very latest.

One way or another, the Minister has been associated with plans for the future of the railways and the creation of Great British Railways for some years now. There is surely nothing raised in our debates that he has not thought of, he has not worked on, or that would come as a surprise to him. He has been exceptionally generous with his time in cross-party discussions in the last couple of weeks. I urge him to explain when he replies what the timescale is likely to be and to assure us that there will be full consultation and that there is a grand plan.

Lord Moylan (Con): My Lords, we have had lengthy discussion on this Bill in Committee, and it is not my intention today to repeat unnecessarily the arguments and the evidence adduced during those debates. The longer that we went on in Committee, the clearer it became that this is a very bad Bill that has been accompanied by a degree of arrogance. I do not say this as a personal comment on the Minister; it is on the part of the Government in general. There has been a tone, sometimes said quite explicitly, of "We won so we can do what we want". That is an argument. It has some merit, but the merit that you would expect to find in an argument made in a playground.

Another type of arrogance has also been underlying our debates: "We want a better railway, but we are not going to tell you what it will look like. That's all going to come in the future—don't ask your pesky questions now. That will all be dealt with, and you have to trust us". That is not a basis on which the House should be passing this type of legislation. The amendment in the name of the noble Lord, Lord Berkeley, goes some way to address that latter point. We all have a common desire for a better railway, but we will no doubt disagree on the details of how it is to be achieved. My noble friend Lord Grayling said that these are very complex issues. I do not think that anyone would disagree.

Therefore, on the prospect of having the Bill published in draft for pre-legislative scrutiny, I disagree with the noble Baroness, Lady Randerson. I do not think that will add materially to the time taken before legislation is enacted because it is likely to produce a better Bill when it eventually arrives in your Lordships' House, one that can go through faster and be implemented better with better outcomes. It is the outcomes that we are interested in, not a particular timescale, although like her I will hold the Government to their undertaking that a Bill will come forward within 12 to 18 months.

It is more important to get the outcome right than to worry about a few weeks here or there, which is as much as we would be discussing in relation to the amendment tabled by the noble Lord, Lord Berkeley. I am deeply disappointed that he is not going to press it to a Division as I would be very tempted to support it if he did. However, I expect and hope that the Minister, when he stands up, can satisfy the noble Lord, Lord Berkeley, by saying that there will be some sort of pre-legislative scrutiny of the very large and complex Bill that he is expecting to bring before your Lordships' House in the next 12 or 18 months, to use his phrase.

The amendment in the name of my noble friend Lord Lansley is very good and commends itself. Like him, I would like to hear what the Minister says in response. I note that my noble friend does not intend to press it to a Division.

Amendment 1, tabled by my noble friend Lord Gascoigne, is indispensable. A number of things are missing from this Bill. A number of important parties have been wholly excluded. One of them, for example, which we will come to later in debate, is the staff. There is no reference to the staff in this Bill. We take for granted that they will be TUPE-ed. That basic legislative cover is there and does not need to be stated. They will not lose their jobs as a result of this but will be TUPE-ed over. However, has any consultation been carried out with the staff? You would expect that normally, would you not? Do they want to change their employer? Do they want to be working for the Government? They may all say yes, but one would have thought that in an undertaking such as this the Government would have bothered to ask them. There has been no consultation with the staff.

The other glaring omission from the Bill is, of course, the passenger. It is a passenger railway services Bill, yet it says nothing at all about the passenger. My noble friend Lord Gascoigne is attempting to put this lacuna right and to put the passenger back at the head of the Bill, as the driving force of what the Government are trying to do and to require Ministers to test their actions under this Bill against the standard of whether it will improve matters for the passenger. That is why,

if my noble friend intends to divide the House and seek its opinion on this matter, I recommend that we support him.

The Minister of State, Department for Transport (Lord Hendy of Richmond Hill) (Lab): I thank the noble Lords, Lord Gascoigne and Lord Moylan, for Amendment 1. I absolutely support the idea that the Government should be clear about what the railway is for and what we want it to achieve. Far too many conversations in this industry are about tracks, signals and trains and how the railway works—or, in many cases, does not work so well. There needs to be much more focus on what the railway is for, but you can do that only if the organisation fundamentally works.

I am clear that when we establish Great British Railways, we should set out a clear statement of purpose, and we will set out a proposal for this statement of purpose in the consultation we will launch ahead of the substantive railways Bill. I am also very clear about the purpose of the Bill and the Government's wider plans for the railway. Improving the performance of passenger services is clearly a big part of that purpose, but it is not and cannot be the only purpose. The Secretary of State has set out six key objectives against which she expects the railway to deliver. In summary, the railway should be reliable, affordable for passengers and taxpayers, efficient, of suitable quality, accessible and, of course, safe. She and I are reminding senior railway leaders of these objectives very clearly and very often. I expect that to carry more weight than a statement of purpose in a Bill that, if we are honest, might not be read widely by those on the front line of running the railway. Given the range of objectives that the Government wish to meet, I would not support the idea of singling out one objective, even a vital one, and placing it in this Bill.

Turning to the specific wording of the amendment, which is about performance, the easiest way to improve the performance of passenger railway services would be not to run so many of them, and to try to run fewer freight trains. It would be much easier to make trains run on time if the railway were less congested. Of course, I do not advocate that as a solution, but it illustrates the point that trying to reduce the Government's objectives for the railway to a single purpose might be counter-productive. I hope that my remarks will have reassured the noble Lord that I am entirely on board with his underlying suggestion that the railway needs a clear statement of purpose, but I am not convinced that it needs to be enshrined in primary legislation right now, nor that it should focus exclusively on the performance of passenger services.

The noble Lord, Lord Grayling, asked me to set aside my ministerial hat and opine about the performance of the London Overground and the type of operator that operates it. I shall not set aside the hat, but I will say that one of the differences with the Overground is that it operates within a consistent and easily understood fares structure, which has enabled a significant increase in patronage over the period it has been operating. We must change the railway fares: there are far too many of them and they are deeply confusing. But one of the reasons for public ownership of the main network is to ensure that we have control of the operation and that there is enough information to be able to do that.

I will not trouble to respond to the point about arrogance and the Government acting, according to the noble Lord, Lord Moylan, as if we won the election, because it is rather self-evident that we did. I will remind him that this measure is very popular with the public, and every recent opinion poll suggests that a very large majority wish to see the railway in public ownership. We will return to the matter of the staff, but he acknowledges that the transfer of undertakings regulations will apply, and they do involve some consultation. But if you went to Waterloo station today and asked the staff there whether they want to change their employer, most of them would tell you that they have changed employer so often that some of them cannot remember who their employer is, and do not much care. The most frequent description of railway employment that I get when I speak to railway men and women—

Lord Moylan (Con): Are not the staff of Waterloo station already employed by Network Rail?

12.45 pm

Lord Hendy of Richmond Hill (Lab): I was referring to the people who drive and operate the trains. There are more of them on Waterloo station than there are employees of Network Rail.

To finish what I was saying, most people on the railway refer to their employer and their work as "the railway", which tells you something about the way in which the franchise system has dealt with loyalty to employment.

I thank the noble Lord, Lord Lansley, for Amendment 14 and the discussion we had in the last few days. He is right that Regulation 17 requires the publication of a specified list of information within one year, following the direct award of a contract, where that information has not already been published. However, we expect the majority of the information included in Regulation 17 to have already been published well before one year has expired. That is because Regulation 23, which covers post-award publication, requires a competent authority to publish a similar set of information within two months of contract award. The information which must be published is set out in Schedule 2. Regulation 23 also allows interested parties to request the reasons for a direct award within one month of the post-award publication. I agree that a year would be a very long time to wait before the information is published. However, I do not believe that the noble Lord's amendment is needed because similar and, in many respects, more detailed publication requirements are already provided for in Regulation 23. I urge him to withdraw the amendment, and I note that he does not intend to press it.

I note that Amendment 16, from my noble friend Lord Berkeley, is somewhat novel constitutionally, as it would constrain parliamentary sovereignty by imposing limitations on when primary legislation relating to the railways could be introduced. I am very happy to confirm to my noble friend, to the noble Baroness, Lady Randerson, and to others who mentioned it that the Government intend to set out their key proposal for the railways Bill in a consultation document that

[Lord Hendy of Richmond Hill]
I very much hope will be published before the end of this calendar year. This will give all interested parties, including Members of your Lordships' House, the chance to review and scrutinise it and to feed in their views before the Bill is introduced later in this parliamentary Session. The Government do not intend to publish a draft of the Bill before it is introduced, as I would expect that to delay progress in implementing the Government's planned reforms.

It is now more than six years since the previous Government declared that the structure of the railways is

"no longer fit to meet today's challenges"

and appointed Keith Williams to lead his review. Passengers, freight and everyone on and who uses the railway have waited too far long already to see meaningful change. I have to say that my own experience is that the previous Government went through pre-legislative scrutiny in a desultory manner, and frankly, we all concluded that they did not intend to bring a Bill before either House any time soon.

While the Government are keen to hear the widest possible range of views on their proposals, including the noble Lord's, I do not on this occasion support the idea of publishing a draft Bill. It also does not seem necessary, given that noble Lords can submit their views during the consultation I have committed to and will be able to debate the Bill once it is before the House. I am of course happy to meet with my noble friend Lord Berkeley and other noble Lords at the time of the consultation launch to seek their views, as we have done during the course of the Bill before us, if that would help persuade him to withdraw his amendment.

Lord Gascoigne (Con): My Lords, I am grateful to the Minister for his response, to all those who spoke in this relatively short debate, and to those who supported my Amendment 1. I am pleased to see that the Government Chief Whip is on the Front Bench, and I am conscious that many people have sat through days of Committee and we are about to head into recess, so I will not detain noble Lords for long.

As I said in Committee and earlier, I want to make the case for why this amendment is not against the spirit of the Bill. It does not stop it, and I want to ensure that everyone knows that these changes are not being done through ideology and that they are focused on the passengers. Effectively, it forces the department, Ministers, civil servants and everyone to deliver this mission and this mission alone. Otherwise, we will enter into what President Ronald Reagan called "trust me" government.

Without boring on for too long, and to repeat the point I made, Labour has used this language repeatedly, in opposition and in government, so I am still not sure why the amendment cannot be included, especially given that the Minister, who I respect greatly, warmed to the sentiment behind it and understands it. As I said, we risk entering into the world of having to trust the Government that that is the intention. Despite those words of reassurance, the Bill still needs something on the face of it—Ronseal, like I said. With that, I would like to test the opinion of the House.

12.50 pm

Division on Amendment 1

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Amendment 1 agreed.

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1.02 pm

Clause 1: Prohibition on franchise extensions and new franchises

Amendment 2

Moved by ***Lord Moylan***

2: Clause 1, page 1, line 12, at end insert—

"25B Termination of existing franchise agreements

(1) The Secretary of State must terminate franchise agreements for default in accordance with the terms of the agreement as soon as it is possible to do so.

(2) The Secretary of State must assess and rank existing franchise agreements according to performance criteria established after consultation with relevant stakeholders.

(3) Subject to subsection (1), the Secretary of State must only terminate a franchise agreement pursuant to a break clause if—

(a) there are no other franchise agreements which are performing worse under the criteria in the list referenced in subsection (2), and

(b) the Secretary of State is satisfied that provision of the services by a public sector company will improve existing service provision.

(4) In this section, "break clause" means a contractual provision in a franchise agreement which entitles the Secretary of State to terminate the franchise agreement before the end of the franchise term by notice without reason."

Member's explanatory statement

This amendment would require the Secretary of State to terminate franchise agreements for default and to nationalise the worst performing operators first, while enabling services that are currently working well to continue.

Lord Moylan (Con): My Lords, in the course of debate at Second Reading and in Committee, numerous noble Lords drew attention to the fact that the manner in which the Government are approaching the termination of franchises is going to result in some very perverse outcomes. Admittedly, most of the franchises still in existence are relatively short, but the Government—with a view to saving money, as far as I can make out—are determined to terminate them in the order in which the contract falls in.

[LORD MOYLAN]

That has the bizarre consequence that some of the most popular, effective and highly rated franchises are going to be terminated early at the head of the list, while those that are most reviled by the public—I am not going to mention any names in the course of this brief speech—and regarded as being hopeless at what they do will have the longest continuation in existence. It is of course the case that if they fell into default, the Government could terminate them early without expense, but we heard from the Minister earlier that none of them is as bad as that. None the less, some of them are very bad indeed.

This case was made most compellingly at Second Reading by the noble Lord, Lord Browne of Ladyton, but it has been made by other noble Lords as well. I think there is strong demand among noble Lords for the worst franchises to be brought to the head of the queue. My Amendment 2 would have the effect of bringing that about: the worst-performing operators would be terminated first, while services that are currently working well would be enabled to continue. Amendment 10 in the name of the noble Baroness, Lady Randerson, has a similar intent and effect. It is drafted differently—it is expressed as providing flexibility to the Government, whereas mine is perhaps a little more mandatory in its tone—but they are similar in various ways.

With the time the Government have had for reflection on the strength of feeling in the House about this issue, they should be able to come forward and say something now that would alleviate noble Lords' concerns. Otherwise, I will be interested in testing the opinion of the House on my Amendment 2.

Baroness Randerson (LD): My Lords, I will speak to Amendment 2, and to Amendment 10 in my name and that of my noble friend Lady Scott. Amendment 2 was the Liberal Democrats' Amendment 1 in Committee, requiring the Secretary of State to terminate franchises for default and to nationalise the worst-performing operators first, while allowing train operating companies that are currently working well to continue.

The Minister explained to us, both in this Chamber in response to our amendment and in private discussions, that this cannot be done without major costs to the taxpayer. The existing contracts have been written and signed by the previous Government so as to make it difficult to penalise defaulters. We accept what the Minister says and we are not prepared to cause the taxpayer greater costs than necessary in this process. So, having listened and learned, we turned our amendment around and wrote Amendment 10, which simply proposes giving the Secretary of State the freedom to enable services that are working well to have an extension to their franchise and to continue for a period of time suitable to the Government. Can the Minister explain to us the Government's approach to this and whether existing contracts could be extended, as our amendment suggests?

Our view is that the Government are going to be hard pressed in dealing with the numerous parts of the rail systems that are failing, and they need to allow themselves a bit of space by letting the bits that are working well continue until they get around to the overall process of nationalisation. The Government's whole approach has been nationalisation gradually rather than one big effort, and I hope this amendment works with the grain of their intentions.

Lord Liddle (Lab): My Lords, from listening to the noble Baroness, Lady Randerson, I think there is a misunderstanding about what the Government are trying to do. As I understand it as a humble Back-Bencher, we are trying to get rid of the franchising system because, as it is, it does not help us to run a railway in the way we want to. In his opening remarks the noble Lord, Lord Hendy, said that one of the points is to have a simplified fare system that will greatly raise the prospects of increasing passenger revenue and passenger use of the railway, because the fare system is an obstacle to that. We cannot do that while we have the franchise system, so we have to get rid of the franchise system.

If there is any fault in what is happening at the moment, it lies on the opposite side of the Chamber and with the Transport Ministers who gave operators such as Avanti the very loose targets that they have to meet. I advocate that we should be tougher with Avanti, have it in every month, and if things have not improved, we should take the risk of taking the franchise off it and saying, "See you in court". That would be my approach, but the problem is what the Conservatives have left us with, and that is very difficult to solve. I do not support this amendment, which would result just in extending the existing system.

Lord Young of Cookham (Con): My Lords, I am glad I let the noble Lord, Lord Liddle, speak before me, because I listened very carefully to what he said at Second Reading, when he made a powerful speech in favour of pragmatism. I think that was an expression that he used; I see him nodding in assent. Pragmatism is the reason behind Amendment 10. It is a question of whether we let ideology trump pragmatism. The amendment is very similar to one I proposed in Committee. It is less ambitious—the one I proposed in Committee would have allowed the franchise to be renewed for a longer period than 12 months—and therefore one that is it easier for the Minister to accept.

There is an additional reason that has not been mentioned so far, which is that there will be pressure within the Minister's own department to absorb the franchises as they fall due. I think his department would welcome the flexibility under Amendment 10 to enable an existing franchise to be extended for a further 12 months, but no longer. The Minister will get his way: all the train operating companies will be nationalised and all the franchises will come to an end. What we are arguing about is some flexibility. If a franchise is being run perfectly competently, if the existing company would be happy to run on for another 12 months, and if the department is having to recruit more civil servants to absorb the existing ones, I honestly cannot see why the Minister has set his face against Amendment 10. If there is the word "resist" in his brief, perhaps he will reflect on whether a little bit of flexibility would be in order.

Lord Snape (Lab): My Lords, I expressed some sympathy with this amendment, or an amendment similar to it, in Committee. Without repeating anything

I said in Committee, I put it to my noble friend the Minister again—having said one thing, I now contradict myself—that it does not really make any sense to terminate instantly or as soon as it runs out, which is pretty close to instantly, a franchise such as Greater Anglia, which has generated enormous public support for the efficient way that it has run its train services, or c2c, the line from Liverpool Street to Southend, which recently scored a 94% approval rate as far as its passengers were concerned, although I imagine they, like most other sensible people in this country, think the franchising system has been pretty disastrous for the railway as a whole. Coincidentally, those two franchises run out fairly quickly. Although the noble Lord who speaks for the Opposition would not mention specific franchises for some reason, I will. I have been tormented by Avanti since the last Government were unwise to give it the franchise around 2017 and take it off Virgin, for no apparent reason. The last Government then gave Avanti a nine-year extension, despite all the complaints from both sides of your Lordships' House. Does it really make any sense to terminate franchises that have enormous support from the travelling public, two of which I have just mentioned, and not take any action for another few years—about seven years or so—for companies such as Avanti? Surely there is some flexibility here that my noble friend could press.

If there are good reasons to terminate franchises then surely those reasons, good or bad, have been realised as far as Avanti's performance is concerned. Perhaps my noble friend can tell us exactly how much it would cost in public funds to dispose of Avanti's services and how the contracts were drawn up and interpreted in the first place, when a company like that can get away with the shoddy service that it provides daily.

1.15 pm

Lord Hendy of Richmond Hill (Lab): I thank the noble Lord, Lord Moylan, and the noble Baronesses, Lady Randerson and Lady Scott of Needham Market, for their amendments in this group—Amendment 2 and Amendment 10 respectively. The amendments seek to test the Government's approach of transferring services as existing contracts expire. I also thank my noble friend Lord Liddle for saying that the intention is to get rid of franchises and for explaining why. He is right. I should also say that I and the Government do not believe that we should either pay compensation for termination or keep paying fees to owning groups of train operating companies when we do not need to.

I am happy to begin with a reassurance about the Government's position. We will not hesitate to take decisive action if Avanti, CrossCountry or any other operator's poor performance means that the contractual conditions that allow for early termination are met. The contracts we have inherited from the previous Government make it far too hard to get rid of an underperforming operator, but if we have the opportunity to put passengers out of their misery by ending a failing operator's contract early and bringing their services into public ownership, we will do just that. In those circumstances, we will not wait for those contracts to expire.

The noble Baroness, Lady Randerson, and the noble Lord, Lord Young, asked whether the public sector operator will have the capacity to take in services from a failing operator whose contract has been terminated early, at the same time as other planned transfers. I reassure them that current contracts allow sufficient flexibility to accommodate this. All but two of the current contracts with private operators give the Secretary of State significant discretion to select an expiry date within a range of possible dates specified in each contract. The Secretary of State simply has to give the outgoing operator a minimum of 12 weeks' notice of expiry. This means that if a contract can be terminated early for poor performance—be it by Avanti, CrossCountry or any other operator—the Secretary of State will be able to adjust the planned expiry dates of other contracts if necessary to ensure that the failing operator's services can be transferred as quickly as possible without overwhelming the public sector operator. Of course, we also need a programme of return that is reassuringly steady for the good management of the operations as they come back into public ownership. I hope those observations will be sufficient to persuade the noble Baronesses not to press their Amendment 10.

In response to the noble Lord, Lord Moylan, my previous comments address the first part of his Amendment 2. The Government will not hesitate to exercise its contractual rights if an operator's poor performance means that the conditions for early termination are met. The Secretary of State, my noble friend Lady Blake of Leeds and I have all made the Government's position on the matter very clear and on the record. There is no need for a statutory obligation to cover this point.

The noble Lord knows very well that I cannot accept the remainder of his amendment because it would substantially delay the programme of transfers to public sector operation. As the noble Baroness, Lady Randerson, said, thanks to decisions taken by the previous Government, the two most poorly performing operators currently have the longest contracts, with terms that make it very difficult to terminate them early for poor performance. I cannot say quite what the cost is, but I will write to my noble friend Lord Snape to tell him the rough quantum. In fact, the amendment from the noble Lord, Lord Moylan, would mean it would be impossible for the Secretary of State to exercise any contractual break clause, as defined in his amendment, until after the worst-performing operator's contract had ended. That could be as late as October 2027, so it is difficult to see this as anything other than a wrecking amendment. I hope the noble Lord will prove me wrong by withdrawing it.

Lord Young of Cookham (Con): Before the Minister sits down, can he just clarify something that he said? Is it the case that under new Section 30A inserted by Clause 2(3) he has the flexibility already to renew two of the franchises mentioned by the noble Lord, Lord Snape, by using that particular paragraph in the Bill—namely, that he

"is satisfied that it will not be reasonably practicable to provide"

the services in any other way?

Lord Hendy of Richmond Hill (Lab): Is that the two worst-performing franchises or two others?

Lord Young of Cookham (Con): Any franchises. Can he use that section to renew the satisfactory franchises, because it would "not be reasonably practicable" to do so otherwise, and take them in-house?

Lord Hendy of Richmond Hill (Lab): I thank the noble Lord, Lord Young, for his intervention. I think he is right, but he will forgive me if I consider it further and write to him.

Lord Moylan (Con): My Lords, with the leave of your Lordships' House, I may speak for slightly longer than would be normal because I would like to address a comment made by the noble Baroness, Lady Randerson, about my Amendment 2. She said that it was the same as Amendment 1 tabled by the Liberal Democrats in Committee. In fact, that is only superficially the case. While proposed new Sections 25B(1) and (4) are the same as in the amendment tabled in Committee—I think, by the noble Baroness, Lady Scott of Needham Market—the meat in the sandwich, so to speak, has changed. There would be no additional cost in early termination fees as a result of this amendment as drafted because the franchises would be terminated not as they fell in but in order of worst first, even though that might take a little longer.

I listened very carefully to what the Minister said. Although the Minister found it helpful, the intervention from the noble Lord, Lord Liddle, was, to this side of the House, slightly infuriating. Throughout the debate in Committee there was a constant jumping between asking us to please focus on this narrow, technical Bill to then, when we wanted to talk about the narrow, technical Bill, being told that we should be talking about the great, big, wonderful Bill that will be coming in 18 months, because that is really what this is all about. But we cannot talk about that Bill because we have not seen it—indeed, we are not even going to get to see it in pre-legislative form. So although the Minister found it helpful, it illustrated the constant problem we have had in dealing with the Government on this measure.

For that reason, I am afraid I am not sufficiently satisfied with the Minister's comments in respect of my Amendment 2 and I would like to test the opinion of the House.

1.23 pm

Division on Amendment 2

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Amendment 2 agreed.

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1.34 pm

Clause 2: Future provision of services

Amendment 3

Moved by ***Lord Lansley***

3: Clause 2, page 2, line 6, at end insert—

"(1A) In section 4 (general duties of the Secretary of State and the Office of Rail and Road) omit paragraph (1)(d)."

Member's explanatory statement

This amendment probes when - and in relation to which services - Ministers expect to meet their duty to promote competition.

Lord Lansley (Con): My Lords, the purpose of Amendment 3 in my name is to explore the question of when and under what circumstances it is the Government's intention to meet their duty in Section 4(1)(d) of the Railways Act

"to promote competition in the provision of railway services for the benefit of users of railway services".

It was prompted by a very brief exchange that took place in Committee, where the Minister confirmed that it is not the Government's intention to remove that duty. However, it is clearly their intention, in relation to passenger railway services, very substantially to reduce competition and perhaps to exclude it altogether. There may well be other areas of activity in the provision of railway services which are open to competition, and I want to examine where those should be. Of course, I approach this not with the intention that the duty to promote competition should be removed from the Act, but with the view that it should be exercised.

I am in favour of competition. I might say, in this context, going back many years, that where privatisation is concerned, we have found that competition between private organisations yields benefits. In the railways, in some circumstances, we have found that the absence of competition has been at the heart of the problem: that the performance has not been exposed to competition and therefore has not improved in the way we would have wished it to. So, competition works, privatisation does not necessarily work, but the combination of privatisation and competition, in my view, has worked in the past. However, we are not here to discuss privatisation; we are here to discuss competition, and there is a continuing role for competition, in my view.

I am not planning to talk at length about Amendments 13 and 17 in this group, I will leave that to my noble friend on the Front Bench, but Amendment 17 is directly relevant. One of the principal opportunities for competition would be with open-access operators. In Committee, we touched upon but did not find out whether, and to what extent, it was the Government's intention to continue to permit open-access operators or indeed to promote them. In my view, promoting them can be a very effective way of stimulating competition and innovation, which are often—as Schumpeter would have said—very intimately linked together.

My contention in this amendment is very simple: to explore where competition will be available. Clearly, it can be done with things such as the provision of rolling stock and services to railways, and maybe, to some extent, in relation to rail freight. As far as passenger railway services are concerned—and we are dealing with that here—the Government's intention appears to be that every aspect of the passenger railway services should be subject to the "directing mind"—as the Explanatory Notes sets out. Therefore, it will be very difficult for there to be any substantial competition, except if that can be achieved by the role of open-access operators. I hope, when he responds to this debate, the Minister will be able to say they will have a continuing role, or even that they might be encouraged to bring the innovation and competition that would enable us to avoid the downside of a dominant provider.

We have seen this in other circumstances. For example, in France, the dominance of SNCF has led to abuse such as anti-competitive pricing or the overbooking of train paths to restrict competition from other providers. We do not want to see the dominance of public sector providers, on passenger railway services, to lead to that kind of abuse. Still less do we want to see monopoly activity on the part of public sector companies in passenger railway services lead to an elevation of the

[LORD LANSLEY]
interests of the companies themselves over the interests of the users of railway services. The general duty to promote competition is for the benefit of the users of railway services because, very often, they are the ones who most see the benefit of that.

I will just tease the Minister, finally, by saying that in this legislation he has the opportunity to move in the opposite direction to the fourth railway package under the EU's transport legislation. Here is an uncovenanted Brexit bonus for the Government, in being able to move in the opposite direction to the thrust of legislation in the European Union. With that teasing moment, I beg leave to move Amendment 3.

Lord Moylan (Con): My Lords, I rise to speak to Amendments 13 and 17 in my name, but also to respond to my noble friend Lord Lansley in relation to Amendment 3. We come now to the heart of a considerable confusion that exists in the Bill, one that the Government have done their very best to avoid and that needs to be flushed out.

My noble friend Lord Lansley refers to competition. In fact, he refers to the abusive practice by monopoly railways in France. That, of course, is in response to European Union legislation, which has had to mandate access to competition in order for it to flourish in the European Union. It is going in the direction that we went in, somewhat later than us. We are now going back to the Attlee Government, basically, and moving away from that. It is a Brexit bonus, as I think I said in an earlier debate.

The matter is made worse because the Government have not been clear about their view on competition. It has been made much worse by the Government's confusion and blank refusal to address the question: who is going to make the decisions about competition? Who is going to decide, in relation to open access, which providers will have access to the service? I refer, as I was encouraged to do by the Minister, to the Labour Party document *Getting Britain Moving*. In its section 7 on "The role of open access", beginning on page 22, it says clearly:

"The ORR will continue to make approval decisions on open access applications",

but that is not confirmed by the Minister. Instead, we have the spectre of Great British Railways making open access decisions. That appears to be part of the great controlling brain: one of its functions is that it would make those decisions about open access. But in doing so, it will be making decisions directly about competition with itself.

We are very concerned that the sort of abusive monopoly activity seen in France, which my noble friend has referred to, is exactly what we would be exposing ourselves to if we allowed this measure to go through without having appropriate safeguards in place in advance. That is the thrust of Amendment 17, which simply calls for a report. In Committee the Minister made fun of me for calling for so many reports, but he should understand that we are doing this as a way of drawing attention to an issue of serious concern without trying to hobble or wreck the Bill. He has not given us any assurance in response. He has taken no notice of our very genuine and serious concerns.

Amendment 13 relates to a similar topic, in relation not to open access for passenger railway services but rather to access for freight services. They too compete, so to speak, for paths on the railway; they need access to the railway if they are to operate. The previous Government had an informal and non-statutory target of seeing the volume of freight on the railways increase by 75% by 2050 from a base of, I think, two years ago. This amendment would effectively put that target into the Bill.

Nobody in the Labour Party, either in opposition or in government, has resiled from or rejected that target. If anything, I think they want a more exacting target. The Minister, if pressed, would probably say that it was a perfectly respectable target, one that he would want to sign up to, so there should be no objection to seeing it in the Bill. It would give some assurance that Great British Railways, in its operations, would not simply favour its own activities at the expense of freight operators. Ideally, we would also want some sort of assurance that it would not favour its own passenger activities at the expense of open access operators.

1.45 pm

I grant that the Government have given an assurance, which I accept, that existing open access operators will be allowed to continue under the new Great British Railways regime, but they have contracts to do so only for specific periods. We could easily be contemplating, in a number of years, a railway that was a total monopoly, one in which there was no open access for passenger services and none of the benefits that those very popular services have brought to the railways. It could also be one in which freight was being, so to speak, shunted to one side to give priority to Great British Railways and its own passenger services. It would be different if the ORR were guaranteed to be doing the allocation of paths, but we have no guarantee of that at all because the Labour Party document I refer to has no statutory basis.

Again, we suffer from the point I made in the debate on the previous group in relation to the speech by the noble Lord, Lord Liddle. We are being pushed around between what this Bill says and being told that we cannot ask questions—it is all going to be dealt with in a Bill we cannot see. It is not good enough; we need the assurances now. It will very much be my intention to seek the opinion of the House on Amendment 13 if the assurances I receive are not satisfactory.

Lord Snape (Lab): My Lords, I rise to say a few words on Amendment 13 and the future of rail freight once this legislation becomes law.

Traditionally, on nationalised rail in the past, freight was often seen as the poor relation. Trying to attract people to the freight side of the former British Rail, particularly getting management involved, was much more difficult than the passenger side. There was a bit of glamour about fast passenger trains that the freight network never shared. My noble friend the Minister spoke in Committee about the Government's intention to increase rail freight by 75% by 2050. I would be grateful if he could provide some clarification as to how that will be done.

I look at railway operations from time to time on the website OpenTrainTimes—I am a devotee, and this is a terrible confession to make. I note how close to the timetable rail freight adheres these days, which was not necessarily true in the past. There was a welcome introduction of relief from access charges for new business, as far as rail freight was concerned. Can my noble friend tell us whether there is any intention to extend that? Indeed, we should go further. In Committee I pointed out the imbalance in taxation in this country that makes it cheaper and more attractive to buy a fleet of lorries and put them on our road network—where, of course, the infrastructure is paid for out of general taxation—than it is to run rail freight, as Royal Mail has, deplorably, just demonstrated.

While I would not seek to pin down my noble friend the Minister as far as future taxation policy is concerned, I certainly hope he can press Treasury Ministers to see whether something can be done in future to rectify that imbalance between rail and road. In speaking to Amendment 13, I hope that my noble friend can give me some reassurance as to how this envisaged increase in rail freight—welcome though it is—will be implemented.

Baroness Randerson (LD): My Lords, these three amendments deal with crucial aspects of the running of the railways and they are issues that we on these Benches probed in Committee. I certainly anticipate that, when we get the full Bill next year, there will be long and vigorous debate and discussion about them and I have serious reservations about the possible plans. However, we on these Benches accept that, however concerned we are about freight or open access or competition, the Government have chosen to write a very tightly drafted Bill and to separate ownership from operational organisation in that Bill and it is not appropriate to try to write, in a rather haphazard way, the big, final Bill on Report in this House at this time.

Lord Hendy of Richmond Hill (Lab): I thank noble Lords for their amendments in this group. In response to Amendment 3, from the noble Lord, Lord Lansley—and I thank him for our discussion a few days ago—I will highlight two important ways in which this Bill promotes competition.

First, there will continue to be huge opportunities for competition between businesses in the supply chain which publicly owned operators and Network Rail will continue to depend on. I was speaking this morning at the Railway Industry Association's conference and it welcomed clarity about the Government's intentions with enthusiasm, because it knows as well as we do that the railway, after six years of being promised reform, needs to understand what reform might look like in order for its businesses to prosper. Public ownership and our plans for GBR to provide long-term strategic direction for the whole railway will give greater clarity and certainty to businesses in the supply chain and so will support healthy competition.

Secondly, in relation to competition between train operators, the Bill preserves the existing arrangements for open-access operators. Open-access services are the only source of meaningful competition between operators on today's railway, and this Bill makes no changes to the way in which open-access applications are treated by either Network Rail or the independent regulator, the Office of Rail and Road.

Having set out how the Government's approach is consistent with a duty to promote competition, I also note for completeness, referring to the propositions of the noble Lord, Lord Lansley, that the Section 4 duty applies to the Secretary of State only when she is exercising certain functions under the 1993 Act. It does not apply to the exercise of her functions under Sections 23 to 31, which are the franchising functions that are amended by the Bill. As such, there can be no question of this Bill impairing the Secretary of State's ability to comply with the Section 4 competition duty.

Turning to Amendment 17, tabled by the noble Lord, Lord Moylan, open-access operators are a valuable part of the system and will remain so following this short Bill. Looking ahead to the wider railways Bill, we see a continuing role for open-access services where they add value and capacity to the network. I will say more in a moment about how their interests will be protected. In the meantime, I reiterate that the current short Bill has no impact on open-access operators, the services they provide or the process by which they can secure rights to operate on the rail network. For this reason, the report required by this amendment would serve absolutely no purpose; the Bill plainly has no impact.

Requiring this report—not just once but every single year in perpetuity—would simply place an additional reporting burden on Network Rail and the Office of Rail and Road, and potentially also on open-access operators themselves if they were each required to provide information about their services to inform each report.

Finally in this group, Amendment 13 deals with freight. My noble friend Lord Berkeley is a staunch advocate of the rail freight sector and I hope that I can reassure him and the noble Lord, Lord Moylan, about the Government's intentions. The Government hugely value the rail freight sector and recognise the importance of its contribution in reducing congestion on our roads and in helping our transport system move towards net zero.

I entirely agree that the Government's plans for reform under the railways Bill must ensure that Great British Railways promotes growth in the freight sector and must provide suitable protections for freight operators. We will set out our detailed plans in the consultation I have already referred to as soon as we are able to.

In the meantime, I am very happy to reassure noble Lords on three fronts. First, our proposals for the railways Bill will include a statutory duty on Great British Railways. I have reflected carefully on the remarks of the noble Baroness, Lady Randerson, in Committee, and the remarks just made by my noble friend Lord Snape, and as a result I now confirm that this duty will be not merely to enable the growth of rail freight but to promote it. My noble friend Lord Snape referred to variable access charges. I very much agree that we would seek more of that in the future to encourage more freight traffic.

Secondly, the Secretary of State will set a specific freight growth target for Great British Railways. I cannot confirm today the specific detail of what that target will be, but we will set out our plans for that in due course.

[Lord Hendy of Richmond Hill]

Thirdly, I thank my noble friend Lord Berkeley in particular for his comments on the importance of a fair system for the allocation of access. As discussed with my noble friend last week, I have confirmed today that there will be consultation on the Government's reform proposals, and that the consultation will set out the proposed role for the Office of Rail and Road in the access decision-making process. Any changes will then be set out in the railways Bill itself, so noble Lords will have ample chance to debate these matters before changes are implemented.

I also reassure noble Lords that our proposals for allocating capacity and granting access to the network will include safeguards to ensure that both freight and open-access operators continue to be treated fairly. As I have already said, I would be delighted to meet with my noble friend and other noble Lords with an interest once the consultation has been published, so that we can discuss the details and continue the very helpful conversations we have started here.

Turning to the specifics of the noble Lords' Amendment 13, the statement required by this amendment would be very short and sweet. There is no need to wait six months after Royal Assent for me to provide this statement; I can give it to the noble Lords now. The Bill is narrow in scope. Its purpose is simply to allow the Government to transfer the operation of franchised passenger services to the public sector. It does not make any changes to the arrangements under which freight services operate. This means that the Bill will not, and cannot, have any adverse impacts on the freight sector or on freight growth.

I have clarified the impacts of the Bill on competition, open access and freight, I have confirmed that we will soon publish a consultation document setting out our proposals for the railways Bill, and I have reaffirmed that these proposals will consider appropriate protections for freight and open-access operators. In light of what I have said, I hope that noble Lords will agree that there is no need to pursue their amendments further today.

Lord Lansley (Con): My Lords, I am very grateful to all noble Lords who have taken part in this short debate. It has raised a number of important issues, and I am grateful to the Minister for the clarity that he brought to the subject—partly from my own point of view, in understanding how the legislative provisions work, which is always helpful. I have to confess that I know much less about railways than the noble Lord, but I try to find out how legislation works, since that is part of our job, and what he said was very helpful.

What he had to say about there being no changes to the legislative provisions and the arrangements in relation to open access was important and I will come back to that in a minute.

I do not think there is any merit in pressing the amendment now, because when we come to look at the role of Great British Railways in the major Bill to follow, we will look at issues such as the one my noble friend raised—the relationship between Great British Railways and the control of train paths. That is exactly the problem that occurred in France, and I think my noble friend Lord Moylan also discussed the abuse of a dominant position. We will need to look at how that kind of scrutiny and competition can be sustained, notwithstanding the monopoly aspects of Great British Railways. However, in light of all those helpful points, I beg leave to withdraw Amendment 3.

Amendment 3 withdrawn.

2 pm

Amendment 4

Moved by ***Lord Lansley***

4: Clause 2, page 2, line 12, leave out "only"

Member's explanatory statement

This probing amendment seeks to understand the circumstances where Ministers may provide services other than by direct award of a public service contract to a public sector company.

Lord Lansley (Con): My Lords, this is the last group on which I plan to speak. My amendment was prompted by a debate in Committee that gave rise to the question of how the new legislation would work. We have established, including during the previous group, a number of things that do not change, including the licensing of railway services and the prohibition on operating without a licence. The relationship with open-access providers therefore does not change, since they can make applications to the Office of Rail and Road for that purpose—I am paraphrasing, but that is, broadly speaking, how it works.

Where we have a change is in the process for franchising, which is to be removed. The Government have chosen to change the franchising provisions in the Railways Act, in Section 30 et cetera, and to replace that text with what we see in the Bill. I really want to explore this question: to what extent will all designated railway services be brought under Section 30, from new Sections 30A to 30C? I want to explore the consequence of the use of the word "only" in that provision. It says that a service must "only" be provided by

"a direct award of a public service contract to a"

wholly owned public sector company. In effect, it will be wholly owned by the Secretary of State—not, as we have discovered, other public sector companies.

The removal of the word "only" would, in the way in which the text works, as far as I can see, create an opportunity for the Secretary of State to provide or secure the provision of services by routes other than the direct award under Regulation 17. Clearly, that is not the Government's intention. I will not return to the debate I promoted in Committee, but it would be good legislation to leave that option open to the Secretary of State, even if it were not the Government's present intention to use it, because they may find it valuable to be able to do so in future.

Let us look at a practical example. Imagine that the Government thought it desirable to say that a service such as the one from Fenchurch Street to Southend and Shoeburyness should form part of the Overground services under the operating control of Transport for London. As far as I can see, as things stand, if that service is designated under Section 23 of the Railways Act—the designation requirements—it will have to be run by a public sector company wholly owned by the

Secretary of State, unless it is the subject of an exemption under Section 24. In Committee, I think we heard the Minister say that the Government have no plans to extend the exemptions under Section 24. That raises another question for the Minister. Would he entertain that there may be circumstances in which it would be desirable to extend Section 24 exemptions? While London is a straightforward example, will the Government be open to that possibility, if it were a practical mechanism of securing the best operation of those services?

To what extent is the language of the Bill very deliberate, in that it requires that the Secretary of State may secure the provision of these services only through a direct award, but it does not say that the Secretary of State may provide or secure the provision of these services only by this route? I am making the distinction between "provide" and "securing the provision of". This is customarily seen in legislation as a distinction between a government department doing it itself and doing it by means of a contract.

Where in this does the Department for Transport's operator of last resort holdings company sit? Does giving an award of a contract to OLR Holdings Ltd constitute securing the provision of a service, or does it constitute providing the service? Is it regarded as part of the department for these purposes, or is it part of a wholly owned public sector company? There would be something rather odd now about treating it as part of a franchise agreement, since these franchises have already ended. Bringing it under a regime that is about the ending of franchise agreements seems odd.

My second example concerns East West Rail. We are not far away from the point when East West Rail will be running services itself on its new rail services. That will be very welcome—not least from my point of view, living in Cambridgeshire—when it reaches, as the Budget told us, all the way into Cambridge in due course. It will be running services quite soon in Oxford and Bletchley. It has not had a franchise; clearly, it will not now be given a franchise. It is a wholly owned public sector company. Is it the Government's intention that it will be brought within the scope of Section 30? If so, this is odd, as this is an arrangement for franchises, but it has never had a franchise.

Of course, on the face of it, the Government will continue to designate railway services. Presumably—and here is a question to the Minister—there will be a comprehensive designation of railway services under Section 23, and that will, as a consequence, bring them all under Section 30 because of the way the legislation is now to be phrased. Therefore, is the intention, in effect, to bring all designated railway services under the scope of Section 30 et cetera, other than those exempted under Section 24?

I am sorry for asking a range of questions to explore how this works. We did, as the Minister has kindly mentioned, have the opportunity to discuss this a few days ago, so I hope he will have had the opportunity to think about explaining precisely how these interactions in the legislation will work. I beg to move.

Lord Moylan (Con): My Lords, I am very grateful to my noble friend Lord Lansley for posing those very interesting questions. I am sure that the Government have answers to them, but they illustrate that this legislation is essentially very rushed and that they have not properly considered it.

I promise not to repeat what I said in Committee, but I cannot resist referring back to the final impact assessment, produced by the Department for Transport. It said that the purpose of the Bill is to meet a manifesto commitment, so it has not undertaken the normal practice of looking at alternative methods by which the same objectives might be achieved, because they are all in a terrible rush as the Government want to have a headline, essentially, and want to get ahead of the franchises as they expire. Therefore, I appreciate what my noble friend Lord Lansley has said, and I look forward to the Government's reply.

Amendments 5 and 6, standing in my name, are linked. If Amendment 5 were to pass, I understand that there has been discussion with the Government Front Bench that Amendment 6 would pass without a Division in order to avoid having two votes on the same topic.

In Committee, I referred to two different models by which the private sector might be involved in the running of railways. One is the franchise system that we are currently discussing, which is the main subject of this Bill, but the other, generally dubbed the concession system, is the one used by Transport for London for the operation of all its services other than the London Underground, which is directly provided by Transport for London. All the other services—the buses, London Overground, the DLR, the tram and so forth—are provided under a concession system; that is, they are run by private companies on a contract.

The key difference between the franchise system and the concession system is that under the franchise system, as envisaged at privatisation, the fares risk rests with the operator. That was the model that was set up back when privatisation was introduced. If the fares went up and the companies generated more fares income, they would keep it; if they lost money on fares, it would be their problem that they did not make money because the fares were not good enough. Companies had the incentive to generate more fares, principally by generating more passengers, through all the clever things that they would do.

I was frank and straightforward in saying at Second Reading that that aspect of privatisation has never worked well because, essentially, private operators are not in control of fares income, which is closely correlated with the economic cycle—which of course they cannot control, manage or in any serious way mitigate. That aspect has never worked well, and Covid put an end to it in any meaningful sense. It has never recovered from that, nor, given this legislation, is it ever going to have the chance to recover.

The concession system is different, in that the fares risk remains with the franchisor. In the case of Transport for London, it is the franchisor of the services I referred to and it retains the fares risk. The obligation of the private sector operator is simply to have the trains and equipment in the right place, pointing in the right direction first thing in the morning, properly staffed, cleaned to a certain standard and so forth. If it fails to do those things, it will suffer financial penalties. The important point is that all those things are within its

[Lord Moylan]
control. It receives a fee for that, but, in practice, because of competition, it is a modest fee given that risk is very limited. The risks are all things that are just a matter of it doing its job properly; if it does it properly, it will get that modest fee without penalty.

The purpose of Amendment 5 is to open up an option. It makes no obligation on the Secretary of State. When a franchise is terminated, the Secretary of State would have the option of awarding it not only, as the Bill is currently drafted, to a public sector company that is a subsidiary of the Department for Transport but to a private sector entity on a concession basis. The reason for it is simply that we know that it works. We know from Transport for London that the system can be made to work very effectively. We know that some of the best services on the Transport for London network—some of the best modes—are provided under this system. Why should it be that the Government would want to rule that out? Of course there could be a role for the private sector operating on that concessionary basis.

My noble friend Lord Lansley's amendment gives the Government more options than mine does. My amendment gives the Government one extra option, but he would give the Government effectively limitless options by deleting the word "only", whatever options might be available. It would give the Government more flexibility in dealing with circumstances that they may not have foreseen when they drafted this Bill.

Amendment 6 goes with Amendment 5 simply by defining in a separate clause what I mean by concession. Amendment 5 opens up the choice to do something on a concession basis and Amendment 6 says what a concession is. Despite every effort on my part and that of the Public Bill Office, we could not quite combine these into one amendment, so they stand on the Marshalled List as two amendments which, in practice, are closely linked, as one amplifies and clarifies the other.

I would very much like to hear from the Minister why Amendment 5 would not be acceptable, except to a control freak. That appears to be perhaps the Government's vision for the railways.

2.15 pm

Baroness Randerson (LD): My Lords, this group raises some interesting questions about the various shapes that the ownership of rail services can take. Our interest on these Benches, which we raised in Committee, is specifically the interface between the Government's picture for national rail services run by the Government and those run by devolved authorities. We are interested in seeing that nothing in this Bill attacks devolution as it currently exists or stops the further development of devolution when it is properly and fully thought through. We are interested in ensuring that nothing in this Bill would prevent current devolution models continuing and new ones from being established. Those devolution models include aspects of private sector involvement.

In addition, in Committee, the noble Lord, Lord Liddle, raised some interesting questions about alternative public/private models and not-for-profit models. I hope that he will speak about those again in this debate.

I will be listening very carefully to the Minister's response. If I understood him earlier in our discussions about this, he has reassured us about devolution, but I need an additional public response on that issue. With that, I take note of a very interesting aspect of this debate.

Lord Liddle (Lab): My Lords, I will speak briefly, as the noble Baroness, Lady Randerson, mentioned what I said in Committee.

It is right to raise these questions here, but they are questions for the future and for the big Bill that we will get next year. Personally, I do not want to see the re-creation of British Rail. My dad used to work for it, and to my mind it did not have great success as a monopoly nationalised industry. Therefore, it is right that, in the debate about the Bill setting up GBR when it comes around, we should explore the models of ownership that might work on these concessions. I would not rule out co-operative models, or heritage railways, running part of the national network.

My main concern is that we do not get stuck on the idea that this has to be a public sector monopoly. After all, the main thrust of Labour policy, the manifesto on which we won the election and the Budget put forward by Rachel Reeves is that we should use public investment to generate private investment, which will multiply the effects on economic growth. I do not see why the railways should somehow be different from that general principle. I discussed this with the Minister, and he explained how one thing being looked at is using the private development of Network Rail-owned land to improve investment in services. That strikes me as a very good idea and something that we should look at. Noble Lords are right to raise this question, but I hope we are going to have an open-minded debate about it in the coming year.

Lord Hendy of Richmond Hill (Lab): I thank the noble Lords, Lord Lansley and Lord Moylan, for their amendments in this group. I will speak first to Amendment 4. Following enactment of the Bill, there would be just two routes by which the Secretary of State could secure the operation of passenger services. The first option, and this is the option we plan to use, would be to make a direct award to a public sector company under the amended Section 30 of the Railways Act 1993 and in accordance with the Public Service Obligations in Transport Regulations 2023.

The second option, which is a very limited option, would be to use the power to continue an existing private sector franchise temporarily under new Section 30A. This power is deliberately limited only to circumstances where the Secretary of State is satisfied that a transfer to a public sector company is not reasonably practicable. This means the Government would expect to use it only as a last resort, for a short period, to avoid a transfer causing disruption to passengers or staff. Apart from this very limited power in new Section 30A, the Bill leaves no other route by which the Secretary of State could contract with a private sector operator to run either existing services or new ones. This is entirely consistent with the Government's very clear policy in favour of public ownership of services that form part of the national railway network.

On the point from the noble Lord, Lord Lansley, about DfT OLR Holdings Ltd, I confirm that award to it is securing the provision. All services currently designated under Section 27 will be provided under Section 30 by a public sector operator as existing contracts expire. The noble Lord also asked about the Secretary of State's power to secure the provision of new services through a public sector company if those services had never been provided under a franchise agreement. Regulation 21 of the Public Service Obligations in Transport Regulations 2023 allows the Secretary of State to vary the terms of a public service contract to include additional services, and so would provide the necessary statutory basis for her to secure the provision of new services from a public sector operator.

The noble Lord asked whether the Bill will leave an option for the Secretary of State to procure East West Rail services from a new private sector operator, and the simple answer is that it will not. The Government have no plans for long-term private sector operation of the new East West Rail services, which will commence operation next year, nor any other services that the Secretary of State is responsible for procuring.

There are—and, after this Bill, there will remain—two ways in which other parties might operate or secure the provision of services on the rail network. One possibility is that a third party might operate them as an open access operator, as is the case with Hull Trains, for example. Another possibility is that a mayoral or combined authority or other local authority might secure the operation of services either by running them itself or by procuring a third party to do so. As I will explain in relation to the next group of amendments, the Secretary of State can facilitate this by granting an exemption under Section 24 of the 1993 Act, which takes the relevant services out of the scope of the surrounding provisions of that Act.

I noted with interest that my noble friend Lord Liddle remarked about involvement of developers, for example. I echo his sentiment that there will be ways of getting private capital in, particularly through development, that have not really been explored so far.

I hope that my explanation reassures the noble Lord, Lord Lansley, that the Government have carefully considered the implications of the Bill and the options it will and will not leave open, and I hope he will feel able to withdraw this amendment.

Amendments 5 and 6 from the noble Lord, Lord Moylan, deal with competed concession contracts. As I set out to the noble Lord in Committee, these amendments would remove the opportunity to deliver the benefits of public ownership, which a clear majority of the public support and which was a specific commitment in the manifesto on which this Government were elected. For the following reasons, I cannot agree to the amendments.

First, a concession model would mean the taxpayer continuing to fund substantial profits for private sector operators. A concession model along the lines of Transport for London's contracts would expose operators to more financial risk than today's contracts, where government bears virtually all the financial risk. Under such a model, train operators would price their bids to generate even more profit than the £110 million to £150 million per annum that they can earn under the current contracts. Our plans for public ownership will eliminate those fees and profits entirely—in the Government's view, continuing to line the pockets of private shareholders is not a good use of taxpayers' money.

Secondly, TfL concessions are a relatively inflexible form of contract which is not well suited to the needs of the national railway network. For a concession contract, the procuring authority has to define the service levels and standards at the start of the procurement process, and those levels and standards then endure for the lifetime of the contract. Changes to the service specification can be achieved only through costly negotiation and agreement with the operator which already holds the contract.

That is very different from the London bus market, for example, which we discussed in Committee, where the concession model is much more suitable because there is a large number of small individual contracts. For the London Overground, much of which is heavily constrained by the geography of the railway network and the other services that run on it, it might be satisfactory, but the whole of the national railway network requires greater flexibility to adapt to changing patterns of demand. Finally, and most importantly, a concession model would not resolve the fragmentation of the current system, nor would it deliver on the Government's commitment that rail services should be run by and for the public.

The noble Baroness, Lady Randerson, referred to devolved Administrations and local mayoral authorities. We will come to devolution further in the next amendments.

I urge noble Lords not to press their amendments.

Lord Lansley (Con): My Lords, I am very grateful to all noble Lords who participated in this shortish debate, particularly to the Minister for the additional clarity sought by my Amendment 4.

My noble friend raised the issue of concessions, which I suspect we will come back to. It is one of those occasions where one looks at the interesting examples of what is happening in the French railway system, which is using concessions to a greater extent and is perhaps not encountering the objections that the Minister cited in relation to TfL's concessions. That is a comparison that I am not qualified to make, but I know my noble friend on the Front Bench might pursue it.

I thoroughly agree with the point made by the noble Baroness, Lady Randerson, about the desirability of maintaining devolution models or perhaps extending them. The use of the exemptions under Section 24 should be considered. The Minister said that, in addition to the two routes the Secretary of State might use for securing the provision of services, that is the additional route, as it were, alongside open access, which we discussed in the previous group.

2.30 pm

What I have understood from this, which is curious, is that the Secretary of State is going to designate all railway services, there will be exemptions from the designation for those that are in the devolved model and it does not include those that are open-access providers—but, in so far as the designation is made for services, it will all come in under Section 30, as amended.

[Lord Lansley]

After this Bill is enacted, Section 30, as amended, will state that the relevant franchising authority—that is, the Secretary of State—

"shall provide, or secure the provision of, services for the carriage of passengers by railway where … a franchise agreement in respect of the services is terminated or otherwise comes to an end".

What we have discovered in this group is that here is a railway, East West Rail, that in the course of next year—I say to the noble Lord, Lord Liddle, that we are discussing this now and it will happen next year before the coming into force of any further Bill, so it is a relevant, present consideration about how the Bill will actually work—the Secretary of State is going to in effect direct into a structure that is legislatively designed, as the statute provides, so that it relates to a situation where a franchise agreement has ended. But there is no franchise agreement, so it seems to me that the legislation is just flawed. Still, they have written it and no doubt they will use it, and they will probably get away with it, because it is all designed simply to channel everything into a public sector company. So be it.

We will no doubt come to discuss how successful or otherwise wholly public sector-run passenger railway services might be in future. I happen to agree with the thrust of what the noble Lord, Lord Liddle, was saying about the inherent benefits of public/private partnerships in the provision of services, and I hope we will see the Government bending towards that in the future.

In the light of my rather elaborate response to that debate, for which I am sorry, it is right, as I was simply probing for that sort of information, for me to beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Amendment 5

Moved by ***Lord Moylan***

5: Clause 2, page 2, line 15, after "Regulations" insert "or by the competitive award of a contract in the form of a concession to a private sector entity."

Lord Moylan (Con): My Lords, if I may respond to what the Minister said, he is asking us to make a huge bet on what he refers to as the benefits of public ownership. Most of us who are of a certain age can remember public ownership, and we remember that the benefits were few and far between. He is asking us to take a leap of faith that this time round it is going to be different, but he will not—

Lord Bradshaw (LD): The noble Lord has spoken as if public ownership is something evil. I remember, when I worked on the west coast main line, that 90% of the trains ran on time. That is a far cry from what is now the case. It was so different from what he is saying that he really should take a history lesson in what was right about British Rail.

Lord Moylan (Con): My Lords, I made no reference to good or evil. I am talking about operational efficiency. I am sure the noble Lord is correct in drawing attention, as has happened several times today, to the deficiencies of the current operation of the west coast main line, but other noble Lords have rightly drawn attention to the fact that there are private sector operators in this country currently operating with the efficiency levels that he refers to, and better—so the private sector has a lot to be said for it as well.

The fact is that public ownership is something about which the country largely breathed a sigh of relief when we moved away from it—rightly or wrongly, whatever the history behind that might have been—and every other European country over the last few years has moved away from exclusive public ownership operation. Even train companies such as Deutsche Bahn, which stood once at the pinnacle of public regard, are now something of a joke in their own country.

Lord Watts (Lab): My Lords—

Lord Moylan (Con): I am only trying to move an amendment.

Lord Watts (Lab): It is the introduction to it that is the problem. Is it not the case that the public support public ownership of the railways, and that the public sector had to take over the east coast line because the private company failed to deliver the service?

Lord Moylan (Con): My Lords, the noble Lord brings me to exactly my point. The benefits of public ownership that the noble Lord was able to refer to were, first, that it is popular and, secondly, that it was in the manifesto. Those two things might be absolutely true, but they are not quantifiable passenger benefits. They are not passenger benefits at all; they are political facts that sit there in the background.

Of course the system has broken down, especially since Covid. I have acknowledged that, and the need for reform. What this amendment seeks to do is allow a degree of variability, non-uniformity, difference of practice, choice, options to the Government, rather than having a single, purely nationalised, purely state-controlled machine that we are told will bring us benefits, one of which, as far as I can make out, will be flexibility.

I really did not discern any others, except that we will not be paying fees to private sector operators—a point the Minister has made several times. We will not, but in the picture of the cost of running the railways the fees are extremely small; they are a tiny percentage of what is involved. If the private sector can continue, post Covid, to generate the sort of growth in passenger numbers that it generated before Covid after privatisation, and we can get back to those happy days, the amount of money being paid to operators would be swamped by the revenues that would be coming in. That is the bar that public ownership has to match and we have no guarantees that it will do so. We are asked to take the whole thing on trust. To that extent, I wish to press my Amendment 5 and test the opinion of the House on it.

2.37 pm

Division on Amendment 5

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Knight of Weymouth, L.
Lawrence of Clarendon, B.
Lennie, L.
Leong, L.
Liddell of Coatdyke, B.
Liddle, L.
Lister of Burtersett, B.
Livermore, L.
Low of Dalston, L.
Mandelson, L.
Mann, L.
McConnell of Glenscorrodale, L.
McDonald of Salford, L.
McIntosh of Hudnall, B.
McNicol of West Kilbride, L.
Merron, B.
Mitchell, L.
Morgan of Drefelin, B.
Morris of Yardley, B.
Murphy of Torfaen, L.
Nye, B.
O'Grady of Upper Holloway, B.
Patel of Bradford, L.
Pitkeathley, B.
Ponsonby of Shulbrede, L.
Prentis of Leeds, L.
Prosser, B.
Ramsey of Wall Heath, B.
Ravensdale, L.
Rebuck, B.
Reid of Cardowan, L.
Rowlands, L.
Sahota, L.
Sawyer, L.
Shamash, L.
Sikka, L.
Singh of Wimbledon, L.
Smith of Basildon, B.
Smith of Cluny, B.
Smith of Malvern, B.
Snape, L.
Spellar, L.
Stansgate, V.
Stevenson of Balmacara, L.
Symons of Vernham Dean, B.
Taylor of Stevenage, B.
Thornton, B.
Timpson, L.
Touhig, L.
Tunnicliffe, L.
Twycross, B.
Uddin, B.
Vallance of Balham, L.
Walker of Aldringham, L.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watson of Wyre Forest, L.
Watts, L.
Wheeler, B. [Teller]
Whitaker, B.
Whitty, L.
Wilcox of Newport, B.
Winston, L.
Winterton of Doncaster, B.
Wood of Anfield, L.
Woodley, L.
Young of Old Scone, B.

The Division result was initially reported as Contents 99; Not-Contents 138.

2.49 pm

Amendment 6 not moved.

Amendment 7

Moved by ***Baroness Pidgeon***

7: Clause 2, page 2, line 23, at end insert—

"30ZA Exemption of passenger services: duty to consult

(1) Before making a direct award of a public service contract to a public sector company under section 30(1A), the relevant franchising authority must consult with relevant persons on their willingness and ability to make an application to the appropriate designating authority for the grant of an exemption from designation under section 23(1) for the purposes of applying for or being awarded a public service contract under section 30(1A).

(2) For the purposes of subsection (1), "relevant persons" include—

(a) the Scottish Ministers,

(b) the Welsh Ministers,

(c) English combined authorities,

(d) the Greater London Authority,

(e) directly elected mayors, and

(f) any other relevant persons or bodies."

Member's explanatory statement

This amendment requires the Secretary of State to consult appropriately when awarding a public sector contract in order to encourage more services to be operated by devolved authorities like TfL or combined authorities in the future.

Baroness Pidgeon (LD): My Lords, our Amendment 7 is about rail devolution, discussed extensively in Committee from all sides of the Chamber. We believe it is really important that this first piece of rail legislation from the new Government not only meets their manifesto commitment to public ownership of the railways but allows further rail lines to be transferred to metro mayors and local and regional authorities where there is a strong case, and a desire, by the locally elected members. Local accountability is key.

I remind the House that we have discussed in detail the huge success of the Overground and the Elizabeth line in London and of Merseyrail in the Liverpool region, and the desire for metropolitan areas such as Greater Manchester to deliver a truly integrated public transport offer, branded under one logo and accountable to the mayor. These not only improve transport but contribute to housing and economic growth. I hope that the Minister can offer some stronger words today about future devolution, not just the limited existing devolved lines. The Minister started to outline this in response to the previous group, and I hope to hear more.

We on these Benches want our railway to become a reliable, fast, cost-effective and efficient service for everyone, with local services run in a way that serves the needs of local areas and local communities. I sensed in Committee that the Minister was listening very carefully to the points that were made, especially given his direct experience in a former role of running and expanding the Overground service in London.

I thank the Minister for his time, since Committee, meeting with my noble friends to discuss our amendments further and the assurances that we would like to hear at this stage. I hope the Minister can today assure the House that, as franchises end and come into public ownership, there will be genuine consultation and discussion with devolved authorities on how future services should look, and indeed on how best to run them—including the option for locally run and accountable devolved rail services, in addition to those already devolved. We believe that this will help bring about the transformation of the railway that is the aim of this Bill. I look forward to hearing from the Minister real assurances in this area. I beg to move.

Lord Moylan (Con): My Lords, I will speak to the amendments in this group, particularly Amendment 12 standing in my name. I have a great deal of sympathy with the amendment moved by the noble Baroness, Lady Pidgeon. Both amendments are aiming at the same thing.

I said earlier today that there are a number of crucial things missing from this Bill: one is staff, and we will come to that, and another is the passenger, and we have dealt with that. The third is the local authorities, the regions, the metropolitan authorities and devolution as a whole. On this side of the House we have always had great aspirations for the powers of combined metropolitan authorities and regional government, and for their expansion. We are largely responsible for promoting and establishing mayoralties in Manchester and the West Midlands, and in other places as well, such as Teesside and so forth. We have done that with a view to expanding their powers, and part of that was to take on a greater role in transport. We are seeing the beginning of that in Manchester with the buses, and Merseyrail is operated by the combined authority.

In doing that, we are coming from a successful metropolitan model, London, which already has many of these powers. As far as we can make out, these powers, where rail is concerned—not buses—are effectively to be closed down where they do not already exist. They will not be expanded further—the Minister has been quite clear about that—and we will not see the growth of rail on a metropolitan basis.

My Amendment 12 is simpler than that advanced by the noble Baroness, Lady Pidgeon. It would require a preliminary report that outlines the proposed framework in which Great British Railways is going to communicate with local authorities and regional authorities about passenger railway services. That it is going to communicate is something that the Government have committed to, as the Labour Party document *Getting Britain Moving* said so. There is going to be a great deal of consultation and involvement on every possible front, but, again, we are told that we have to take all of this on trust—that none of this will become manifest until we see the great rail Bill that will come in the future, with a bit of consultation but without seeing a proper text in advance for pre-legislative scrutiny.

We are trying to get it established now, as a principle at least, that the Government can initiate these communications before that Bill comes into effect. They can set up structures that allow those communications to take place; this amendment requires the Government effectively to do that.

If the Minister cannot agree to the precise amendment tabled by the noble Baroness, Lady Pidgeon, I very much hope that he will at least be able to agree to my amendment, which asks him to get those structures—which he envisages happening—in place as soon as possible, so that local authorities and the relevant regional authorities can be involved.

Baroness Randerson (LD): My Lords, in response to the previous group, the Minister emphasised—I think it was in reply to the noble Lord, Lord Moylan—that the concession model would not comfortably fit national rail services. I accept that, and he made my point for me in making his response. The Government must not be allowed to create a national monolith, because one size will not fit all. Part of the variability that we should celebrate in this House is that which comes with devolution, because it fits local areas comfortably.

The Government have made a great deal of the £22 billion or £40 billion black hole and the shortage of public money. Money is undoubtedly in short supply.

The Government have also made a lot of their support for devolution, but if devolution on rail transport services is to flourish then there has to be an alternative source of funding and of investment. Local authorities, even on the big scale of metro mayors, will not have the resources to invest in a pure public sector model.

Our concern in our Amendment 7 is that the Government leave themselves the scope to access or call upon alternative models of funding. That would be very much along the lines of what the noble Lord, Lord Liddle, suggested: some form of local partnership or an alternative structure, other than a pure public sector company. As my noble friend Lady Pidgeon says, we will be listening carefully to the Minister's reply.

3 pm

Lord Hendy of Richmond Hill (Lab): My Lords, I would like to clarify a point for the noble Lord, Lord Moylan, on Amendment 13. If I inadvertently implied that the Government would somehow reduce the present freight target of 75% growth by 2050, I did not mean to. We intend that target to remain.

I will speak first to Amendment 7, proposed by the noble Baronesses, Lady Pidgeon and Lady Randerson, and I recognise the passion with which the noble Baroness, Lady Pidgeon, spoke on this. In responding to this group of amendments, let me start by saying very clearly that this Government are absolutely committed to strengthening the role of local leaders and local communities in shaping the provision of rail services in their areas. We are a pro-devolution Government. A stronger local voice is absolutely essential if the railway is to play its full part in this Government's missions of kick-starting economic growth, breaking down barriers to opportunity and accelerating towards net zero. Our plans for reform in the substantive railways Bill will provide that stronger local voice. I can reaffirm to your Lordships' House that the railways Bill will include a statutory role for devolved governments and mayoral combined authorities. They will be involved in governing, managing, planning and developing the railways.

Linked to this, we expect GBR to closely collaborate with areas through partnership agreements, which will build on progress made through existing arrangements the department has with the West Midlands Rail Executive and Transport for the North. We are already working with leaders in areas such as Greater Manchester, the West Midlands, the north-east and Liverpool City Region to discuss how these relationships could work, with governance supporting these discussions established. While final agreement of these partnerships will need to wait until GBR is formally established, the Government are committed to working with mayors to explore opportunities for progress ahead of GBR operation.

We are clear that together the statutory role and partnerships must allow genuine and meaningful opportunity to influence service levels and standards, and to drive forward the integration of local rail services with other modes as part of a genuinely joined-up local transport offer to passengers. It must allow for things like common branding, integrated timetabling, integration of fares and ticketing in the manner that Londoners, and people who live and work in London, completely understand. By getting this right in the wider railways Bill, we can offer local leaders the much greater level of influence that they are seeking. Existing options for local authorities to directly procure or operate their own services will remain in place, subject to the Secretary of State's approval, as is currently the case. Alongside our proposed statutory role, our plans for the design of Great British Railways will make it easier for local leaders to engage with and influence what happens on the railway. I am so pleased that the noble Baroness, Lady Randerson, raised her dislike of a one-size-fits-all approach, and I agree with her.

First, I expect GBR will adopt a route and regional structure, with—importantly—a single leader responsible for train operations, rolling stock, staff and infrastructure within a given geographical area. This is material to the reason for public ownership and will create revenue growth and efficiencies and improve performance. A regional and route approach will ensure that GBR is close enough to local communities to understand and respond to their needs, while also being clear that they are part of a national system that needs to work coherently as a whole. It will also mean that local leaders will need to engage with just one organisation—GBR—rather than an infrastructure owner and, potentially, several different train operators.

Secondly, where local leaders wish to promote service improvements, having track and train under unified leadership will mean GBR can take a whole-system approach to identify the most cost-effective solutions. In the past, Network Rail has been much too quick—because it is an infrastructure provider—to opt for the most expensive solution, which is infrastructure change. A whole-system approach would begin by asking whether a service enhancement can be delivered with additional staff, while making better use of the existing train fleet on the existing railway infrastructure. If the answer is no, the next question should be whether the improvement can be delivered solely through changes to the rolling stock fleet. If, and only if, the answer to that question is also no, it might then be sensible to look at infrastructure change, which is usually the most expensive option and certainly takes the longest time.

The crucial point is that one organisation, GBR, on a route or regional basis, will be able to take a view across all those options with local leaders. I would encourage local leaders who think they might want to take over responsibility for operating or procuring services in their areas to keep an open mind until they have seen our full proposals for wider reform. I also reassure noble Lords that, where local leaders conclude that they wish to take over that responsibility, the current Bill does not stand in the way.

Existing legislation in Section 24 of the Railways Act 1993 allows local authorities and others to apply to the Secretary of State for specific services to be exempted from the franchising regime. Where the Secretary of State grants such an exemption, the exempted services are no longer caught in the surrounding provisions of the 1993 Act. So long as adequate alternatives are being made available, this means that the Secretary of State is no longer obliged to secure the operation of these services and they are not subject to the restriction that says they can be provided only by means of a public sector company. The relevant local authority can then operate or procure the services to its own

[Lord Hendy of Richmond Hill]
specification, using its existing powers under other legislation, which, in the case of Transport for London, are conferred by Section 173 of the Greater London Authority Act 1999.

This is the mechanism by which services have been devolved in London and in the Liverpool City Region. The current Bill does not make any changes to the way this mechanism works. Following enactment of this Bill, the railways legislation will still provide the same opportunity as today for the Secretary of State to devolve services where she considers it appropriate and where it supports a well-functioning national service, and if we receive any such requests for the devolution of services, we will consider them openly, fairly and carefully, taking proper account of local, regional and national interests. I hope this reassures the noble Baronesses.

On Amendment 12, from the noble Lord, Lord Moylan, I thank the noble Lord for this amendment, which would require the Secretary of State to publish a report on the proposed communications framework between Great British Railways and local transport authorities across the UK. I can reassure the noble Lord that communicating effectively with local authorities is of critical importance to the Government. I have already explained that the Government are keen to ensure that local communities can influence the design and delivery of passenger rail services in their areas. We expect that GBR will engage with local transport authorities regularly on this and on key strategic matters, such as housing and economic growth.

I have also already mentioned the proposed statutory role, which will enable partnership agreements between mayoral combined authorities and GBR. The Government are already engaging with mayoral authorities to develop a framework for these partnership agreements and the intention is that the framework will enable varying degrees of influence, depending on the ambitions and institutional capability of partners. This will include close collaboration on the delivery of rail elements of local transport plans and greater opportunities for local partners to directly invest in the railway and to influence service provision.

Due to devolved infrastructure funding arrangements, my department currently has a memorandum of understanding with the Scottish Government which outlines interactions regarding the governance of Network Rail. The devolved operator, ScotRail, also has an alliance agreement with Network Rail which sees both organisations working closely together to better integrate the railway. For devolved services in Wales, there are a number of supporting devolution agreements between the department and the Welsh Government which set out the existing relationship. Under GBR, these devolved accountabilities will remain in place. We will therefore work with the devolved Governments to update existing arrangements and ensure that the benefits of establishing GBR are felt across Great Britain.

In conclusion, the report proposed by Amendment 12 is not necessary, given that the Government will be setting out their plans in a consultation which will be published shortly. This will provide not only detail on our proposals but also the opportunity for local authorities, mayoral combined authorities and noble Lords to input their views on these proposals. I hope my explanations in response to these amendments will be sufficient to persuade noble Lords not to press their amendments.

Baroness Pidgeon (LD): One thing that has united this House in our discussions is support for further devolution and acknowledgment of the success of devolved lines in London and elsewhere in the country. I thank the Minister for his detailed response and serious consideration of the points we raised in Committee. I was really pleased to hear the words, "This is a pro-devolution Government", because we have not heard that in the debates to date. I was also pleased to hear that the Minister will ensure that in the next legislation, the role of local authorities will be strengthened, and that he will include that statutory role to ensure their involvement in the governance, management and provision of rail services.

Transport for Greater Manchester, which my noble friend Lady Randerson met with recently, will be reassured to hear that, ahead of Great British Railways being established and on the statute book, there are opportunities for it to develop its ambitious plans for the Bee Network. What was said today about branding and being consistent in these metro areas was really reassuring, given that we want to drive a modal shift and get more people using public transport.

I was really pleased to hear the Minister say that the Secretary of State will still be allowed to exempt lines—that if local leaders want to take over a line, their request will be seriously considered and an exemption granted where appropriate to allow lines to be run across the country, as we have seen in London and Liverpool. On the basis of what the Minister has said, I beg leave to withdraw Amendment 7.

Amendment 7 withdrawn.

The Deputy Speaker (Lord Ashton of Hyde) (Non-Afl): Before we move on to the next group, I have to inform the House about the voting in the third Division. The figure was announced as 99 for the Contents. The correct figure is 95, but the result is the same.

Amendment 8

Moved by ***Baroness Brinton***

8: Clause 2, page 2, line 23, at end insert—

"30ZA Statement of accessibility standards

(1) When making a direct award under section 30(1A) the Secretary of State must lay before Parliament a statement to the effect that they are of the view that such an award will comply with the accessibility standards.

(2) The Secretary of State must prepare a statement of the standards that they propose to apply in assessing, for the purposes of subsection (1), that a public sector company meets the required level of accessibility.

(3) The principles must in particular make provision for the accessibility of—

(a) the service,

(b) accommodation for individual journeys, and

(c) booking platforms and other interactive digital services and systems used in connections with journeys on the relevant franchise.

(4) In preparing the statement under subsection (2) the Secretary of State must consult such persons as they consider appropriate, in particular disabled people."

Member's explanatory statement

This amendment places a duty on the Secretary of State to make a statement to Parliament confirming they are of the view that making an award to a public sector company will meet certain accessibility standards.

Baroness Brinton (LD): My Lords, I declare my interest as vice-chair of the Accessible Transport Policy Commission. I start by thanking the Minister for meeting with myself and the noble Baronesses, Lady Grey-Thompson and Lady Randerson, last week, for the very constructive discussions about issues relating to passenger assistance and support for disabled passengers, and for the other meeting with my Lib Dem colleagues and myself to discuss the Bill more broadly.

Before I speak to my amendment, I want to say that I support Amendment 11 in the name of the noble Baroness, Lady Randerson, which requires the Secretary of State to consult appropriately when awarding a public sector contract in order to encourage more services to be operated by devolved authorities.

Turning to my Amendment 8, I thank the noble Baroness, Lady Grey-Thompson, and the noble Lords, Lord Blunkett and Lord Holmes of Richmond, for signing it. It places a duty on the Secretary of State to make a Statement to Parliament confirming that they are of the view that an award made to a public sector company will meet certain accessibility standards. The Minister has tabled Amendment 15, which puts in legislation for the first time that public sector companies providing train services under Section 30 of the 1993 Railways Act are subject to the public sector equality duty, and I thank him for that.

One of the current issues is that it is not clear what is required by law, whether a train company is publicly owned or not. That has resulted in inconsistent standards and services. I thank all noble Lords, not just those who have taken part in the Bill but others who have spoken to me outside the Chamber, who have commented on the experiences of disabled Peers, including the noble Baroness, Lady Grey-Thompson—and myself. The fact is that our experience is not unusual, and many disabled people report disrupted or poor services daily. People are surprised when we say what has happened, but it is actually the daily experience of many disabled people.

In Committee, the Minister said:

"I was going to list a range of areas where things need to change, but I am embarrassed to do so because so many speakers in this debate have listed them themselves".

He went on to say:

"All I can do is acknowledge that I have heard the list quite clearly. We know that we need to do better, and it hurts me that the public service that I care about fails so regularly to look after people in the way that it ought to".—[*Official Report*, 23/10/24; col. 694.]

I thank the Minister for that. I repeated it because I have some questions, although not on that statement but on the detail that will follow. First, can he clarify that the public sector equality duty does not already apply to the existing OLR train operating companies? If it does not, will the current OLR train operating companies have to comply with it immediately after the Bill is enacted, but before the rail reform Bill is passed? If the answer is yes, how will that work with the next stage of consultation on a stronger assistance service?

Following remarks made in an earlier group today, can the Minister explain the next steps to consult with the disabled community about the new universal assistance standards he wanted to correct in the list of problems? It included too many apps, a lack of level boarding, broken lifts, unsuitable rolling stock, and the lack of staff on trains and at stations, which he and many others referred to in Committee. How does that fit in with the publication of the rail reform Bill, be that later this year or early next year?

3.15 pm

Above all, I thank the Minister because, as he knows, disabled people have for far too long been ignored by the train operating companies, with complex and different arrangements leading to chaos and unreliable services. I look forward to hearing more detail from the Minister about what this Government want to change. I beg to move.

Baroness Grey-Thompson (CB): My Lords, I will speak to Amendment 8 in the name of the noble Baroness, Lady Brinton, to which I have added my name. I draw the House's attention to my interests as listed in the register, including as chair of the Accessible Transport Policy Commission. I thank the Minister and the noble Baroness, Lady Blake, for their time in looking at this issue.

I will briefly offer my support. In speeches both in Committee and today, the noble Baroness, Lady Brinton, has made very clear what we are seeking. In Committee, there was a lot of support, not just for our own personal experiences but for the treatment of disabled people.

I spend much of my time on social media bemoaning some of the negative experiences I have had, but I will highlight one that was very positive. Today, I have already been on a return trip to Milton Keynes, which was absolutely wonderful. The train manager walked through the train and knew that I was on board. I did not use my legal right to turn up and go; I booked assistance. The train manager was there with the ramp ready and waiting, and I was in the amazing position of having three people there to meet me on the platform.

I have often mentioned that I experience way better treatment than any other disabled person I know—that was highlighted today. All we want is for the same treatment I get to be extended to every other disabled person. As the noble Baroness, Lady Brinton, said, the voice of disabled people in moving this forward is incredibly important. We also need to consider how we avoid future derogations, which I expect will be discussed in the next Bill. As a result of such derogations, instead of trains being step free on 1 January 2020, it will now be 100 years before I, the noble Baroness or other wheelchair users can get on a train without the permission or support of a non-disabled person.

I recognise where we are today. I will strongly support the noble Baroness, whatever she chooses to do with the amendment. I very much look forward to the Minister's response.

Baroness Randerson (LD): My Lords, I am very pleased to speak in support of my noble friend Lady Brinton and the significant group of signatories to this amendment. This eye-catching group of people campaign on disability-related issues and have made important points in this debate and others aligned with it. In addition to that amendment, which speaks for itself, there is Amendment 11 in my name and that of my noble friend Lady Scott.

Although the experiences of people using wheelchairs and those who do not have perfect sight and so on are very much at the sharp end of passengers' experiences, the passenger body generally does not have a good experience in Britain these days. There are huge problems for passengers of every age group and every level of physical ability, so there is a massive job to be done in improving that experience. People would put up with a second-rate experience, perhaps, if they were paying second-level fares, but they are paying premium fares for a very rough deal, and those two just do not sit together.

Amendment 11 seeks to establish a body that will work on behalf of passengers: a body dedicated to passengers' needs and to creating the kind of experience that those of us who are lucky enough to travel abroad on trains know can be achieved with a perfectly normal, non-premium rail service in other countries. If they can do it, I do not see why we cannot.

I am very pleased to see Amendment 15 in the name of the Minister, and I look forward with great interest to what he is going to say about it, because I hope it will reassure us that the Government's plans include the creation of a passenger standards authority —or something similarly named—that will look out for passengers. I also hope that the Government will produce a commitment that suits the needs of the signatories of Amendment 8.

Lord Moylan (Con): My Lords, I rise with some humility to make a few comments on Amendment 8, which, of course, is one where the noble Baronesses, Lady Brinton and Lady Grey-Thompson, bring an experience that cannot be gainsaid in your Lordships' House. I said in Committee that I fully acknowledge—from my own personal knowledge—that the Minister is personally committed to seeing improvements in regard to accessibility. I know that it is a matter of importance to him, but none the less, fine words and parsnips come to mind. Action is needed and we need to see real progress. If Great British Railways offers something in that regard that has not been offered before, that would be greatly to its credit.

In relation to Amendment 11, from the noble Baroness, Lady Randerson, this is another example of what the Government could be doing now. It is already the Government's policy to have a passenger standards authority; they have set that out in the document *Getting Britain Moving*. Like so many other things, it is wrapped up in a Bill that we are told we might see in 12 or 18 months. I have expressed in Committee a degree of doubt and scepticism as to whether the Government will meet that target. I hope they will, but these are very complex issues, and it could take even longer than that before we see the Bill. Then, of course, it has to be passed and enacted, and then, as I keep pointing out, it has to be implemented. Change on that scale does not happen overnight; it will take several years for it to be implemented. Where in that timeframe is the passenger standards authority going to stand? Will we see it coming to life at the beginning of the process or at the end? Could it be four or five years away before it comes into existence? We have no idea.

The amendment from the noble Baroness, Lady Randerson, would at least say, "This is one thing you can get started on now. You can get it up and running very quickly and it could be something that passengers could benefit from at a really early stage". I really do not understand why the Government cannot accept, if it turns out that is the case, what the noble Baroness is proposing.

I have no comment on Amendment 15 in the name of the Government except to say that it is, of course, entirely unobjectionable from our point of view.

Lord Hendy of Richmond Hill (Lab): My Lords, I will speak first to Amendment 8, which was tabled by the noble Baroness, Lady Brinton, and is supported by the noble Baroness, Lady Grey-Thompson, the noble Lord, Lord Holmes, and my noble friend Lord Blunkett, and to Amendment 15 which is tabled in my name. I thank the noble Baronesses for their amendment and for the productive discussion we had last week. As I said in Committee, I feel personally ashamed of the industry that I am so familiar with as so many deficiencies come out of the way that it treats passengers, particularly those in need of some assistance. Many of those deficiencies are a result of the fragmented structure of the privatised railway.

The noble Baroness, Lady Grey-Thompson, has shown me and described to me the plethora of apps that you need to buy tickets, the differences in how they work, what they do and whether they enable you to book a seat, a wheelchair space or a ticket for the whole of your journey. I am shocked by it, and I cannot bear for her to show me much more, because all she would do is show me more apps that work differently from those that she has already shown me. We cannot and should not tolerate that. The lack of consistency in train design has been highlighted today, as has the lack of reliable, accurate information about whether crucial facilities such as lifts and accessible toilets are working, and there are other issues.

Looking ahead to the wider railways Bill, establishing Great British Railways will provide the opportunity, for the first time in three decades, to begin to take a coherent approach to these matters. Some of them can be done quickly, some of them we can start now and some of them will, by virtue of the longevity of rolling stock and structures, take a long time, but if we do not start, we will never achieve them. However, I also agree that the noble Baronesses and the many disabled passengers on whose behalf they speak should not have to wait for Great British Railways to come along before we start to improve things, so, as I discussed with the noble Baronesses last week, the Government have tabled an amendment and we also have a number of verbal commitments that I shall place on record in the House today.

First, the Government will work with the disabled community to develop and publish an accessibility road map that will explain the actions we intend to

take to improve things for disabled people or others requiring assistance in advance of GBR being set up. We are not waiting for it to do that. The road map will suggest how the Government can work with the industry to prevent situations like those we have heard about in this House so far. As discussed, it will cover important matters that the noble Baronesses have raised with me. They include measuring and reporting on lift reliability and maintenance, providing confirmation and clarity about the legal obligation of operators to provide every disabled person with assistance when travelling whether or not a pre-booking has been made, and improving consistency in the service provided to disabled people across the board. We will engage with the disabled community on the development of the road map to ensure that when it is finished, it works for them.

Secondly, I commit before the House that this Government will provide the funding to develop phase 5 of the passenger assist app. As the noble Baroness, Lady Grey-Thompson, knows from our previous discussions, I have made it clear and will continue to make it clear to those involved that the development of this next phase of the programme must be done in consultation with the noble Baronesses and representatives of disabled people to ensure that it delivers the assistance that people deserve and addresses their needs.

Finally, we have tabled Amendment 15, which is before the House today. It amends the Equality Act 2010 to make it clear that publicly owned train companies are subject to the public sector equality duty. Although it is the Government's view that the public sector equality duty already applies to publicly owned train operating companies, we are concerned that that is currently not as clear as it needs to be. By adding them to the list of public authorities in the Act, we will ensure that there can be no mistake. Network Rail and Transport for London are already named in the Act, but train operating companies previously were not, which is something that, if this amendment is agreed, we will remedy.

3.30 pm

It is the intention of this Government to send a clear signal to train operating companies that they cannot ignore their legal duties to support disabled passengers and to ensure that disabled passengers have proper access to the railway as they need and deserve. Given this amendment and the commitments that I have made today, I hope that the noble Baroness will withdraw her amendment and support the Government's amendment instead. I look forward to continuing to work with her and those who signed the amendment on this matter over the coming months and years.

I thank the noble Baronesses, Lady Randerson and Lady Scott of Needham Market, for Amendment 11. Let me make it absolutely clear to this House that the intention of this Bill and of the rail reform programme is to create a railway that works better for passengers. The changes made under this Bill, and further reforms, will be passenger-focused, because we know that this is what has been lacking for years. The Secretary of State has already set out that she considers her role to be passenger-in-chief of the railway, championing passengers every day, and that this Bill is the first step towards a railway that works for everyone who travels on it.

I confirm that, as I agreed with the noble Baronesses, Lady Randerson, Lady Pidgeon, Lady Scott of Needham Market and Lady Brinton, the consultation I have already referred to, delivered in advance of the wider railways Bill, will contain proposals for the passenger standards authority and how it will monitor performance for passengers. It will present the opportunity for those in this House and beyond to provide views on how this watchdog should operate. I will be delighted to discuss this with noble Lords in more detail once the consultation is launched.

I confirm that, as we work with the bodies that will be impacted by the proposed passenger standards authorities—the Office of Rail and Road, Transport Focus and the Rail Ombudsman—we will look at any opportunities to improve things for passengers in the short-term before the passenger standards authority has formally launched. I met Transport Focus yesterday on just that matter. I urge the noble Baroness to withdraw the amendment.

Baroness Brinton (LD): My Lords, in tabling Amendment 8, I was very aware of standing on the shoulders of giants, including Transport for All and many disabled campaigners over the years.

I thank the Minister for putting the public sector equality duty in the Bill. This is a big step forward. I thank him also for the commitments that the Government have made, albeit for the future. There is a real spirit here to make sure that things start to change. For the first time since I joined your Lordships' House in 2011, I feel encouraged that we have been heard and understood. Amendment 15 is, we hope—I am not going to get Churchillian about this—the beginning of the end or the end of the beginning, or something like that. It will be the end of the current poor levels of assistance for passengers. I know that the Minister understands that there is much detail to be worked out to make that real change happen.

On that basis, I am happy to withdraw my Amendment 8. I look forward to seeing Amendment 15 become part of the Bill and to us seeing more detail in due course. The future higher standards of assistance services will transform the lives of disabled rail passengers. I beg leave to withdraw my amendment.

Amendment 8 withdrawn.

Amendment 9

Moved by ***Lord Young of Cookham***

9: Clause 2, page 2, line 23, at end insert—

"30ZA Annual report of public operator liabilities

(1) The Secretary of State must lay before Parliament, within six months of the day on which this Act comes into force, and on each anniversary of that date thereafter, a report on the public sector financial liabilities arising from the award of public service contracts to public sector companies under subsection 30(1A).

(2) The report published under subsection (1) must include details of rolling stock leasing liabilities."

Member's explanatory statement

This amendment would require the Secretary of State to publish an annual report examining the impact of train company rolling stock liabilities transferring into the public sector.

Lord Young of Cookham (Con): My Lords, Amendment 9 in my name would require an annual report on public operator liabilities. This might sound rather a dry subject with which to lead the last group on Report, but it is an important one, as it has the potential to totally disrupt the Government's ambitions for Great British Railways. I begin by thanking the Minister for the meeting that we had last week with the noble Baroness, Lady Blake. He listened patiently to my concerns and was able to allay some of them—though not, I am afraid, this one.

This amendment has grown in prominence since last week's Budget with its clear fiscal rules, and these were needed to give confidence to the markets that the Government could borrow the substantial sums needed to fund their expenditure; we will debate all that on Monday. In a nutshell, my concern is that, if liabilities which are currently off the Government's books cease to be off balance sheet, we will revert to the position when I was Transport Secretary, with transport bidding for investment against schools, hospitals and defence and always missing out because of political priorities.

I believe the noble Lord has conceded the risk of this happening, because he has said repeatedly that it will be for the Office for National Statistics to decide in the future how GBR liabilities impact the public sector balance sheet and, specifically, public sector net debt. However, it simply cannot be prudent for the Government to embark on a programme of nationalisation without fully understanding the financial consequences of the ONS classifying GBR as "central government" and without taking the necessary precautions.

We can have a shot at what the ONS will do, because it has stated that in circumstances such as GBR it would run what is called the market body test, and we know that GBR, as the Government envisage it being structured, would fail that test. The integration of track and train within a single entity, as set out clearly in Labour's *Getting Britain Moving* document, will mean that GBR will fail the ONS market body test, meaning that its liabilities will be consolidated into the department's accounts. The Minister has argued previously that the position will not be different from where we are now, but it will be. The creation of GBR as a permanent public monopoly will create a completely different system, which will change the way in which the ONS categorises expenditure.

The Labour document is clear that GBR will be a "single employer". If so, it will simply fail the market test and its accounts will be classified as "central government", rather than a public corporation, as LNER is currently. The accounts will then be required to be consolidated into DfT's accounts, like other bodies that fail the market test, and then classified as "central government". Crucially, these different accounting treatments will make investment, for example, in rolling stock harder, as it will be in competition with other demands for public investment. The Minister has made it clear that GBR will use its purchasing power to commission new rolling stock through the roscos: rolling stock that will then be leased to GBR. He stated:

"GBR will enable a longer-term view of the rolling stock market, and it will reduce the margins it needs to make".—[*Official Report*, 23/10/24; col. 736.]

Those long-term liabilities, totalling potentially some £15 billion, will score immediately on the Government's balance sheet, increasing national debt, even if the money to manufacture the trains comes from the roscos and is raised on the capital markets.

What I hope the Minister has done—and if he has done it, no one would be happier than me—is get an undertaking from the Treasury that, if the ONS so classifies GBR debt, the Treasury will ensure that the DfT is insulated from that decision. He may have such a letter in his breast pocket. If he has not, we know what is likely to happen because it happened to Network Rail, which was reclassified by the ONS in 2014. The Minister said at our meeting that there was scope for economies at Network Rail when it was reclassified, and I am sure he was right. But those measures were never going to compensate for all the consequences. Network Rail had to divest £1.8 billion by selling property assets; it had to defer renewal works; it had to postpone completion dates; and it had to renegotiate a lot of contracts. Do we honestly want that to happen to GBR?

So, in a nutshell, I am concerned at the gamble the Government are taking with the future of the railways by going back to the pre-privatisation system, where Ministers will have to compete against other spending departments for what the railways need. I beg to move.

Baroness Randerson (LD): My Lords, I have one very brief question for the Minister, following the warnings by the noble Lord, Lord Young. Have the Government looked at this from the point of view not just of what I would call the finished product of the nationalised railway system but of how the categorisation of a mixed economy would work? We, the nation, will be in a situation of a mixed, some-and-some economy for a significant number of years to come.

Lord Moylan (Con): My Lords, my noble friend Lord Young sought throughout Committee, with great forensic precision and courtesy, to get answers to the sort of questions he has been raising today, and I have sought, with rather blundering efforts, to get answers to very similar questions. Here we are on Report, still asking questions that the Government have consistently failed to answer throughout. The reason is that, as I said earlier today, this is a rushed Bill that has not been thought through properly as to its broader consequences. These are consequences not to be dealt with in a future Bill coming down the road but that flow directly from the measures in this Bill. I very much hope the Minister can give some account of them today and explain how the Bill and this nationalisation will affect the public finances in what I call, in my blundering way, balance sheet terms.

There are other items. Since we discussed this Bill in Committee, we and the country have had the body blow of the employers' national insurance increase delivered by the Chancellor of the Exchequer. Amendment 19 in my name is there to probe what the consequences of that will be for Great British Railways. Will there be a very significant increase in staff costs on the railways as a result, and what impact is that likely to have on the revenue expenditure that the railways can undertake?

In Amendment 18, I ask for clarity on something that also flows directly from the Bill—it is a direct consequence of it, and not something to be dealt with in a future Bill—to do with the harmonisation of staff wages, terms and conditions as they transfer from diverse employers in the private sector to a single employer owned by the state. Drivers and other staff are employed by the railway companies on terms agreed with trade unions but not necessarily the same terms as between one company and another, so drivers' pay, terms and conditions will vary somewhat between one company and another. The Government have resisted saying, at any point, what they will do about this if they are a single employer. Of course, theoretically, each franchise as it falls due will be placed in a separate company from the others, so it is perfectly possible, legally, for it to have a separate agreement with its staff, different from that which another nationalised company has with its staff, replicating the current arrangements, if it chooses to do so. Is that the Government's intention, or is there an intention that wages, terms and conditions should be harmonised? If the latter, do the Government imagine that they will be harmonised on the basis of the lowest common denominator, the highest common denominator, or some denominator that might be found in the middle as a sort of average? This is a direct consequence of the Bill, but nothing has been said by the Minister about it.

I come back to the question of staff consultation. There has been no staff consultation about the change of employer. The idea that the Minister might wander around Waterloo station randomly consulting drivers as he accosts them, which he held out when he spoke earlier, is an attractive and enticing one. That is to be encouraged—there are not enough Ministers going around randomly accosting staff whom they employ in the public sector—but it hardly constitutes what might be called formal consultation in industrial relations terms.

I hope I am forgiven for saying this, but earlier I saw the Minister having a quiet chat in a break for a Division with his brother, the noble Lord, Lord Hendy, with his great industrial relations experience. Who knows? Perhaps he was pointing out to the Minister that normal industrial relations consultation requires a little more than simply wandering around and chatting to the staff on the station as you meet them, welcome though that is.

I very much hope that by now, with all the warning that the Minister had about these issues in Committee, he will be able to give an account of himself that will satisfy the legitimate questions of my noble friend Lord Young, and will be able to explain to us what his employment and industrial relations strategy is as a direct consequence of the nationalisations that will take place under the Bill.

3.45 pm

Lord Hendy of Richmond Hill (Lab): I thank the noble Lord, Lord Young, for tabling Amendment 9 and for our productive meeting the other day. I recognise that there is a question of whether public ownership will lead to certain liabilities moving on to the public sector balance sheet and therefore counting towards the public sector net debt. I cannot speculate about future balance sheet treatments and impacts as those will always depend on classification decisions that are a matter for the independent Office for National Statistics.

What I can say is that four train companies are already owned by DOHL, including LNER for six years and Northern for four, and the position has not changed so far. The Office for National Statistics recently considered the classification of TransPennine and concluded that it should remain classified as a public non-financial corporation. The mixed economy that we already have is relevant to the question asked by the noble Baroness, Lady Randerson, about the categorisation of a mixed economy. We are going to be there over the next several years as the train operations come back one by one.

It has been suggested in debate that, if liabilities move on to the public sector balance sheet, that would affect public sector net debt and unduly constrain future investment. The noble Lord, Lord Young, referred to events at Network Rail after it was reclassified, many of which I witnessed when I went there in 2015. In fact, a large number of the things that happened were really good. The organisation was not on the public balance sheet. It had spent an enormous amount of money: when I turned up in July 2015, it had debt of £54 billion, roughly equivalent to the whole of New Zealand's national debt. With the last chief executive and the present one, we have put it into great order and reduced its expenditure. It has reduced capital expenditure too, which I think was also wise. The list of enhancements that it was proposing to carry out were beyond its capability then, and beyond the funding of even the unlimited amounts of debt that it could call on.

Nevertheless, the existing publicly owned train operators are the driving force behind the current multibillion-pound pipeline of new rolling stock orders. Network Rail is still investing in the railway infrastructure, and it shows that public ownership need not be a barrier to investment.

Looking more broadly across the public services, noble Lords may have seen that, alongside the Budget, the Chancellor announced changes to the fiscal rules to measure government debt in a way that recognises the need to better support capital investment. This Government recognise the pressing need to rebuild our economy and invest in our public services after years of underinvestment.

It might be helpful to provide the noble Lord, Lord Young, with some specific reassurance, and I can reassure him that we are not seeking to close the door on private investment. Where there are genuine opportunities for private investment—which, for example, might well be, and in the future should be, in relation to property development around stations or car park investment—we would expect Great British Railways to work with relevant local authorities and the private sector to promote these opportunities. I reassure the noble Lord that securing appropriate private investment will be an absolute priority for this Government. I hope that provides him with enough reassurance to withdraw the amendment.

Next, I will address Amendments 18 and 19 in turn. I thank the noble Lord, Lord Moylan, for these amendments. Amendment 18 would require the Secretary

[Lord Hendy of Richmond Hill]
of State to lay a Statement before Parliament within three months of the Bill's enactment. The Statement would need to set out the Government's intentions concerning the terms, conditions and pay rates of staff of existing train operating companies as they transfer to become employees of public sector companies.

At that stage, it would be a very simple Statement. The Government fully expect that the TUPE regulations will apply, preserving employees' existing contractual terms and conditions as they transfer from private operators to subsidiaries of directly operated holdings, in the same way as they have done in previous transfers. I can also confirm that the Secretary of State's contracts with public sector companies would ensure that staff could continue to be members of the railways pension scheme. That being the case, there is no need for a further Statement of the kind mandated by the amendment.

The noble Lord asked what the Government intend should happen to pay, terms and conditions in the period after employees have transferred to a public sector operator. Although this is beyond the scope of the amendment the noble Lord has tabled, I am happy to address the question by saying three things.

First, public ownership under this Bill does not give rise to any imperative to harmonise or otherwise amend staff terms and conditions. Decisions about any such changes are for the future. In contrast to the previous Government's approach, we would expect to discuss these matters openly and constructively with the workforce and their representatives before settling on any specific proposals. If the noble Lord was serious in his proposal, he would be able to tell me, for example, that the previous Government consulted the staff of LNER when it was transferred into the public sector. I think he will find that they did not. I am not going to speculate about the outcome of any such future discussions.

Secondly, resolving the long-standing disputes with the rail unions, as we have done and are doing, clears the way for vital workforce reform to modernise our railways and do away with outdated working practices. We do not need to wait for Great British Railways to start this essential work—although we have needed to clear up a number of disputes, including one so long-standing that it has been a dispute since 2015—and we will do this by working with the workforce, not against them.

Thirdly, looking further ahead to Great British Railways, the overall structure for GBR and the mechanics of how staff will transfer into it are still to be decided. We will want to make sure that GBR retains and treats fairly the committed and talented staff who are essential to keep the railway running for its customers. We will have more to say about this when we publish our proposals for the railways Bill.

Amendment 19 would require another report, this time on the impact of national insurance employer contributions on the operational costs of public sector companies. I am sure that the noble Lord will recognise that employer national insurance contributions are just one relatively small component of train operators' overall costs—less than 2.5% of total costs in this financial year. Furthermore, other significant costs, such as diesel and electricity, are volatile. It would therefore take significant resource to routinely report on all these different costs, which are subject to change all the time.

This reporting would add little value, particularly when any national insurance costs incurred by a DfT-contracted operator are simply paid to another part of government. Public ownership will make no difference to the net cost to government of the relevant train operators' employer national insurance contributions; the Government are already both the funder and the recipient of these.

Having said that, I will be pleased to provide an estimate of any impact as soon as I am able to. At that point, I will happily write to the noble Lord and place a copy of the letter in the House Library. In the light of this, I urge the noble Lord, Lord Moylan, not to press his amendments.

Lord Young of Cookham (Con): My Lords, as this is the last debate and possibly the last speech on Report, I commend the Minister for the patient way he has dealt with the proceedings on Report, drawing on his unique knowledge of the industry we are debating. It has been a pleasure to watch the contrasting debating styles of him and the more flamboyant style of my noble friend Lord Moylan.

I welcome what the Minister said about private investment, but I have to point out that the Bill specifically precludes the sort of investment we saw with the franchise. For example, Chiltern widened single track into double track and built new railway stations. That sort of investment by a train operating company is specifically precluded by the Bill.

On the substance of my concern, he said right at the beginning that there is a question about how the liabilities will be classified. He then sheltered behind the well-known phrase that he "could not speculate" about what the ONS will do. I think there is a distinction between the present position with LNER within the department, with relatively short-term liabilities for rolling stock, and the position with a 20-year liability and GBR. I remind the Minister that, in order to avoid Network Rail being reclassified as public sector body, Treasury Ministers specifically asked—this is under the Labour Government—other Ministers not to criticise the salaries of Network Rail for fear that the ONS would classify it as a public body.

Having said that, the Minister has gone as far as I could have expected him to. He does not have in his breast pocket a letter from the Treasury giving him a guarantee against the consequences of reclassification, but against the good-natured reply he gave me, I seek leave to withdraw my amendment.

Amendment 9 withdrawn.

Amendments 10 and 11 not moved.

Amendment 12

Tabled by ***Lord Moylan***

12: Clause 2, page 3, line 32, at end insert—

"30D Preliminary Report on Communication with Local Transport Authorities

The Secretary of State must, within six months of the day on which the Passenger Railway Services (Public Ownership) Act 2024 is passed, publish a preliminary report outlining the proposed framework for communication between Great British Railways (GBR) and local transport authorities across the United Kingdom."

Lord Moylan (Con): My Lords, this amendment deals with devolution and requires the Government to start work on that in the next few months and explain how they are going to do it. One thing that is new today, as far as I am aware and I have listened fairly carefully to all parts of this debate, is that the Minister has said that he intends to issue his consultation document before the end of this calendar year. Did my ears hear that correctly?

Lord Hendy of Richmond Hill (Lab): I said I hoped to.

Lord Moylan (Con): On the basis of that "hope", which I imagine the Minister will expect to be held to—and which I will be holding him to—I am prepared not to move this amendment, because it will simply be timed out by that consultation document which would replace it, so to speak.

Amendment 12 not moved.

Amendment 13

Moved by ***Lord Moylan***

13: Clause 2, page 3, line 32, at end insert—

"30D Statement on the impact of the Act on rail freight target

The Secretary of State must, within six months of the day on which the Passenger Railway Services (Public Ownership) Act 2024 is passed, make a statement in each House of Parliament outlining how the Government's plans to achieve a 75% increase in the volume of rail freight in the United Kingdom by 2050 are affected by the provisions of that Act."

Member's explanatory statement

This amendment would require the Secretary of State to make a statement outlining the Government's plans to take all reasonable steps to achieve a 75 per cent increase in the volume of rail freight in the United Kingdom by 2050.

Lord Moylan (Con): I am afraid the case is rather different in relation to Amendment 13, which relates to freight and requires the Government to state not simply that they intend to meet the 75% target for the increase in freight volumes but how they intend to do so. It remains wholly mysterious how the Government are going to do this, and it is time that that veil should be drawn back and we should be allowed to know. This amendment would require them to do that. I wish to test the opinion of the House on Amendment 13.

3.58 pm

Division on Amendment 13

Contents 69; Not-Contents 124.

Amendment 13 disagreed.

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4.09 pm

Amendment 14 not moved.

Amendment 15

Moved by ***Lord Hendy of Richmond Hill***

15: After Clause 2, insert the following new Clause—

"Application of public sector equality duty

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

"A public sector company providing services for the carriage of passengers by railway under a public service contract awarded under section 30 of the Railways Act 1993 (public sector provision of services).""

Member's explanatory statement

This amendment provides for public sector companies providing train services under section 30 to be subject to the public sector equality duty.

Amendment 15 agreed.

Amendments 16 to 19 not moved.

House adjourned at 4.10 pm.

Second Reading Committee

Wednesday 6 November 2024

Arrangement of Business

Announcement

1.02 pm

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): My Lords, before the Minister moves that the Bill be considered, I remind noble Lords that the Motion before the Committee will be that the Committee do consider the Bill. I should perhaps make it clear that the Motion to give the Bill a Second Reading will be moved in the Chamber in the usual way on a later date, with the expectation that it will be taken formally. Also, there may be further Divisions in the Chamber; I will adjourn the Committee for 10 minutes each time.

Property (Digital Assets etc) Bill

Motion to Consider

1.03 pm

Moved by ***Lord Ponsonby of Shulbrede***

That the Committee do consider the Bill.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Ponsonby of Shulbrede) (Lab): My Lords, as we begin, I would like to set out some of the history of property law and how this Bill came into being. It is worth noting at the outset that these proposals are concerned with the law of personal property in England and Wales; that is, anything that is not land or real estate. Specifically, the Bill is designed to respond to the challenge the common law faces in recognising certain digital assets, such as crypto tokens, as property; and to position the UK as the pre-eminent jurisdiction for the transaction of digital assets and the resolution of disputes arising from them.

As your Lordships will be aware, certainty around personal property rights is important for a number of reasons, including: in cases where objects of property rights are interfered with or unlawfully taken; in cases of bankruptcy or insolvency; and for the legal rules concerning succession on death. These rights are also important for the proper characterisation of numerous modern and complex legal relationships, including custody relationships, collateral arrangements and structures involving trusts.

Traditionally, personal property has been categorised into two types: tangible property that you can hold or otherwise physically possess, known as "things in possession"; and intangible property that can be claimed or enforced only through a court action, such as a debt or contractual right, known as "things in action". These categories have been recognised in English and Welsh law for centuries, long before digital assets existed. It is not surprising that they do not fit neatly into either category, yet some digital assets have characteristics that mean they should be recognised as property by the common law and treated as such.

For example, it has long been held that pure information cannot be the object of property rights because it can be copied exactly without affecting the original version. If one party sends another party a Word document, for example, the original party still has their copy. By contrast, the technology used to create crypto tokens means that they cannot be duplicated or "double spent". This has been recognised in some recent case law, which found that certain digital assets, specifically crypto assets, can still attract personal property rights even though their unique nature means that they are neither things in action nor things in possession.

It is worth noting, however, that these cases are not definitive in that the decisions were not made by a precedent-setting court. This has left some ambiguity, as there is old case law suggesting that something cannot be personal property if it does not fall within either of the two traditional categories. Under the previous Government, in 2020, the Ministry of Justice asked the Law Commission to review the law on crypto tokens and other digital assets, and to consider whether reform was required. In its 2023 report, the Law Commission concluded that certain types of digital assets can attract property rights and recommended legislation to reflect this. This Government agree wholeheartedly with that approach, which is why we have brought forward this Bill.

I turn to the details of the Bill, which has only one limited and technical operative clause. It recognises that:

"A thing … including a thing that is digital or electronic … is not prevented from"

attracting

"personal property rights merely because it is neither … a thing in possession, nor … a thing in action".

The Bill simply signals a further category of personal property. What it does not do is state which assets fall within this further category. It also does not provide for the legal consequences of falling into this category. These are matters purposefully left to the common law, which is best placed to respond in a nuanced and flexible way.

The Bill does not mean that all digital assets will be recognised as property. There are many kinds of digital assets with different features, including crypto tokens, non-fungible tokens, virtual carbon credits, digital files, and domain names. The well-established common-law tests for personal property will be applied by the courts to each specific digital asset. This means that only things with the necessary characteristics of property will be recognised as attracting property rights.

We believe that the Bill has clear benefits for England and Wales as a legal jurisdiction, and the UK as a whole, enabling more efficient dispute resolution, attracting international businesses to use our law, and promoting economic growth. The Bill will: first, encourage the use of English and Welsh law by international businesses by increasing confidence in how our law will treat certain digital assets; secondly, ensure protections for owners of crypto tokens and other assets in the event of unauthorised use or misappropriation; thirdly, decrease litigation costs and court time by giving certainty as to the existence of a further category of personal property; and, lastly, empower the courts with the tools to develop our world-leading common law.

[Lord Ponsonby of Shulbrede]

Ultimately, the Bill will ensure that our jurisdiction continues to be an attractive place to do business with, and litigate in respect of, crypto tokens and other emerging assets that have the characteristics of property under the common law. The Property (Digital Assets etc) Bill represents a step forward in modernising the law of personal property in England and Wales. By recognising a further category of personal property, it recognises the unique features of digital assets, ensuring that they can be protected and managed effectively under the law.

The Bill underscores our commitment to fostering innovation. It supports our efforts to ensure that our jurisdiction remains at the forefront globally, providing a flexible legal framework that can react to the dynamic nature of digital assets and other emerging technologies. I hope the Bill receives strong support and I look forward to noble Lords' contributions. I beg to move.

1.10 pm

Lord Holmes of Richmond (Con): My Lords, it is a pleasure to take part in this Second Reading Committee on the digital assets Bill, and to follow the Minister. I congratulate him on his erudite and excellent introduction. I declare my technology interests as set out in the register, not least as an adviser to Lombard Electronic Market Infrastructure and to MCM Ltd. I shall set out a bit of history around the technology that underpins the Bill and the opportunities for the UK, say some words on the Bill itself and then ask some questions of the Minister. Before all that, I put on record my thanks to the Law Commission, particularly Professor Green, for her work and the work of her team in bringing this Bill to your Lordships' House for our consideration.

Turning to the technology, we can all be forgiven for believing that artificial intelligence, not least gen AI, is the only technology show in town. It certainly has enough column inches to keep feeding itself until the end of time. But there are other technologies that we should consider when we look at the social, economic and democratic opportunities for the UK. Chief among them is blockchain or distributed ledger technology, which I believe could be a far more profound driver and enabler of value than even some of the greatest claims about artificial intelligence. That is why I have been interested in blockchain for decades and wrote a report on the subject in 2017, *Distributed Ledger Technologies for Public Good: Leadership, Collaboration and Innovation*. I believe that leadership, collaboration and innovation remain three wise watchwords for our approach to this Bill.

I shall give an example of the transformative powers of this technology, which was in my 2017 report. Currently, 25,000 doctor days are used up in the NHS on proof of credentials. Of course they are important—you want to know that the person operating on you is who they say they are and has the experience and the credentials to do so—but with a relatively simple DLT solution, those 25,000 doctor days could be converted into 25,000 doctor days of care.

Crucially, when we consider these technologies, we need to put the human right at their heart. They are extraordinarily powerful, but they are technologies in our human hands: we decide, we determine and we choose how to develop and deploy. It is down to us.

On the opportunities of digital assets, I could cite any statistic from one of the four consultancy firms. I am not going to, but take this: by 2030, the majority of value exchange will take place under or using digital assets. By 2030, tokenisation of real-world assets will be in excess of $10 trillion. This technology came into being only in 2017 and is still highly nascent—my noble friends may be aware of non-fungible tokens or stablecoins, which are the two obvious examples—but we are talking about more than $10 trillion by the end of this decade.

The opportunities for the planet are extraordinary. The opportunities for the UK are immense, not least because of our financial services ecosystem, our fantastic higher education, our start-up and technology communities, and the greatest gift of all: English common law. Some £250 billion of M&A activity takes place around the globe and 40% of commercial arbitration is done under English common law. We have a unique opportunity in this country: as individuals, to assist with financial inclusion, through to financial market transformation, the dematerialisation of capital markets, and a transformation of our economy and society for the benefit of all, if we get it right—all potential, none of it inevitable.

I will quickly list some use cases. The Electronic Trade Documents Act that we passed last year, which also came from Professor Green's team at the Law Commission, is an excellent example of a short Bill with a significant impact: enabling efficiency in international trade, driving economic and environmental benefits, and collapsing the time it takes to perfect trade, potentially from 10 to 14 days to a matter of moments.

With regard to individuals and the housing crisis we have in this country right now, what about looking at fractionalised models for home ownership so that our young people in particular can get a grip on and a piece of the housing market? There are extraordinary opportunities through all the social and economic challenges that we currently face. For our global workforce in the UK, there is transforming overseas payments, taking friction and cost out, so that they can send that money back to their families around the world. On the environmental challenge, we should all be highly cognisant of the environmental impact of blockchain and AI, not just in development but in each and every query and interaction. But none of that is inevitable. We can choose, we can determine, and we can say that all digital assets have to be driven by and generated through renewable sources. All this is in our power. If we get this right, to quote a phrase, digital assets could be a key enabler of "growth, growth, growth".

I turn to the Bill itself. What do we need to consider? What do we currently not have when it comes to the law of property in England and Wales? The question must revolve around clarity, certainty, consistency and coherence. We have already seen the role the EU has played with MiCA and its definition of crypto assets, in a prescriptive code, and how that is currently evolving. Perhaps more pertinent to the UK are the examples in the UAE—Dubai—and Saudi and, indeed, the approach of the Hong Kong Monetary Authority. This is a global game, and the UK needs to decide what role we want to play within it.

The Bill is short in nature but could be extraordinarily significant in impact. At the heart of it is that question set out by the Minister: are the current classifications and categorisations of property in this country, developed over centuries, insufficient to cover digital assets? It is a significant question, because set out in the Bill is a suggestion that a third category of property right should be developed as a consequence, if we pass the Bill as drafted. There are so many elements at play internationally but, looking at home, is there a case to consider that the courts have in some ways overtaken the Law Commission and, indeed, the parliamentary process? I am thinking not least of recent High Court decisions.

When it comes to Committee, I believe that we will need to go into a series of issues in significant detail, and this brings me to the questions for the Minister. First, and most important, are the Government sure that the current categorisation of property into things in possession and things in action is not exhaustive and not able to accommodate digital assets? If not, is the development of a third category desirable in English common law? If we take that path, what are the implications for the courts? Will it become inevitable that the courts follow the parliamentary steer and think, "Well, there must be a need to develop this jurisprudence as a result of the activities of Parliament in passing the Bill"?

Similarly, what will it mean internationally for our common-law community, in which we are such a key player? One of the strengths of common law is consistency in whichever jurisdiction one finds oneself. To that extent, can the Minister say what the Government's position is on the impact of the Bill on other common-law jurisdictions, which have already determined that digital assets can be classified as things in action? I am thinking not least of Singapore and New Zealand, and the relevant cases well passed at precedent level in those jurisdictions. Perhaps closer to home, we should strongly consider the situation in Scotland, as its law on incorporeal movable property seems highly capable of taking digital assets into account.

Noble Lords will have an extraordinarily interesting and detailed exposition of all these matters in Committee. The Bill may seem small, but it is incredibly significant, and we need to consider whether the existing two-state classification of property law is in fact sufficient for the task in hand, and if not, what case law and evidence we are bringing to bear. For example, do we find the 2012 High Court decision in Armstrong compelling in this respect or not?

Ultimately, this is not about the law—the statute itself. It is about what we do in this place and in courts up and down the land as a consequence of this statute, and what that means for individuals, businesses, our economy, our society and our very democracy. I believe that, if we get this right, there will be an extraordinary, almost limitless, unique opportunity for the UK to drive benefits for citizen and state alike to pass a Bill which drives economic and social benefits, which shows Parliament playing her role in this digital future, enabling the courts to play their role in interpretation and development, and reaching out to our common-law communities right around the world. That will be a fine digital assets Bill.

1.23 pm

Lord Thomas of Cwmgiedd (CB): My Lords, it is a pleasure and privilege to follow the noble Lord, Lord Holmes, in his exposition of most of the main issues. I thank the Minister for his careful introduction to the Bill and join him in thanking and paying tribute to Professor Sarah Green, who has done so much to bring our law up to date.

Sitting suspended for a Division in the House.

1.32 pm

Lord Thomas of Cwmgiedd (CB): My Lords, as I was not using written notes, I rely on the absolute skill of Hansard to make it look as though I have continued at the point where I stopped. I thanked the Minister for his very careful introduction, and I added my thanks and praise to Professor Sarah Green for what she has done, which is important in two respects.

First, it is wonderful to be able to go into the Royal Gallery as a lawyer and say, "You can actually do law on one piece of paper", because most complain that lawyers do law in volumes. That is an immense tribute to her.

Secondly, the Bill achieves the right balance to making the critical change—which probably has to be made by statute—but not getting ourselves into an area where you cut off development of the common law.

There is one other respect that I hope the Special Public Bill Committee will be able to consider. We live in different times to when the dominance of English law was achieved. We were then a great industrial and commercial power. We cannot claim to be that in the world relating to digitalisation and digital technology. It is important that the solution adopted by the Law Commission is an internationally attractive solution. We must retain at the forefront of our mind the enormous contribution that having contracts governed by English law provides—it is far more important that they are governed by English law than that dispute resolution occurs here, which is a less significant industry—and that people will choose English law on the basis that they like the solution. This is important because the transnational view is emerging that selection of the governing law will almost certainly be the basis upon which most disputes are likely to be decided.

So we want to say, "Look, come: our law is a good solution and, if you're under our law, you'll get a solution that is attractive". I think the answer is probably right. Another tribute to Sarah Green is the acknowledgement that this is not a matter for looking at solely through the eyes of English law. You have to look at what the Americans are doing, and she has looked at what the American Law Institute has done and what the commissioners at UCC have done—and she has also looked at what is incredibly important these days: the work of UNIDROIT. We have to recognise that it is vitally important that our law is seen in this transnational context.

As I understand it, the Law Commission is going to do a project on the proper law to be attributed and on jurisdiction. It is extremely urgent that this is done from the perspective of commercial transactions. It may be important in other areas, but where it is critical from this Bill's point of view is that we want people to

[Lord Thomas of Cwmgiedd]
choose English law and put that into the contract—and if it is chosen in the contract, and it is likely that most of the pointers for the selection of the law that governs digital assets will be the law chosen by the contract, people are then happy that our solution is the right one. We simply cannot be little Englanders and just look at this through the narrow perspective of what is good for England. We have to look at it in a much broader context—at what is good for our legal system as producing money in very large amounts from its transnational use. If we lose sight of that objective, in an area that one reads about all the time, and which we were reminded of this morning, which is an area of intense international competition, we will cede away to other people's legal systems the business that is done here.

I regard that as the paramount task: to see that this is attractive to those who are not British but who dominate the world's commercial and industrial life. That is our audience—it is not the audience in the UK.

1.37 pm

Lord Vaizey of Didcot (Con): My Lords, it is an honour to have an opportunity to speak on this Bill. I refer to my entry in the register of interests, which includes sitting on the advisory board of two crypto-currency companies and, indeed, one environmental company that uses tokens and the blockchain.

I begin by saying what an honour it is to follow two such distinguished speakers, including the noble Lord, Lord Holmes, who has established himself over many years in this House as a real expert in the emerging technologies that are going to transform not just the British but the global economy. Hearing his thoughts about the use of blockchain going forward was very instructive. I am also following a Lord Chief Justice, who made a point that I was going to make at the end of my speech but will now move up the agenda in terms of where this Bill sits in the international context of different legal systems and jurisdictions.

I thank the Government for fielding such a heavyweight team of hereditary Peers, because it reminds us yet again of the incredible contribution that our hereditary Peers make in this House, particularly on technical but very important, narrowly focused Bills. I hope that they will do so for many years to come.

Obviously, today we are welcoming—well, welcoming may be too strong a word, but we are noting—the election of President Trump. I have been looking at my bitcoin holdings as they soar on the back of it, because he is, apparently, the crypto president. It will be interesting to see the developments that happen in the US, because I want to focus on crypto and technology.

Two important points—I hope that does not sound too patronising—have been made by my noble friend Lord Holmes and the noble and learned Lord, Lord Thomas, on whether the Bill is necessary and whether the common law already defines what a digital asset is or could be. The Minister said that a digital asset is considered property if it has the necessary characteristics of property, by which I assume he means it exists as a unique and unchangeable asset that can be passed from one party to another. He referred to intangible assets and made the point that multiple copies of a Word document can be made. However, within that word "document" sits the intangible asset of intellectual property. Legislation has made it clear what can count as property, including copyright Acts dating back to the beginning of the 18th century, so this Bill may well be necessary to make it clear that the courts have jurisdiction to define a digital asset as property.

That links very well with a point from my noble friend Lord Holmes. Interestingly, this is a Ministry of Justice Bill which resulted from a Law Commission report, but it is also a digital and technology Bill. It is in many ways a flagship not just of our English legal jurisdiction keeping up with the times but of this Government leading on digital policy. I feel strongly as a former Minister in this area that the British Government need to maintain their lead and status as one of the jurisdictions to which people look for policy innovations. I recently spoke to the Malaysian Digital Minister, who was in London last week and made it very clear that Malaysia looks to us on policy for such things as artificial intelligence and digital identity. I appreciate that I am straying somewhat from the core of this tiny Bill, but within it lies the important message that the Government are prepared to bring forward legislation that will maintain Britain's status in this important area.

My noble friend Lord Holmes mentioned that he has been talking about blockchain since 2017; I am pleased to get one over on him, as I was lucky enough to write the preface to the Government's consultation on distributed ledger technology in 2015. Those were the days when George Osborne, echoing what I have just said, wanted the British Government to be at the forefront of emerging technologies and the Treasury to be on the front foot in embracing them. Rather like with artificial intelligence and the metaverse, we have been through so many iterations of how this will eventually play out. The market will eventually show that, but we have talked about central bank digital currencies, for example, and the Bank of England has done many reports on it.

I will dwell a bit on what we call cryptocurrencies and know as bitcoin, which is becoming more and more mainstream. It is interesting that there are now these things called exchange-traded funds, through which normal consumers can go to very well-established financial institutions and effectively buy bitcoin, rather than going to the Wild West of the many crypto companies that have emerged over the last few years. I find bitcoin and cryptocurrency a fascinating development. In theory, there is no reason why bitcoin cannot be currency. It has all its attributes; it can be traded and used to purchase things—just as gold can effectively be a currency because we decided that it has a value and we are willing to exchange it for value. However, bitcoin and cryptocurrency quickly get involved in the geopolitical debate—the prominence of the dollar and the role of the nation state in issuing currencies—which is why it is so controversial. It is also controversial because it can be misused by nefarious elements, but it can be a fantastic asset for people excluded from normal banking facilities. The ability to use bitcoin to transfer aid to Ukraine is an obvious example.

I would like the Minister perhaps to reflect on this. I appreciate that it is not really his department that would oversee cryptocurrency regulation—it would be the Treasury and perhaps the Department for Science, Innovation and Technology—but it is the case that the last Government were very much on the front foot in talking about putting regulation in place for cryptocurrencies. In February 2024, the then Economic Secretary to the Treasury, Bim Afolami, said that the UK Government were going to get new rules governing stablecoins and staking services for crypto assets approved by Parliament within the six months ahead of the general election. That consultation has obviously run into the sand, but this plays to my fundamental point about technology: once the genie is out of the bottle, it will not go away. It is much better to regulate these technologies than simply to allow them to develop in a grey area. In that respect, we encourage this Government to review the effectiveness of the new rules that the last Government introduced governing the financial promotions of digital assets, to ensure that this new regime is working. This was only recently introduced, at the end of last year, and people would like clarity on whether these rules are effective.

Fundamentally, the opportunity for the UK potentially to take a lead in this important area would be the licensing of digital asset firms by the Financial Conduct Authority. It remains the case that this kind of licensing is very slow. It takes more than a year—about a year and a half—to get a licence in order to be a digital asset firm. The number of applications has fallen by more than 50% because of the bureaucracy involved. It is also difficult for a lot of these firms to get access to banking services and other professional services, such as insurance and external auditors. Some G7 jurisdictions have leaned into this issue and taken action to mandate banks to provide bank accounts to these kinds of firms.

There needs to be continued—indeed increased—engagement between the Government, the digital assets industry and the blockchain industry. As I say, the UK remains a technology leader. There was a moment in time a couple of years ago when people expected the UK—particularly under the last Prime Minister, given his interest in technology and financial services—to put the UK at the forefront.

So the digital assets Bill is seen by this industry as an important step forward and a recognition that digital assets can be exchanged and have value. My message to the Minister is that the Treasury and the Department for Science, Innovation and Technology need to step up alongside him and at least give clarity on the Government's thought about this industry, how and whether it should be regulated, and whether they want the UK to be a centre for it.

1.48 pm

Baroness Bennett of Manor Castle (GP): My Lords, I rise as the only female speaker in this debate, noting that, should we see a restructuring of your Lordships' House in future, we might create some space for some female Members with interests in this area. I thank the Minister for a clear introduction to the Bill. It is not my intention in this speech to debate the legal detail or indeed to oppose the Bill, but I shall reflect on how the Government and other noble Lords have suggested the Bill will be used and its potential impact. I guess you could sum up this speech as one that sends a strong note of caution.

I agree with the noble Lord, Lord Holmes of Richmond, that it is up to us how we deploy the powers in the Bill. That means it is a matter of choice. Like the noble Lord, Lord Vaizey, I noted the broader international political context in which we debate today, although my perspective is rather different to his. I note that Susie Dent, the lexicographer, declared that the word for today is "recrudescence", which means the recurrence of an undesirable condition. That is an appropriate term for the context we speak in today. It is also relevant to some of the points I wish to make, which fall into three main areas: the relationship between the kind of goods we are talking about here and corruption and fraud; the situation in the UK economy, where we have too much finance already; and the environmental impacts of cryptocurrencies, other digital resources and the things we are talking about here.

Since we are in Committee, I am reminded of a quote from the noble Lord, Lord Evans. He was then the chair of the Committee on Standards in Public Life, although speaking in a private capacity in a debate on corruption secured by my noble friend Lady Jones of Moulsecoomb. Referring to the most recent decade or two, he said that

"we have clearly, as a matter of policy, turned a blind eye to the perpetrators of corruption overseas using London for business or leisure purposes".—[*Official Report*, 13/10/22; col. GC 156.]

If we look around the world at what cryptocurrency is associated with, we see that it opens up entirely new and lucrative avenues for scammers, terrorists, plutocrats, oligarchs and dictators. They have been using it. There is the well-known case of Sam Bankman-Fried from the exchange FTX in the US. Indeed, the most recent figures from the FBI, from September, show that, in the US alone, consumers have lost more than $5.6 billion through cryptocurrency-related fraud—a 45% jump from 2022. I note that, here in the UK, our officials—after a difficult, complex and no doubt expensive investigation—seized £3 billion-worth of bitcoin in April. The Chinese apparent owners of that bitcoin are now seeking to get it back. Think about the costs: they are very much starting to add up here.

I have to contrast that with the Government's press release dated 11 September, which says that Britain wants to

"maintains its pole position in the emerging global crypto race"

and

"maintain its position as a global leader in cryptoassets".

We are already a leader in global corruption and fraud. How much do we want to magnify that leadership?

Following on from the comments of the noble Lord, Lord Vaizey, I note that this is very much an equalities issue, too. I am sure that many noble Lords have seen the no doubt expensive and high-profile advertising campaigns for cryptocurrencies. They clearly target young, minoritised communities that are suspicious —with good reason—of the traditional financial sector, with its association with colonialism and slavery, but are at risk of being exploited by a new Wild West of finance.

[Baroness Bennett of Manor Castle]

I come to my second point, which is about having too much finance. I shall quote a study; I have quoted it before, in your Lordships' House, but it is worth going back to it. Back in 2018, the Sheffield Political Economy Research Institute concluded that the UK had lost £4.5 trillion over two decades because of its oversized financial sector. We are taking scarce human resources—people with PhDs in maths and physics—and letting them go into sectors of corruption that crash and cost us all a great deal of money. The SPERI researchers concluded that, in the 30 years following Margaret Thatcher's deregulation of the City, financial workers were overpaid by around £280 billion compared to people from similar financial educational backgrounds in other jobs, and financial services reaped £400 billion in excess profits.

Noble Lords may think, "Well, that is not in my political frame". I point them to yesterday's article from Martin Wolf in the *Financial Times*, headlined "More muddling through won't deliver the growth Britain craves". In it, Wolf says that

"pre-crisis GDP and GDP growth were either exaggerated, or unsustainable, or both".

He suggests that a big source of that unsustainability is

"that the pre-2008 global financial bubble, from which the UK, home to a leading financial hub, benefited, also distorted GDP. It not only exaggerated the sustainable size of the financial sector, but also exaggerated the sustainable size of a whole host of ancillary activities".

Let us think carefully about future bubbles.

My third point picks up a point made by the noble Lord, Lord Holmes of Richmond, about the environmental impact of the digital sector, which has been of increasing concern in the past year. Last year, United Nations scientists evaluated the environmental impacts of just one—although probably the biggest—cryptocurrency: bitcoin. They looked at the activity of 76 bitcoin-mining nations from 2020 to 2021; the study was published in the journal *Earth's Future*. If bitcoin were a country, its energy consumption would have ranked 27th in the world, consuming 173.42 terawatt hours of electricity; that is about the equivalent of Pakistan's consumption, with its population of 230 million people.

Energy footprint is just one aspect of this. The water footprint over a similar time was enough to have filled 660,000 Olympic-sized swimming pools, which would meet the current domestic water needs of more than 300 million people in rural sub-Saharan Africa. The land-mining footprint of bitcoin activities was 1.4 times larger than the area of Los Angeles. We are talking about growing this and seeing how far we can make it go. What can the planet bear?

Those are my three main points but I have a couple of final questions, or comments, to put to the Minister. There has been some discussion about non-fungible tokens. Thinking about the way in which, through Brexit, a loss of government funding et cetera, our artists have been scrabbling around and struggling for financial income, securing non-fungible tokens might be a good thing in the art world. That would be something small to celebrate.

In his introduction, the Minister talked about virtual carbon credits being covered by the Bill. We know that carbon offsetting has been an area of massive fraud and corruption—an absolute failure of governance. Might the Minister, either in summing up or in a letter to me, be able to reflect on how the Government will deploy the Bill to ensure that that is not the situation?

I shall come to a slightly more abstract area of consideration, then a concrete one. Taking the abstract first, digital spaces are now where many of us meet, gather, communicate, conduct politics and conduct democracy. They are in some ways a new kind of Commons, if we think about the Commons as a public space where people gather on the street. Again, I shall understand if the Minister would prefer to write, but I ask him to reflect on how this might affect the public use of digital spaces or digital knowledge.

I finish with this concrete question: how does the Bill interact with the decision taken at the COP 16 biodiversity talks to introduce a multilateral mechanism, including a global fund, in order to share the benefits from the use of digital sequence information on genetic resources—known as DSI—more fairly and accurately? It aims to share the benefits with the global South, indigenous people and local communities, and is known as the Cali fund. How will the Bill interact with it?

1.58 pm

Lord Meston (CB): My Lords, we should indeed be grateful to the Minister for his introduction to this Bill. It concerns a topic for which there are mixed messages, as we have already gathered.

Digital assets are now said to be a fundamental part of modern society and economies, yet it is clear that many people continue to regard them with suspicion. They see them as a currency for criminals; as a sophisticated way to launder money or otherwise put funds out of reach in order to evade tax or creditors; or, in the legal area with which I am most familiar, as a way to frustrate claims by estranged spouses and partners. Others regard any investment in digital assets as a peculiarly risky way for fools to be parted from their money, lacking even the colourful excitement of a horse race or tulip fever.

However, it is also clear from the enthusiasm we have heard today that the market in crypto assets is here to stay and grow. Nevertheless, these are programmable assets that remain volatile, illiquid and an intangible species of wealth. They are transferred, stored or traded electronically on what are described as permissionless and public global systems with unregulated intermediaries, which are, as I recently read, detached from traditional geographical boundaries.

It seems that the criminal law is ahead of the civil law in this regard, as was shown by the Economic Crime and Corporate Transparency Act of last year. The law and many non-criminal lawyers have had to get to grips with unfamiliar technological terminology and legal complexities. Bitcoins, altcoins and Bored Apes are beyond the experience and ambitions of many of us; I admit that, before starting work on this Bill, I had never heard of, let alone thought about, reification or rivalrousness. Doubtless others present for this debate talk of little else.

The remarkable feature of the debate is that we are now considering a Bill, as has been said, with just two clauses on less than one page; indeed, the use of the

abbreviation "etc" in the short title is hardly justified. It follows, of course, a report by the Law Commission of more than 300 pages and a supplementary report of a further 80 pages. The Law Commission reports on this topic show a breadth and depth of research and analysis based on wide consultation, making its conclusions authoritative and compelling. Of particular help is the way in which those reports expressly consider, balance and address differing and contrary arguments and viewpoints.

The fundamental proposition underlying the Bill is the conclusion of the commission that, in the common law world and elsewhere, there is now a persuasive, clear and well-reasoned body of case law that holds that certain digital assets are capable of being objects of personal property rights; and the further conclusion that the law should focus on the attributes or characteristics of the thing with which it is concerned in a particular case, without rigid application to so-called "third-category things"—legal principles formulated by reference to other things that are capable of being objects of personal property rights.

The Bill itself, admirably drafted with unambiguous brevity, is designed to knock out potential arguments about the essential nature of the property rights relating to digital assets. It is now to be hoped that, as a result, there will be no further doubt that such property rights fall within Article 1 of the first Protocol to the European Convention on Human Rights; and that, nearer to home, digital assets can be property capable of transfer in matrimonial and family cases before the courts.

I suggest that the points to take away from the Law Commission's work are these. First, statutory confirmation through the Bill will provide greater and valuable legal certainty for many cases, and will allow the law to develop from a clear foundation and from a considered parliamentary decision that has recognised existing modern realities.

Secondly, the Law Commission has recognised the limits of what it wishes to propose in this area, expressing its confidence in the flexibility and capabilities of the common law and our courts to provide for any necessary further development and definition of boundaries. The commission has not attempted to provide a Bill with greater detail or exhaustive definitions, so avoiding what was once called the vain search for greater certainty; indeed, rather than trying to make the legislation judge-proof, it is expected and intended that the courts will deal with developments as they arise. As the commission stated:

> "We also consider that the market will, in general, gravitate towards legal structuring of arrangements where existing legal certainty is high".

It was therefore suggested that much remaining uncertainty will be transient and will diminish through the operation of markets. There was a welcome conclusion that much of the current law can be applied to provide causes of action and remedies.

Thirdly, the Law Commission supplemented its view of what could be achieved through the courts with the recommendation of the creation of a panel of experts, practitioners, academics and judges to discuss difficult factual and legal issues, particularly relating to control, and to provide guidance, albeit non-binding. It is welcome that this recommendation has been accepted and, as I understand it, is being implemented.

Fourthly, these mechanisms should provide the foundation for the courts to consider both the duties of developers and intermediaries towards users and consumers and potentially complex international jurisdictional questions.

Fifthly, the commission tells us that the large number of crypto-related frauds and scams is likely to serve as a catalyst for further development of the law relating to following and tracing.

Finally, it was hoped that the statutory confirmation of the position would reduce the time spent by the courts on questions of categorisation, allowing them to focus on substantive issues. Certainly, the law reports in this area show how much time and effort have had to be devoted to discussion of the legal status of the assets concerned. This Bill, if enacted, should help to reduce this tendency, although I suspect that the legal profession can still take comfort from the adage that there is always at least 10 years' work in a new Act of Parliament. Given the position taken by the Law Commission, it is now for Parliament to respect that position and the reasoning behind it.

It is to be hoped that the separate and different action required in Scotland will be encouraged, so far as possible, to align the law in each jurisdiction. More practically, this is not just esoteric law for lawyers; at a practical level, the greatest challenges to the public and their advisers relate to insolvency practice and to those dealing with succession and probate, who have to try to locate, realise and value these assets and any liabilities. Even if the owners of such assets manage to avoid tax and debt, they cannot avoid death. The now well-known case of the Canadian gentleman, Mr Cotten, who died while the sole password holder of an account containing £105 million worth of cryptocurrency, demonstrates the fragility of digital assets on death.

As the Law Society and consumer bodies remind us, not enough people make or update their wills and even fewer prepare a digital inventory or legacy plan or give directions to help their loved ones or personal representatives to identify or access digital accounts. There is a lot of good and necessary advice for those of us who have failed to do so, and I for one am going home to prepare just such an inventory.

2.08 pm

Viscount Stansgate (Lab): My Lords, I will say a few words in broad support of the Bill and thank my noble friend the Minister for the way in which he introduced it. This is my first involvement in a Law Commission Bill and the special procedure attached to it. I commend the Law Commission for its work.

I have a few points to raise which I hope will be considered legitimate. I am not a lawyer but, clearly, for many years, many lawyers have reached the view that the law in this area is inadequate when faced with the realities of modern life. It is not the first time that technological developments—in this case, crypto assets, bitcoin, et cetera—have, in effect, overtaken and bypassed the legal system.

[Viscount Stansgate]

Although I do not intend to talk about bitcoin, I ought to say that the points made by the noble Baroness, Lady Bennett of Manor Castle, who has just left her place, about the quantities of energy involved in bitcoin mining, were very well made. About two years ago, I was going down the Columbia River in Washington state when I saw my first server farm—an enormous building next to the river, which generates the water and electricity needed. We will have to face up to the point the noble Baroness made about the sheer quantity of energy involved. As I say, I do not intend to talk about that now, but the point is worth making.

The House spent a long time in the previous Session considering the Online Safety Bill for the same reason—technological developments had overtaken the framework of the law. We are still not sure whether that Act will work and do its job but, on the surface, this new Bill seems to be fairly simple and straightforward, as reflected in the briefing by the House of Lords Library. You could not have a shorter Bill if you tried, as has been said. I suspect, however, that it might have somewhat wider ramifications than we initially realised.

The Law Commission described digital assets as

"increasingly important to modern society".

I absolutely agree, but the examples given—crypto tokens, cryptocurrency and non-fungible tokens—are not the only ones. I do not know when Members here first came across the idea of a non-fungible token—I did when I went to the Louisiana Museum of Modern Art just north of Copenhagen in Denmark to see a collection of art by David Hockney. They were pictures drawn on iPads and there were 50 of them around the room. David Hockney is of course one of our most famous artists. I found myself looking at these pictures, which were all very lovely, and saying, "If I took that one off the wall and bought it, in what way would that be an original David Hockney?" You could have passed it to any other noble Lord on their iPad.

A non-fungible token derives from the idea that, unlike in the old-fashioned art world where you buy a painting and take it home with you, you need some other way of ascertaining who is the owner of a particular—in this case—artwork. I began to realise that you could not possibly tell what was an original, in the sense that we do about paintings—references have also been made to Word documents in this debate—so the concept of the non-fungible token clearly grew out of that type of experience.

The emphasis in the Bill is clearly on the financial aspects of new digital things, hence the Law Commission's 2022 *Digital Assets* consultation paper and its advocacy of

"a third category of personal property beyond things in possession and things in action"

taking form in the Bill. I notice that the House of Lords Library briefing refers to the Law Commission's final report on the consultation in 2023, saying:

"The final report … concluded it would be best to avoid hard boundaries of what a third category"

is. Can the Minister confirm that it is intended to create or continue the expert panel—that has been suggested or maybe even set up—designed to give a guide in the future on emerging technical and legal issues?

I turn briefly to one of the more personal aspects of the effect of the Bill. I read an article recently about a new type of legal expertise making great strides. I cannot remember what it is called—something like crypto accountants. These specialist lawyers are much in demand in divorce cases where one party, usually the man, is thought to be hiding assets from the other party, usually the woman. I look towards those Members opposite who may have expertise in this direction but it strikes me as being entirely possible that that is happening. I presume that the Bill will help with those

"complex cases where digital holdings are disputed or form part of settlements".

I hope that the Committee will not mind if I raise an issue that might turn out to be covered by the Bill, which is what you might call our personal digital lives. I am not referring to money, although the sheer scale of the monetary value of digital assets mentioned by the noble Lord, Lord Holmes, is astonishing. Mention has briefly been made of our online life: the records, messages, Zoom calls and the case of the person who died with a digital password unknown to others.

In divorce cases, one often reads about the business of dividing up assets: "Who keeps this? Who keeps that? Who keeps"—this is a very old-fashioned term these days—"the CD collection? And who keeps the photo albums?" In what way will this Bill apply to disputes over things such as digital photos? I have here a mobile phone. A lot of noble Lords have them. They may have large quantities of digital photos on their phones—tens of thousands, in some cases. As I said, we all have them. Will this Bill lead to the courts applying this legislation in some way to whether a phone is a digital asset that can be apportioned in the case of, for example, a divorce?

I read something that interested me the other day. An AI company has apparently set up a digital version of a BBC broadcast with Michael Parkinson, who died a few years ago. In conjunction with his family—at least, with the approval of his eldest son—the company is creating a digital Michael Parkinson, who will be programmed to take part in digital conversations in future with real, alive people. This may seem strange to noble Lords but it looks to me as though this type of thing is coming. What I want to know is, supposing this does happen but part of the family objects to it, if it came to the courts, how might this Bill be applied to decide whether a digital version of a former relative counts as something that can, as an asset, be divided, disputed and so on? I would be interested to know that. I very much doubt that the Minister has anything in his brief relating to it but, nevertheless, I feel it is the type of issue that will arise in terms of the Bill and its potential applications.

I entirely understand the wider international benefits to the UK legal system of this legislation. I hope that it will keep the UK at the forefront of the international legal industry, where we are already recognised as being able to apply the rule of law when so many other jurisdictions around us are not.

2.17 pm

Lord Freyberg (CB): My Lords, it is a pleasure to follow the exposition from the noble Viscount, Lord Stansgate, on digital assets; I particularly enjoyed what he had to say on David Hockney, whose work

I admire. I add my thanks to the Minister for introducing the Bill. First, I declare my interests as someone with a background in the visual arts and as an artist member of DACS, the Design and Artists Copyright Society.

The Bill before the Committee looks to make a narrow and specific change in law to give property protection to digital assets. Although I commend the lucidity of the evidence put forward by the Law Commission and its findings as part of its consultation process, some aspects of digital assets have unfortunately been overlooked by that process. I refer in particular to the impact that non-fungible tokens—NFTs—have had on artists, the art market and the wider creative industries, which were not adequately considered in the consultation by the Law Commission. This represents a potentially missed opportunity to address wider concerns around the roles that digital assets play in a variety of marketplaces. I note in particular that, although NFTs have been widely aligned with artworks—such as the first NFT, which sold at auction for almost $70 million in 2021—only cursory references were made to this important store of value in the consultation and, therefore, in the responses.

Although the sale of NFTs made headlines and could be considered somewhat fanciful, the reality is that NFTs and NFT marketplaces opened the doors to a plethora of issues, from intellectual property infringement to fraud. I therefore wish to highlight some of the important work of the Government's Select Committee in addressing these concerns, which were not considered in the earlier 2022 Law Commission *Digital Assets: Consultation Paper*, as they were discussed nine months later in August 2023.

The Culture, Media and Sport Committee undertook an inquiry into non-fungible tokens and blockchain to assess the role of NFT marketplaces, the impact of blockchain on the traditional art market, and issues of intellectual property arising from a surge in NFT sales on international platforms. The committee heard from witnesses that the role of NFT marketplaces facilitated widespread copyright infringement and, in some cases, fraud. Marketplaces selling NFTs subjected their users, whether consumers or artists selling their NFTs, to terms and conditions of use that absolved them entirely of any responsibility regarding the veracity of the products sold and of any liability for wrongdoing.

Consumers trading in NFT marketplaces face high financial risks. They must first convert fiat currency into volatile cryptocurrency and contend with unpredictable service fees, known as "gas fees". These risks are intensified by a lack of transparency, with marketplaces often not disclosing complete product information or taking responsibility for fluctuating transaction costs.

There is also a lack of reliable data on the scale of the NFT market to adequately evaluate, and therefore mitigate, these risks. At the time the CMS committee conducted its inquiry, it was understood that OpenSea, one of the largest NFT marketplaces, had over 80 million NFTs on its platform. However, no data on how many individuals were purchasing these or converting fiat currency into cryptocurrency was available. None the less, there was some speculation that around $100 billion-worth of cryptocurrencies were in circulation, leaving an enormous amount of capital subject to losses caused by fluctuation in prices.

Although the anticipated benefits of NFTs did not meaningfully materialise, the real risks and harms to creators and consumers in their use have persisted. The most pressing issues uncovered by the CMS committee's inquiry pertained to risks to intellectual property. These included the infringement of creators' copyright when NFTs were created or "minted" from their creative works—a restricted act under copyright law—as well as the limited avenues for recourse and redress available to creators whose works were minted, and the consumer confusion around the transfer of rights to, or even ownership of, the underlying assets in transactions of NFTs.

To mitigate the identified issues, the committee recommended that the Government engage with NFT marketplaces to address the scale of infringement and enable copyright holders to enforce their rights. It also recommended that the Government address the impact of safe harbour provisions by introducing for online marketplaces operating in the UK, including NFT marketplaces, a code of conduct that protects creators, consumers and sellers from infringing and prevents fraudulent material from being sold on these platforms. However, the Government's response to the report, received on 4 January 2024, stated that they would not seek to introduce any legislation or code of conduct for online marketplaces, including NFT marketplaces.

So, although it is commendable and necessary, the Property (Digital Assets etc) Bill does not address the full extent of the issues arising from the sale and trade of digital assets in the real world. Sadly, it also does not factor in the work conducted by the CMS committee in April 2023. These issues are still valid—artists depend on fair pay for the use of their works in an online environment and are particularly impacted by unauthorised and unremunerated uses.

These problems are only intensifying. We now have generative AI platforms that have scraped images from the internet, without permission or pay, to train AI models. A lot of generative AI products will even encourage customers to prompt the models to produce an output in the style of another artist. Why would anyone need to ask permission or license the work of our talented artists if these platforms give something identical to their customers for free?

Given these concerns, will the Minister look to conduct a thorough review of the CMS committee's work to support the advancement of the Property (Digital Assets etc) Bill? This review should aim to improve benefits while addressing the adverse effects that non-fungible tokens have had on artists, the art market and the broader creative sectors.

2.25 pm

Lord Clement-Jones (LD): My Lords, I remind the Committee of my interests in the register. I add my thanks to the Minister for his clear introduction. I am an admirer of the work of the Law Commission, so it is intriguing to be debating the merits of this one-clause Bill with such a distinguished group of digital aficionados. Despite the brevity of the Bill, as the Minister has described, it has seen quite a careful run-up through consultation, response, report and draft Bill to help inform us. We have heard some great speeches today

[Lord Clement-Jones]

explaining why digital assets are important because of their impact, both negative and positive, on society and the economy.

The Law Commission has essentially recommended that we legislate to confirm that the outcome of the 1885 case Colonial Bank v Whinney, which decided that all personal things are either in possession or in action, is clearly superseded. Effectively, we are confirming that the common law of England and Wales has, over the last 10 years, clearly moved towards explicit recognition of a third category of things to which personal property rights can relate. In the words of the Law Commission, the courts have recognised that those things are

"capable of being objects of personal property rights at law".

It was interesting to be reminded, while preparing for this debate, of the traditional forms of personal property. In the dim and distant past, I remember my supervising partner when I was an articled clerk—in the quill pen era—being very surprised when I had no idea how to draft an assignment of a chose in action. Actually, I had no idea what a chose in action was, despite two years of law at university. Anyway, young lawyers will now have to learn how to assign a digital asset as well.

The Electronic Trade Documents Act, mentioned by the noble Lord, Lord Holmes—it is also good to see the noble and learned Lord, Lord Thomas of Cwmgiedd—and which I was pleased to help on its way recently, was an exception in that it provided that electronic, or digital, trade documents could be treated as things in possession. Sadly, the Centre for Digital Trade and Innovation, soon to become an international centre, recently said that, while there are some signs of adoption, particularly among large commodity traders using e-bills of lading, the dial has yet to move on more general usage of the Act to make international trade faster, cheaper and simpler—as suggested in the impact assessment—especially for the SME sector. So, sadly, not all Law Commission efforts bear fruit quickly.

However, as the Law Commission discusses in its consultation paper, it did not think that the arguments for using possession as the operative concept for electronic trade documents were as persuasive in respect of other forms of digital asset. It concluded that

"it is not necessary or appropriate for legislation to define the boundaries of such a third category".

We are essentially being asked to take an act of faith in the adaptability of the common law and to accept that

"the common law remains best placed to describe the parameters of third category things that are capable of being objects of personal property rights".

This is in line with the first two of the principles that the Law Commission has explicitly and rightly adopted. The first is:

"Championing and supporting the inherent flexibility of the common law and making clear that, in general, it is sufficiently flexible, and already able, to accommodate digital assets".

The second is:

"Statutory reform only to confirm the existing common law position or where the common law cannot develop the legal certainty the market requires".

So we see reflected in this short Bill the Law Commission's recommended legislation confirming the simple proposition that the fact that a thing is neither a thing in possession nor a thing in action does not prevent it being a thing to which personal property rights can relate. As we have heard today from a number of noble Lords—including the noble Lords, Lord Vaizey and Lord Holmes, and the noble Viscount, Lord Stansgate—this is designed to cover crypto tokens, such as bitcoin, ether and stablecoins, NFTs and carbon credits, which may not have rights or claims attached to them so they may not qualify as things in action.

Some lawyers say that there is already a high degree of legal certainty and that there exist certain types of intangible property that are already recognised by the law of England and Wales. In essence, the Law Commission says that the recommendation for statutory intervention seeks merely to confirm and support what it considers the existing position in law. It goes further in its belief that the common law can do the necessary job in further defining digital assets, saying that

"it is not necessary, appropriate or helpful for the law of England and Wales to adopt statutory definitions of digital things for the purposes of answering the question as to whether such things are capable of being objects of personal property rights".

It continues:

"We think that this logic applies equally to defining hard boundaries of a category of thing to which personal property rights can relate, distinct from things in possession and things in action".

So, broadly speaking, the Law Commission leaves detailed implications to be fleshed out through future judicial decisions and ongoing common-law development, perhaps with the expert panel.

This includes the important aspect of remedies. The commission concludes that

"the vitiating factors of mistake, misrepresentation, duress and undue influence apply similarly to contracts involving third category things as they do to contracts involving things in possession and things in action".

We are taking quite a lot on faith here. However, when it comes to certain other aspects, such as the entry into operation and enforcement of collateral arrangements for crypto tokens and crypto assets, the Law Commission concludes that

"it is not possible for the common law alone to develop a legal framework"

and that

"such a regime would be beneficial for the law of England and Wales and would provide market participants with important legal tools that do not exist today".

Some questions arise. What next steps are proposed for this? Is this another case for the expert panel to look at? Is the common law adequate to deal with transfers and intermediate holding arrangements?

There are a number of additional questions, to which I hope we will get the answers in the course of our Committee proceedings when we take evidence. For instance, the report touches on general consequences, such as clearer rules for inheritance, bankruptcy and insolvency proceedings. The noble Lord, Lord Meston, touched on the vexed issue of digital assets in wills, while the noble Viscount, Lord Stansgate, mentioned it in the context of divorce—happy days. What are the potential legal consequences of the Bill's approach for the parties involved in digital asset transactions? How will this impact issues such as ownership disputes, inheritance, bankruptcy and insolvency?

The Bill leaves detailed implications to be fleshed out through future judicial decisions and ongoing common-law development. The report clearly states that the courts will play a critical role in shaping the contours of this new category. Are they fully equipped to do so? Is that the best way forward, rather than providing more granular definitions in the Bill itself? Is there any transition of existing digital assets required from their current legal status to their status as a result of the Bill? What are the potential risks or unintended consequences of the proposed legislation? Will the explicit recognition of digital assets as personal property have an impact on the financial, technological and legal sectors? How do stakeholders from those sectors view the proposed Bill?

While the Law Commission in its reports acknowledges the possibility of unintended consequences, it argues that the flexibility of the common law approach will allow for adjustments and refinements as necessary, rather than detailing specific risks, and I am certain that the Committee will want to explore that approach.

Finally, I have two questions that the Minister may be able to answer today. The report discusses potential impacts, such as increased legal certainty and more straightforward asset management, but it does not provide an in-depth analysis of sector-specific impacts. Do the Government propose to produce an assessment of the impact that the recognition of digital assets as personal property will have on various sectors, or do they believe that because of the confirmatory nature of the Bill, that is already baked in?

Then, on a matter that a number of other noble Lords raised today—the noble and learned Lord, Lord Thomas, and the noble Lords, Lord Vaizey and Lord Holmes—there is the whole question of how the proposed legislation aligns with existing international models. We heard mention of MiCA in the EU, while Dubai has digital asset legislation and a regulator, VARA, and the US will probably become more bullish about crypto assets under its new Administration. The noble and learned Lord, Lord Thomas, was also very clear about the importance of the competitive aspect in terms of choice of jurisdiction. This question remains largely unanswered in the report, with the Law Commission not detailing how the Bill will align with international legal frameworks or affect international transactions. What are the potential risks or unintended consequences of any of the proposed legislation in this respect?

Other questions were rightly raised about the future regulation of crypto assets and cryptocurrencies. On whether we are going as far as we should in this respect, the noble Lord, Lord Vaizey, and the noble Baroness, Lady Bennett, are pretty much on opposite sides of the equation. The noble Lord, Lord Meston, rightly made the point that the criminal law is ahead of the civil law—I see we are debating a statutory instrument on this subject on Monday. It may be beyond the Minister's brief to be talking about the digital Michael Parkinson, but perhaps he could shine some light and give us a glimpse of the regulatory future as regards some of these digital assets.

There are many unanswered questions. I look forward to Committee, when I hope that we will get some more answers.

2.37 pm

Lord Sandhurst (Con): My Lords, this has been a most interesting debate. I am grateful, as are others, to the Minister for his careful opening.

On this side we welcome the Bill. It may be small in size but it is big in importance, and we may yet find that it is perfectly formed. The last Conservative Administration deserves credit, I suggest, for having asked the Law Commission in 2020 to review this field of law. It is also very timely that we are debating this during the presidential election, because I see from my phone that bitcoin has risen over 7% in value today. So, this is an important, real topic for many people.

2.38 pm

Sitting suspended for a Division in the House.

2.45 pm

Lord Sandhurst (Con): My Lords, the Law Commission has produced two admirable reports. The Bill, we suggest, is a necessary but appropriately constrained measure. I shall be interested to hear the evidence in Committee, but it is plain that such a Bill is necessary to clarify the definition of what is capable of being property and to give enforceable rights where there might otherwise be doubt.

The English common law has given property rights to two categories of thing, as we have heard: so-called things in possession, which are generally tangible, visible objects, and so-called things in action, such as debts, and the rights to sue for breach of contract and company shares.

However, the world moves fast, and we are now confronted with digital assets. These sit less easily in our current definitions. They can include crypto tokens, cryptocurrency and non-fungible tokens. They are increasingly important to modern society, whether we personally like them or not. It is important that we keep the strong position that English common law holds in international trade, as the noble and learned Lord, Lord Thomas of Cwmgiedd, reminded us. We need to enforce the position of the City of London and the role of its lawyers in the important commerce that they bring to this country, and the tax and other benefits which flow from that.

There is a need for action to enable ongoing innovation growth in the sector. This has given rise to the Law Commission's definition of a third category of property. It should take account of recent technological developments without creating hard boundaries which exclude or misdescribe future categories of property as yet unimagined.

The Law Commission is of the view that the common law of England is the better vehicle for determining those things that properly can and should be the object of personal property rights. They need not necessarily even be digital things. It points out that they could include, for example, carbon emission allowances. The world moves fast, and the law must keep up, but it cannot anticipate everything. As the Law Commission points out, an overprescriptive definition will leave things frozen in time.

[Lord Sandhurst]

In chapter 2 of its July report, the commission explains that the common law is in general sufficiently flexible and already able to accommodate digital assets. It agreed with Sir Geoffrey Vos, Master of the Rolls, who, speaking extrajudicially, said:

"We should try to avoid the creation of a new legal and regulatory regime that will discourage the use of new technologies rather than provide the foundation for them to flourish".

The Law Commission concluded that it should take a tripartite approach to law reform. First, the common law is in general sufficiently flexible and already able to accommodate digital assets, so any law reform should be through further common law development where possible. Secondly, it recommended targeted statutory law reform and no more. That should confirm and support the existing common law position or fill a gap where common law development is not realistically possible. Thirdly, it said the making of arrangements for the provision of further guidance from industry experts should occur. We are not concerned with that third category.

So, the commission concluded, the law in England and Wales is now relatively certain. Most areas of residual legal uncertainty are highly nuanced and complex, in part because both the digital asset markets and the technology that supports them continue to evolve. Although some digital assets are not easy to place in traditional categories of things to which personal property rights can relate, this does not prevent them from being capable of attracting personal property rights.

The commission has said that it is clear what should take place in common law. It was persuaded by consultees that it would be helpful to express in legislation that certain digital assets are capable of attracting personal property rights and, therefore, to support the existing common law and take away any uncertainty. It set out certain principles that are beyond argument, I suggest. We should champion and support the inherent flexibility of the common law; it is already sufficiently flexible to accommodate most, if not all, digital assets. We should seek by statute only to confirm the existing common law position or to reform it where the common law cannot develop the legal certainty that the market requires. We must ensure that there is consistency with other legal and regulatory regimes where possible.

English common law has already proved resilient in the face of new technology. It has been flexible enough to answer legal questions concerning digital assets. It is developing a sophisticated regime that recognises and protects the newest features. It provides the market with a good balance of certainty and flexibility. Our English jurisdiction is well placed to provide a coherent and globally relevant legal regime for existing and new types of digital asset. As the noble Lord, Lord Freyberg, said in his interesting speech, if the Bill leaves gaps—particularly in respect of non-fungible tokens in the art market—we should examine the potential remedies, if there are any, in Committee. However, intervention by statute should not undermine the high level of existing certainty, lead to undue complexity or create a significant risk of boundary issues—the Law Commission was clear on that—because the wrong sort of statutory intervention might not be capable of distinguishing between different implementations of similar technology in the way the common law can.

The Bill, with its one simple clause, is the product of much deliberation at the highest level. The definition has been drafted with great care. I note the subtle differences between the version now before this Committee and the earlier draft, produced in February. The Committee will hear evidence about whether that balance is now right and whether there are appropriate additions or amendments, but, to me, at the present time, it is plain that the draft before us should not be amended without compelling reasons. I commend the Bill to the Committee.

2.53 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, I am grateful to those noble Lords who contributed to today's debate. All of them will, I hope, acknowledge the expertise in the Room. Committee stage is likely to be very expert as well; I look forward to it.

I am keen to emphasise, as the noble Lords, Lord Clement-Jones and Lord Sandhurst, did, the great deal of work that has gone into the Bill: from the Law Commission, which produced an excellent report and followed that up with a consultation on the proposed Bill, and from the practitioners, businesses, academics and organisations that engaged with the process throughout. I give my thanks to all who were involved in that work.

The result of those efforts is a simple but elegant Bill. As has been said, most notably by the noble and learned Lord, Lord Thomas, it will support our efforts to remain a pre-eminent jurisdiction, with English and Welsh law the global law of choice, and it will signal that the UK is a leader in innovation and technology. As our society evolves, so too must our laws. The Bill is just one of the ways in which we are modernising our legal framework. I will endeavour to address some of the points made by noble Lords. If I miss any points in particular, I will of course write to noble Lords.

First, the noble Lord, Lord Holmes, asked a number of questions, and I will have a go at answering them—I recognise his expertise in this matter. The first question was on whether the Government are sure that the current categorisation is not exhaustive and unable to accommodate existing digital assets. The Law Commission considered this option as part of its extensive and detailed report. It acknowledged that it would be possible to recognise crypto tokens as falling within an expanded category of things in action—that is, to treat "things in action" as a catch-all category for all personal property that is not capable of possession. However, crypto tokens and similar assets are fundamentally different from other things in action, which can only be claimed or enforced through a court action. For example, unlike debt they can be stolen, which in some ways makes them more like things in possession despite them not being physical objects.

Digital assets could not have been conceived when the original categories of personal property were developed and so it is no wonder that these do not fit neatly into either category. The commission, and most of its consultees, concluded that it would be better for the law to recognise that this unique combination of features means that they belong to a different category. That is why we chose the third category option, which is promoted in the Bill.

The second point the noble Lord, Lord Holmes, made, was on the implications for our courts. One of the great strengths of the common law is its ability to evolve. We are, however, dependent on the right cases being brought to the precedent-setting courts. While we could have left the law to develop, there is no guarantee of if or when this would happen, and in the meantime the uncertainty would remain about whether digital assets could be treated as personal property. The underlying point of the Bill is to put into statute the way that the common law was developing in any case, and to allow the common law to continue to develop once this particular bit of legislation is in place. To that end, the Government took the decision to legislate to give the market confidence and clarity in English and Welsh law. It also provides a strong indication to the courts that Parliament then intends to develop common law and that there is a further category of personal property that some digital assets can fall within.

The third question the noble Lord, Lord Holmes, asked, was on what this means for the common-law community. The Bill does not put the law of England and Wales at odds with other common-law countries. Courts in New Zealand and Singapore have considered that crypto assets are capable of attracting property rights and question the appropriateness of there being only two categories of personal property. The Bill is consistent with further international legal developments —for example, the US, New Zealand, Singapore and the Dubai International Finance Centre have recognised crypto tokens as property, and the latter has recognised them as specifically belonging to a new category of personal property.

The noble Lord, Lord Holmes, asked about Scotland. Scotland's law of personal property is distinct and does not share concepts of things in action or things in possession, so any legislative intervention in this area would have to be slightly different. I understand that the Scottish Government recently appointed an expert reference group to consider how Scots private law may best accommodate digital assets. It will be interesting to see how its work develops in this area. No noble Lord raised Northern Ireland, but the Bill could be extended to include Northern Ireland, subject to a legislative consent Motion at the Northern Ireland Assembly's request.

The noble Lord, Lord Vaizey, spoke about the importance of the financial regulation of crypto assets. The Bill supports and complements the work of the Treasury and the Financial Conduct Authority, which are currently working on appropriate financial regulation of crypto assets.

The noble Baroness, Lady Bennett, asked what impact the Bill will have on things such as illegal transactions, fraud and tax avoidance. I recognise her points, and the answer is that the Bill deals only with a specific issue of personal property law. Illegal transactions, fraud and tax avoidance are properly dealt with by other statutes and initiatives.

The noble Baroness spoke about the environmental impact of crypto in a wider sense, and my noble friend Lord Stansgate also made that point. Of course, the Bill does not have a direct environmental impact, as it does not mandate for an increase in the use of crypto tokens or other digital assets—digital assets will continue to be used and created regardless of the Bill. Rather, the Bill is about clarifying the legal status of digital assets that already exist when a dispute has arisen. The Bill will help keep the courts of England and Wales as a leading place to mitigate these disputes.

However, I agree that environmental issues are important. This falls to a much wider discussion on things such as improving energy efficiency and adoptable sustainable power sources, and that is best addressed by other statutes and initiatives. Conversely, it is possible that the Bill could bring positive environmental benefits by enabling innovative green finance for particular projects and things. Nevertheless, I take the noble Baroness's point.

My noble friend Lord Stansgate asked a number of questions. The first was: is the panel on the legal concept of control proceeding? I am happy to confirm that the UK Jurisdiction Taskforce, an expert group chaired by the Master of the Rolls, is taking forward this work, as a body that already has an internationally credible voice in the intersection of law and technology. In fact, I met Sir Geoffrey Vos last week, and we spoke about that very point.

Secondly, my noble friend asked whether the Bill would help in the division of matrimonial property on divorce—the noble Lord, Lord Meston, made this point as well. I am pleased to say that the Bill will help courts to say with confidence, in divorce cases, that crypto assets are matrimonial property. This is also a case for crypto assets on death.

The third question my noble friend raised was: will the Bill help people access the iPhone photos, for example, of deceased relatives? The situation for other digital assets, such as digital photos, is not addressed by the Bill, as the assets are not personal property. So it will not address that point as such, but it will be for the common law to develop the answers to those sorts of questions.

The noble Lord, Lord Freyberg, in a thoughtful speech of which he gave me good notice—I thank him for that—raised the impact of NFTs on the traditional art market. As he rightly said, there are many different aspects to this, and many uses for digital assets, giving rise to different legal, practical and other issues. This Bill does not purport to deal with all the issues that arise; that would be a very different and hugely extensive Bill. This Bill deals with a discrete issue of personal property law; it does not relate to the existing statutory framework of copyright law, artists' resale rights or consumer protection law. Those areas of law raise different policy issues and need to be considered separately. I recognise the important work done by the CMS Select Committee on issues such as copyright infringement, and other bodies such as the Financial Conduct Authority on issues of consumer misinformation about crypto. These issues are too varied and complex to be brought within the present Bill, which is deliberately limited in scope.

On the noble Lord's comments relating to AI, the Government believe in both human-centred creativity and the potential of AI to open up new creative frontiers. The AI and creative sectors are both essential

[Lord Ponsonby of Shulbrede]
to our mission to grow the UK economy. However, this is an area which requires thoughtful engagement. I understand that the Intellectual Property Office, the Department for Science, Innovation and Technology and the Department for Culture, Media and Sport are working closely with a range of stakeholders, including artists, on issues related to AI, copyright and IP. This includes holding round tables with AI developers and representatives from the creative industries.

I thank the noble Lord, Lord Clement-Jones, for his broad support for the Bill, although he asked whether this should be left to the common law. The idea is that this Bill will enable the common law to continue developing in this field. There will be new technologies, including things that perhaps we have not even thought about in this debate. The law of personal property is an area which has traditionally been developed through common law. If the noble Lord wishes to pursue the issue, we could develop it in Committee.

Baroness Bennett of Manor Castle (GP): Will the Minister write to me about the issue I raised from COP 16 about digital sequence information on genetic resources, and the broader point about digital commons?

Lord Ponsonby of Shulbrede (Lab): Yes, I will be happy to write to the noble Baroness.

Motion agreed.

Committee adjourned at 3.07 pm.