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HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

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

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House of Lords

Tuesday 16 June 2020

The House met in a Hybrid Sitting.

11 am

Prayers—read by the Lord Bishop of Peterborough.

Arrangement of Business

Announcement

11.07 am

The Deputy Speaker (Lord Bates) (Con): My Lords, the Hybrid Sitting of the House will now begin. A limited number of Members are here in the Chamber, respecting social distancing. Other Members will participate remotely, but all Members will be treated equally, wherever they are. For Members participating remotely, microphones will unmute shortly before they are to speak—please accept any on-screen prompt to unmute. Microphones will be muted after each speech. I ask noble Lords to be patient if there are any short delays as we switch between physical and remote participants. Oral Questions will now commence. Please ensure that questions and answers are short.

Constitution, Democracy and Rights Commission

Question

11.07 am

Asked by ***Baroness Whitaker***

To ask Her Majesty's Government what will be (1) the terms of reference, and (2) the appointment process, for the constitution, democracy and rights commission.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, the commission will examine the broader aspects of the constitution in depth and develop proposals to restore trust in our institutions and in how our democracy operates. Careful consideration of the scope of the commission is required, and further announcements will be made in due course.

Baroness Whitaker (Lab) [V]: Events have moved on since this commission was first announced. How will its remit and membership take account of the rights of black and minority ethnic marginalised and poor people, as well as the citizen's right to a clean and sustainable environment?

Lord True: My Lords, the commission was promised in the Conservative manifesto last December. Since then, we have had the Covid crisis. As I said, further announcements about the commission will be made in due course, but I have no doubt that it will be able to take into account all events anterior to its creation.

Lord Strathclyde (Con) [V]: My Lords, when my noble friend the Minister is discussing the terms of reference for this commission, will he also consider the case for examining political interference by the judiciary, and for looking at the provisions of the Constitutional Reform Act 2005 and the possibility of the role of Lord Chancellor returning to this House permanently?

Lord True: My Lords, I cannot anticipate the scope of the commission at this point. Of course, like my noble friend, I well remember the appalling events when the Lord Chancellor's office was abolished by a press release from No. 10. I assure noble Lords that the commission will be proceeded with in a more thoughtful and sensitive fashion.

Lord Kilclooney (CB): My Lords, considering the increased indifference among some English Conservatives towards Scotland and Northern Ireland, can the Minister confirm that representatives from Scotland and Northern Ireland will be on the commission, who would ensure the future of the United Kingdom?

Lord True: My Lords, as I have said, I am afraid that I cannot respond in detail prior to the announcements of the scope, composition and focus of the commission. However, the noble Lord makes a vital point about our union, the preservation of which is fundamental to the objectives of the Government.

Lord Maxton (Lab) [V]: My Lords, can the Minister confirm that the commission will cover all aspects of the constitution, including that most basic of all: how we vote in both local and general elections? If, as I hope it will, the commission advises that it will go for electronic voting with an ID card which has built into it either a fingerprint or facial recognition so that there can be no cheating, will the Government implement the commission's proposal?

Lord True: My Lords, again, I cannot anticipate the composition and focus of the commission. However, I can say to the noble Lord that the Government have already presented legislation on boundaries, which is before the other place at the moment, and we have also signified that we will look at matters relating to the conduct of elections.

Lord Wallace of Saltaire (LD) [V]: My Lords, I welcome the Minister's statement that the Government are taking very careful consideration of the agenda. There is a great deal of expertise on constitutional and political issues in this Chamber. Will the Minister commit to a Lords debate on the agenda and terms of reference of the constitutional commission, either before the summer or at least in our September Session, to inform the process of consideration?

Lord True: My Lords, I had the pleasure of sitting on the Back Benches behind the noble Lord when he was on the Front Bench, and he will know that that is a matter for the usual channels to determine. For my own part, I always welcome discussion with anybody on this important matter.

Lord Wigley (PC) [V]: My Lords, I wish to press the Minister further on the relationship between the devolved Administrations and Westminster. If the terms of reference include looking at this interrelationship, as they most certainly should, can he guarantee, or at least press the Government to ensure, that voices from Cardiff, Edinburgh and Belfast are on both sides of the argument —with regard to the nationalist community in the three countries—as a central part of the commission to ensure that it has credibility in those three nations?

Lord True: My Lords, I regret that I cannot add anything to my answer to the noble Lord, Lord Kilclooney. I am not in a position to advise the House at this stage on the composition and focus of the commission. Of course, I take note of what the noble Lord says.

Lord Howell of Guildford (Con) [V]: My Lords, further to the question put by my noble friend Lord Strathclyde, will the proposed commission look at the relationship between the Supreme Court and Parliament? If so, will it look in particular at the recent controversial court judgment on interim custody orders in Northern Ireland and exactly who signed them back in the 1970s, given that the judgment seemed to ignore completely the clear wishes and intentions of Parliament, to misunderstand the normal workings of ministerial and departmental government and to take no account of the practicalities of direct rule administration in Belfast at the time?

Lord True: My Lords, my noble friend has great and direct experience of this issue. Obviously, the Government will look closely at the outcome of that judgment. I regret that, as far as the commission is concerned, I cannot add anything to my prior answers on its scope and composition. I assure the noble Lord that the Government will proceed with care and consideration.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I am sure that the Minister is aware of the YouGov survey conducted last month, which showed that less than half of people said that the Government are "relatively trustworthy" or better. If we look around the world, to countries such as Germany, New Zealand and Iceland, levels of trust are high. That suggests that the underlying problem may be our system of an uncodified, opaque and unwritten constitution. Will the terms of reference consider why our system is trusted so little by the people?

Lord True: My Lords, I strongly disagree with the noble Baroness in her view that the people of this country distrust our governance and the Government. I remind her that the British people had an opportunity only last December to say what their view was on who should govern them.

Baroness Hayter of Kentish Town (Lab) [V]: My Lords, I appreciate that the Minister cannot tell us what is already going on but I wonder whether he could use his good offices—we know that he has a lot of influence—to ensure that, if the commission is to restore or enhance public confidence, it is taken forward on a cross-party basis and with a focus on excluded or disenfranchised groups, particularly BME groups, as we have heard, as well as the charity sector and civil society. Unless we all have confidence in the process, we will not have confidence in the outcome. Can the Minister assure us that he will use his influence to put the views he has heard today to those who are drawing up the terms of reference and membership?

Lord True: My Lords, I have the privilege of coming to this Chamber to hear the views of Members from all sides of the House; I do that, of course. We will continue to promote the United Kingdom's interests and values, including freedom of speech, human rights and the rule of law.

Lord Bruce of Bennachie (LD) [V]: Given the stress of the combined impact of Brexit and Covid-19 on the devolution settlements, may I urge the Government to consider how a federal constitution could share fairly the powers, resources and decision-making allocated to and shared between the devolved Administrations and local authorities?

Lord True: My Lords, I know that that is a long-time aspiration of the noble Lord's party but I cannot add further to what I have said about composition, focus and scope.

Lord Caine (Con): My Lords, is my noble friend aware of the damaging impact of the retrospective application of the Human Rights Act on legacy cases in Northern Ireland, particularly in respect of former members of the Armed Forces and the police? Could the commission consider legislating to limit the scope of that Act?

Lord True: My Lords, I regret to say to my noble friend what I have said to other Members: I cannot answer that specifically. The Government are still considering these matters but, as with the other noble Lords I have answered, I will take close notice of what my noble friend says.

The Deputy Speaker (Lord Bates) (Con): My Lords, all supplementary questions have been asked so we will move on to the next Question. I will allow a few moments for the Front-Bench teams to change places.

Social Housing

Question

11.19 am

Asked by ***Baroness Sanderson of Welton***

To ask Her Majesty's Government when they plan to publish the social housing White Paper.

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): My Lords, we will publish the social housing White Paper later this year. It will set out further measures to empower tenants and support

the continued supply of social homes. This will include greater redress, better regulation and improving the quality of social housing.

Baroness Sanderson of Welton (Con) [V]: My Lords, last Sunday marked the third anniversary of the Grenfell Tower fire, which highlighted the great need to address social housing. Meanwhile, coronavirus has shown the importance of having a home that is a decent, safe and secure. For many, this will mean social housing. Will my noble friend the Minister come forward with a clearer timeline than the end of the year as to when the White Paper will be published?

Lord Greenhalgh: I cannot add to the timeline that I have already provided. However, I will say that we are a matter of weeks away from publication of the new building safety Bill, which will transform the safety of many of those who are currently living at risk of similar events to Grenfell. That will form a new regulatory oversight for all tenants, including those in social housing.

The Lord Bishop of St Albans [V]: My Lords, these Benches welcome the upcoming White Paper, but we are still losing tens of thousands of social housing units annually, with a net loss of 17,000 in 2019 alone. Can the Minister confirm to your Lordships' House that increasing social housing will be addressed in the White Paper, and is he able to give us some indication as to the steps that Her Majesty's Government will implement to address this worrying decline?

Lord Greenhalgh: It is fair to say that the record of this Government is quite impressive when compared with the previous decade under Labour. Some 450,000 affordable homes is considerably more than the 399,000 built during the years 2000 to 2010. Of course, the Chancellor has already set out a considerable sum of money—an unprecedented sum of £12 billion—for the affordable homes programme and, by lifting the housing revenue account borrowing cap, many local authorities are now building council homes again. Although we are waiting on the social housing White Paper, a lot has been done to ensure the continued supply of affordable housing and social rented housing.

Baroness Neville-Rolfe (Con) [V]: With more and more demand for accessible homes for the elderly and the disabled—a need that has been highlighted by Covid—has the Minister seen Habinteg's analysis of local plans? It shows that, of the 2.4 million homes already planned for by 2030, only 20% are expected to meet the Part M4(2) accessible and adaptable standards and that a mere 2% will meet the needs of wheelchair users in Part M4(3). What steps will my noble friend the Minister be taking to remedy this, either in the White Paper or perhaps more broadly?

Lord Greenhalgh: My noble friend makes an important point about the accessibility of social housing, and I will write to her about the specific measures we will be taking. I can say that, as well as accessibility, it is of course important that we continue to build supported housing for the elderly, and the supply of that should feature as a very important part of local plans.

Lord Alton of Liverpool (CB): My Lords, has the Minister seen the report published by the Affordable Housing Commission which says that 13% of adults surveyed claimed that their mental health was being adversely affected by their housing situation? Does the Minister accept that behind the stress, and despite the significant strides which have been made, there is still a shortage of more than 1 million homes and places to live? We need to do more to target people in low-income groups, people who are poor and people who are young and still living in their family homes.

Lord Greenhalgh: There is no doubt that we need to see more homes of all types and tenures to house vulnerable groups, in particular those who have been mentioned by the noble Lord. It is important to recognise, however, that the amount of money which has been set aside for affordable housing—£12 billion—is an unprecedented sum, with which we seek to build 250,000 affordable homes, including those for social rent which the noble Lord has pointed out are so needed.

Baroness Warwick of Undercliffe (Lab) [V]: My Lords, I declare an interest as the chair of the National Housing Federation. It has been three years since the tragic fire at Grenfell Tower, and we owe it to the families and friends of the victims to ensure that this never happens again. The tragedy revealed the urgent need to rebuild trust between landlords and residents. Housing associations have been working, through the "Together with Tenants" initiative, to strengthen those relationships, and it is vital that the Government should support such initiatives to protect the rights and interests of residents. The earlier Green Paper emphasised the need to renew our commitment to social housing and to tackle stigma. Coronavirus has reaffirmed the value of having a safe place to call home. Will the Minister commit to using the White Paper to restate the value of social housing to our society and to invest in it?

Lord Greenhalgh: My Lords, it is important to recognise the points outlined by the noble Baroness about the stigma around social housing and that we do what we can to ensure that so-called "poor doors" are a thing of the past. In addition, we should continue to invest money in building affordable housing, including social rented housing, so that we have mixed and balanced communities. One of the points that is always raised is the need to ensure that there is no concentration of deprivation, and having a mixture of types and tenures of housing is critical for all communities.

Baroness Grender (LD) [V]: Does the Minister agree with the Conservative-majority housing Select Committee, which only last week stated that the building safety fund is an inadequate response to the current "cladding nightmare" and has too many restrictions, including against social housing providers? This White Paper was promised by Boris Johnson before the last election—originally, it was to be an urgent response to the Grenfell tragedy. Three years on, does the Minister accept that this is a promise which has not been met?

Lord Greenhalgh: Noble Lords will not be surprised to hear that I do not agree with that analysis. The sum of £1 billion to the building safety fund is to ensure

[Lord Greenhalgh]
that more high-rise buildings are remediated, and in particular to provide a recourse for those who cannot use any other means than public money. The provision of £1 billion is an unprecedented sum to discharge that, and of course we are delighted that so many people had already registered with the fund within several weeks of its opening.

Baroness Altmann (Con) [V]: My Lords, I welcome the £12 billion expenditure announced for social housing, but can I ask my noble friend whether there are any plans to encourage the use of pension fund assets, including local authority funds, to fund extensive social housing investment, which could ease the pressures on public expenditure?

Lord Greenhalgh: My noble friend has made a very good point, which is that we could use the returns from housing in order to increase investment. I shall have to write to her on the specifics of her point, but it should be noted that the removal of the caps on the housing revenue account was done precisely to enable more money to flow into the building of affordable housing.

Lord Best (CB) [V]: My Lords, a core characteristic of social housing is that its rents are genuinely affordable to those on modest incomes, but defining "affordable" is not easy. Will the White Paper cover this, and does the Minister agree with the Affordable Housing Commission—which I have the honour to chair—that a sensible yardstick is for social housing rents to absorb no more than a third of the take-home pay of those for whom social housing is intended?

Lord Greenhalgh: My Lords, the definition of "affordable" is certainly not an easy one. While the Government have not set a specific percentage of the incomes that people in social housing should be spending on rent, as suggested, the formula is such that it is typically around 50% to 60% of market rents.

Lord Kennedy of Southwark (Lab Co-op) [V]: My Lords, I declare my relevant interest as a vice-president of the Local Government Association. The cost of rent in the social housing sector has more than trebled over the past 40 years. This has pushed up the cost of living and made family finances harder. The Joseph Rowntree Foundation has previously discovered a strong link between the cost of rents in the housing sector and levels of poverty. What assessment have the Government made of the actual affordability of the limited social housing which remains and levels of poverty?

Lord Greenhalgh: It is fair to say that the differential between social and private rents has narrowed over a considerable number of decades. The policy of rent restructuring was started under the previous Labour Administration. However, as I said in response to a previous question, social rents continue to be at or around 50% to 60% of market rents. We are seeing a rise in rents overall, whether in the private or social sector. At this stage, we can say that being at around half the private sector level is a considerable discount in rent, although rents have risen dramatically overall.

The Deputy Speaker (Lord Bates) (Con): My Lords, the time allowed for this Question has elapsed. Before calling the next Question, I will take a few moments to allow the Front-Bench teams to change place.

Manifesto Commitments

Question

11.30 am

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

To ask Her Majesty's Government what plans they have to review their manifesto commitments as a result of the COVID-19 pandemic.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, the coronavirus pandemic is an unprecedented crisis. The Government have rightly focused on providing stability and support to the people, families and organisations most affected by the outbreak. However, as the Prime Minister confirmed at the end of May in his evidence to the Liaison Committee in another place, this Government are still fully committed to meeting all commitments made in the 2019 manifesto.

Lord Young of Cookham (Con) [V]: I am very grateful to my noble friend for that reply, but one of the commitments in the manifesto said:

"We will not borrow to fund day-to-day spending".

Another promised that the national debt

"will be lower at the end of the Parliament".

Sticking to these commitments in circumstances that no one could have foreseen, as my noble friend just said, would prevent the Government continuing on their commendable path of doing what it takes to mitigate the recession. Will my noble friend encourage the Prime Minister to modify that statement?

Lord True: My Lords, my noble friend recognises that we are living through un unprecedented crisis at the moment but, as he will well know, the Chancellor of the Exchequer has said that later this year there will be a Budget Statement, which will address a number of the concerns raised by my noble friend.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, another manifesto promise was for

"a long-term solution for social care",

but we have been here before. Last July the Prime Minister, standing on the steps of Downing Street, said he had prepared "a clear plan" to

"fix the crisis in social care",

but nothing happened, and the palpable neglect of the care sector during the current crisis has been all too evident. Where is the plan that the Prime Minister had so carefully prepared last summer, and how is it to be financed?

Lord True: My Lords, on social care, the noble Lord himself has a long and distinguished record as a health Minister. He will know that discussions about and consideration of this vital question have been going on for many years. I assure him that the question of long-term social care remains at the heart of the Government's objectives.

Baroness Uddin (Non-Afl) [V]: My Lords, in February this year my noble friend Lady Kennedy of The Shaws launched in Parliament a report called *Empowered Employment: Unlocking the Workplace for Muslim Women*. With support from Oxford, Yale and SOAS universities, Dr Suriyah Bi surveyed 500 women at work, 84% of whom were highly qualified. They nevertheless face barriers to progression, including discrimination, Islamophobia and challenges from families and partners. In the light of the emerging information on socioeconomic disparities, in particular among Bangladeshi women, will the Minister say whether the Government will consider the economic empowerment of Muslim women in any reviews of their manifesto commitments?

Lord True: My Lords, the noble Baroness makes powerful points. The Government campaigned on commitments to tackle prejudice, racism and discrimination of all sorts and to improve the quality of evidence and data about the types of barriers faced by all people from different backgrounds, to help drive effective and lasting change. I undertake to the noble Baroness that this will remain an important and central aspect of the Government's work.

Baroness Eaton (Con) [V]: My Lords, the manifesto committed Her Majesty's Government to a review of children's social care. In a Written Statement in February, the Secretary of State said it would be independent, broad, bold and undertaken at the earliest opportunity. Given the significant additional pressures faced by the vast majority of families and social workers during Covid-19 restrictions, this review is needed now more than ever. Can my noble friend the Minister confirm that its terms of reference, independent chair and launch will be announced soon?

Lord True: My Lords, I regret that the timetable of some government action has obviously been interfered with by the Covid emergency, but I think all noble Lords will agree that there is a vital social need to ensure that all sectors of society are protected during the Covid crisis. I repeat what my right honourable friend the Prime Minister said recently: the Government currently intend to proceed with all their manifesto commitments.

Baroness Thomas of Winchester (LD) [V]: My Lords, in April the Government said that in the light of the pandemic they were reviewing the development of the manifesto commitment to establish a national strategy for disabled people. Disabled people badly need some good news. Can the Minister give us some about the strategy?

Lord True: My Lords, I can add little to the previous answers I gave to the noble Baroness, Lady Uddin, and my noble friend Lady Eaton. Of course, the Government attach the highest importance to tackling diversity and disadvantage of all sorts, and that remains our objective.

Lord Balfe (Con) [V]: My Lords, the world has changed enormously since the election. The Conservative Party held power for two-thirds of the last century. John Maynard Keynes is reported to have said: "When the facts change, I change my mind." Will the Government continue to support the working-class and trade union votes that got them into power through most of the last century and, when they adapt their policies, as they must, bear in mind the need for trade union and working-class people to continue—I stress the word "continue"—their support for the Government?

Lord True: My Lords, the Government intend to be and are a Government for all people and respect every person in this country, not only the many who—as my noble friend rightly said—voted for them. The Government have made a major change in the face of the Covid crisis in giving unprecedented help to people at disadvantage. That in itself is a manifest of this Government's intent and spirit.

Lord Russell of Liverpool (CB) [V]: My Lords, I follow up and reinforce the point made in the pertinent question from the noble Baroness, Lady Eaton, and the Minister's answer. Can the Minister please give an undertaking that during the review of the care system, careful attention will be paid to some of the innovative approaches that have evolved directly as a result of the lockdown and ensure that these are built into that review?

Lord True: My Lords, I do not carry direct responsibility for that area of policy, but the noble Lord is of course right to say that all lessons from the Covid crisis and experience must be learned; they are being learned and will be applied.

Lord Livermore (Lab) [V]: My Lords, to follow on from the question asked by the noble Lord, Lord Young of Cookham, in addition to promising not to "borrow to fund day-to-day spending", the Government's manifesto promised not to "raise the rate of income tax, VAT or National Insurance", not to increase any taxes on small businesses and to "keep the triple lock" on pensions. Is the Minister able to guarantee that these commitments remain unchanged in light of the Covid-19 pandemic?

Lord True: My Lords, I am absolutely delighted that the noble Lord is such an avid reader of the Conservative manifesto; I hope he found it improving reading. I repeat that my right honourable friend the Chancellor of the Exchequer will make a financial statement later this year.

Baroness Randerson (LD) [V]: My Lords, even at the time of the general election, the haulage industry was seriously worried about the additional bureaucracy that a potential no-deal Brexit would bring. It has now suffered the crisis of the pandemic, and the Government are no nearer to getting a deal. Does the Minister

[Baroness Randerson]
accept that our haulage industry will not be able to cope with any further challenges this year? Do the Government accept that the transition period needs to be extended, as the haulage industry has requested?

Lord True: I pay tribute to the haulage industry; it has been an outstanding performer, and not just in this crisis. However, the answer to the noble Baroness's question is no. The transition period will not be extended. That has been accepted by the European Union, and I suggest it is about time that it was accepted by your Lordships' House.

Viscount Waverley (CB) [V]: My Lords, I have listened carefully to the Minister's responses, but would it not be prudent, at this time of unprecedented national and international uncertainty, for the Government to adapt to these new circumstances, or are they to follow an end game, irrespective of the consequences? How can the repeatedly professed line of seeking a deep and special relationship with the EU, on the one hand, be reconciled with walking away from negotiations, on the other—and that is before a probable downgrading in relations and a global trade war with China, together with an untested strategic trade relationship with individual Commonwealth members?

Lord True: My Lords, we have moved slightly away from the manifesto. I do not know whether the noble Viscount saw the very friendly discussions yesterday between the Prime Minister and representatives of the Commission. There is a commitment on both sides to intensify negotiations to produce a satisfactory outcome. I remain confident that that is possible.

The Deputy Speaker (Lord Bates) (Con): My Lords, the time allowed for this Question has now elapsed.

Covid-19: Mental Health

Question

11.42 am

Asked by ***Baroness Tyler of Enfield***

To ask Her Majesty's Government what assessment they have made of the report *The mental health effects of the first two months of lockdown and social distancing during the Covid-19 pandemic in the UK*, published by the Institute for Fiscal Studies on 10 June; and what steps they plan to take in response.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con) [V]: My Lords, the noble Baroness raises an important issue, and I am grateful to the IFS for this thoughtful report. It is too early to know for certain the mental health consequences of Covid, but we are deeply concerned about those who suffer from isolation, young people, those who have fears of economic uncertainty and those with existing mental health vulnerabilities. I give thanks to mental health professionals, who have worked hard during the epidemic, despite difficult circumstances.

Baroness Tyler of Enfield (LD) [V]: My Lords, last week's report by the IFS reveals how Covid-19 and the lockdown has had a major negative impact on mental health across the population, with women and young people particularly badly hit. Pre-existing inequalities in mental health have widened yet further. The report states that the scale of deterioration in mental health is of a magnitude unlike anything seen in recent years. What immediate steps are the Government taking to prevent this looming mental health crisis turning into an epidemic in its own right?

Lord Bethell [V]: My Lords, the report is extremely helpful and throws a spotlight on an issue that we are deeply concerned about. Immediate help includes a £4.2 million support fund for mental health charities, and a £5 million fund for Mind, specifically to support charities dealing with Covid-related mental health issues. We will continue to invest in mental health in the long term, to support this important area.

Baroness Thornton (Lab) [V]: My Lords, four in 10 pupils are not in regular touch with their teachers, there is a sharp educational divide between the rich and the poor, one in eight children and young people already has diagnosable mental health conditions and the IFS research now reveals that those groups with the poorest mental health pre-crisis will see the largest deterioration. Does the Minister agree that the Government should put the same amount of resource, energy and imagination that they put into the development of the Nightingale hospitals, for example, into getting our children and young people back to school? Will the Minister commit to the YoungMinds five-point plan, which includes additional support for young people's mental health as we move out of the pandemic, to meet rising demand, including recommitting to the measures outlined in the *NHS Long Term Plan*, in full, and funding additional early intervention services?

Lord Bethell [V]: My Lords, the noble Baroness, Lady Thornton, raises an important point on the mental health of young people. A primary concern is the effect that the epidemic has on young people, at a delicate stage of their development. However, the return to schools is a very delicate matter. It requires the confidence of both parents and young people. We do not want to create further distress or concern. Therefore, we are taking steps in a thoughtful and measured fashion, to ensure that both pupils and parents are confident about the journey back to school.

Baroness Brinton (LD) [V]: My Lords, research led by Louisa Codjoe at King's College London on tackling mental health inequalities found that BAME people are less likely to contact their GP about their mental health, to be prescribed anti-depressants or to be referred to a specialist mental health service. Any failures by the professional health services lead to fear and mistrust among the community, perpetuating a cycle of poor access. How do the Government plan to prioritise access for BAME communities and training for GPs to overcome these barriers?

Lord Bethell [V]: The noble Baroness, Lady Brinton, is entirely right to raise the issue of attendance. One of the greatest concerns during the epidemic is the declining attendance at mental health services, at primary care level and in hospitals. We are working hard on that. Last week, we launched the first aid kit for psychological first-aiders. Public Health England has launched this important resource, and it is indicative of the kinds of measures we are putting in place to address the inequalities of which the noble Baroness speaks.

Lord Lilley (Con) [V]: My Lords, although it is strange to describe people who are, not surprisingly, worried about the current situation as suffering mental health problems, we should be concerned that so many young people are worried and stressed at present. Will my noble friend reassure any young people who have exaggerated fears of Covid-19 that they are more likely to be killed by lightning? I expect that many more young people have justified worries about the threat to their education and future job prospects. Will he abandon the physical distancing rule in schools and colleges, where it is unnecessary, and cut it to one metre elsewhere to enable the economy to recover?

Lord Bethell [V]: My noble friend is entirely right that the fears described as mental health issues are about not only Covid itself but the economic and social consequences. The impact on mental health of the financial crisis 10 years ago was profound, and largely driven by fears of economic hardship. That is paramount. Reducing the distancing is not currently government policy, but we have that under review and news is expected.

Baroness Campbell of Surbiton (CB) [V]: My Lords, the CQC reports that deaths of patients detained under the Mental Health Act have doubled in one year, to 122; 56 of these patients died with either confirmed or suspected Covid-19. In the same period, we have also seen the increased use of restraints and seclusion within secure units. What plans do the Government have to address and help reduce inequalities, to prevent further tragic deaths? What steps have they taken to review these questionable restraint and seclusion practices in psychiatric hospitals?

Lord Bethell [V]: My Lords, the investment we are making in mental health is profound. Our commitment is to £2.3 billion of extra funding by 2023-24. This is the sort of money necessary to provide the resources that will lead to a kinder, gentler type of mental health provision. I hope it will address the issues that the noble Baroness raises.

Lord Haskel (Lab) [V]: Has the Minister made any assessment of the effect on women of the ending of the self-employment income support scheme, since the inequalities report says that women still earn less, save less and are overrepresented in low-income insecure self-employment, notably in hospitality and leisure?

Lord Bethell [V]: The noble Lord is entirely right that the burden on women during an epidemic such as Covid is probably more profound in some instances than on men. Women carry a huge amount of the domestic burden and of the financial concerns for the family. The IFS report puts a spotlight on the huge pressures placed on women. That will be a focus for our study and work.

Lord Purvis of Tweed (LD): My Lords, the Minister said that young people were the Government's primary concern, but the Government's waiting times and standards guidance of 2015 said that by 1 April 2016 more than 50% of young people would be treated within two weeks of referral. NHS England's statistics for 2019 said that only 15% were receiving treatment within zero to four weeks and a shocking 25% were still waiting after 12 months. If this is the record before the crisis, what faith will there be in the Government's addressing the problem after the crisis? Will the Minister apologise for this record of letting so many vulnerable young people down?

Lord Bethell [V]: My Lords, supporting children and young people's mental health during and after the pandemic is absolutely a priority. Mental health providers are offering support using digital and remote approaches to continue assessment and treatment during social distancing measures. This is part of the wide range of support that we are providing. The noble Lord is entirely right that this area requires a huge amount of investment; we have committed to making that necessary investment.

Lord Reid of Cardowan (Lab) [V]: My Lords, the Covid pandemic has often been referred to as the invisible enemy. That is all too often true of mental health issues as well. Is the Minister aware that the campaign group Beyond Tomorrow has estimated that 83% of young people have said that the coronavirus pandemic has made their mental health worse? Will he guarantee that all young people and families who need immediate mental health support can get it to prevent the pandemic having long-term consequences for young people's mental health?

Lord Bethell [V]: The noble Lord is entirely right to focus on the impact of the pandemic on young people. It is not yet clear how that mental health impact will take effect. The natural concern is that it will be long standing. One thinks back to the major economic shocks of the past, which often led to long-term mental health issues for those who found economic insecurity. The struggle to find jobs left them with damaged confidence and concerns about the future. With that in mind, we are very much focused on addressing young people's mental health and the impact of the epidemic.

The Deputy Speaker (Lord Bates) (Con): My Lords, I am afraid that the time allowed for that Question has now elapsed. That also concludes the hybrid proceedings on Oral Questions.

11.53 am

Sitting suspended.

Arrangement of Business

Announcement

Noon

The Deputy Speaker (Lord Bates) (Con): My Lords, we now come to questions on the Answer to a Commons Urgent Question on the probity of the planning process. The Answer itself will not be repeated. For Members participating remotely, microphones will unmute shortly before they are to speak. Please accept any on-screen prompt to unmute. I remind the House that our normal courtesies in debate still apply in the hybrid way of working. Please keep questions and answers short.

Planning Process: Probity

Commons Urgent Question

The following Answer to an Urgent Question was given on Thursday 11 June in the House of Commons.

"The Government are committed to maintaining public confidence in the probity of the planning process at all levels, including the Secretary of State's role in deciding called-in planning applications and recovered appeals. Rightly, Parliament has, through the planning Acts, delegated to local planning authorities the powers to determine things at their level. However, Parliament has also created provisions whereby a small proportion of cases are determined by central government.

The Written Ministerial Statement of June 2008 sets out clear criteria for the use of the powers. For example, some decisions are recovered because of the quantum of housing they involve and thus their potential effect on the Government's objectives for sustainable communities; others are recovered because of non-determination by the local authority. The involvement of Ministers in the planning system is a very long-established process that is clearly guided by both the published Ministerial Code and the guidance published by the Ministry of Housing, Communities and Local Government on planning propriety, which focuses on the duty on Ministers to behave fairly and to approach matters before them with an open mind.

The vast majority of planning decisions are determined at a local level by local planning authorities. However, as I have said, the planning system provides for decisions to be sent to Ministers for determination, including on the grounds that they involve developments of major importance. In fact, Ministers were involved in 26 planning decisions out of a total of 447,000 planning cases last year. The small number of cases that are referred to planning Ministers for determination are often among the most controversial in the planning system: for example, the 500 dwellings in the Oxford green belt that were recently allowed, and the 500 dwellings in the York green belt that were refused.

Given the nature of the cases before them, it is not uncommon for Ministers to determine against the planning inspector's recommendation, as has happened in around 20% of cases in recent years. In conclusion, I stress that each planning decision is taken fairly and on its own merits."

12.01 pm

Lord Kennedy of Southwark (Lab Co-op) [V]: My Lords, can the Minister confirm that he believes in the principle of the rule of law that everybody is subject to the law and no one is above it? How is it justifiable that Mr Jenrick is in his post, having acted so blatantly and having accepted that he acted unlawfully?

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): My Lords, my right honourable friend the Secretary of State followed entirely the planning guidelines that were set out by the MHCLG. I do not accept the way that this has been put to me —that he in any way broke the law. He sought to ensure that there was no inference of bias and that the planning decision would be redetermined. That was agreed with the local planning authority in Tower Hamlets and the Mayor of London.

Baroness Pinnock (LD) [V]: My Lords, I declare my relevant interests as a councillor and vice-president of the Local Government Association.

Failure to declare lobbying, failure to provide reasons for planning decisions and failure to make such decisions in a public session by local planning committees could result in allegations of maladministration. Does the Minister agree that those requirements should also apply to the Secretary of State—and, if so, will the Government disclose all such documents in the Westferry decision process?

Lord Greenhalgh: Of course these requirements apply to the Secretary of State, but it is absolutely clear that at every step of the way, he disclosed all that he needed to disclose to the department, and that he followed the rules set out in the MHCLG's propriety planning ethics.

Lord Lansley (Con): My noble friend will be aware that public confidence in planning appeals and called-in decisions on appeals depends on speedy and independent reports from the Planning Inspectorate. Considerable progress was made last year, following the Rosewell review, in speeding up Planning Inspectorate decisions, but we may have lost quite a lot of that in the last few months. How might the Planning Inspectorate speed up its decisions in the months ahead to give greater confidence in these decisions being made?

Lord Greenhalgh: My Lords, probity in the planning system is absolutely critical to its function. We are also aware of the delays in making decisions on the part of the Planning Inspectorate. The Secretary of State and Ministers have insisted on the Planning Inspectorate responding to the current environment and delivering decisions from mid-June by virtual means.

Baroness Deech (CB) [V]: Is the Minister aware of another example of what appears to be a breach of the guidance on planning propriety, and less than impartial behaviour by the department? There have been a number of meetings between Ministers and representatives of the UK Holocaust Memorial Foundation, who are in effect appealing to the Minister to permit this controversial

project. On 29 October, Mr Jenrick met with the co-chair of the foundation and its QC. The very next day, the foundation, without consulting Westminster City Council, wrote to the department to ask that the project be called in—and, within a week, it was. Was there, at this meeting, any discussion of the application being called in for the Secretary of State's own determination?

Lord Greenhalgh: I do not feel that it is appropriate to comment on a live planning application. I am sure that the Secretary of State followed the MHCLG guidance on propriety matters in planning absolutely to the letter and disclosed all that he needed to, in this application and in all the others that he determined.

Baroness Andrews (Lab) [V]: My Lords, does the Minister agree that the probity of the planning system and its integrity rest on the integrity of the Secretary of State? Will he therefore urge his right honourable friend Mr Robert Jenrick to explain why he took the very controversial planning decision on Westferry Printworks on 14 January, the day before the CIL came into force in Tower Hamlets, thus saving the developer £40 million? Why did the Secretary of State then decide to quash his own decision, and why will he not fully and publicly—not just to the Cabinet Office—disclose all correspondence relating to that development?

Lord Greenhalgh: Let us be clear. It was the letter from the department that was sent out on 14 January. The determination by the Secretary of State was made a considerable time before that—certainly before the end of the year—and the planning application went on to his desk with the planning casework in December. As the noble Baroness will know, only a small proportion of decisions have ministerial involvement. Of the 447,000 applications, we are talking about 26 ministerial decisions, which is a tiny fraction. There are many occasions when the Secretary of State will decide to go against the planning inspector or the local planning authority to encourage the supply side of development—so I do not recognise what the noble Baroness says.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I declare my position as a vice-president of the Local Government Association.

Does the Minister agree that cases such as this, in which the judge found apparent bias and ruled against the Government, fuel fears that the country is not being run for the common good, and that the underlying problem is large private political donations? Is not the only way to protect Ministers to ban large private political donations?

Lord Greenhalgh: This is about the probity of the planning system. It is quite right that currently we do not have taxpayer funding for political parties. All the fundraising by the Conservative Party adheres to the guidelines around donations. Ministers have no part in that. That is a topic for another day, but, regarding probity in this matter, it is absolutely clear that my right honourable friend the Secretary of State followed the guidance on planning propriety, as outlined by the department, every step of the way.

Lord Robathan (Con) [V]: Following on from the question asked by the noble Baroness, Lady Deech, I pay tribute to the Holocaust Educational Trust that some dozen years ago took me on an inspirational yet horrifying visit to Auschwitz. However, Victoria Tower Gardens is the wrong place for an educational centre. Again, there is huge local opposition. It would cause congestion and pollution and destroy a precious green space in central London. Will the Minister take back to his department the message that the planning application should be sent back for local decision-making?

Lord Greenhalgh: I note my noble friend's point about the strength of feeling locally about the location of this memorial, although I will not comment on a specific planning matter. I am sure that the decision will be determined entirely appropriately and in line with the department's guidelines on ministerial involvement in planning decisions.

Lord Thurlow (CB) [V]: For our planning process to work effectively, it must be transparent, and decisions balanced and fair. However, for the public to read that both the Prime Minister and Mr Jenrick had private discussions with Mr Desmond or his team to sponsor a development worth hundreds of millions of pounds shortly before consent was granted is unacceptable, regardless of any questions of probity. Does the Minister not agree that this case should be reopened and reviewed?

Lord Greenhalgh: To be absolutely clear, those discussions over the development simply did not occur. My right honourable friend the Secretary of State was seated next to Mr Desmond. That was not of his choosing. The matter was raised by Mr Desmond and the Secretary of State refused to comment on the planning application. The position that we are now in is that to ensure that there is no inference of bias, as I said in a previous answer, this matter will be determined, as agreed, with the Mayor of London and the planning authority for Tower Hamlets.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, with respect, the Minister has not answered any of the questions put by my noble friends and others. Unless he does so now, will the House and the public not be justified in considering that the £12,000 that Richard Desmond gave to the Tory party at that Carlton Club dinner will be seen as cash for influence?

Lord Greenhalgh: With respect, I have been absolutely clear that fundraising by political parties is currently highly regulated and all the fundraising issues associated with this have entirely been followed. The Secretary of State was not aware that he was going to be sitting next to Mr Desmond, but made that fact and the fact that he refused to engage in a discussion on that specific planning application known to the department. Therefore, I can guarantee that the Secretary of State behaved with absolute probity and takes his duties as Secretary of State responsible for these planning matters seriously.

The Deputy Speaker (Lord Bates) (Con): My Lords, the time allowed for the Urgent Question has now elapsed.

12.14 pm

Sitting suspended.

Arrangement of Business

Announcement

12.15 pm

The Deputy Speaker (Lord Bates) (Con): My Lords, we now come to the repeat of a Commons Urgent Question on Covid-19 two-metre social distancing. For Members participating remotely, microphones will unmute shortly before they are to speak—please accept any on-screen prompt to unmute. I remind the House that our usual courtesies in debate still apply in this new hybrid way of working.

Social Distancing: Two-metre Rule

Commons Urgent Question

The following Answer to an Urgent Question was given on Monday 15 June in the House of Commons.

"I thank my right honourable friend for his important Urgent Question. As part of our work to slow the spread of coronavirus, the Government have put in place social distancing guidance. The guidance specifies that everyone must keep two metres away from people outside their household or the support bubbles that have been in place since Saturday. I am grateful for the commitment and the perseverance of the British people in following these guidelines over the past few months; I know it has entailed huge sacrifice.

We keep all of our public health guidance under constant review to ensure it reflects the latest advice from the Scientific Advisory Group for Emergencies and the latest evidence that we have on the transmission of the virus. The Prime Minister has commissioned a comprehensive review of the two-metre guidance. It will take advice from a range of experts, including the Chief Medical Officer and the Chief Scientific Adviser, as well as behavioural scientists and economists. It will also receive papers from SAGE, which is conducting a rolling review of the two-metre guidance already. The review will examine how the current guidance is working, and will look at evidence around transmission in different environments, incidence rates and international comparisons.

Unless and until there is any change to the guidance, everyone must continue to keep two metres apart wherever possible, and must continue to follow our 'stay alert' guidance, by washing their hands, for example, and self- isolating and getting tested if they have symptoms. I am aware that there is a great deal of interest, understandably, in this matter from both sides of the House. However, I am sure that the House would agree that it would be premature to speculate about that review's conclusions at this stage. We will, of course, keep the House updated on this work, and we will share any developments at the earliest possible opportunity."

12.17 pm

Baroness Wheeler (Lab) [V]: My Lords, the National Audit Office is the latest in a long line of independent organisations and care bodies to conclude that people and staff in care homes are an afterthought in the Government's planning for Covid-19. We know that hundreds of thousands of vulnerable people who are shielding from the disease were not warned or included in the last-minute government decision on 30 May to lift shielding. Will the Minister please reassure the House that the impact of any change to two-metre social distancing in care homes, social care and for people whose shielding periods are coming to an end will be fully considered in the review and that advice to them will be a key part of the revised guidelines in good time for any 4 July announcement?

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con) [V]: The noble Baroness highlights an incredibly important consideration in the review on the two-metre rule. Clearly, those who are vulnerable or in social care deserve the best protection necessary. SAGE has been extremely clear that two metres provides emphatically more protection than one metre, and the protection of our vulnerable people will be an important consideration in any review.

Lord Rennard (LD) [V]: My Lords, yesterday a Health Minister in the Commons repeated the mantra that advisers advise and Ministers decide. But trust in government has diminished greatly in recent weeks, so people need to know what is advised before accepting what Ministers decide. Can the Minister assure us that the advice to be provided by the Government's scientific and medical advisers to this review will be published as it is written and submitted by them, independently of any government pressure, so that we will know whether or not any proposed change really is based on scientific and medical advice? There is a consensus that the Government were late on lockdown, late on face masks and late on testing and tracing, so we do not want to be premature in reducing the two-metre distance rule. Should we not be sure that we have a full track and trace system in place before considering easing the distance rules?

Lord Bethell [V]: I do not recognise the contention of the noble Lord. Having been in many meetings with our scientific advisers, I deny the suggestion that scientists are open to being pressured by politicians. The advice that they have given is clear-cut and it is for us to consider its value. The noble Lord does scientists no favours by implying that they might be changeable under pressure.

Lord Bowness (Con) [V]: There is a reluctance to give specific dates and targets, although targets on their own are not precluded in that reluctance. I am sure that my noble friend is aware that subjecting businesses, especially in the holiday and travel area, to this great uncertainty is giving rise to many problems, including among the general public, who do not understand why more specific dates or targets cannot be given. That means that there is a considerable lack of confidence. We have been told today that travel insurance companies are talking about not covering people unless they can show that they have complied with local social distancing rules. What efforts are being made by the Government to get a Europe-wide agreement on social distancing, especially at airports and on aeroplanes, and in restaurants and hotels?

Lord Bethell [V]: My Lords, I completely and utterly share my noble friend's frustration about the lack of clarity, but a fact of this epidemic is that the Covid germ is incredibly unpredictable. We have fought really hard to apply the best and most up-to-date science possible, which has meant that there has been a real struggle to lay out the kind of clear framework that he and the public would like to see. We remain guided by the science; we work closely with our foreign neighbours; and we are working hard to put in place a clear plan to take us out of lockdown.

Baroness Meacher (CB) [V]: My Lords, does the Minister anticipate that the two-metre social distancing rule will in fact be reduced following the review? I might be wrong but I think that it will be, in which case access to masks on high streets and at stations will become absolutely urgent. What plans do the Government have to ensure ready access to masks across the country? Would the Minister like me to send him details of one company that provides and installs dispensers of masks and hand-sanitising gel free of charge? I declare that I have no personal interest in this company but I believe that it and others like it, if they exist, will have a vital role to play in tackling Covid-19 if the social distancing rule is in fact changed.

Lord Bethell [V]: My Lords, social distancing has without doubt been the most effective tool in the battle against Covid. That is why the Prime Minister has appointed the Permanent Secretary, Simon Case, to undertake a review, which will include the Chief Medical Officer and the Chief Scientific Adviser. The use of masks might offer some protection but in no way will it ever replicate the impact of social distancing. That is why we are not prejudging any review or making any assumptions about any changes.

Lord Reid of Cardowan (Lab) [V]: My Lords, some of the Government's own scientific advisers have said that being one metre apart carries up to 10 times the risk of being two metres apart. Are the Minister and the Government willing to take that risk? If so, will any changes to the two-metre rule be reviewed, assessed and changed if necessary, and how often would such further reviews take place?

Lord Bethell [V]: The noble Lord's maths is entirely right. That is why we are moving cautiously in this area, despite many people's concerns and despite the profound effect on industries such as the hospitality industry, which we regret enormously. However, the main focus is to drive down the infection rate. If we can get the prevalence levels down sufficiently, social distancing will not be required any further, and it is on that target that we are focusing.

Lord Forsyth of Drumlean (Con) [V]: Do the Government accept that each day's delay in reducing the two-metre rule will result in needless redundancies, that many of these jobs will go in the next few days and will not be replaced in the short term, and that we cannot wait weeks for a review? Failure to act now will see the loss of hundreds of thousands of jobs, and that will hang like an albatross around the neck of the Administration.

Lord Bethell [V]: No, I do not accept my noble friend's analysis. In fact, social distancing, which is central to our strategy, has had an incredible impact on saving lives and protecting the NHS. You have only to look at the spike that is occurring in places such as Texas, Florida and, according to today's news, Beijing to see what happens if you do not tackle the underlying prevalence of the disease and you allow the lockdown to end too early.

Baroness Finlay of Llandaff (CB) [V]: My Lords, do the Government recognise that if the blanket rule is relaxed for some, such as most primary school children, who appear to have a lower rate of infecting others, people who are shielding someone will be terrified that reducing the distance will endanger the life of the person they are protecting? Their need to maintain a greater physical distance will need to be clearly signalled—for example, through an officially issued lapel badge or lanyard, as I suggested yesterday—and they will need to have antibody testing.

Lord Bethell [V]: The noble Baroness is entirely right. The kind of differential shielding that she suggests may well play an important role in what we do going ahead. We must do our utmost to protect those who are shielded. However, we are also aware of the challenge of having confusing regulations. That is why we are currently holding the line. We are aware of the effects on the economy, and that is why a review is on the horizon, but until then we are focused on reducing the prevalence rate and protecting those who are most vulnerable.

Lord Mackenzie of Framwellgate (Non-Afl) [V]: My Lords, most people in my area of Durham appreciate Dominic Cummings for putting Barnard Castle on the tourism map—for the wrong reasons—but does the Minister accept that the prime ministerial adviser's breach of the self-isolation rules, with the hypocritical support of members of the Cabinet, was a major cause of the loss of faith in the Government's credibility regarding continued acceptance of the distancing rules in England?

Lord Bethell [V]: My Lords, I pay tribute to the British public, who have remained sensible and thoughtful to others, have largely borne the cost of social distancing and have abided by the rules of the lockdown. I express gratitude to all members of the public who have gone along with this incredibly impactful regime—a regime that continues to have a huge amount of support among the broader general public.

The Deputy Speaker (Lord Bates) (Con): My Lords, I am afraid that the time allowed for questions on this Urgent Question has now elapsed. I call on the Whip to move that the House be adjourned until 1.30 pm for the Committee stage of the Corporate Insolvency and Governance Bill.

12.28 pm

Sitting suspended.

Corporate Insolvency and Governance Bill

Committee (1st Day)

1.32 pm

Relevant document: 14th Report from the Delegated Powers Committee

The Deputy Chairman of Committees (Baroness Henig) (Lab): My Lords, a limited number of Members are here in the Chamber, respecting social distancing, and if the capacity of the Chamber is exceeded, I will immediately adjourn the House. Other Members will participate remotely, but all Members will be treated equally, wherever they are. For Members participating remotely, microphones will unmute shortly before they are to speak—please accept any on-screen prompt to unmute. Microphones will be muted after each speech. I ask noble Lords to be patient if there are any short delays as we switch between physical and remote participants. I should remind the House that our normal courtesies in debate still very much apply in this new hybrid way of working.

I shall begin by setting out how these proceedings will work. A participants' list for today's proceedings has been published and is in my brief, which Members should have received. I also have lists of Members who have put their names to the amendments or expressed an interest in speaking on each group. I will call Members to speak in the order listed. Members' microphones will be muted by the broadcasters except when I call a Member to speak. Interventions during speeches or before the noble Lord sits down are not permitted, and uncalled speakers will not be heard.

During the debate on each group, I will invite Members, including Members in the Chamber, to email the clerk if they wish to speak after the Minister. I will call Members to speak in order of request and will call the Minister to reply each time. Debate will take place on the lead amendment in each group only. The groupings are binding and it will not be possible to de-group an amendment for separate debate. A Member intending to press an amendment already debated to a Division should give notice in the debate. Leave should be given to withdraw amendments. When putting the Question, I will collect voices in the Chamber only. If a Member taking part remotely intends to trigger a Division, they should make this clear when speaking on the group.

Clause 1: Moratoriums in Great Britain

Amendment 1

Moved by ***Lord Stevenson of Balmacara***

1: Clause 1, page 3, line 18, leave out "person" and insert "insolvency practitioner, or has an appropriate qualification from a UK chartered accountancy body"

Lord Stevenson of Balmacara (Lab) [V]: My Lords, in moving Amendment 1, I shall speak also to Amendments 2, 5, 6, 10 and 14, which are either in my name or in the name of my noble friend Lord Lennie. As I am afraid is true perhaps of all our proceedings this afternoon, this is quite a wide group. A lot of issues are raised, and I hope that we will have appropriate time to ensure that the points made are recorded and responded to by the Minister.

Amendment 1 concerns the question of whether the new post of monitor should have an appropriate set of regulations and, if so, what they should be. The amendment makes a rather narrow proposal for qualifications from a UK chartered accountancy body. As a member of the ACCA, I should of course declare an interest in this discussion. I would have expected there to be a broad interpretation of this issue, and this is just a probing amendment to try to get a response on the record. It raises the wider question of whether the persons likely to be involved in acting as monitors should be restricted to those with an accountancy background, because in many cases we are trying to develop a new approach to company rescue and relaunch in this country. It does of course happen in many ways, but the Bill perhaps provides a focus for a new mission on this. Of course, over the years, those who were involved in this have grown up from a number of different backgrounds, including lawyers and other professionals, as well as accountants, and we should be alert to that.

A wider question is raised. There is very little in the Bill about what the Government have in mind for those who will occupy this key role. Maybe the Minister can put a little more shade into the detail of this. Perhaps he could offer that notes might be published at some future date relating to the post of monitor, or regulatory provisions put into the Bill in relation to points that might be raised on later amendments. Those are all important considerations. We do not want to hold back the Bill because it is important that we get it in play but, if this initiative to provide breathing space and time for companies to rethink what they are doing is to work in practice, we will need people with real additional skills to those that are available more generally within the IP profession at the moment. We will need to encourage them to develop those skills, bring forward their version of what we find works and build on those.

Amendment 1 is perhaps rather narrow in its application when seen in print, but there is a broader resonance behind it, and I hope the Minister will be able to respond to that in kind. Amendment 2, which I will speak briefly to, is a question about independence of the postholder of the position of monitor. It was raised on Second Reading and in the other place. We assume that there is no question but that those appointed to the post of monitor will be truly independent and able to exercise judgment in relation to the future of the companies with which they are involved. But again the Bill is silent on this, and perhaps I can again ask the Minister to speculate on how he might bridge the gap there in relation to guidance or regulation itself if required.

Amendment 5, in the name of my noble friend Lord Lennie, touches on an issue that will come up in a number of groups today: the role of the employees involved in companies which might be considering the use of the breathing space, the consideration of a reorganisational restructuring or, if it goes down that route, going into administration to preserve the assets held within a company for the creditors who are due to be repaid. In the latter case where we go into formal

procedures, the law already is very solid on the role that must be played by employee representatives of particular trade unions, and particular aspects of consultation are brought into it. But the Bill is silent on what would happen in relation to these new initiatives about breathing space and the idea of trying to restructure in the time provided for it.

Could the Minister mention, when he comes to respond, whether he is minded to think further about these issues? It may not be necessary to do it on this Bill, but I think it would give comfort to those who have this amendment and other amendments to be discussed later this afternoon if he could say something at this stage about the Government's overall position towards union employee representatives in relation to ongoing companies' works. Any of us who have worked in business know that a tremendous role is played by employee representatives in the business of companies. Anybody who denies that is either unsighted or is just being provocative. In a good company, it is as natural as the air we breathe to consult and discuss issues of substance in relationships within the company with your employees. If you do not do that, you will suffer. It therefore makes no sense to arbitrarily dismiss that as a possible way forward in this legislation. I look forward to hearing the Government's response on that. Only good can come from any movement in this area.

Amendment 6 concerns an issue that was also raised at Second Reading and is worthy of further consideration. The Bill correctly places a limit on the aspirations for recovery in relation to the monitor and their work by suggesting that they must have in mind the idea that a company rescue would be a possibility. However, this amendment asks: does that not make that a little tight; and would it not be better to use a different word, such as "could"? If it is only a requirement for the monitor to have regard to the fact that there could be a rescue, that seems to me—and to others, perhaps—a better way of opening up the possibilities for how and in what form a company might be rescued. If we are in the business of making sure that companies carry on and saving them, we should not kill them off too early. It would be wrong if the Bill, perhaps through infelicitous phrasing, gave too much away at this early stage of the process. "Could" would be a better word. I look forward to the Minister's response.

Amendment 10 deals with the timescales for the legislation, as do many other amendments on our agenda that will come later. This amendment is narrow in relation to the timings required by companies to get themselves through the first early stage of consideration on whether a rescue is possible and, if so, how it might be managed. At the moment, 20 working days is provided although there is a possibility for extension. We pose the question, in a probing way, as to whether 30 days may be better. It would be good to get the Government's response to that. Perhaps we can return to this issue later.

Amendment 14, which is the last one that I will speak to at this point, returns to the rather more complex issue of how long a company or, in practice perhaps, a monitor has to review the state of play in relation to the company, identify its creditor problems, talk to those who are involved in the whole process of the company—including employees, as will often happen—and think through the implications for pensions and other internal commitments. The timing is deliberately left open but when we raised this at Second Reading and the Minister read it out, it seemed that there was effectively no stop on the time limit that could be applied to companies seeking this form of redress in relation to the moratorium. If it is the case that the moratorium could be extended permanently and that that is meant here, perhaps how that happens in practice should be more explicit than simply having to work it out from what the Minister says. This issue was also raised in reports from the Delegated Powers Committee and the Constitution Committee, so we may well come back to it later. Again, it would be helpful if the Minister could clarify this when he responds.

There are a number of other amendments in this group, which we will need to debate. In particular, I want to focus on Amendments 83, 84 and 85 in the names of my noble friends Lord Hendy, Lord Hain and Lord Monks. They are in themselves important but they are also important for the long-term future of the way in which the Government, and indeed the country, deal with company organisation in relation to the points that I have already made, for example about the treatment of workers. I hope that we will have some good debate and discussion on these amendments for future work if we do not see them passed today.

I beg to move.

Baroness Altmann (Con) [V]: My Lords, I have added my name to a number of amendments in this group. If I may, I will leave it to those who formally move the amendments to expand on their thinking and I will give just an overview, in the interests of time.

I support the Bill's aims. Clearly, it is vital to protect as many jobs and businesses as possible during the pandemic, as the noble Lord, Lord Leigh, rightly says, but due to the speed with which the Bill was introduced, some of the novel ways in which individuals are introduced into the potential insolvency process or the corporate rescue process may need further strengthening. Indeed, further checks and limitations to reduce the risk of the moratorium being abused and more explicit duties on the monitor to ensure their independence are needed. The Bill does not impose any statutory requirement for the monitor to be independent of the company directors, who appoint the monitor.

1.45 pm

It is of particular concern that creditors have no say in the selection, appointment or removal of the monitor, and that the monitor does not owe creditors any express statutory duties. Therefore, a number of these amendments aim to strengthen the safeguards around the appointment and duties of the monitor. For example: Amendment 2 explicitly states that there needs to be independence; Amendment 25, in the name of the noble Baroness, Lady Bowles, says that payments should not be accelerated and new fees should not be added during the moratorium; Amendment 28, in the name of the noble Lord, Lord Palmer of Childs Hill, and Amendment 37 provide for periodic review of the moratorium; and Amendment 42, in the name of the noble Lord, Lord Hodgson of Astley Abbotts, would require the monitor to detail and explain relationships

[Baroness Altmann]
to any directors or liquidator. We need a statement of the independence from the company of the monitor, who is so crucial during this important moratorium period. One does not want to see the measures in the Bill being used as an opportunity to fast-track insolvency to the benefit of certain parties at the expense of others.

In the interests of time, I feel that that is all I need to say at this stage. I thank my noble friend the Minister for all the work that has gone into this important Bill.

Lord Mendelsohn (Lab) [V]: My Lords, I will speak to Amendment 3 and make some general observations.

Amendment 3 relates to the recognition of the appropriate debts of creditors. In particular, one must be concerned about smaller businesses, which may well suffer as creditors and unsecured creditors from such a transaction. While these may be smaller crumbs of comfort than the overall Bill, it is absolutely right that businesses that fall into this process properly recognise the full extent of the debts that they owe so that statutory interest is recognised as a cost and a consequence for them. It is right that these debts should be appreciated and recognised in the statements that the monitors have to put forward. I hope that the Minister will consider the Government introducing this measure, not just to make sure of the full amount that is owed to a company because of late payment and late settlement of their debts but also because it sends an important cultural message.

I support some of the measures introduced by other Members of this House. In particular, it is very important that we probe the Minister for much more detail about the role of the monitor. We must look at the qualifications, skills and independence of the people who will occupy those posts, as well as the costs.

Here I am concerned that the impact assessment itself shows that very little work has been done on the likely operating mechanisms of the Bill. The figures that it uses are from a study in 2010, and I hasten to add that in the last decade we have seen a significant increase in the rise of professional service costs, and the costs in the impact assessment do not fully recognise those.

We do not have a full appreciation of what skills are required for this, and I strongly support the notions expressed by my noble friend Lord Stevenson that there are many others who we might want to introduce into this area who have appropriate skills that are recognised by professional accountancy bodies. Many people who have been involved in the turnaround industry would do very well at this task—much better than qualified insolvency practitioners. I would be interested to hear the Minister's comments as to how the Government will look at the appropriate skills that are required for someone to successfully be able to carry out the role of a monitor, including the measures to try to ensure the proper independence of the monitor, that they have a real view for the potential future success of the business and that they are not beholden to any particular class, but particularly those who are connected parties.

However, I strongly support the amendment, which addresses the difficult question about the time for a monitor. This process should be given an extended period, and it would be worth while in the first instance extending the first period to ensure that we do not go through a quick cycle to make sure that it is there.

On the amendment in the name of the noble Lord, Lord Leigh, while many people will consider this to be a difference without a distinction, he will be able to express the nature of his interpretation.

It is important also to probe the Minister on the fact that we have seen that many businesses, particularly at latter stages, like to structure themselves in such a way that they can move a variety of the different connected parts of the business through different processes, and will disaggregate the overall enterprise and take individual companies to be able to crush suppliers or deal with the dispensing of staff during that period. It is important that the application of a company's business helps us ensure that companies do not act inappropriately and section off parts of their businesses, as we saw just a couple of days after Second Reading, with one of the most disgraceful pre-packs of all time. A connected part of a business was crushed in order to eliminate the full suppliers, and it isolated a particular business rather than the whole enterprise. It will be important for the Minister to give us some reassurance that the definition of a company does not allow businesses to game the system, or allow some form of recourse or interpretation that makes that possible.

Lord Hope of Craighead (CB) [V]: My Lords, I will speak to Amendment 4 on the Marshalled List, which is in my name.

The context for what I propose is to be found in new Section A8, which requires the monitor, as soon as reasonably practicable after the moratorium comes into force, to notify every creditor of the company of whose claim he is aware, giving notice of when the moratorium came into force and when it will come to an end. The importance of this duty is highlighted by the fact that the monitor commits an offence if he fails without a reasonable excuse to comply with it. That is as it should be, as the creditors need to know about the moratorium as soon as possible, because it has such an obvious effect on them and their interests. Their right to recover the debt is effectively frozen for the duration of the moratorium. That may have significant adverse effects, which may need to be provided for urgently to avoid the creditors' financial embarrassment. But the monitor's duty to notify the creditors extends only to those of whose claims he is aware. There is no suggestion anywhere in the Bill, so far as I can see, that the monitor is under a duty to make inquiries. Therefore, the provision, as it stands, is a rather weak protection for the creditors, whose interests will inevitably be disadvantaged by the moratorium, against which they are being given no right to object.

In that context, I am proposing an addition to the list of relevant documents in new Section A6. These are the documents that must accompany the directors' application for a moratorium. The amendment seeks to add to the definition of "the relevant documents" in Section A6(1) a list by the directors of all known creditors of the company. The aim of the amendment is to ensure that the monitor has access to this information as soon as possible. That is because he really does need it, if the performance of his duty to notify is to be

effective for the protection of the creditors. The directors are, of course, in a much better position to say who the creditors are than the monitor, who is a newcomer to its affairs. Adding this list to the definition will greatly strengthen the effectiveness of the duty to notify in new Section A8. It will enable the performance by the monitor of his duty to notify to be much more effectively scrutinised, and enforced, if necessary, than it would be if all that can be done is to rely on what he happens to be "aware" of.

I should explain that the need for a provision of this kind was drawn to my attention by the Law Society of England and Wales. The wording of it has its support, and I invite the Minister to look at it very carefully. I appreciate, of course, the pressure the Minister is under to get the Bill through as soon as possible, and that the time he may need to get clearance for any amendments to it is also very limited. I would therefore be content if the Minister would give an assurance that he will indeed look at this matter and at the gap in the creditors' protection that it exposes, perhaps with a view to an amendment by regulation under the power provided by Clause 18(1)(a), as R3 suggests, once the way these measures are working out in practice has been tested in the marketplace.

The Deputy Chairman of Committees: I understand that the noble Lord, Lord Lennie, does not wish to speak, so I call the noble Lord, Lord Hodgson of Astley Abbotts.

Lord Hodgson of Astley Abbotts (Con): My Lords, I have Amendments 8, 21 and 42 in this group. I remind your Lordships' House of my entry in the register of interests.

The amendments are of a practical nature and are drawn from my experience as an investor in and director of private equity funds and small companies over many years. Before I turn to them, I will just repeat to the Minister how unsatisfactory is the way the Bill is being dealt with. We are mixing coronavirus amendments —which we all understand have to happen quickly—with permanent changes to our insolvency law, and this is a rushed job that may well rebound to cause more trouble for the Government than they like. The reason I want to repeat the points that I made at Second Reading is that since that debate on a Bill littered with Henry VIII clauses took place, we have had a report from the Delegated Powers and Regulatory Reform Committee. I do not think I have ever read a report that is quite so critical of a Bill. I have to say to my noble friend that if Members of your Lordships' House are inclined to push amendments to restrict those Henry VIII clauses today or at future date, I shall feel obliged to support them, because we have a very bad mix here.

The purpose of Amendment 8 is to facilitate and encourage the use of moratoriums. Events leading to a company's collapse proceed at two speeds. It first happens at a slow speed, while the directors think, hope and pray that something will turn up—that a contract will be won, some money will come in or an investor will appear. Inevitably, when Mr Micawber does not turn up, things have to move very quickly indeed. Then, if they decide to appoint a monitor, the time for him to make his decision is very limited indeed. As we know from the wording of the Bill, he has to make a statement that it is likely that a moratorium would result in the rescue of the company as a going concern.

2 pm

The monitor will have to do this in a few days. If a major supplier has to be paid or, most importantly, if a payroll run has to take place at the end of the month, there is no time for delay. He has a reputational risk in going out on a branch on his own; inevitably, monitors will not want to be known as having a lot of horses shot under them. So my amendment is to suggest that his job, his role and his readiness to take on this particular company would be much enhanced if he was entitled to rely on information provided by the company, which has the bulk of information about the case in question.

It is not a power or entitlement that can be exercised without care—the proposed wording is

"unless the monitor has reason to doubt its accuracy."

For these purposes, you can look for the information; you must look at it critically but you may use it. If we do not pass an amendment like this, more monitors will conclude, "Well it's sort of on the margin and I've got to make a judgment off my own back", and they will decline; that would not help the Government's central case.

Amendment 21 is of a rather more technical nature; it is intended to ensure that banks and financial institutions cannot game the system. I am very grateful to the noble Baroness, Lady Bowles, for her support for this amendment. As Members of your Lordships' House are aware, the moratorium is intended to provide a payment holiday for debtors in respect of pre-moratorium liabilities and those that fall due during the moratorium period. But certain prescribed liabilities falling due during the moratorium, including

"debts or other liabilities arising under a contract or other instrument involving financial services",

are not subject to a payment holiday.

With the leave of the House, I will explain how this might work. Let us say that the company has a £10 million term facility from a bank and it has defaulted on the first £1 million; we know that it will be under stress because that is why we are thinking about the moratorium. Prior to the entry into the moratorium, the sum of £1 million which fell due, with interest payable, will be a pre-moratorium liability and, as such, it will qualify for protection. But that very event of having a demand to repay £1 million will be an event of default under the terms of nearly every standard bank facility. That means that the bank can then ask for the £9 million—the balance of the loan—and, since that is happening under a financial services contract during the moratorium period, there is no protection.

So the bank can use the trigger of an early default to get round the purpose and sense of what the moratorium is all about. This not only means that the company will collapse but that, almost certainly, the monitor will not take on the job in the first place; the monitor will be nervous that, if a bank uses this as a tool or lever, the chances of there being a going

[Lord Hodgson of Astley Abbotts]
concern at the end will be much reduced. Amendment 21 is designed to prevent the banks or financial institutions using those sorts of levers to advantage their position.

Finally, on the "Conflicts of interest" amendment, the noble Lord, Lord Stevenson, raised this issue, as did my noble friend Lady Altmann, who was kind enough to put her name to my amendment. This is best explained by an old story. The company is in trouble. The bank decides that it is going to put in a firm of reporting accountants. The firm of reporting accountants arrives and does its work. On a Friday evening, as the work is finished, the chief executive's office door swings open; the head of the investigating firm walks in and says, "Thank you very much. We're off now. The report's gone to the bank. Have a good weekend, and I'll see you on Monday". The chief executive says, "See you on Monday? I thought you had finished your work." "Oh yes, we have," says the head of the investigating firm, "but you're going to be put into receivership, and I'm going to be the receiver." The chief executive wonders, "Are those two issues connected at all?"

People do not bite the hand that feeds them; it is banks, financial institutions and other major creditors that do most of the feeding for the insolvency world. This amendment is simply designed to ensure that any prospective monitor looks at himself or herself in the mirror before taking on the job to ensure that he or she is reasonably free from conflicts of interest.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): Lord Hendy? No? Then I call the noble Baroness, Lady Kramer. We will then try to get the noble Lord, Lord Hendy.

Baroness Kramer (LD) [V]: My Lords, I will speak to Amendment 22 in my name and that of my noble friend Lord Fox. I will also make a few comments on Amendments 25 and 40, to which I have added my name.

Amendment 22 seeks to achieve fairness for small entities which are creditors to a company entering a moratorium. Most small entities are very vulnerable if a major customer fails to pay on time. They do not have the volume of other customers to offset cash-flow problems; even in the good times nearly all of them find it very difficult to borrow from banks to cover cash flow, never mind in a situation where a major customer is entering a moratorium or, potentially, insolvency. So Amendment 22 adds these small entities to a list of priority creditors that are not subject to the moratorium delays. I would point out that the moratorium, while initially about 20 days, could stretch on to a year and beyond, so this is absolutely critical for small suppliers.

The second part of the same amendment—I admit that the language is extremely clumsy—deals with the problem that small entities are often strong-armed by their large customers into accepting excessively long payment terms compared to those that a large supplier would insist on. I spoke at Second Reading about the failure of many large companies to make prompt payment to small suppliers; the numbers are quite shocking. What I am attempting to do here is to right this underlying wrong by deeming that any payment due to any small supplier be treated as if, from the first day, it was an agreement for payment within 30 days, regardless of what is actually down on the piece of paper. In a sense, I am trying to move small companies on to an equal footing with the large suppliers to the company that is entering the moratorium, so it is two different ways. I hope that the Minister in replying will talk about this problem for small suppliers; it is very different in character to the problems for a big supplier who has many other customers, very good banking relationships and, potentially, access to the capital markets.

As I said, I have also added my name to Amendments 25 and 40. The noble Baroness, Lady Altmann, made the key points here, and I just want to reinforce them slightly. Indeed, the noble Lord, Lord Hodgson, in describing the behaviour of banks when speaking to Amendment 21, was in a sense also describing the kind of behaviour that one could anticipate that is relevant to Amendments 25 and 40.

Banks understand very well how to improve their position in a moratorium; it is quite possible to gain advantage by shaping the terms that are attached to new borrowings that take place from a bank during the moratorium—those are almost inevitable if a company is to keep functioning—and potentially to build into those new arrangements a mechanism that affects the acceleration of other payments and that levies fees and interest rates that are essentially well above market. This is, in a sense, another way of drawing more money out of the company ahead of other players. It is a way of gaming the system. I note that R3, the insolvency trade body, has written in support of the purpose of these amendments, so this is not paranoia on my part. I am a former banker and I know very well how I would have been encouraged to handle a situation like this; it is a much more broadly recognised problem. Again, I hope that we will hear from the Minister on this issue.

The Deputy Chairman of Committees: I now call the noble Lord, Lord Hendy.

Lord Hendy (Lab) [V]: My Lords, in speaking to Amendments 83 to 86, I will begin with an introduction and then make two points, which will also shorten my contributions to amendments in later groups. The Government rightly foresee that, in consequence of the pandemic, many companies will run into or are already in financial difficulty. Companies become insolvent all the time; we all know the fates of Woolworths, Bernard Matthews, Mothercare, Thomas Cook, Wrightbus, Jamie's Italian, Carillion, Flybe and many more. There were 17,196 company insolvencies in 2019 alone, but Covid-19 will make it worse.

Hundreds of thousands of workers are directly engaged by the companies in danger. There are hundreds of thousands more in their supply chains. Many will find themselves among the 2 million unemployed workers estimated by the Office for Budget Responsibility to join the 1.36 million unemployed before lockdown—a total of 3.36 million unemployed: a catastrophe. Not only are livelihoods at risk, but the terms and conditions,

and the pensions, of those whose jobs are saved are also at risk. We have already seen this in companies that are not insolvent: pay cuts of 10% at the *Daily Mirror*; of 20% at BAM Construct; of 20% at Ryanair, with a loss of possibly 3,000 jobs; and up to 60% at British Airways, with 12,000 jobs to go.

There can be no doubt that the opportunities offered by the Bill, though generally welcome, will be utilised, as in Chapter 11 proceedings in the USA, to scrap jobs, cut pay and dump pension liabilities. I understand that the Minister has recognised the risk to pensions, yet the remarkable fact remains—and this is the first of my two points—that, in the 234 pages of the Bill, the workers, even those directly engaged, are not mentioned. They are at risk, but not protected.

Most strikingly, the Bill provides no requirement for workers and their representatives to be involved in the decisions that follow the recognition that a company is in financial difficulty and the consequences of such decisions—decisions that are profoundly likely to affect their futures. In the other place, it was said that, in court approval for restructures, the court will have regard to the workers and pensioners in its duty to ensure that the outcome is just and equitable. That will not wash. There is no duty to have regard to the interests of workers and pensioners, and no provision requiring workers or pensioners to be represented in or heard by the court.

It is true that Section 172(1)(b) of the Companies Act provides that among the considerations that directors must take into account are the interests of the employees. But the directors are not obliged to ask them for their views or discuss with them the possible consequences of an application under the Bill. Still less is there any requirement to bargain collectively over these matters. Directors commonly ignore the interests of workers when a company is in financial difficulty. Often, the workers first learn that the company has gone into liquidation on the TV, well after all key decisions have been taken—for example, at Carillion, or Flybe earlier this year.

Section 188 of the Trade Union and Labour Relations (Consolidation) Act requires consultation before redundancy. We know that too often, that does not happen, even where administrators have been appointed. It is often cheaper to liquidate the company than to keep it going while consultation takes place. In the administration of Woolworths, £67.8 million was paid in compensation for failure to consult. For Comet, it was £26 million. But the companies, directors and administrators that choose to break the law by not consulting do not pay. Where there are insufficient funds, the burden falls on the taxpayer, under Part XI of the Employment Rights Act, by which the National Insurance Fund pays—capped at £538 a week—up to eight weeks' unpaid wages, wages in lieu of statutory notice, holiday pay and basic awards for unfair dismissal. Why does the taxpayer pay? Insolvency law distributes the risk of economic failure in a grossly unfair manner.

2.15 pm

Turning to my second point, the secured creditors—and much capital in companies is in the form of secured loans, rather than shares—are at the head of the queue. True, Schedule 6 to the Insolvency Act confers preferred creditor status on an employee for a maximum of £800 in unpaid wages, holiday pay entitlements and unpaid pension contributions, but their claims are often much more than this. Preferred creditor status sounds secure, but even the limited amounts protected by it rank behind all the secured creditors. After they are paid, there is often not enough for the preferred creditors.

In the Bernard Matthews case, the pension fund recovered next to nothing, while the secured creditors were paid in full. Debts owed to workers beyond those covered as preferred creditors rank with all other unsecured creditors. With the company in financial difficulty by definition, it is likely there will not be enough for them. These protections, little as they are, apply to employees only. Limb (b) workers, zero-hours workers and casuals employed by the day, hour or week will all have their employment lawfully terminated before liquidation occurs, as, likewise, will self-employed workers and those working through personal companies.

What is required, therefore, is to make the benefits of the Bill contingent on the company fulfilling its obligations to those who have supplied their labour to keep it going—the workers. Thus, our Amendments 83 to 86 provide that a company seeking a moratorium has paid up to date all national insurance tax and pension payments owed in respect of workers, all remuneration owed to the workers, including the obligation to pay equal pay for work of equal value, and has published statutorily required gender pay gap disclosure. This effectively gives absolute priority to the remuneration owed to workers.

This is a proper distribution of risk. The secured creditors—banks, private equity, hedge funds and so on—are professional risk-takers, who have spread their risks in a diversified portfolio. If they take a hit, they can usually make it up from their other investments. The worker is at the other end of the spectrum: typically, she has one job, one investment, only. As her life unfolds, her fund of usable labour diminishes. If she takes a hit, it may be impossible to regain her earning capacity or restore her pension pot ever again. Those facts are magnified by the catastrophic unemployment consequential on the pandemic. She may never work again, or for a significantly lower income only. She needs protection. These amendments go some way to provide it.

Lord Monks (Lab) [V]: My Lords, I do not wish to speak at this stage.

Lord Leigh of Hurley (Con) [V]: I will speak to Amendments 12, 13, 17, 18, 30 and 31, all of which are mine. Essentially, they make the same point, but I had to table several amendments to the Bill to cover it. The point is to allow an extension of the moratorium where the rescue of the business, as opposed to the company, is likely. I draw the attention of your Lordship's House to my register of interests, which includes being deputy chairman of finnCap, a stockbroker, and senior partner of Cavendish Corporate Finance, which specialises in selling businesses. Unusually, I am speaking to an area in which I have some limited expertise, particularly in selling businesses.

I add to the remarks of the noble Lord, Lord Hendy, that private equity firms, banks and others do spread their risk, and insolvency is a devastating experience

[Lord Leigh of Hurley]
for the owner of a business, who may have spent years building it up and invested all their family wealth into it. They too need as much protection as possible.

At the moment, there is constant reference throughout the Bill to "the company", but frequently, if not in the vast majority of cases, the actual limited company, or plc company, will not survive—there is simply no possibility—and there will be no return to the shareholders or equity at all. However, the actual business itself might well survive. For example, in the retail sector, many businesses trade from shops. The companies that have the leases with the landlords will disappear, but the businesses trading in those shops will, hopefully, carry on. Typically, they may be sold to a third party but, to do that, the directors or monitor will need time to negotiate a transaction that preserves the business and the jobs. I thank the noble Lord, Lord Mendelsohn, for inviting me to amplify the amendments, but what they are saying is pretty simple. In many instances, the business that is owned by the company is viable and likely to carry on, but there is no chance of the company so doing. The amendments in my name seek to address this.

Amendments 12 and 13 refer to the situation where a director wants to extend the moratorium with creditor consent, and Amendments 17 and 18 to where the directors apply to the courts. I share the concern of other noble Lords that the courts are going to be very busy as a result of the Bill, and I hope that sufficient resources will be given to them. Again, where the directors apply to the courts, the courts will see that the business may well carry on, even if the company is not able so to do. This will then allow the courts to instruct the directors to carry on the moratorium.

Amendments 30 and 31 refer to the circumstances where the monitor is in charge. I will make a few comments about the monitor in a minute. The Bill states that

"the moratorium is no longer likely to result in the rescue of the company as a going concern".

This ignores the possibility that the business might well be rescued as a going concern. It is particularly important that the monitor is a person who is able to see that viability and implement it. It would be tragic if the moratorium ends for all the wrong reasons.

I support the noble Lords, Lord Stevenson and Lord Hodgson of Astley Abbotts, in emphasising the importance of who the monitor is. The noble Lord, Lord Stevenson, quite rightly made the point that it need not necessarily be a chartered accountant or an insolvency practitioner. It would be great if the legislation allowed the flexibility for a turnaround professional to be appointed as a monitor, albeit with the appropriate protections, as they really do know what they are talking about in enabling a business to carry on afterwards. The story from the noble Lord, Lord Hodgson, about the investigating accountants telling the directors that they would be back on Monday to carry out receivership is chillingly true; I have seen it in practice. I have also seen much better examples, where the investigating accountants have been told by the bank that under no circumstances will they be appointed as the receiver, or in our case monitor. So they are truly independent and are working to try to ensure that the business carries on, as opposed investigative accountants being appointed, who know that they might be appointed as the receiver, with subsequent huge professional fees.

It is vital that we try to ensure that the monitor is independent not just at the time of appointment, as these amendments suggest, but subsequently, and is not appointed as a receiver without proper investigation that their actions have been in the interests of the business. I will not amplify this point any more but will simply quote from the Insolvency Practitioners Association, which has said:

"Expanding the definition",

as I have suggested,

"will enable monitors to more broadly assist businesses, working with their owners, stakeholders and directors to give them a greater opportunity to survive the economic strictures of Covid-19 responses"—

which is the purpose of the Bill. Without the amendments I have tabled, the Bill will be heavily emasculated.

Baroness Meacher (CB) [V]: My Lords, I thank the noble Lord, Lord Vaux, for his detailed amendment to Clause 12, and support it most strongly. I apologise to the Committee; I must be responsible for the fact that I am listed ahead of the noble Lord, Lord Vaux, who will move his amendment, but I hope that my brief comments will nevertheless make sense. As it stands, Clause 12 interferes in an unacceptable way in the commercial activities between companies. By restricting the ability of suppliers of goods and services to terminate contracts with a company that has entered a relevant insolvency procedure, the clause puts the viability of supplier companies in jeopardy, particularly if they are small, as other noble Lords have mentioned, or if their client company represents a substantial percentage of their sales.

Along with the noble Lord, Lord Vaux, I am particularly concerned about the provision in Clause 12 to allow the Secretary of State to remove exclusions in Schedule 4ZZA using subordinate legislation. As the Bill stands, small companies are excluded from the restrictions on supplier companies, so they can, at the moment, terminate their contract to supply goods and services to a client company when it enters relevant insolvency procedures. This is surely absolutely essential if we are to encourage new entrants to the supply sector and if we are not to threaten the future of small companies. As I understand it, the amendment in the name of the noble Lord, Lord Vaux, would permanently protect small companies from the effects of Clause 12.

Another control over supplier companies is the restriction preventing them from requiring payment of outstanding charges as a condition of continued supply. Such a restriction surely also risks the financial viability of the supplier. I question the morality of a Government interfering in the marketplace to protect one company, apparently at the expense of others. Will the Minister explain how the Government justify the different treatment of companies involved in insolvency proceedings and their suppliers? Why do the Government appear unconcerned about the future of supplier companies? I agree with the noble Lord, Lord Hodgson, that a major problem with the Bill is that it combines understandable emergency measures to deal with the

Covid crisis with permanent Henry VIII powers. This has been the matter of most concern to the Delegated Powers Committee, of which I am a member.

In conclusion, I hope that the Minister will accept the amendment in the name of the noble Lord, Lord Vaux. If not, I hope that the noble Lord will bring it back on Report.

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, I declare my interests in the register as a company director. There are many good amendments in this group that I support, but I will limit my speech to the ones in my name, relating to creditor priorities and to review, and to a couple related to them. The background to Amendments 25 and 40 is the same as that already raised by the noble Lord, Lord Hodgson, and the noble Baroness, Lady Kramer. The position of financial institutions is uniquely privileged in that they will inevitably continue to be involved but they are not bound by the same conditions of moratorium as others who must continue to supply. They are not bound to normal supply terms or the ipso facto clause, and are free to accelerate and increase their demands, achieving elevation to both the amount and priority of their lending.

As well as the issue of priority, enhanced charges and advancement extract funds from the company, which is counterproductive to the very rescue that is the purpose of the moratorium. The effect of both those possibilities would be to leave unsecured creditors and, notably, pension deficits in a worse position in a subsequent insolvency. Put together, the two effects make the price of the moratorium too high, and the financial institution behaviour pattern is compelled to happen.

I do not need to remind the Committee that the operation of banks is not geared towards benevolence. I wish they had that in their articles but they do not; they are geared towards maintaining their own capital and their own profit, which is encouraged by bonuses and regulation. There have been some appalling examples of banks squeezing SMEs, for example as elaborated in the FCA's report on RBS's Global Restructuring Group, which this House debated last June. It is clear from that FCA report that there is no desire to interfere in contractual terms.

2.30 pm

Further, regulators and HMT contributed to the debt squeeze through pressure on banks concerning capital and the scariness of systemic effects following the financial crisis. What makes anyone think that the forthcoming recession and looming loan losses will set up any different priorities? That is how it works and no matter what supportive declarations are made, it needs legislation to override that model or else it will prevail. There is no way that it is safe to give lenders a win-win, gameable scenario, as the Bill does, because they will feel obliged to exploit it. My Amendment 25 and its companion for Northern Ireland, Amendment 40, aim to prevent the extraction of cash and gaming debt priority by restricting bank and financial creditors from accelerating repayment or increasing charges and interest during the moratorium. This does not prevent them participating in a final financing agreement.

A second mechanism that I want to comment on, and which I conclude is best as an addition, is to remove the new super-priority from financial institutions altogether. That can be done either through Amendments 94 and 95, in the name of the noble Baroness, Lady Altmann, which remove the financial instruments from having priority in Schedule 3—where the priority is allocated—or by removing financial institutions from new Section A18, as the noble Baroness, Lady Drake, suggests in amendments allocated to a later group. In fact, I submitted an identical amendment to hers but I was beaten to it and there was no space left to sign it. I also note that Amendment 21, in the name of the noble Lord, Lord Hodgson, addresses the issue in another way by removing from new Section A18, and hence priority, bank debts arising during the moratorium. I signed that amendment because all the measures that could possibly relieve this problem need to be considered. However, it is necessary to go a little further.

The main question is this: how did the balance in the Bill concerning financial institutions come about? Does the Minister recognise the seriousness of the problem and is there a willingness to find a solution? We will return to the pensions aspect in group 3 but, left unchanged, the moratorium may do more harm than good overall. That is especially the case for a long moratorium. For that reason, I am not sure that I agree with changing more than once regarding extensions to "multiple times without limit". If the original drafting carries with it a slight suggestion of a more limited time, in my book that is probably better.

Turning more briefly to other priority matters, the priority within new Section A18 can be adjusted by regulation, which I do not like. But in Schedule 3, at the top of page 132, moratorium debts from ongoing supply are given a ranking above wages. I am not too keen on that as it seems to me that employees are engaged in ongoing supply of their labour, so I propose Amendments 98 and 99, which give salary and wages equal top ranking with debts for companies continuing to supply.

My final amendments in this group are Amendments 37 and 44, which would add a review of the operation of the moratorium, including the impact on SMEs and unsecured creditors, and recommendations for legislation to mitigate negative effects. It is clear from the extensive number and scope of delegated powers that this legislation is a work in progress and will need a lot of tweaks. Indeed, despite noble Lords not being the keenest on delegated powers there are places where more are suggested, such as for the monitor, simply because this legislation is not completely worked out. In an ordinary procedure it might well have been possible to iron everything out, but on this emergency schedule it is not. It is not right to bypass Parliament's helpful scrutiny and, at the very least, there comes a point when it must be considered again in the round, and in the light of experience. The alternative is to sunset and start again, or to do both so that a coherent replacement can give continuity.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I will address Amendments 1, 2, 4, 8, 28 and 42, as they clarify the role of the monitor and include safeguards on that role while ensuring its independence, which

[Baroness McIntosh of Pickering]
was the theme that I spoke to at Second Reading. We are obliged to the Minister and the department for bringing forward the Bill and we do not seek to delay it, but to strengthen its provisions. The aim of the Bill is clearly to support a company rescue. These amendments would strengthen the role and independence of the monitor. I emphasise the gaps that were addressed at Second Reading.

Amendments 1 and 2 to Clause 1, in the name of the noble Lord, Lord Stevenson, go right to the heart of what the role of the monitor should be. Its role is not to displace the existing management but to monitor company affairs during the moratorium, with the purpose of ensuring that in the view of the monitor the moratorium would be likely to lead to a rescue of the company as a going concern. These amendments, and the others I have referred to, would help the monitor by putting him in a stronger position. We must not detract from the fact that if at any stage during the moratorium the monitor believes that the rescue of the company as a going concern is not likely, the monitor must bring that moratorium to an end. Amendments 1 and 2, along with Amendment 4, in the name of the noble and learned Lord, Lord Hope of Craighead, address these points. Providing this list would actually save time in the long term.

A noble Lord spoke to the amendment about extending the time of the moratorium. Will my noble friend the Minister consider, when he responds to these amendments, whether this would add to or reduce the overall cost of the moratorium?

Amendment 8, together with Amendments 28 and 42 in the names of my noble friend Lord Hodgson and the noble Lord, Lord Palmer, further strengthen the role of the monitor. They could help to facilitate the rescue of the company and reduce the period of the moratorium. What is of interest, and key to these amendments, is that they were identified at Second Reading. I hope that my noble friend might look with approval on these amendments, which seem to meet with the approval of industry and the Law Society for England. There does not seem to be any view within the industry that they would do anything other than enhance the Bill.

I have to confess to having some sympathy with the remarks of my noble friend Lord Hodgson about any referral to, and reliance upon, Henry VIII powers. In my view, it is always preferable to address these issues in the Bill rather than leaving too much leeway to regulations that may be interpreted rather loosely and put more onus on the monitor and the courts in the long term. With those few remarks, I hope that my noble friend the Minister will look favourably on all these amendments.

Lord Palmer of Childs Hill (LD) [V]: My Lords, my Amendment 28 is on the definition of the role of the monitor. It also ties in with Amendments 1 and 2, referred to by other noble Lords. I declare an interest as a fellow of the Institute of Chartered Accountants.

There is concern among many fellow noble Lords about the lack of supporting information about the monitor. The monitor is an individual, as is a liquidator; in other words, this is not an appointment of a partnership or a limited company. Can the Minister address what the situation could be in the real world outside your Lordships' Chamber? It seems that a firm of accountants or one of its partners, referred to by the noble Lord, Lord Stevenson, in Amendment 1, could be consultants to a troubled company; at the same time, the firm could be auditors to the same troubled company; now, it can be appointed monitor to the same entity; and, ultimately, if matters go downhill, the same firm or a member of it can be appointed liquidator. Can the Minister reassure the Committee that these fears of cross-contamination are to be addressed? The noble Lord, Lord Hodgson, gave a graphic example, and there are many others which many of us have experienced in business.

Amendment 2, also in the name of the noble Lord, Lord Stevenson, calls for the monitor's independence from the company. I agree with that, but he or she surely needs also to be independent of the group of companies and the directors, not mentioned in the Bill.

I raised at Second Reading that the monitor—a newish concept—will, unlike a liquidator, not have control of the company's assets. Can the Minister clarify what research has been done on what insurance cover is available to a monitor, who has no control of the assets?

Amendment 4, in the name of the noble and learned Lord, Lord Hope, calls for a list of creditors, which I heartily support, but this should also include potential debts hiding in the undergrowth, such as the cost of dilapidations. Is the Minister able to address the creditor who is the elephant in the room? I refer to the preferential status to be given under the Finance Act to HMRC for VAT. I understand that the argument is that the company has collected this and needs to hand it over, but is there not a similarity with the supplier of widgets essential to the business who is destined to be below the salt in the list of creditors requested in the amendment?

The noble Lord, Lord Leigh, raised much the same question as I raised at Second Reading, about the actual business as distinct from the company. There seems to be no recognition in the Bill that a business or the components of a business could be rescued. I am not sure that a monitor will help in that process. My noble friend Lady Bowles said that, in effect, the appointment may do more harm than good—it may do more good than harm; I do not know—but, as she so ably said, it is clearly a work in progress and not completely worked out. We look to the Minister and the Government to fill in the blanks before we feel easy about the Bill before us.

Lord Hain (Lab) [V]: My Lords, Amendments 83 to 86 are in my name and those of my noble friends Lord Hendy—who spoke so powerfully and compellingly earlier—and Lord Monks. Under them, companies would be excluded from moratoriums for not paying tax, for unpaid remuneration to employees and for breaching sex equality or equal pay.

The amendments are about setting standards with which firms in financial difficulty and seeking state support to stave off insolvency must comply. They aim to ensure that the interests of workers are not sacrificed in a blind rush to shore up businesses facing acute short-term financial pressures.

2.45 pm

Too often, company directors and insolvency practitioners fail to consult trade unions and workers' representatives in potential insolvency situations. By the time they do, it is often too late for unions to explore alternatives to closure and any options for saving jobs and for saving the company concerned. Current UK company law favours creditors, especially secured creditors, with the taxpayer too often stuck with picking up the bill. Witness, for instance, the Financial Assistance Scheme, initiated when I was Secretary of State for Work and Pensions, that helps protect workers' pension rights when companies go bust leaving company pension schemes underfunded, or when companies in financial distress stay in business but use a "compromise agreement" to avoid meeting their obligations to the firm's pension scheme. In the mid-2000s, over 140,000 workers lost their pensions when their company went bust and we as a Government acted to protect them, as the noble Baroness, Lady Altmann—a doughty campaigner on their behalf—will recall.

JK Galbraith wrote that neoclassical economics provides only a fugitive role for trade unions and a subservient one for workers, whose place is to be "abundant, redundant and poor." This Bill could reinforce such roles. For instance, I share the concern expressed by the TUC that companies in insolvency situations might use the provisions on restructuring in the Bill to try to impose worse terms and conditions on their workforce than already exist. It is also important that we guard against bogus self-employed or agency staff not being classed as workers and therefore not entitled to employment rights such as protection from unfair dismissal, sick pay, holidays with pay, pension rights and maternity and paternity rights.

We went into this crisis with a grossly unfair labour market that treats many key workers shabbily, dismissing them as unskilled and low paid and therefore of little consequence. Yes, UK employment had risen to record heights before the pandemic, but this masked widespread insecurity. The TUC estimates that nearly 4 million people —over 10% of the UK workforce—were in insecure work before the crisis. Nearly a million were struggling to survive on zero-hours contracts and over a million were in temporary work or doing second jobs. We must emerge from the crisis determined to deliver fairness at work.

Our amendments aim to ensure that the Bill contributes to a fairer outcome by providing for all unpaid remuneration and redundancy payments due to every worker, other than directors, to be paid on the date that a compromise agreement or reconstruction arrangement for a company in financial difficulty takes effect. We propose the same for unpaid tax, national insurance and pension payments. Directors of companies commonly hold significant ownership stakes in the companies they manage. It is all too easy for them to focus exclusively on protecting the interests of owners when firms are facing financial distress and to sacrifice the interests of the workforce by sidestepping their responsibilities for pay, redundancy, tax, national insurance and pensions.

Workers are also too often the last to learn what is happening when firms find themselves in financial distress, but they are also the first in the firing line. It is scandalous, for example, that workers sometimes hear that their jobs are in jeopardy only via the television or radio news and not directly from their own managers. It is even worse when they discover that their wages or redundancy pay have been as good as "stolen" by secured creditors, who have first dibs on anything of value remaining in a company facing financial failure. Amendment 84 would ensure that workers could not simply be overlooked or shunted to the back of the queue, by making it a condition for eligibility for a moratorium that companies had no outstanding unpaid wages or redundancy payments obligations.

Amendment 83 provides that on the filing date, any company with such outstanding unpaid tax, national insurance or pension payments in respect of any of its employees, other than directors, would be ineligible for a moratorium. The point here is to prevent firms seeking a moratorium abandoning their responsibilities to their workforce by failing to meet in full their tax, national insurance and pension obligations, leaving the workers in the lurch afterwards. We have seen far too many cases of workers losing out on their pensions when their employer became insolvent or escaped its obligation to pay its debt to the company pension scheme under a compromise agreement. Workers should not have to run the risk of losing some or all of their pensions by employers underfunding the company pension scheme. Employers that try to do so should certainly not be eligible for a moratorium.

Employees do not feature on company balance sheets, even though they are among businesses' most valuable assets. Amendment 85 would exclude from eligibility for a moratorium any company that is behind on its payments required for equal pay for work of equal value. Sadly, British business has a long and unhappy record of resisting equality initiatives such as equal pay audits. Discrimination on gender grounds is commonplace at work still, despite Tory attempts to suppress the evidence by charging prohibitively high and unfair fees for employment tribunal cases. This amendment seeks to provide countervailing pressure to firms contemplating defaulting on their equal pay obligations while seeking a moratorium.

Amendment 86 would make companies that fail to comply with the information requirements of the Equality Act 2010 and the 2017 gender pay gap information regulations ineligible for a moratorium. Firms in financial difficulty must not be permitted an easy way out of their equal pay responsibilities. Allowing such a loophole would open up the law on insolvency to great abuse. So that we can decide what to do about these issues on Report, I appeal to the Minister to give strong and unequivocal guarantees on the issues we have raised in Amendments 83 to 86.

I will also speak briefly to Amendments 29, 82 and 100 standing in my name alone. On Amendment 29, both an administrator and a monitor are officers of the court. The function of the administrator is primarily to manage the affairs, business and property of the company, as set out at paragraph 59(1) of Schedule B1. The function of the monitor is to monitor the management of the affairs, business and property of the company by the company's directors, but new Section A37 as drafted appears to limit the scope of the directions applications to the carrying out of the monitor's functions.

[Lord Hain]

So that directions applications can be as effective a mechanism for resolving questions concerning the management of the affairs, business and property of the company as the mechanism available to administrators to resolve such questions, I propose that new Section A37, which currently states

"The monitor in relation to a moratorium may apply to the court for directions about the carrying out of the monitor's functions"

should be amended by the addition the additional words

"or the management of the affairs, business and property of the company."

This would make it possible for a monitor to raise with the court the necessary questions in a similar manner to the power of an administrator to raise such questions. Surely it is right that monitors should be able to question the directors' management. Moreover, the ability to seek directions relating to such questions will strengthen the court's oversight of the moratorium process. I hope the Minister will accept this amendment in some form on Report.

On Amendments 82 and 100, there is a strong case for removing the exclusion relating to parties to capital market arrangements, set out in paragraphs 13 to 14 to new Schedule ZA1 in Schedule 1. The same provisions —paragraphs 13 and 14 of new Schedule ZA1 to the Insolvency (Northern Ireland) Order 1989—inserted by Schedule 5 should also be removed. In addition to the moratoria available to companies that have entered administration or eligible small companies that have proposed a company voluntary arrangement, it is important that distressed companies of all sizes have a moratorium available to them under the law so that they can keep trading and benefit from "breathing space" from enforcement action while a restructuring plan under the Bill, a consensual out-of-court restructuring or a scheme of arrangement under Part 26 of the Companies Act 2006 is implemented. It is right that certain types of businesses are excluded from being able to avail themselves of a moratorium under the Bill. However, it does not seem right to have exclusions that turn on the type of financing that a business employs, rather than the type of activity in which that business is engaged, or whether it has been subject in the preceding 12 months, or is subject at the time of seeking a moratorium, to an insolvency procedure or separate moratorium.

Indeed, the effect of the Bill as drafted in paragraphs 13 and 14 is that many large and medium-sized companies, which may employ a range of different types of financing, will be excluded from access to the benefits of the moratorium, with that exclusion extending to all company stakeholders, including creditors as a whole, employees and customers. Paragraphs 13(1)(a) and (2) are particularly restrictive in that they would exclude any company that is party to a rated or listed bond issue, or, potentially, to a syndicated loan, or indeed to any arrangement where one party guarantees the performance of obligations of another party. The de minimis threshold of £10 million of debt set out in paragraph 13(1)(b) is also strikingly low, especially when compared with the equivalent threshold of £50 million regarding the exclusion of capital market arrangements under Section 72B(1)(a) of the Insolvency Act 1986 regarding the appointment of an administrative receiver.

The Bill does not propose a moratorium on claims for companies subject to insolvency procedures. Its purpose is to facilitate restructuring for distressed companies that can be rescued and continue trading for the benefit of all stakeholders, including creditors and employees. I fear that the capital market arrangement exclusion, in prohibiting a large number of companies from benefiting from the moratorium in this Bill, is not conducive to that end when reforms to facilitate restructuring and save businesses and jobs have never been more important. Surely the Government must ensure that the moratorium in the Bill is available in practice as well as on paper. It is certainly not with the capital market arrangement exclusion, as far as medium and large companies are concerned. I appeal to the Minister to reconsider and come back on Report with government amendments addressing this problem.

Baroness Burt of Solihull (LD) [V]: My Lords, I will speak briefly to Amendment 6, but I associate myself with the comments of my noble friends Lady Kramer, Lady Bowles and Lord Palmer. Amendment 6 in the name of the noble Lord, Lord Stevenson, to which I have added my name, concerns the threshold that a monitor must believe has been met for a moratorium to be suitable for a company.

Changing "would" to "could" seems on paper to be a very small change to such a significant piece of legislation. However, given the relatively short timeframe within which the monitor must satisfy themselves that this criterion has been met, not to mention the difficulties in gathering all the relevant facts regarding the company's trading, lending and general financial arrangements, it is likely that the cost of doing so will be significant. Under the current threshold these costs could be so high as to prevent the moratorium being used, which is obviously the opposite of what we all want to achieve. This slightly less definitive word could make a significant difference on a practical, working basis. I encourage the Minister to consider seriously this small but significant change.

3 pm

Lord Vaux of Harrowden (CB) [V]: My Lords, I declare my interest as a chartered accountant. I start by associating myself with the comments of the noble Lord, Lord Hodgson of Astley Abbotts, and other noble Lords about the rushed nature of this Bill. This would be appropriate if it contained only emergency measures, but the Bill introduces important and permanent changes, and the number of amendments we are discussing today rather demonstrates that concern. I thank the noble Baroness, Lady Meacher, for her support for my Amendment 51 to Clause 12. It is to be debated in a later group so I shall speak to it then, but I am grateful to her.

I want to add my support to a number of amendments in this group, and I apologise for having missed the deadline to add my name to them. It is a rather diverse group, so I shall try to sub-group my comments by subject area. I turn first to Amendment 2, in the name of the noble Lord, Lord Stevenson of Balmacara, and Amendment 42, in the name of the noble Lord, Lord Hodgson of Astley Abbotts. Amendment 2 simply

makes independence a qualification of the monitor, while Amendment 42 says that the monitor "must satisfy himself" that he is

"free of conflicts of interest".

These really should go without saying.

The Government seem to be arguing that because insolvency practitioners are professionals, they will do this anyway. I confess that I have a healthy scepticism about the insolvency industry, which has a substantial ambulance-chasing component to it. Conflicts are commonplace, and we have been given some good examples by the noble Lord, Lord Hodgson, and the noble Lord, Lord Leigh of Hurley. Making independence a legal requirement in the Bill would seem to be an extremely good thing, and it is hard to see any downside to that.

Secondly, I add my support to Amendment 4, proposed by my noble and learned friend Lord Hope of Craighead. This would simply add a list of creditors to the list of relevant documents that must be provided to the court when applying for a moratorium. This would be a simple and practical way of assisting the monitor to do his job, and in particular, to notify the creditors without delay. It is hard to see any downside to this and really it should be accepted.

Finally, I support Amendment 21, in the name of the noble Lord, Lord Hodgson, and Amendments 25 and 40, in the name of the noble Baroness, Lady Bowles of Berkhamsted. The amendments seek to prevent banks gaming the process by changing the terms of payments and costs during the term of the moratorium. It must make sense to ensure that banks, which will have all the negotiating strength in these situations, are not able to give themselves preferential terms, and so I urge the Minister to consider this matter seriously.

Lord Adonis (Lab) [V]: My Lords, I thought that the noble Lord, Lord Hodgson, made two very powerful remarks earlier in the debate when he said that this Bill seeks to do two separate things. The first is to introduce the emergency provisions in respect of the crisis we are in, and the second is making permanent changes to insolvency law. He also drew attention to the absolutely devastating report on the Bill by the Delegated Powers and Regulatory Reform Committee, which highlights a wider set of Henry VIII clauses than I have ever seen in a Bill of this kind, including the whole definition of which companies are affected by it under new Schedule ZA1, which can be changed by the Government by order, without any primary legislation. I am sure that we will want to return to that.

Even more extraordinary is the Government's justification for why they have included all these Henry VIII powers, which is

"the undesirability of taking up Parliament's time unnecessarily."

Surely it is the job of Parliament to decide whether its time is being taken up unnecessarily, not that of the Government. I draw the particular attention of the Committee to paragraph 8 of the Delegated Powers and Regulatory Reform Committee report, which states:

"In our view, the presumption should be that where something needs changing which Parliament has enacted, Parliament should enact the changes by primary legislation rather than ministers make the changes by secondary legislation."

That points the way to a number of key amendments that need to be made on Report.

Turning to this group of amendments, it suffers from exactly the same problem that the noble Lord, Lord Hodgson, said the Bill suffers from, which is that it puts together a whole lot of separate things that do not actually go together. Over the past hour and a half, we have debated three completely separate matters: the issue of the independence of the monitor, which is hugely important—my noble friend Lord Stevenson's amendments in that regard are utterly compelling—along with the issue of wider conflicts of interest in the whole handling of the moratorium arrangements and the people who play a part in them, which again is a wider and separate issue. The third issue, which has been covered comprehensively by my noble friends Lord Hendy and Lord Hain, is the hugely important matter of consultation with the workforce and the priority to be given to employees and workers in these moratorium arrangements and anything that might follow from them. I hope that in his reply, the Minister will be able to pay substantial attention to all three of these areas.

I do not want to go over ground that has already been covered by my noble friends, but I would like to ask the Minister one specific question. In the early stages of the coronavirus crisis, the Government made great virtue of the fact that they were consulting employee organisations, trade unions and the TUC in order to create a consensus on the kinds of measures which would be needed to deal with it. Indeed, in the construction of the furlough scheme, the Chancellor of the Exchequer made great play of the fact that he had been talking to the general secretary of the TUC, Frances O'Grady. It is quite clear that there are concerns among trade unions about the whole way that these provisions will cut across established insolvency provisions and redundancy provisions. Therefore, I want to ask the Minister a specific question—or rather, two related questions.

First, what representations have been made to the Government about the role of employees and their interests in this Bill? Secondly, can he tell us whether he personally or any of his ministerial colleagues have met the TUC general secretary or officials from the TUC to discuss these provisions? I ask that because if we are seeking to proceed by consensus, by the time we get to Report, we will want to know what actual discussions have taken place with representatives of employees and whether we can satisfy ourselves that there has been adequate consultation. If not, the arguments made by my noble friends Lord Hain and Lord Hendy are compelling when it comes to amendments that we will need to make on Report.

Viscount Trenchard (Con): My Lords, as other noble Lords have mentioned, this Bill is an unusual combination of Covid-related measures that clearly need to be fast-tracked, along with measures to implement the long-held belief that we need an equivalent to the Chapter 11 procedures of the United States.

I do not think that a hybrid House is particularly well suited to scrutinising legislation, especially in Committee. I do not think we will be able to say that this is working well. We are making the best of a difficult situation but it only goes to show that in order to scrutinise the Government's legislation properly, we need to get back to the proper House as soon as we can.

[Viscount Trenchard]

The only good point I might mention is that, for the first time since we went to Virtual Proceedings, in this Committee we have no time limits. It is so nice and such a relief that we do not have my noble friend the Minister turning round to scowl at us as soon as we have gone 10 seconds over the prescribed one minute or two minutes.

Amendment 1, in the name of the noble Lord, Lord Stevenson, seeks to narrow the definition of persons entitled to be appointed as monitors from "a qualified person" to qualified accountants. I would not support this narrow definition because it may be too restrictive, especially for small enterprises. A monitor should be someone with a professional qualification, issued by a body whose members are carrying on a relevant regulated activity.

I agree with Amendment 2, in the names of the noble Lord, Lord Stevenson, and my noble friend Lady Altmann. It is important that the monitor should be capable of independence and objectivity. The current IESBA—International Ethics Standards Board for Accountants—code of ethics definition of "independence" explains it as being made up of two elements: independence of mind and independence of appearance. The former is defined to include integrity, objectivity and scepticism. The latter is defined as being free from facts and circumstances that would lead

"a reasonable and informed third party"

to conclude that integrity, objectivity or scepticism was compromised.

I ask the noble Lord, or my noble friend, to confirm which definition of independence they would apply and whether it should be a strict, rules-based one, comprising a list of prohibitions of those related by blood, marriage, shareholding et cetera, or a looser one, based on principles and objectivity. I hope that a sufficiently robust definition of independence could be included, so as to render unnecessary Amendment 42, in the names of my noble friends Lord Hodgson of Astley Abbotts and Lady Altmann, which seeks to ensure that a monitor should not be exposed to any possible conflicts of interest.

As precise amounts can be difficult to assess, I support Amendment 4, in the name of the noble and learned Lord, Lord Hope of Craighead, rather than Amendment 3, in the name of the noble Lord, Lord Mendelsohn. However, I agree that some kind of document showing the number of a company's creditors would be useful to the court in making a decision on granting a moratorium. As explained by the noble and learned Lord, Lord Hope, that would assist the monitor in his or her duty to notify every creditor.

The noble Lord, Lord Stevenson, makes a case in Amendment 10 for the extension of the initial period in relation to a moratorium from 20 to 30 business days; this means six weeks, rather than four. I think that 20 days should be enough, even for small companies. Obviously, it will not be enough time for a complex restructuring, but that is not the purpose of a moratorium as introduced in this Bill.

I support Amendments 12, 13, 17, 18, 30 and 31, as proposed by my noble friend Lord Leigh of Hurley. Like my noble friend, I also have spent more than 30 years as an investment banker, much of it doing mergers and acquisition business. Like him, I know just a little bit about this. In the case of companies which have both viable businesses and non-viable businesses, it may be that to rescue one or more of a company's businesses is sensible in cases where a rescue of a whole company may not be realistic. Does my noble friend not therefore agree that his amendments would be improved further if, after "company", they sought to insert, "or the whole, or some part, of the company's business"? I understand that this issue was much discussed at the time of the Enterprise Act 2002. There are of course very many companies which contain only one, or one substantive, business. But surely, in other cases, it is the rescue of a business, as opposed to the rescue of a company as a legal entity, that is important.

I also support Amendment 27 in the name of my noble friend Lady Altmann. Where an asset has been pledged to a company's defined benefit pension scheme, it should not be within the powers of the court to release it for sale without the consent of the pension protection fund, as well as, surely, the trustees of the pension fund itself.

3.15 pm

Lord Liddle (Lab): My Lords, I would like to make three points—briefly, I hope. The first is a point of process. It would be nice if the Minister acknowledged that this is clearly not a normal Committee stage. We are grouping different subjects in a way that we would not do normally, because of the urgency of the Bill. Given that we are moving to a critical economic situation, I accept that urgency, but this is not a normal way of proceeding. As the noble Viscount, Lord Trenchard, and the noble Lord, Lord Hodgson, have just said, the Government are trying to deal with the situation by mixing things that are required for the immediate economic urgency with longer-term reforms, and, at the same time, trying to deal with the uncertainties of what they will face by including lots of Henry VIII powers in the Bill.

This is a classic example of where effective post-legislative scrutiny is needed. We should have a committee to look at how the Bill is implemented, and to bring forward proposals for reform after six months, or a year, or whatever seems reasonable. My first point is that this is not satisfactory, and we need a process of post-legislative scrutiny.

Secondly, I am not an insolvency practitioner and I have never had to deal with anything insolvent. However, I am greatly interested in questions of industrial policy. Prior to the Labour Government coming to power in 1997, I read a lot of academic pieces about our bankruptcy and corporate insolvency provisions which suggested that our law was much tougher than that of the United States, and, as a result, was a barrier to the entrepreneurship that all sides of this House want to see flourish in this country. Indeed, the Labour Government went on to reform the bankruptcy and insolvency laws.

There is of course always a tension in this. The introduction of something equivalent to the US Chapter 11 has also led to abuses, and we have all seen instances of companies going insolvent, where, on the face of it, it looks as though their boards have behaved

with a great deal of irresponsibility. It would be nice, therefore, to have a statement from the Government on what they think the responsibilities are to be of the monitor that is being introduced. In whose interests will the monitor be acting? What is the public interest in these legal reforms? This is not a matter for legislation, but rather for a major speech by Ministers, which would then be taken into account in subsequent interpretation of the legislation by the courts. As someone said, I am sure that there will be a lot of that.

On my final point, I have of course a lot of sympathy with my Labour colleagues who have pointed out that the trade unions, workers and employees have not had a fair deal in these matters in the past. I would like to see their rights strengthened in this legislation, but there has to be a balance. One of the most disastrous experiences of a crisis happened in the coal industry in 1926, when the union position of "Not a penny off the pay, not a minute on the day" led to a human tragedy of awful proportions in Britain. To save their company, the workers may be prepared to make sacrifices, but their position needs to be strengthened. Again, I would like from the Government a high-level political statement to say that they accept that our culture of capitalism has to change, that we have to move in a more partnership-driven direction and that when dealing with the details of things such as insolvency law, we should try to reflect in legislation the need for a balanced set of rights and obligations.

I must apologise to the Minister: I have another engagement, which may mean that I will not hear his reply at the end of this discussion. I will, however, be coming back to the Committee as soon as I can.

Lord Balfe (Con) [V]: My Lords, I begin by endorsing what the noble Viscount, Lord Trenchard, said about the way we are conducting this. We are in a very unusual time, I accept, but I hope that as soon as possible we will get back to a normal House and a normal way of dealing with Committee stages—and with everything else, for that matter.

My second point is for the Minister, who of course comes from the north-east—not a traditional Conservative area, but one that has always had a strong Conservative vote. As we move forward, one thing we need to remember is that the last Labour Government was not exactly the best thing that trade unionism ever saw. They did basically nothing that the Conservatives wanted to repeal when they came in. I ask the Minister to remember that some of the great social legislation of Britain was actually passed by the much-reviled Neville Chamberlain when he was Minister for Local Government and Chancellor of the Exchequer in the 1920s and 1930s: such things as wage councils and some basic rights. The way Stanley Baldwin handled the aftermath of the General Strike contributed tremendously to the fact that the Conservative Party ran Britain for two-thirds of the last century and is well on the way to achieving that again. I make that point in beginning.

My next point is that insolvency is a sad necessity—in a capitalist economy companies go up and down—but it is as much a sad necessity for the workers as it is for the people who own the company, and we should never forget that. The workers in any industry do not go home at night thinking, "My company does not matter"; they are often devoted servants and they are as hard-hit by insolvency as anyone else. I ask the Minister to remember that, as we move forward into the 21st century, we may well need to rewrite the historic deal between the working people and the state in the same way that we did 100 years ago. As such, I will not endorse all these amendments, but I am particularly interested in Amendment 84 tabled by the noble Lord, Lord Hendy, and supported by the noble Lord, Lord Hain, on unpaid remuneration for workers.

One of the great tragedies and wrongs of recent events has been that workers—Thomas Cook is a good example—can put in a month's work, suddenly their company goes bankrupt and they do not even get the three weeks' wages for which they have just worked. I ask the Government not necessarily to accept Amendment 84 but to look at a way at least to prioritise the fact that if a company goes into insolvency, wages that are more or less immediately due to the workforce are paid—taken out of the present system, as I understand they are in Germany, and paid to the workers.

I also have sympathy with Amendment 27, in the name of my good noble friend Lady Altmann, which would prevent insolvency practitioners disposing of items that are pledged to a pension fund. If items are pledged, they are pledged and cannot just be taken back and sold off willy-nilly. I think the relationship between company pension funds and company assets needs to be looked at. Certainly, my noble friend's amendment is well worthy of us having a look at to see what we can do.

I also point to something that will come up in a number of subsequent amendments, which is the need to protect pensions. Pensions are a worker's deferred wages: it is not some bonus pot in the distance that they can have if they are lucky, but part of their remuneration. In a funny sort of way, one of the advantages of a defined contribution scheme is that at least it generally goes to the workers as it is earned, rather than being held on to by the company, but even that needs further looking at.

My final point is that I think we need to look at how the concerns of workers can be heard by the courts. Although I and many others often refer to trade unions, it is worth remembering that the trade union movement in the private sector is incredibly weak and we have to look well beyond trade unions at ways in which working people can be represented in insolvency situations. They should have some rights to be heard, and I believe that those who judge insolvencies should at least be prepared to, and be required to, listen to what they say and, in coming to their decisions, to make their reactions to their representations part of the response: in other words, workers have a right to be heard and to be responded to.

Having said these things, I welcome the legislation. There is never a right time for a Bill such as this. I have reservations about the Henry VIII powers, but I am prepared to see if this will work. Fundamentally, I think that the Minister, with his background, understands the concerns of working people, particularly working people from outside London, and I am sure that he will do his best to strengthen the Bill in the ways we are urging him to do.

Baroness Kennedy of Cradley (Lab) [V]: My Lords, I shall speak in support of Amendments 2, 42 and 5. Amendments 2 and 42 seek to make it explicit and clear to all relevant stakeholders involved in a moratorium that the monitor is expected to be independent from the company under consideration. The proposed moratorium is intended to give struggling companies breathing space to turn their businesses around and suspend, for example, a number of actions by creditors, such as chasing debts through the courts or enforcing securities, for as long as the moratorium is in force. To build confidence in the system, the monitor, who decides if the moratorium will help rescue the company, has to be independent of the company under consideration.

It is not unreasonable to assume that creditors will be worried that such a moratorium will be subject to abuse. The monitor is a safeguard in this regard, but will the monitor be able to allay creditor fears if they are perceived not to be independently minded and not to have conflicts? Having a high degree of control over which debts can be paid and which properties can be sold means independence is critical, especially as creditors can apply to courts if they disagree with these decisions. Surely, if the Bill is explicit about the monitor's independence, it will give greater confidence to all concerned. I hope the Minister will support the intention behind the amendments and set out in his response how the Government will ensure that that independence is achieved.

Finally, I support Amendment 5 in the name of my noble friend Lord Lennie. It is right that once a company enters a restructuring process, there are mandatory talks with trade unions and those who represent employees. Having the right to be fully consulted and having access to the same information that goes to the courts will help ensure the protection of workers in the event of restructuring in an insolvency. I hope the noble Lord will address this too in his response.

Baroness Neville-Rolfe (Con) [V]: My Lords, I shall be brief. I agree with the question of the noble Lord, Lord Stevenson, about the need for clarity on timing and other issues on the moratorium. I was very interested in the comments of the noble and learned Lord, Lord Hope, on how we might proceed. I look forward to the Minister's response on all the issues raised in this vast group, including on the interests of small business and on the notion of my noble friend Lord Leigh that we focus on businesses, and saving trading businesses, rather than on companies. I think we should listen to those with real experience of the market.

As my noble friend the Minister knows, I support the Bill and look forward to helping to get it through in a way that does not have unacceptable, perverse consequences, including addressing the concerns rightly articulated by my noble friend Lord Hodgson on the use of delegated powers.

3.30 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, I refer the House to my interests as published in the register. I thank the Minister for introducing this legislation, which has many valuable facets to it. I also thank the Law Society for its helpful briefing. I will particularly talk about the amendments that relate to the independence of the monitor, which are extremely important. The point has been well made that this is a simple matter to put right, and I hope that the Minister has been listening. It is clearly right that the monitor should be independent of the company. That runs to the very heart of company law.

I also very much welcome the amendment of the noble and learned Lord, Lord Hope of Craighead, relating to the provision of a list of creditors from directors for a monitor to work from. That is necessary for ensuring that the moratorium process works effectively, and deserves our backing too. I also welcome Amendments 42 and 28, which again relate to the independence of the monitor and ensuring that there are no conflicts of interest—matters that are easily put right, and I hope that we can do that.

It has been a long debate on this group of amendments so I will not detain the Committee long, but I share with my noble friend Lord Hodgson of Astley Abbotts a concern about the two different halves to this legislation. There is the half—no doubt very important—relating to insolvency procedures, which centres on the moratorium and is very welcome, and then there is the other half, which has an urgency about it and which we need to push through very quickly to protect businesses during the Covid crisis. It is as if we have two halves of different cars welded together, as might have been the case with Del Boy and Rodney in "Only Fools and Horses", with predictable consequences. That is not to say that it cannot be put right, but we need to push through some important amendments to ensure that this works effectively. I hope that the Minister has been listening and will take on board some of the important points made as we have progressed through this group and, no doubt, as we continue throughout the other groups.

Lord Fox (LD): My Lords, I draw noble Lords' attention to my interests as set out in the register. The noble Lord, Lord Stevenson, in his understated way, called this a wide group of amendments and we have heard a wide and knowledgeable group of Peers speaking to it. I agree with the noble Viscount, Lord Trenchard, that we need proper scrutiny of this Bill. Whether we are here virtually or physically, cramming so many amendments into one group is symptomatic of trying to rush this Bill through. That will have unintended consequences, whether the noble Baroness, Lady Neville-Rolfe, believes it or otherwise. We are suffering from undue haste in trying to do in one day what should have been done over at least two or three days.

I will speak to a small number of amendments. On Amendment 10, the noble Lord, Lord Stevenson, queried 20 days and suggested 30 days. My question for the Minister is: why 20? What was the science and evidence that suggested that 20 was correct? The noble Lord, Lord Leigh, spoke about the courts being busy. Well, one way of relieving the courts of work would be to have a slightly longer period, because that would mean that the monitor would not have to go back to the courts so often to renew the process. Why 20 days and why not 30, or indeed some other number of days?

Amendment 2, to some extent Amendment 1 and certainly Amendment 28 ask the perfectly reasonable question of what the monitor's role is. What is the correct qualification for the monitor? It is perfectly reasonable in a Bill such as this, with the role of monitor so central to this process, that we understand what that monitor is and who it might be. I look forward to the Minister's comments on that.

This group, among others, contains a whole load of amendments that address what I call the creditor waterfall. Amendment 21 and, in different ways, Amendments 25 and 40, talk about the role of the banks and financial institutions and seek to restrain the advantage that those institutions can get from their special position within the creditor landscape. It is not in the Government's interests to continue to allow these organisations the freedom of the remaining resources of a failing business. What was going through the mind of the Government when those decisions were made to set out this level of access and give financial institutions the run that they seem to get from the Bill?

My noble friends Lady Kramer and Lady Bowles and others talked about the role of small and medium-sized businesses, and Amendment 22 adds small entities to the list of those with preferential treatments. Amendments 37 and 40 call for a review after 18 months of how a moratorium is dealing with SMEs. This is an entirely different review from the other reviews that crop up on later groups. It is very much about how this is really affecting businesses. I am proud to put my name to Amendments 98 and 99, proposed by my colleague and noble friend Lady Bowles, which makes wages and salaries rank alongside continuing suppliers and not below them. That seems entirely reasonable and I thought that she set that out very well.

All these issues set up the central point: the Bill is not a fully formed piece of legislation. The Government have recognised that, as my noble friend Lady Bowles pointed out, by granting themselves an almost unprecedented ability to rewrite it. They know that it is not the finished article. We will have an opportunity in later groups of amendments to discuss a better way of doing that and a way of giving Parliament the power to assess and possibly rewrite the rules, but I look forward to the Minister's reply.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): I thank all noble Lords who have spoken in this debate. Yet again, the contributions have demonstrated the breadth of expertise that exists in this House. I must say to my noble friend Lord Trenchard that I would never scowl at him. This is entirely the job of the Whips and not my fault. While there is of course no overall time limit on speeches at Second Reading, there is an overall time limit on the debate in Committee. With that, I will address as many of the points as possible. I apologise to noble Lords if there is not enough time to address all their points, but I am happy to have individual correspondence or a meeting with anyone who does not feel that their concerns have been addressed.

The moratorium was a subject raised by many noble Lords. It is built on two pillars: that the directors believe that the company is insolvent or likely to become so, and that an insolvency practitioner thinks that the company is liable to be rescued having been in a moratorium—finances on one hand and viability on the other. The intention of the moratorium is not to make the creditors' position worse nor to allow a company to delay an inevitable administration or liquidation. On the contrary, the intention of the moratorium is to rescue the company, and a rescue of the company will be better for creditors, better for suppliers and of course better for employees.

I say in response to the noble and learned Lord, Lord Hope, that, although I fully understand the intention behind his amendment, we are concerned that it would add another burden on to the directors of the company at a time when the company needs to enter into the procedure as quickly as possible. It has never been our intention that the moratorium should be used to "line up the ducks" for a pre-pack administration. Although they are subject to some criticism, we believe that pre-packs are a useful tool that allows businesses and jobs to be saved. However, as with all administrations, the likelihood of a substantial return to unsecured creditors is of course small.

The amendments tabled by noble Lords who seek to lower the barrier to entry into a moratorium to focus on the rescue of a company's undertakings, rather than the company, could, in our view, lead to increased losses to creditors. The new moratorium provides protection for a company, perhaps further upstream than when administration is the only route open to it. If the company or corporate vehicle can be saved, the outcome for unsecured creditors will almost certainly be better than it would be through the form of insolvency that results in the sale of the company's undertaking and its ultimate dissolution.

As has been said, the moratorium lasts for an initial period of 20 business days, although it can be extended relatively easily for a further 20 business days. In response to a point raised by the noble Lord, Lord Fox, and my noble friend Lord Leigh, we do not believe that it will lead to an increased burden on the courts. The moratorium is intended to be light touch as far as the court is concerned. Entry is by administrative filing, other than where overseas orders file a winding-up petition, rather than through judicial scrutiny. The courts get involved in longer moratoriums only if the monitor requires court direction or if there is a challenge to the monitor or to the directors' actions. I hope that that resolves those issues.

Although, in my view, the amendment in the name of the noble Lord, Lord Stevenson, that seeks to permit small businesses an initial period of 30 business days is laudable, it does not appreciate the position that the company's creditors are in. In our view, the moratorium balances creditor interests with those of the company.

The noble Lord, Lord Fox, asked why the period proposed is 20 days, and that of course is a good question. We consulted on what the period should be, and the clear view was that it should not be left for too long before creditors' views are considered. The Government are confident that a moratorium with one extension lasting 40 business days is the right length. There is of course always a balance to be

[Lord Callanan]
struck, and the company should seek the views of its pre-moratorium creditors on whether a moratorium should or should not continue.

A number of amendments have been tabled on the role and status of the monitor, including by my noble friend Lady Altmann, the noble Baroness, Lady Kramer, and my noble friend Lord Hodgson. It is important to say that only licensed insolvency practitioners—a highly regulated profession—are permitted to be monitors of company moratoriums. Practitioners are subject to very high ethical and professional standards. The insolvency code of ethics sets out five fundamental principles of ethics for insolvency practitioners. These include the need for objectivity and a duty not to compromise professional or business judgments because of bias or a conflict of interest. We believe that this strong regulatory framework underpins the independence of insolvency practitioners from those who appoint them.

Many of the amendments proposed by noble Lords, with good intention, seek to strengthen the independence of the monitor, but in our view they would in practice add nothing to the regulatory framework that monitors will already be subject to. Creditors benefit from strong protections. If they think that their interests have been unfairly harmed by the action, or indeed inaction, of the monitor or the directors during a moratorium, it is always open to them to challenge that behaviour in court. This specific right to challenge builds on the strong foundations of the regulatory framework.

In addition, employees are well protected. Requiring a statement from a trade union, alongside documents filed in court when a moratorium commences, as proposed by the noble Lord, Lord Lennie, would in our view add an unacceptable layer of bureaucracy. It might also risk a company's financial problems being publicised before it is protected from creditor action, leading to unnecessary company failures. I repeat the Government's view that the greatest support that we can give workers is to keep their businesses afloat, thereby saving their jobs.

3.45 pm

The noble Lords, Lord Hendy and Lord Hain, raised a number of other points that will be addressed when we reach the ninth group of amendments.

The noble Lord, Lord Adonis, asked me about consultation with trade unions. My ministerial colleague Mr Scully meets regularly—once a week, I think—with trade unions, and has consulted with them on many of these points.

As I said, the moratorium is intended to be light touch and a lower-cost process than existing insolvency procedures. At all times, directors retain control of the company's management. It is important to remember that control does not pass to the monitor. Increasing the legislative burden on the monitor would detract from what is intended to be the light-touch approach. It would not reflect who was in control of the company, and of course it would add costs while adding little value.

Debts arising from financial services and their treatment both within the moratorium and in any subsequent insolvency also attracted the interest of many noble Lords with their amendments. I of course understand the purpose of the amendments proposed for these parts of the Bill and the concerns that were raised at Second Reading about the treatment of financial services debts in a moratorium, including their super-priority or protection in a subsequent insolvency procedure. I repeat what I said during that debate: the Government take this issue very seriously and we have considered it very carefully. We will bring forward an amendment on Report to amend the definition of pre-moratorium debts so that accelerated pre-moratorium debts will not be afforded super-priority status or protection. In our view, the amendment is important to ensure that the Bill works in a way that I think we all intend it to.

In addition, there is a range of financial services legislation and, in some cases, bespoke insolvency regimes for parts of the sector that are designed to deal with the failure of a financial services firm. They are there to mitigate risks to financial stability and to protect consumers. Furthermore, they reflect the fact that the way goods and services are traded in this sector is different from in the rest of the economy. The financial services exclusions from the moratorium are therefore designed to ensure that the operation of certain financial services is unaffected and that financial market participants have the legal certainty that they need to facilitate the efficient functioning of financial markets. Not excluding companies that are party to capital market arrangements could have severe repercussions for the operation of those financial markets. Firms could suddenly find that their financial transactions were no longer excluded from the effects of the moratorium, and that could have wide-ranging and systemic impacts on the financial system.

In addition, it is important to recognise that financial services firms are a key part of making the moratorium provisions work. Critically, they are not excluded from the moratorium where they are a creditor of a company in distress, so they continue to support those companies. It is recognised that not excluding financial services contracts from the payment holiday definition could remove the incentive for those firms to continue to provide finance. That could leave companies in great financial difficulty and therefore far worse off.

Again, I thank noble Lords for their contributions to the debate, for their amendments and for the interest that they have shown in this new procedure. I hope that they have found satisfactory my explanation and the information that I have shared with the Committee on amendments that we intend to table on Report. I hope, therefore, that the noble Lord will feel able to withdraw his amendment.

The Deputy Chairman of Committees (Lord Bates) (Con): I have received a request to speak after the Minister from the noble Baroness, Lady Falkner of Margravine. After the noble Baroness, we will hear a response from the Minister.

Baroness Falkner of Margravine (Non-Afl): My Lords, for clarity, I did not request to speak after the Minister; it was due to an inadvertent error that I ended up not being on the list to speak when I should have spoken. In fact, as I am speaking after the Minister, I will use

the opportunity to make one or two general observations about this process that conform to what the noble Lord, Lord Hodgson of Astley Abbotts, and the noble Viscount, Lord Trenchard, have said.

This is the second Bill in which I am involved in legislative scrutiny. The first one was when we had a virtual House, and with this one we have a hybrid House. I can only concur with everything that has been said about how a hybrid House cannot work for any kind of complex or contentious piece of legislation.

These are pieces of legislation with implications that, as several noble Lords have said, go beyond the immediate health and economic emergencies. They should not be passed by this House unless and until we have the capacity to undertake proper scrutiny. Normally, my only excuse for speaking at this point would be if the Minister had said something on which I needed further clarification; I would then have spoken before he had sat down.

The idea that one is still continuing to speak to amendments in this manner is regrettable, but there is a broader point, also raised by the noble Lords, Lord Liddle and Lord Adonis: this is complex legislation, we do not know when we will revert to normal procedures and a vaccine may not be found. I hope that this situation does not continue for very long, but it could continue for some time. In that case, do the usual channels deal with the legislation that is pertinent to the health and economic emergency that we face in this House through these proceedings, as a necessity, and therefore, park legislation that has very long-term implications for all kinds of governance in this country, until this is over? I do not blame the Government. They are trying their best to deal with an emergency facing the country. However, I wonder whether there is some level of complicity—I use that word with care—in the usual channels, that they so comfortably settle into these extraordinary arrangements. If people were truly aware of what was happening, of how we are passing legislation and how we are conducting scrutiny, even in terms of Oral Questions, they would be quite astonished.

Turning to the Bill, I am not going to use the notes that I would have used for this speech, but there are one or two things it is important to put on the record. I declare an interest as set out in the register, concerning the Bank of England, and that I am speaking in a personal capacity on this Bill. I have already spoken about the inappropriateness of doing this in this manner in Committee, but I also want to say a word or two about fast-track legislation. I sat on the Constitution Committee when it did a report on when and how Governments should use fast-track legislation. In all candour, and with the highest regard for the Minister, there are measures in this Bill that are simply inappropriate for fast-tracking through the Chamber in this way. These longer term and permanent changes should not be discussed today.

In light of that, I completely support Amendment 37 in the names of the noble Baronesses, Lady Bowles of Berkhamsted and Lady Altmann, for the Secretary of State to conduct a review of the provisions for a moratorium, and to lay a report before Parliament. They indicate that the review should be done in 18 months, which is a fair timescale.

I also support Amendments 2, 4, 8, 28 and 42, in the names of the noble Lords, Lord Stevenson, Lord Palmer, Lord Fox and Lord Hodgson, the noble and learned Lord, Lord Hope, and the noble Baronesses, Lady Bowles and Lady Altmann, concerning all aspects of the independence of the monitor. The danger of the Bill not making clear the separation and independence of the monitor is a perception that there was a closeness between the directors of the company and a lack of transparency for creditors. I support those amendments essentially to assist the monitor, those insolvency practitioners. I hear what the Minister says about their own regulatory framework and the onus upon them to behave in an upright manner, but as he noted in his closing remarks, there are enough safeguards built into the regulation of insolvency practitioners whereby these amendments are otiose. I argue that by having them in this Bill—which is subject to review if Amendment 37 passes on Report—if they were entirely redundant, we could do away with them in 18 months. The Secretary of State could then lay before us the report that says that these amendments are redundant. I argue that this helps the monitor at this point, and on that basis, I intend to support them on Report.

Lord Callanan: I thank the noble Baroness. I am sure she understands that her comments about the hybrid House are not a matter for me. I have responsibilities in a number of areas, but the operation of this House is not one of them, so I will allow her to take those up with those Members who are responsible. I am merely a servant and am prepared to operate in whatever way the House sees fit.

Addressing the noble Baroness's points about the Bill, it is important to recognise that permanent provisions have not been developed just in the short time since Covid-19. Some of the temporary provisions have, but the permanent provisions were the subject of a considerable period of consultation and engagement dating back to 2015. The process included the then Government's review of the corporate insolvency framework, a public consultation in 2016 and an extensive period of engagement since then with a wide range of stakeholders. Additionally, the Bill includes regulation-making powers to enable changes to be made as and where necessary, so there has been extensive consultation. The intention to legislate in this area was announced in 2018, but this crisis has made it imperative. The Bill offers important new flexibilities and rescue opportunities that may help many businesses to continue trading during this crisis, which I hope the whole House would agree is the ultimate objective

Lord Stevenson of Balmacara: [V] I thank all noble Lords for the huge range of points that have been brought to bear in this debate. It was inevitable, given the way that the amendments are grouped, that we would range far and wide over the Bill. It was not a repeat of the criticism at Second Reading, because we were drilling down into important areas which in other times might have been picked up for further consideration during the later stages of the Bill, but cannot be because of the short timescale we are talking about.

The Minister made only two substantial points in his response. He is going to bring forward amendments to protect the way that debts are accrued during the

[Lord Stevenson of Balmacara]
moratorium period. I very much look forward to seeing those—we welcome the news. There is a concern around the House about this particular area, where we step into uncharted territory with the idea of a moratorium, and we want to protect it as much as we can. More statutory-based procedures on this will be helpful.

I disagree with the Minister that workers and employees are well looked after in this Bill. The evidence does not support that. I leave it to others to judge from the contributions that were made by my noble friends Lord Hendy and Lord Hain; they made an unanswerable case for further consideration, but if it is not to be, it is not to be and we will just have to wait for another opportunity. However, the Government are well out of step here, and that is going to cause trouble further down the track.

My original amendment, which headed the group, was not the only point raised, as I made clear, but it was about an issue that picked up a lot of support. I am grateful to those who spoke in support of it, particularly those who also had amendments down which were spoken to during the debate. This is the question of how we are going to support the new position of monitor. During the debate I was alerted to the fact that the Government had published their draft guide for monitors. It is a pity that it was not available before this debate, but at least it is now. On a quick read-through, it is interesting that it is based very much on the current IP regulations, and goes so far as to suggest some formal amendments to those regulations, to allow for the role played by the monitor to be given a backing. However, it also makes it clear that these are very temporary statements by the Government, pending further work through statutory instruments, and I am sure that is right.

4 pm

That leaves me with a thought, which I do not need a response to at this stage. If we are in the process of seeing a set of regulations that will be so fundamental to the success of the Bill, it would make sense—I hope the Minister accepts this—to have an opportunity for noble Lords who have declared during this debate and others to contribute to them. I am sure he would gain from that. We certainly seem to have time to do that, although time is very short, and I hope that he will take that opportunity. I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendments 2 to 6 not moved.

The Deputy Chairman of Committees: We now come to the group beginning with Amendment 7. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or any other amendment in this group to a Division should make that clear in the debate.

Amendment 7

Moved by ***Lord Leigh of Hurley***

7: Clause 1, page 3, line 27, after "company" insert "or the company's business"

Lord Leigh of Hurley [V]: My Lords, this amendment is broadly similar to my earlier amendments—I am not quite sure why it is in a different group, to be honest, but so be it. It applies to the circumstances not of an extension but of an appointment of a monitor, and requires the directors to get the proposed monitor to state that it is likely that the moratorium would result in the rescue of the company as a going concern. The word "would" has been helpfully and sensibly addressed by the noble Lord, Lord Stevenson—it should be "could"—and again, the word "company" should have after it, as my amendment proposes, "or the company's business". I would very much like the Minister to specifically address this issue of the difference between company and business; unless I missed it, I do not think it was. If it is not possible to do so in his closing remarks, perhaps he would oblige me with a letter.

I am sure that the Minister will not be able to resist Amendment 62, in the name of the noble Lord, Lord Stevenson, as he is so confident that the courts will be able to cope. I am sure that he will find it most helpful to have a clause that requires a review of how the courts have coped. I beg to move.

Baroness Northover (LD): I will speak to Amendments 71, 76, and 145, which are in my name and that of my noble friend Lord Fox.

These amendments all derive from the conclusions of the Delegated Powers Committee and relate to the often-unchecked powers the Government are seeking to take in the Bill. I thank that committee for its careful scrutiny of this and other Bills. As the noble Lord, Lord Hodgson, said, its report is devastating. There is clearly huge concern about the powers that the Government are proposing to take in the Bill, and most of the amendments in this group address those points. For example, the noble Lord, Lord Stevenson, by seeking to amend numerous places where the Government are taking powers, is challenging the Minister in each instance to justify that, and we will have to see what case the Minister makes. I also look forward to hearing what the noble Lord, Lord Blencathra, who chairs the Delegated Powers Committee, says.

The Government have argued that they need to act with speed because of the urgency of the coronavirus pandemic. However, many measures here will persist indefinitely, as the noble Lord, Lord Hodgson, made clear. We are proposing three specific changes, recommended by the Delegated Powers Committee. As all noble Lords here will know, although it may be less well known should people outside be following these proceedings, the committee's particular concern is with so-called Henry VIII powers, named for his supposed preference for legislating by proclamation rather than through Parliament. These powers enable Ministers to amend or repeal provisions in an Act of Parliament using secondary legislation, which is subject to very limited parliamentary scrutiny. These powers thus transfer power from Parliament to the Executive: the Government.

Thus, for example, the Delegated Powers Committee notes that Clause 23 confers extremely wide powers on the Secretary of State:

"The powers include the power to make provision amending, or modifying the effect of, any Act of Parliament ever passed—including the Bill itself."

That is an astonishing statement. The committee describes this as something that

"might be called a 'super-Henry VIII power'."

We therefore propose in Amendment 71 the affirmative procedure, where regulations under Clause 23 amend primary legislation, as recommended by the committee.

Amendment 76 addresses Henry VIII powers in Clause 37. The Delegated Powers Committee does not accept the Government's argument that they need to act with speed and recommends

"that the affirmative procedure should apply where regulations … amend primary legislation."

It outlines ways in which speed can be delivered, for example through a "made affirmative" instrument, which could come into force pending approval by both Houses within a specified period of time. Our Amendment 76 delivers the affirmative procedure.

In relation to Amendment 145, the Delegated Powers Committee notes:

"Each of paragraphs 2, 4 and 6 of Schedule 14 confer Henry VIII powers."

It emphasises that the "made affirmative" procedure could be used and points out that the Government acknowledge this in other instances elsewhere. It recommends

"that the affirmative procedure should apply."

Our Amendment 145 delivers that.

I am sure that, as ever, the Government will pay close attention to what the Delegated Powers Committee said, especially since these powers cause such disquiet across the House. They are also an especial target of those three notable lawyers, the noble and learned Lords, Lord Hope and Lord Judge, and the noble Lord, Lord Pannick, whose names often seem to represent not the stages of grief but the stages through which Governments proceed when they defend, then amend, such powers. I am sure that the Government will pay close attention to the committee's report; I trust, therefore, that they will find all three of the amendments I have outlined here acceptable.

Lord Blencathra (Con) [V]: My Lords, I will move that Clause 1 do not stand part of the Bill but I have no intention of seeking to delete the whole clause. I use this mechanism to draw attention to the Delegated Powers Committee's recommendations on the excessive Henry VIII powers in the Bill. I am honoured to chair that committee.

Last Wednesday afternoon, we published our report. We drew the House's attention to a number of concerns about the use of the delegated powers in the Bill. I am grateful to my noble friend Lord Hodgson, who referred to our report with great approbation in speaking to his amendments in the first group. I am also grateful to the noble Lords and noble Baronesses who highlighted other parts of our report and some of our recommendations.

In our report, we draw attention to

"New Part A1 of the 1986 Act, inserted by clause 1 of the Bill".

That clause alone contains 10 Henry VIII powers allowing the Bill to be amended when it becomes an Act. I will not list them today; the noble Baroness who just spoke mentioned three of them in particular. There are also further Henry VIII powers in Clauses 23 and 27 and Schedule 1. As we reported, the powers in proposed new Part A1

"are all designed to be permanent changes to insolvency law. The justifications offered by the Government involve: ensuring that the provision remains 'fit for purpose'; the need to act quickly; the undesirability of taking up Parliament's time unnecessarily."

We say in our report:

"Ensuring that something remains 'fit for purpose' means little more than that the Government want to be able to change the provision by regulations if their policy changes. In our view"—

it has always been Parliament's view—

"the presumption should be that where something needs changing which Parliament has enacted"

in an Act of Parliament,

"Parliament should enact the changes by primary legislation"

in another Act of Parliament

"rather than ministers make the changes by secondary legislation … As for legislating quickly, this is often best avoided",

as we have seen time and again that urgent legislation usually needs amending sooner rather than later to plug gaps or correct mistakes.

The report continues:

"And where legislation is needed quickly, the coronavirus outbreak has shown that Parliament is capable of legislating quickly"

when necessary. It goes on:

"As for not taking up parliamentary time unnecessarily, this is a matter primarily for Parliament. Parliament's task is to scrutinise the Government, including the scrutiny of major legislation that has been drafted in haste and which confers wide-ranging powers on the Government."

I have heard the criticism today that our hybrid procedure is not the perfect way to do Committee or Report work, but no one has said that we do not have the time to do some scrutinising. I believe that in our hybrid procedures we still have ample time to do more scrutiny of Bills before Parliament.

My committee concluded that

"the Government have not demonstrated the need for the Henry VIII powers"

we identified, adding:

"We recommend that they be removed from the Bill."

But we did not stop there. We also recognised the need for speed and flexibility and recommended that many of the regulations the Government may need to make should be done using the "made affirmative" procedure. We all know that all Governments under all Administrations prefer to bash things through on the negative procedure with no scrutiny; it is great if you can get away with it, and I did it myself when I was a Minister. The justification is always speed and that they cannot wait for an affirmative resolution. That is sometimes true, but the "made affirmative" procedure allows for exactly the same speed as the negative procedure but also allows parliamentary scrutiny afterwards.

We said in paragraph 22 of our report:

"However, another procedure exists under which an affirmative instrument may be made and come into force before it is approved by both Houses. This is known as the 'made affirmative' procedure. Under this procedure, the instrument is able to come into force as soon as it is made, but it will automatically cease to have effect if it is not approved by both Houses within a specified period of time. The period specified for approval is usually 28 days or 40 days, subject to extension for periods of dissolution, prorogation or adjournment for more than four days."

[LORD BLENCATHRA]

We said in paragraph 23:

"Regulations under the 'made affirmative' procedure can be made and laid as expeditiously as regulations subject to the negative procedure."

I suspect that many government departments are simply fixated on affirmative and negative and do not know that the "made affirmative" procedure exists. If they know it exists, they will still try to get away with the negative procedure.

None of these are a proper substitute for a real Act of Parliament to amend another Act of Parliament, but at least the "made affirmative" procedure is far better than changing any Act of Parliament without any parliamentary scrutiny at all. I therefore conclude by asking my noble friend to remove these excessive Henry VIII powers from the Bill.

Baroness Taylor of Bolton (Lab) [V]: My Lords, I share many of the concerns that the noble Lord, Lord Blencathra, has just outlined. I will say a few words as chair of the Constitution Committee. I thank the Minister for calling and arranging to listen to some of the concerns that I thought the committee might have before Second Reading. He will therefore not be surprised by the amendments tabled, particularly Amendments 66 and 70.

First of all, I think everyone on the committee, myself included, recognises that there is an urgent need to protect businesses during this current pandemic, as other speakers have said today. As a committee, we are of course always concerned about the fast-tracking of legislation, but these are exceptional circumstances and we understand why things have to be done in an emergency.

However—and this is a big "however"—the problem is that the Government are fast-tracking not just the emergency measures required but the permanent measures. This is where the main difficulties arise, which are extremely problematic for everyone in the Committee. It is the reason that we have tabled Amendments 66 and 70. I will say a few words about each.

4.15 pm

On Amendment 66, there is a requirement that

"The Secretary of State must lay a report before Parliament every three months reviewing the use of regulations under section 18."

We are not convinced that this is adequate to keep the House informed and to keep the process going, in terms of the transparency needed about the direction of government thought and measures.

Clause 18 allows, as was just mentioned, very wide Henry VIII powers to amend virtually all corporate insolvency legislation. We are handing Ministers big powers through this legislation. I am sure Ministers will remind us that these powers expire on 30 April 2021, but the problem is that the Government can extend and renew them for a year at a time, and then again the following year, without limits. These are quite extraordinary powers. We have tabled Amendment 70 to prevent these powers being used more than once. If our amendment were accepted, these powers could be renewed until 30 April 2022, but no further; the Government would have to come back to Parliament for future legislation. Given the significance of the powers that Ministers are taking, this is reasonable for us to suggest, so that Parliament can have a real role in monitoring what is happening and making decisions about whether this kind of approach is justified in the long term.

Our main concerns are using the fast-tracking procedure not just for the emergency sections of the Bill but the permanent stages, and the need to keep Parliament informed about use of the new powers, so that the Government do not get away with taking such vast Henry VIII powers, with little recourse to reporting to Parliament, in the future. We are also concerned about other matters, such as the retrospective nature of some of the provisions in this legislation. They will be discussed later, and I hope that the Minister responds to those as well. I hope the Minister will acknowledge that Parliament and the House of Lords are facilitating the passage of the Bill in unusual circumstances. There needs to be greater assurance that Parliament can be kept informed and have a role, in the future, to determine the direction of this legislation permanently.

Baroness Fookes (Con) [V]: My Lords, I am delighted to support the noble Baroness, Lady Taylor, in the two amendments she has tabled, to which I have added my name. I speak not only as a member of the Constitution Committee but as a former member and chairman of the Delegated Powers and Regulatory Reform Committee. I was delighted to hear my successor speak so robustly and correctly. Over the years, I have become increasingly concerned by the way the Government take on to themselves more and more delegated powers. It is important, even when we have a serious problem with coronavirus, that we make our case firmly.

The noble Baroness, Lady Taylor, discussed the two amendments in detail, so I will not go into them, other than to say that Clause 18, which we are trying to soften, is an immensely powerful one. It gives the Government unrivalled powers to take whatever powers they think they need in this emergency, without much restraint.

I regard Clause 18 as King Henry VIII at his most obese, and it is time he was slimmed down; the two amendments standing in our names try to do just that. I thought we had got there with Clause 23, which was the expiry one, but, when you look at it closely, you find that it is not a sunset clause at all because it is possible to renew the power to make these amendments. So I regard it as a pseudo-sunset clause, and it is high time that we all make sure that the Government do not get away, whenever they want, with whatever they want. We must bear in mind too, that it will not always be the present Government; some of the powers would remain for other Administrations, who might not be as enlightened as I am sure the present Government think they are.

Lord Wallace of Tankerness (LD) [V]: My Lords, I am very pleased to follow the noble Baronesses, Lady Fookes and Lady Taylor of Bolton, who are both my colleagues on the Constitution Committee. I have added my name to the amendments that have been spoken to in the previous two contributions, and that carry on the theme of both my noble friend Lady Northover and the noble Lord, Lord Blencathra,

about the wide powers in the Bill. As indicated by the noble Baroness, Lady Taylor, the Constitution Committee accepts that there is a need for temporary emergency arrangements to protect business and the economy in the current pandemic crisis. But the committee also stresses, in its seventh report, published last Friday, that:

"During times of crisis and emergency it is all the more important to be vigilant about constitutional principles, such as the rule of law and parliamentary accountability. The need for an urgent response to COVID-19 does not justify Parliament neglecting its duty to consider the constitutional implications of the legislation presented to it."

As speakers have already mentioned, there are very wide Henry VIII powers in the Bill, not least in Clause 18, which Amendments 66 and 70 seek to address. The Constitution Committee in a report in the 2017-19 Session specifically looked at the use of delegated powers, and said that Henry VIII powers are

"a departure from constitutional principle. Departure from constitutional principle should be contemplated only where a full and clear explanation and justification is provided".

One looks in vain here for some full and clear explanation. Rather, we are told, in the delegated powers memorandum:

"There are no specific plans to use the power to make temporary changes at present, but it is likely that its use will be considered where representations have been made by industry or where discussions with key stakeholders have identified areas where urgent legislation could help save otherwise viable businesses or mitigate the impact of the pandemic otherwise."

That is not exactly what one would call an intimation of specific intent.

Notwithstanding these misgivings, Amendments 66 and 70 are relatively modest, so I hope that they will commend themselves to the Government. The noble Baronesses, Lady Taylor and Lady Fookes, have already explained how they will work. In Amendment 66, we seek that a review should take place and report to Parliament. We have reviews of the current emergency regulations, and we find that they are more often shared with the Downing Street press briefing than with Parliament, but this modest amendment would require a report to Parliament. Amendment 70 would see a sunset clause in effect no later than 30 April 2022. The amendment probably to be spoken to later in this group by the noble Baroness, Lady Neville-Rolfe, would have an earlier sunset clause, and I must say I find that somewhat attractive. In the Government trying to take powers like this, they should adhere to constitutional principle. When such widespread powers are sought, they should be well and truly limited in their effect.

Baroness Neville-Rolfe: My Lords, I am glad to follow my noble friend Lord Blencathra, chairman of the Delegated Powers Committee, and other experts on delegated powers. I am sure that we will get a helpful response from my noble friend the Minister on these wider powers. As has been said, I will speak on Clause 39 stand part and the Northern Ireland equivalent, Clause 40.

I tabled these amendments with the help of our excellent Bill clerks, alongside my Amendments 68 and 74, which I may not now need to move as my questions are exploratory in nature; that may help us to make progress. I want to open up a discussion on time limits, particularly of the emergency measures. As I said at Second Reading, I support all these measures, but they change the balance of corporate law and can make life more difficult for the lenders and investors that businesses need for success.

I am very concerned about the powers of extension, which I do not believe will be properly scrutinised if used. Some are more contentious than others; the noble and learned Lord, Lord Hope, raised a good point about wrongful trading, and, as I said, even delays in annual general meetings and corporate filings are unwelcome. These provide vital transparency and the opportunity for probing questions to be asked of companies. If the Opposition's proposal to extend the emergency measures to the end of September is accepted, I see no need for an extension to the various emergency powers, and certainly not of the easy kind proposed. So that I can consider my position on Report on the various amendments that we are discussing, I would like more details from the Minister on the use of the powers of extension; more of an analysis of the downsides of the emergency measures, as well as their obvious advantages; and details of the criteria that will be applied if and when an extension of power is used, how any costs will be assessed and when the arrangements will sunset completely.

Clauses 21 and 22 seem very elastic—a pseudo-sunset clause, as my noble friend Lady Fookes said—which is not what we are looking for on these emergency measures.

Lord Adonis [V]: I have nothing to add.

Baroness Anelay of St Johns (Con) [V]: My Lords, I would like to speak to Amendments 87 and 88 in this group, which are in the name of the noble Lord, Lord Stevenson of Balmacara. I notice from the speakers' list that he is due to speak just before the Minister responds to this debate.

I am very pleased to follow others who have talked at length about Henry VIII powers and their dangers and to hear from my noble friend Lord Blencathra, who chairs the Delegated Powers Select Committee. The noble Lord, Lord Stevenson, seeks to amend the Bill to reflect some of the criticisms in the delegated powers report, particularly regarding the Henry VIII powers, which would give the Secretary of State the power to change the circumstances in which a company can be eligible for a moratorium—by presenting an affirmative instrument to the House—and, in that way, avoid having to go back to primary legislation.

Amendment 87 removes the whole power; Amendment 88 circumscribes its use. I believe it is a very brave Government who ignore entirely the recommendations of this House's Delegated Powers Committee. When the Minister responds, he may suggest one or two courses of action. Perhaps he will offer the House a more plausible justification for a definition of the need for speed that is mentioned—the need for speed for the wide powers that are currently drafted in paragraph 20 of new Schedule ZA1—and press ahead with the current drafting of the Bill. I believe that he may find that too difficult a mountain to climb.

On the other hand, he might say that, while the Government hold to their belief that it is in the interest of businesses that the Government should have the power to make swift changes to these provisions on the extendable 20-day moratorium, he and his department

[Baroness Anelay of St Johns]
are considering how best to adopt Amendment 88, tabled by the noble Lord, Lord Stevenson of Balmacara, which follows a recommendation of the Delegated Powers Committee that, if the House were prepared to consider the "need for speed" a sufficient justification, the exercise of that power should be subject to a precondition under which the Secretary of State is required to be satisfied that significant damage would be caused to business were the power not exercised.

4.30 pm

As a former Chief Whip, I accept that it is understandable that my noble friend the Minister could not have come forward today with something like Amendment 88, given the limited time his department would have had for consideration of the Select Committee's report. Even though the Select Committee worked at tremendous pace in this world of fast-tracked legislation, the report was not available until last Wednesday afternoon. It is certainly one of the problems that the Government will face when they present any fast-tracked legislation, but they have time to rethink their plans on Henry VIII powers, in particular the ones that are the subject of Amendments 87 and 88. Whatever the Government decide to be the right route ahead, it has to be the right route to ensure that the legislation will deliver the policy that businesses need around the country, but in a way that the Constitution Committee too can describe as appropriate. Whatever happens, I am sure that we will return to these issues on Report.

Lord Thomas of Cwmgiedd (CB) [V]: My Lords, I will speak briefly on the rulemaking powers. I first draw attention to my interests in the register, in particular that I am chairman of the Financial Markets Law Committee, which is interested in clarifying and making certain the law.

It seems that there is a clear dilemma. The Bill is needed very urgently. It is sensible to make the changes to insolvency law that have been consulted on for some time and to provide for a new form of reconstruction, but these are needed now and they cannot sensibly be left to a later time. However, the Bill is of such complexity and, in some areas, of such novelty that more time is needed to sort out the many technical points that continue to arise, despite all that is being done by the Minister, his department and the insolvency services.

Points are being identified all the time. I will give just one example that possibly illustrates the interrelationship between new points and the scope of the delegated powers. It is unclear whether financial service creditors with super-priority have a claim on assets charged to secure debts without super-priority. The Minister might say that these can be dealt with under new Section 174A(3) to the Insolvency Act on page 108 of the Bill, but it is not clear that that power is wide enough. I take that illustration because it shows two points: first, that areas of uncertainty remain, and, secondly, that it is not clear that the delegated powers are drafted in wide enough terms.

Normally, I would absolutely deprecate extensive Henry VIII powers, but I really feel that these are needed in the circumstances of the Bill. It is absolutely essential that uncertain points can be clarified, I hope while the Bill goes through its remaining stages over the next week, but if not by swift rulemaking changes or regulatory changes to it. Points will go on being spotted—some have already been spotted and not rectified—but certainty is essential if we are to weather the problems that will undoubtedly arise over the coming months. We obviously need safeguards. I do not wish to add to the length of what I wish to say by going through the various solutions put forward by the Delegated Powers Committee and the Constitution Committee, so ably explained by my noble friends Lady Taylor and Lord Blencathra.

However, I will emphasise that we cannot escape the need for delegated powers, we cannot escape the need for speed and we should make sure, because it is the reality, that we can iron out points of uncertainty as quickly as possible.

We might say that the courts can do this. I have no doubt that they can, but there are two things that one should say. First, there are issues of policy here which ought to be decided either in this House or by the Executive, and, secondly, there are bound to be mistakes which it is not possible for the courts to rectify.

The courts will of course have extra work, as people have acknowledged, and they may require additional resources. Amendment 62 suggests that there be a report on how the courts are managing and whether training is under way. My understanding is that a significant amount of training has taken place, but the adequacy and the scope of it is under the Constitutional Reform Act a matter for the judiciary and not for the Executive or for this House.

Lord Howarth of Newport (Lab) [V]: My Lords, as a fellow member of the Constitution Committee, I am delighted to follow my noble friend Lady Taylor of Bolton, the noble Baroness, Lady Fookes, and the noble and learned Lord, Lord Wallace of Tankerness. I also endorse warmly the powerful points made by the noble Lord, Lord Blencathra, and the noble Baroness, Lady Northover.

Amendment 66 would enable Parliament to "keep … under review"—a phrase we hear endlessly—the manner in which the Secretary of State keeps under review the use of the very broad Henry VIII powers to change the law on corporate insolvency by regulations which Clause 18 empowers him to make. As many noble Lords have said, if we are to have Henry VIII powers, which are in principle constitutionally offensive, a special and convincing case must always be made for their creation by the Government. If they are to be legislated for, they should be as narrow as possible to meet their specific purpose and they should not last a minute longer than—as far as this legislation is concerned—the emergency requires.

As has been noted, the powers in Clause 18 expire on 30 April 2021, but regulations already made under that power can be extended. Moreover, the Henry VIII power itself can be extended by regulations under Clause 22 for another year, and again and again thereafter. That being so, these clauses give the Government a blank cheque. So Amendment 70, which sets a final expiry date, is the very least that is required.

I am very attracted to the robust and no-nonsense approach of the noble Baroness, Lady Neville-Rolfe: simply abolish the clause. Clause 39, to which she spoke, is a wicked piece of legislation in constitutional terms. It creates a power for the Secretary of State to change the duration of temporary provisions and to keep on doing so, ad infinitum. It is the most self-indulgent of Henry VIII powers. It is constitutionally offensive, and it really should not stand part of the Bill.

I accept, as do members of the Constitution Committee and, I think, all other noble Lords, that there is an emergency which needs urgent legislative action and that, as long as the emergency persists, we will need provisions in place to protect as far as we can businesses that are vulnerable to the coronavirus crisis and of course the jobs of those employed by them or dependent on them indirectly. However, as has been noted also by the noble and learned Lord, Lord Wallace of Tankerness, in an emergency—and this applies especially in a prolonged emergency—the more important it becomes for Parliament also to be vigilant and to protect the principles of the constitution.

The Bill, which the Government are fast-tracking, is huge. It has 47 clauses, 14 schedules and 234 pages. Like Henry VIII clauses, fast-tracked legislation should be rare. It should be specifically and convincingly justified and its scope should not extend beyond the minimum necessary to achieve its purposes, although the scale of this legislation makes even more questionable the appropriateness of the fast-track process.

The Government are tracking the Bill so fast that the House of Commons barely saw it. Its Second Reading and remaining stages all took place on the same day; the remaining stages were transacted in half an hour. The Bill was gone in a blink and the House of Commons did not perform its proper responsibility, I regret to say, of scrutinising it. If the House of Lords steps in where the House of Commons fears or has failed to tread, and if we seek to advise and to do so by way of passing amendments, Ministers and even Back-Bench Members of Parliament are wont to express some resentment. But we have a responsibility to scrutinise and improve important legislation. What else is Parliament for? Noble Lords have made a large number of important observations and criticisms of flaws in the Bill today, particularly in the very long debate on the first group. What we need to do, I suggest, is to separate policy for the emergency from policy for the long term.

This brings me to my second objection, beyond the inappropriate fast-tracking of some of this legislation. As many noble Lords have noted, the Government should not smuggle in permanent changes to policy and law via fast-track emergency legislation. There are three sets of permanent changes, as I understand it, in the Bill. There is a procedure for a new moratorium on enforcement action against companies in financial distress, even though this procedure may be detrimental to creditors and investors, and therefore be potentially as damaging as allowing the debtor companies to go to the wall. The Bill also provides for permanent new arrangements for restructuring companies that are in financial distress, and for restrictions on contractual supplier termination clauses.

In winding up on the first debate the noble Lord, Lord Callanan, argued that the Government had previously consulted on the permanent measures. Indeed they did, but that is no excuse for seeking to bypass full parliamentary scrutiny of important changes to the law on insolvency. We are not making a fuss about the dignity of Parliament. We are complaining about the Government outflanking a process which actually enables them to get difficult changes right and give democratic legitimacy to changes in the law. In another context, the Minister was very keen to restore full law-making rights to this Parliament. I wonder how he justifies what I would regard as this two-fold abuse of Parliament: fast-tracking such a vast law and using emergency legislation to enact permanent changes.

If the Covid-19 effects should, unfortunately, persist in a very damaging form, Parliament should return in new primary legislation to the question of what emergency powers the Government should continue to be able to exercise. I was attracted by the proposal made earlier by my noble friend Lord Liddle: that there should be post-legislative scrutiny of the Bill. The noble and learned Lord, Lord Thomas, put it to us that delegated powers are essential in the emergency. Yes, they may be, but there should be proper sunset clauses attached to all the powers that the Bill creates, and especially the ones that are intended to be permanent, which should never have been in a Bill creating powers for an emergency. At the least, as the DPRRC has recommended, these powers should be amended to limit their use to a period only so long as the Secretary of State judges that the effects of Covid-19 require them.

Lord Mann (Non-Afl) [V]: My Lords, it seems that there are different rationales for why amendments can be put forward and supported. It is often because of the poor drafting of legislation; sometimes, of course, it is for political point scoring or, often, where there is a clear difference of opinion. Sometimes they are intended to save the Government from themselves and, having heard the arguments of the noble Lord, Lord Blencathra, and others, it appears that these amendments sit within the latter category if they are to have any validity. I note that the Law Society is rather supportive of some amendments, in contrast to the noble and learned Lord, Lord Thomas, although I found his arguments logical and persuasive.

4.45 pm

I have a question for the Minister which may or may not be helpful. I like to see things through the prism of football; perhaps all life should be seen that way. Today, a footballer, Mr Marcus Rashford of Manchester United, has singlehandedly overturned government policy in a big way. Some of the more spectacular corporate insolvencies that are looming may create a big political headache for the Government. They will be those of professional football clubs, not because their structure is any more complex—although it is often complex—but because, under its rules, football has its own system of preferred creditors. If those rules are not met, the market in which any new entity emerging out of the previously insolvent one can go into business is purely determined by whether it has met its football-preferred creditors. Some have speculated that this looming crisis could affect as many as 20 of

[LORD MANN]
the 92 professional football clubs in England, all with a significant supporter base, known otherwise as voters. Have the Government considered whether these powers give them sufficient flexibility to handle the political crisis that would emerge? Do these amendments add or detract from that potential?

Lord Fox: My Lords, the amendments in this group, along with those coming up in group six, are designed to pull back a Government seeking to overreach themselves and take on powers that should remain vested in Parliament. The Committee has heard strong arguments from the noble Lord, Lord Blencathra, and many members of the Constitution Committee, to back up this point. Amendment 66 hardens the requirement for the Secretary of State to keep the regulations under review by setting a timetable for those reviews and reporting them back to Parliament. This does not meet the idea of post-legislative scrutiny suggested by the noble Lord, Lord Liddle, but it does at least give Parliament the ability to review what is happening. Amendment 70 prevents the Clause 18 power being renewed on more than one occasion. In other words, it sets a hard stop of 30 April 2022.

Amendments 71, 76 and 140, tabled by my noble friend Lady Northover, to which I have added my name, seek to address the Henry VIII issues that were thrown up in such stark relief by the Delegated Powers and Regulatory Reform Committee. I do not need to add to the wisdom given by other noble Lords. It is absolutely clear that these could be transferred to an affirmative process. Were they to be so, this would not remove the Government's ability to make the changes they think necessary to deliver the flexibility we may need in the crisis as it develops. The Government do not need to be frightened of this amendment. They can take it on board. It would calm down a lot of Peers.

Lord Stevenson of Balmacara [V]: My Lords, I am grateful to all noble Lords who have spoken in this interesting and wide-ranging debate. In contrast to that on the first group, it was quite well focused. There are only a couple of things that escaped the broader consideration of the two advisory committees we have been hearing from: the DPRRC and the Constitution Committee. Amendment 62, in my name, is oddly grouped in this debate but was meant to be helpful. I hoped that the Minister could reassure the Committee that all that needed to be done was being done to make sure the courts played their part appropriately—it is nothing to do with Parliament and, as the noble and learned Lord, Lord Thomas, said, nothing to do with the Government either.

Nevertheless, the funding needs to be there and the resources need to be available to ensure that the work is done properly to support the legislative attempts that have been made within the Bill. If it is of any interest, we tried in our amendment to add not just the judiciary but the staff of the courts, because they too have a part to play, but we found that that was out of scope, so the amendment focuses purely on the judiciary. But it should be understood to be about the court system as a whole helping and supporting the legislation moving through.

The noble Baroness, Lady Anelay of St Johns—who should know a thing or two—said very clearly that only a brave Government would ignore the DPRRC or Constitution Committee reports, and I am sure that it is not in the mind of the Minister to take them on at this stage. Our amendments are largely an attempt—and I acknowledge considerable assistance from the Public Bill Office—to put the aspirations of the DPRRC into a form that could be considered as amendments. They are not meant to be a statement of where we want to get to. They are probing amendments to provoke a response from the Government. I also think that the recommendations of the Constitution Committee, as outlined by my noble friend Lady Taylor and her supporters in Amendments 66 and 70, are exemplary because they quickly get to the heart of what we are about. They contrast slightly with the approach taken by the noble Lord, Lord Blencathra, whose excellent speech belied the fact that his way was simply to delete the clause. That would not achieve very much except make this Committee very happy but it would obviously remove the impulse which has led to where we are.

We are obviously in a situation where we need clear agreement between the various interests displayed in this debate. It really is up to the Government to assure the Committee that, in the words of the noble Baroness, Lady Neville-Rolfe—and I agree with the line she is taking—the analysis has been done properly. We need to better understand the interaction between the lengths and temporary measures—how long the temporary parts of the Bill will last and under what arrangements they can be sunset. If they are not to be sunset, what assurances and safeguards are available to this House and to Parliament as a whole? We need a full and mature consideration, but all that has to be done in a matter of days because the date for the final submission of amendments for Report is looming fast. Indeed, it will have to be the end of this week so that we can debate them in the middle of next week.

We are in a quandary. The Government need to give us an assurance about that, but I make it clear that we are happy to discuss with the Government any way in which we can help, and I am sure that others who have contributed would also do that. We are clearly at a bit of an impasse if we do not find a way out of this, but there seem to be solutions on the ground. The amendments tabled by my noble friend Lady Taylor are attractive and the idea, as the noble Lord, Lord Blencathra, put it, of taking up sensible safeguards such as making the "made affirmative" procedure the default position on this is probably the right way to go. We will need assurances that the Government will not attempt to ride straight through the long and distinguished history of Parliament trying to make sure that abuses are not perpetrated within legislation which it then cannot involve itself with. I look forward to hearing from the Minister on this and hope that he is able to reassure us.

Lord Callanan: I thank all noble Lords for their contributions on this group. I will make a few general comments before I look at the detail of the amendments tabled.

I shall comment first on what I thought was the most important contribution to the proceedings, which of course was the noble Lord, Lord Mann, making a football analogy, which is more important than this legislation. I joke, of course, because it is not, but many of us are looking forward to the recommencement of the Premier League season tomorrow. I suspect that we support different clubs, but nevertheless I am sure that we will both welcome the resumption of football. The serious point is that many of these provisions will apply to football clubs. We hope, as is the purpose of this legislation, that it will enable any of them which are struggling to be saved. The Government have already announced a substantial package of aid and support for many businesses, including football clubs; I think that the Premier League has announced a package of £125 million that is to go to other clubs. We welcome that, and of course many clubs have taken advantage of our other business support measures.

The noble Lord, Lord Howarth, asked why there are so many delegated powers and Henry VIII provisions in the Bill. It is important to address this issue directly. We introduced new procedures to help companies in financial difficulties, in particular the moratorium which we debated earlier, and the new restructuring arrangements, and there are considerable powers to enable these provisions to be reviewed and adjusted if necessary. This point was recognised by the noble and learned Lord, Lord Thomas, and I am grateful for his support. Insolvency legislation is indeed very complex. The Bill has been drafted at pace to respond to the Covid-19 emergency and it contains powers to enable its provisions to be adapted to different types of corporate body or bodies which are subject to special insolvency procedures. It will also ensure that the detail of such procedures can be amended swiftly in the light of these reforms.

My noble friend Lord Blencathra opposed the Question that Clause 1 should stand part, in order to facilitate a wider debate on the Bill's delegated powers. I know that he wishes to understand the Government's position across the amendments related to delegated powers and I hope to be able to respond to his points throughout my response. I note that many of these amendments have been drawn from the report on the Bill by his committee. The Government are carefully considering that report, which we received following Second Reading. I have considered the report and I have listened carefully to the views of noble Lords throughout the debate.

My noble friend Lady Neville-Rolfe opposed the Question that Clause 39 should stand part of the Bill. I will explain. The clause enables the Secretary of State to make regulations either to extend or to curtail the periods during which the temporary provisions in the Bill operate. This is important to ensure that the temporary provisions are not in place for longer than necessary, but also that they do not expire at a time when they are still needed to protect the economy from the impact of the coronavirus emergency. Clause 40 makes similar provisions for Northern Ireland. Clause 41 ensures that where regulations are needed urgently as a result of the insolvency measures being introduced by this Bill, they can be made using the negative procedure for a six-month period after commencement. I therefore commend that these clauses stand part of the Bill.

I turn now to the amendments which seek to remove the powers to make secondary legislation conferred on the Secretary of State in relation to the moratorium. These powers enable the Secretary of State to amend, for example, definitions, defined lists and the circumstances in which the monitor can bring the moratorium to an end. In our view, these powers are required because in the future, it is possible that the Government may wish to address any unforeseen issues efficiently to ensure that the conditions for entry into a moratorium remain fit for purpose and to keep definitions up to date as new activities and entities come within the relevant regulated regimes.

Amendment 52, tabled by the noble Lord, Lord Stevenson, seeks to remove the power conferred on the Secretary of State to amend the list of exclusions set out in Schedule 4ZZA. The Government must retain this power in order to be able to react quickly to evolving situations in business and the financial world and to maintain legal certainty. Without the ability to do this, there is a risk that the Government would not be able to keep pace as new firms or types of contract emerge.

Amendment 62 would require the Government to review the impact of certain measures in the Bill on the High Court and to publish a plan to ensure that judges are appropriately trained in their implementation. I hope that it will reassure noble Lords if I confirm that we have engaged extensively with the judiciary in the course of developing these measures with the aim of ensuring that the impact on the courts is minimised. As always, the Government are extremely grateful to members of the judiciary for sharing their insights into these matters.

5 pm

On Amendments 65 and 66, I thank the noble Lords for raising important points on the use of the power in Clause 18 to make temporary amendments to insolvency and related legislation. Again, I assure noble Lords that any temporary measures would need to be urgent, as they may be made only to mitigate the impact of Covid-19 on business. Any use of the power must be debated and approved by both Houses, and temporary amendments will last for a maximum of six months, with further debate if they are to last any longer than that. The Secretary of State has a continuing duty to review any temporary amendments that are made using this power.

Amendment 70 would limit the power to extend the expiry date to one use, which would mean that one extension of the sunset date could be made, to 30 April 2022 at the very latest. The power to make temporary amendments to insolvency and related legislation could then not be used further after that date. Extension of the expiry date on 30 April 2021 may be made only after proper consideration and scrutiny by Parliament, using the affirmative procedure.

I turn now to Amendments 71 and 72. Clause 23 allows that amendments consequential to those made using the power in Clause 18 may be made by statutory instrument using the negative resolution procedure, unless those amendments are included in regulations made under Clause 18, when the made-affirmative procedure applies. Clauses 23 and 24(7) both allow for

[Lord Callanan]
unforeseen but necessary consequential, incidental, supplemental and transitional amendments to be made through the negative resolution process. I hope that the noble Baroness and the noble Lord will agree that that is the appropriate level of scrutiny for this type of provision.

Amendments 76 and 77 relate to the powers to make regulations under Clause 37 to change certain filing deadlines. These powers can be exercised only until 5 April 2021. The extensions to filing deadlines are strictly limited, and only the deadlines for the filing requirements listed in Clause 38 may be extended. Amendments 145 and 146 relate to the powers to make regulations in Schedule 14 in relation to annual general meetings and other meetings. Again, these powers are temporary in effect. The relevant period in which the flexibilities apply cannot be extended beyond 5 April 2021. The powers to make further provision about the manner in which AGMs and other meetings are held, and to further extend the deadline for holding AGMs, can be exercised only in respect of that temporary period, and are therefore also time limited. We consider that the draft affirmative procedure is not proportionate to these circumstances.

The delegated powers memorandum, published by my department, explains the need for regulations to be capable of taking effect quickly if necessary. There is a need to be able to adapt the requirements for AGMs and other meetings quickly, so as to respond to the present unique and rapidly evolving circumstances.

I turn to Amendment 81. The temporary insolvency measures will all end a month after Royal Assent. Clause 39 provides a power by which these temporary measures can be extended by a statutory instrument under the made-affirmative procedure, ensuring that there is appropriate parliamentary scrutiny. The Government recognise that the temporary measures all have significant impacts on the normal working of various parts of insolvency legislation, and therefore, of course, on the business community. It is for this reason that the Government intend to use the power contained in Clause 39 only if the protections are needed beyond their present expiry date in response to the economic impact of coronavirus.

On Amendments 87 and 88, I understand the noble Lord's concerns. However, it is essential that the Government, and the devolved Administrations, retain these powers to enable us to react quickly to evolving situations, not only in the business and financial world but in ensuring that the moratorium under this Bill does not clash with the special insolvency procedures that already exist. Applying a condition, as suggested by Amendment 88, would effectively apply a block to using the power in paragraph 20.

The Government have heard the concerns of noble Lords and those flagged by the Delegated Powers and Regulatory Reform Committee. The Bill is an attempt not to seek unchecked power but rather to ensure that there is capacity to respond to the rapidly changing Covid landscape and to ensure that permanent measures are delivered more quickly to support companies and other entities, enabling them to survive tough times, and we hope that they will work effectively. I did say at the start that I have listened to the concerns that have been expressed and will consider them carefully. Therefore, for the reasons I have set out, I hope the noble Lord will feel able to withdraw his amendment.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): I have received a request to speak after the Minister.

Baroness Northover: My Lords, I thank the Minister for that reply. He is saying two things: one, that he will be listening to the Delegated Powers Committee and the Constitution Committee; and two, that he has rebutted the various amendments. So it would be very helpful if he would consider those reports and the various amendments in this group and come forward with his own proposals well before the deadline for amendments for Report, so that noble Lords can see the extent to which he has, as he has promised, taken into consideration what those two very significant reports say.

Lord Callanan: We will, of course, issue a formal response to the DPRRC report, hopefully by Friday—but, since Report is next Tuesday, we will need to act more swiftly than that in terms of considering amendments. However, as I have said, I have listened carefully to the points that have been made.

Lord Leigh of Hurley [V]: My Lords, I thank the Minister for his remarks and all noble and noble and learned Lords from all sides of the House for a really interesting debate, agreeing on much. I think my noble friend did address the concerns raised. However, I do not feel that he addressed the concerns raised in respect of Amendment 7 at all, so I would be very grateful if, before Friday, he can communicate with me his remarks in respect of this important point. On the assumption that he will be able to do that, I beg leave to withdraw my amendment.

Amendment 7 withdrawn.

Amendments 8 to 19 not moved.

5.07 pm

Sitting suspended. Committee to begin again not before 5.17 pm.

5.17 pm

The Deputy Chairman of Committees: My Lords, the House is again in Committee on the Corporate Insolvency and Governance Bill. We now come to the group of amendments beginning with Amendment 20. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or any other amendment in this group to a Division should make that clear in the debate.

Amendment 20

Moved by ***Baroness Drake***

20: Clause 1, page 11, leave out lines 21 and 22

Baroness Drake (Lab) [V]: My Lords, I refer to my entry in the register of interests. I shall speak also to Amendments 39, 63 and 64.

I fully support the Government's desire to assist companies in bouncing back from Covid-19, but it is neither necessary nor desirable that such a policy should seriously weaken the position of defined benefit pension schemes and the Pension Protection Fund in the event of an insolvency or restructuring. The Bill does this in several ways: by granting super-priority status to unsecured banking and finance debt, ranking it above pension scheme debt if a company is not rescued, which introduces material detriment to the level of recoveries the PPF, acting as creditor for a scheme, can achieve through insolvency proceedings; by finance debts getting preferential treatment over pension scheme liabilities by continuing to be payable during a moratorium; and by the new moratorium and restructuring plan processes not triggering a PPF assessment period or a pension scheme's Section 75 debt, weakening the position of the scheme and the Pension Protection Fund, which would not have a seat at the table for key creditor and restructuring plan discussions and would be denied a meaningful voice on employer liability to the scheme.

The Minister wrote yesterday and indicated that the Government will bring forward amendments on a number of matters, for which I thank him. We have yet to see the text of those amendments, but I will seek to reference the Minister's letter in what I say.

Amendment 20 removes amounts payable in respect of pre-moratorium debts and other liabilities

"arising under a contract or … instrument involving financial services"

from the exemption from the payment holiday during a moratorium and the super-priority provisions in the event of an insolvency process. Amendment 39 does the same in Northern Ireland.

There is nothing in the Minister's letter that indicates the Government's intention to give further attention to their decision to give such a wide range of finance debts elevated status and preferential treatment over pension scheme liabilities. We have today heard his statement on accelerated finance debt, but I will continue to press my amendment.

It is difficult to comprehend the Government's reasoning for liabilities under financial services contracts, extremely widely drafted in the Bill. It would include unsecured lending such as shareholder loans and intercompany loans, including from a director or parent company, as well as arm's-length regulated activities and bank debts, all getting preferential treatment over pension scheme liabilities. Others have asked similar questions in respect of SMEs and workers.

As drafted, it would allow finance parties to accelerate all debt so that the entirety of the lending would be payable under these provisions and benefit from super-priority on insolvency. There is a real risk of gaming. The noble Lord, Lord Hodgson of Astley Abbotts, and the noble Baroness, Lady Bowles of Berkhamsted, articulated such examples so brilliantly in the first group debated. From what I heard during that debate, I welcome the Minister's statement that accelerated debt will not now have super-priority status, which addresses in part—but certainly not in whole—the purpose of my amendment.

During a moratorium, these financial debts would continue to be payable, pension scheme deficit contributions would not and the trustees could not call on any contingent assets that would otherwise be triggered by non-payment of deficit contributions. Priority for finance debts would remain. The Law Society has said:

"the Bill would create an incentive for lenders without effective security to allow the rescue of a company through a moratorium to fail, so as to force it into administration or liquidation and achieve super-priority."

I say this without sight of the Government's amendments, but there may remain a perverse incentive that undermines any preference the trustee or PPF may have to rescue the company.

Worryingly, liabilities imposed by the Pensions Regulator on the company for breach of moral hazard rules, such as contribution notices and financial support directives, also rank behind these financial debts. This is not addressed in the Minister's letter. Will the government amendments address this concern?

Amendment 63, through an amendment to the Pensions Act 2004, provides that both the start of a moratorium and an application for a meeting of creditors to consider a restructuring plan would trigger a PPF assessment period and a scheme's Section 75 debt. Amendment 64 applies similar provisions to Northern Ireland. This would enable the PPF to act as the creditor of the scheme, which would have an improved standing and vote. These are key protections that currently exist.

In his letter yesterday, the Minister advised that the Government will bring forward amendments that will: during a moratorium, give the PPF rights to information and the right to challenge the actions of the directors and/or the monitor; on a restructuring plan, provide that both the PPF and the Pensions Regulator will be entitled to receive copies of all the information sent out to creditors; and, on both procedures, grant the ability to provide creditor rights to the PPF, subject to appropriate constraints.

I welcome that the Government have recognised that the pension trustees, the PPF and regulator need the rights and authority to engage effectively during the moratorium and restructuring plan discussions, but it is unclear how meaningful those engagement powers will be without seeing the actual amendments and to what extent they will be broadly comparable with or weaker than the current safeguards available.

It will also be important to understand how any government amendments address the serious risk that the new restructuring process could give rise to the systemic dumping of DB pension schemes by companies that are financially underperforming. The restructuring plan procedure can compromise creditors' claims and standing. It allows for a cross-class cram down and there is much speculation that this could be used to cram down the pension scheme. I ask the Minister how the government amendment would address that concern.

[Baroness Drake]

The relevant legislation, which gives the PPF creditor rights, is chiefly the Pensions Act 2004, which puts in place a careful framework that supports action to rescue distressed companies, while protecting the interests of pension scheme members. It does this by triggering a PPF assessment period at the start of the insolvency proceedings that aim to rescue an employer. The PPF steps into the shoes of the trustees by acting as creditor for the debt owed to the scheme. This legislation has proven effective and has delivered better outcomes.

As drafted, the Bill directly undermines that carefully structured framework. It will be important to understand how and to what extent the Government's amendment rows back from that consequence. The 2004 Act provisions were a product of the failure of successive Governments to protect pension scheme members under UK insolvency laws. It would be regrettable if, through this Bill, history repeated itself.

The Minister's letter sent yesterday and his statement on accelerated finance today are a significant step forward, but they do not eradicate all the key risks that many noble Lords are so deeply concerned about. I ask the Minister if, before Report, he will reflect further on the concerns that I, and no doubt others, will express today. I beg to move.

Baroness Warwick of Undercliffe (Lab) [V]: My Lords, until recently, I was a member of the board of the Pension Protection Fund. I will speak to Amendments 20 and 63. Like my noble friend Lady Drake, I have yet to digest the contents of the Minister's letter from yesterday evening and we have yet to see the actual amendments, but I want to set out my concerns, so that they can be tested against the concessions he has made.

I fully support the policy intention behind the Bill: to help otherwise financially viable companies avoid the prospect of failure, as a result of the unprecedented disruption that Covid-19 has caused. However, alongside its temporary measures, the Bill includes permanent measures—the moratorium, the restructuring plan and changes to creditor status—that will be far-reaching. On the current drafting, there will be consequences that have the effect of reducing the protection and rights of underfunded pension schemes and the Pension Protection Fund when companies are in financial distress—protections that have been carefully built up and developed over 16 to 17 years.

Amendment 20 removes financial debts being exempt from the moratorium payment holiday and the granting of super-priority to those debts in the event of a company entering into an insolvency process. Amendment 63 provides for the triggering of PPF creditor rights and a scheme Section 75 deficit at the start of a moratorium and of restructuring plan discussions.

We cannot overestimate just how serious this is. For many years, the covenant position of defined benefit pension schemes has been based on unsecured pension debt ranking side by side with debts owed to other unsecured lenders. This has underpinned all valuation, funding and covenant discussions. The super-priority status granted to finance debts in an insolvency following a moratorium removes that base. It weakens valuations and funding arrangements and is detrimental to members of pension schemes and to the role of the PPF acting as creditor. It also affects the scheme trustees. The liabilities of the scheme—the pension promise—are usually significant and payable over a significant number of years. Unlike other unsecured creditors, trustees are not in a position to manage the exposure to the scheme's debt by ceasing to deal with their employer. Therefore the Bill dramatically enhances the interests of the finance lenders and weakens the interests of the pensioners and future pensioners in an insolvency situation.

5.30 pm

It is unclear why such finance steps are being given such enhanced protection when the pension scheme is not protected from the detrimental impacts of the payment holiday, and is vulnerable to lenders accelerating payments during the moratorium, so the entire debt would benefit from enhanced status and super-priority, as the noble Baroness, Lady Bowles, highlighted on the first group of amendments. I welcomed the Minister's statement in response to that debate that the accelerated debt would not get super-priority status, in what appears to be an important concession for the Government. I am sure that noble Lords will want to look at the amendments in some detail.

Another important point is that liabilities such as contribution notices and financial support directions issued by the Pensions Regulator will rank behind finance debt creditors that are super-priority, undermining, as far as I can see, the role of the regulator and the interests of the scheme. The Minister's letter does not address that at all. There is a real possibility that such finance debts emerging from a moratorium with super-priority status could remove any chance of recovery for pension schemes in an insolvency, and they will certainly get less than they would currently secure in a liquidation or administration.

The Minister's letter does not appear to address many of the concerns to which Amendment 20 is directed: the rise in pensioners not receiving their benefits in full, and greater strain on the PPF. If the PPF has to raise the levy as a result, it will put additional financial pressures on other existing businesses, which is the opposite intention of the Bill's proposals.

On Amendment 63, the moratorium is a new formal arrangement that will act as the starting point for discussions with creditors about the future of the business. As drafted, the Bill means that the PPF will be excluded from those discussions. If it has no formal standing, the PPF cannot address the risk of a deal being reached with creditors which is detrimental to the PPF, the scheme, and the levy payers, or the risk of dumping pension scheme debts by a company which is financially underperforming. It is critical for the PPF and schemes and important for all parties that they are included from the start of these discussions. The Minister's proposals are a recognition of the concerns about the moratorium in restructuring plans, and I welcome those. Of course, I await the detail of the amendments to understand how those concerns are addressed.

Finally, there is a form of super-priority in relation to a restructuring plan in the Bill. A court cannot sanction a restructuring plan if it includes a provision in respect of certain creditors, and those creditors

have not voted in favour. Those creditors include a creditor in respect of a pre-moratorium debt for which the company has not had a payment holiday during the moratorium. The Law Society observes:

"In a CVA or restructuring plan, following on from a moratorium, the holders of debts for which the company did not have any payment holiday during that moratorium, which includes those finance debts, have in effect a veto right in respect of the CVA or restructuring plan."

As to the scheme and the PPF:

"The chances of recovery are reduced or removed in an insolvency, creditor rights are weakened during the moratorium and restructuring plan discussions, and the restructuring plan process allows a plan to be imposed on a dissenting pension scheme to their detriment and to that of the PPF."

Triggering a PPF assessment of the scheme's Section 75 debt at both the start of a moratorium and an application to court to summon a creditors' meeting to consider a restructuring plan would be key protections, which Amendment 63 seeks to include. Can the Minister explain how the Government's amendment would address the need for such protection?

Given the Minister's response to the noble Baroness, Lady Northover, at the end of the last debate, would he be willing to discuss the concerns which members of the Committee have expressed in this debate before the Government publish their amendment in time for Report?

Lord Balfe [V]: I will be brief. One good thing is that there is no time limit today so people have tended to speak on a bit, shall we say?

First, I endorse everything that was said by the noble Baronesses, Lady Drake and Lady Warwick. I hope that there might be an opportunity for a meeting before the final publication. My only point in addition to that is that we seem to imagine that the PPF is safe for ever. I have always—or at least over the past year or so—said that, one day, this lifeboat is going to sink unless someone puts some effort into making it float and keeping it alive. I suppose that BEIS and the DWP are separate departments but we run the danger of ignoring pension schemes to a point where the levy will become unsustainable and the whole edifice will come crashing down on us. I ask the Minister to look carefully at this.

In closing, I repeat the point that I have made ad nauseam: pensions are deferred earnings of the workers in the company, often stretching back over many years, and they deserve priority. That remains my fundamental position.

Baroness Altmann [V]: My Lords, I will speak to Amendment 27, which is in my name. I support wholeheartedly Amendments 20, 39, 63 and 64, as well as Amendment 118, to which I added my name.

I echo the wise words of the noble Baronesses, Lady Drake and Lady Warwick, and my noble friend Lord Balfe. It is of deep concern that the Bill did not originally encompass provisions to protect the deferred pay of workers in an insolvency or restructuring situation. Indeed, as it stands, the Bill drives a coach and horses through the protections that, as the noble Baroness, Lady Drake, so rightly outlined, were carefully crafted and put in place in 2004 to ensure that workers' pensions were protected, having been through several years during which it was discovered that many members of defined benefit pension schemes had lost much, or even all, of the pension that they had been relying on for their retirement.

The Bill is a significant change to the usual priority order for unsecured creditors in an insolvency or a restructuring situation. It is an existential threat to defined benefit pension schemes in the UK to give super-priority status to unsecured financial debt over that of other unsecured creditors—including the associated pension scheme and the rights of the Pension Protection Fund, which protects all other defined benefit pension schemes in the UK. I urge my noble friend—I thank him for at least recognising that this is an issue and saying that the Government will table amendments—to listen carefully to the concerns expressed in the debate on this group of amendments and ensure that consultation is put in place, as other noble Lords have requested, so that we can try to get this right.

The pension promises are so important for workers but, as it stands, this legislation would appear to legitimise the actions in connection with pensions that have been considered egregious over the years. The Pensions Regulator's reports on the pension schemes of BHS or Carillion, for example, make it clear that the pension funds were at risk of being gamed by other financial creditors passing the parcel or elevating themselves ahead of the interests of the pension schemes.

Amendment 27, for example, would ensure that if an insolvency was in the offing and the monitor applied to the court to remove protection from assets that were previously secured, such consent could not be given without the approval of the Pension Protection Fund. That is really important. With the provisions proposed in, for example, Amendments 63 and 64, the PPF would already have been involved because a PPF assessment would have been triggered. After a PPF assessment period is triggered, the PPF can come in and protect its own position and that of the pension fund; that is, the creditor rights.

At the moment we have a system whereby trustees carefully work out integrated risk management proposals to ensure that the contributions to the pension scheme demanded of employers are reasonable and proportionate in terms of helping the company to survive and thrive, but also protecting the scheme should the company not do so. In that regard, many schemes have been pledged assets belonging to the company so that, if insolvency occurs, they will be available to boost the pension scheme. Under the current proposals in the Bill, without Amendment 27 the assets pledged to the scheme would potentially disappear and the banks would potentially secure themselves a win-win situation while jeopardising the interests not only of the pension scheme attached to the company in question but of all other defined benefit schemes protected by the Pension Protection Fund and the millions of members in those schemes. I hope that my noble friend will listen carefully and take seriously the concerns expressed across the Committee that banks should not be given preferential status.

I would also like to pick up on what my noble friend the Minister said in the debate on the first group of amendments: that the intention behind the moratorium is not to make creditor positions worse. However, in

[Baroness Altmann]
the context of a defined benefit pension scheme, should the Bill's measures not be amended in line with the types of amendments proposed here, there will be a fundamental change if an insolvency winding-up or administration takes place within 12 weeks of the moratorium, and the moratorium and pre-moratorium debts take priority over creditors such as those with Section 75 unsecured pension debt.

I welcome my noble friend the Minister's comment that the Government plan to bring forward their own proposals to address some of the concerns covered by my Amendments 94 and 95, and I thank the Law Society very much for its help and support in addressing these inconsistencies or insufficiencies in the Bill. I hope that my noble friend will bring forward amendments to ensure that pension schemes are protected, that contribution notices and financial support directions are not overridden, and that the pensions of scheme members across the country—pensions on which they rely for their retirement security—are not significantly jeopardised by this well-intentioned and important Bill.

5.45 pm

Lord Fox: My Lords, I rise with some trepidation following four experts on pensions. I shall speak to Amendment 118, which bears my name alongside those of the noble Baroness, Lady Altmann, and my noble friend Lady Bowles. Before that, I want to pick up on the point just made by the noble Baroness, Lady Altmann, on asset pledges in her Amendment 27.

That is important for two reasons. First, if the asset pledge falls in the case of an insolvency, pensioners will of course miss out, but, secondly, it is a challenging time for pension trustees even if they are operating within solvent companies today. Asset pledges have been used so that companies do not have to funnel direct cash flow into their pension funds, leaving that cash flow available for them to invest in the expansion of the business. If the Bill stays as it is and I was a pension fund trustee, I would go back to the company funding the pension and say, "That asset pledge is no longer worth the paper upon which it is written. I need more cash". It is not in the interests of that business and, frankly, nor of this country for that cash to be siphoned off and taken out of investment for growth. That is an important point and the noble Baroness was wise to have raised it.

As the Minister knows, if a business goes bust with an underfunded DB scheme, the pension debt ranks alongside other unsecured creditors such as banks. This Bill dramatically changes that.

We all received an email late yesterday that seems to indicate movement on the Government's part, and about that we should be very pleased, but it is difficult to tell how far and to what level that movement is going without the relevant amendments. Today, a second rabbit was pulled from the Minister's hat and we were told that there will movement around banks and financial institutions. It is difficult to see what is going up and what is going down in terms of the movement, so we shall have to wait to see what the amendments say. The Minister could probably say today whether the Government intend to restore the level of access that the PPF and therefore pensioners had as creditors, at the very least to what it was before the Bill was drafted, or whether we are going to be somewhere between that and where we are now.

The email that we received yesterday uses fairly passive words. We are told that under a moratorium the PPF will be given rights to "information"; we are told that, under restructuring, it will receive "copies of"—it sounds like they are added to the "cc" list of the email going round—subject to appropriate constraints. I concede that, under a moratorium, the PPF is given the right to challenge the actions. I have the right to challenge actions, but will it have any powers to make that challenge stick? There is an awful lot of haze in this. It is clear that there has been some movement in the Government's position. The sooner the Minister can table the relevant amendments, and the sooner he can clarify whether pensioners will be as well off as they are now or better off or worse, the better.

Baroness Neville-Rolfe [V]: My Lords, I have not yet seen the email or of course the amendments, so I have nothing to add at this stage but look forward to studying them.

Lord Adonis [V]: I have nothing to add on this group.

Lord Thomas of Cwmgiedd [V]: I put my name down to speak on these amendments because of the very wide terms in which they were drafted. From the perspective of legal certainty and the importance of the London financial markets, it seemed that the Government's overall policy of excluding financial service contracts was completely the right one, and the suggestion of these amendments was to remove part or all of that protection. However, from what has been said in this debate, it is clear—at least, I hope it is clear—that what gives rise to the concern really relates to the position of pension funds. It seems to me that this is a much narrower subject and it turns on the question of the priorities that will need to be clearly spelt out in the event of an insolvency.

Earlier, I raised the rather difficult issues that relate to priorities. This debate seems to underline the importance of that. I hope the Minister will have the opportunity to clarify precisely the way in which the priorities as between financial service contracts and a pension fund are to be resolved in the event of an insolvency.

Baroness Bowles of Berkhamsted [V]: My Lords, it is a pleasure to follow many speakers with great experience in the pensions world. As the Minister said in speaking to the first group of amendments, the objective of moratoriums in this legislation is that they will succeed and that companies with a hope of surviving will do so. But that will not always be the case. Insolvencies or other arrangements may follow. The moratorium structure rewards those who continue to supply, with an enhanced priority in a subsequent insolvency. It rewards financial institutions in a particular way that is identified as giving priority to creditors, including those who would have just ranked alongside pensions as unsecured creditors but are promoted above them.

As has already been mentioned, the Minister said in responding to the first group of amendments that some change will be made to exclude accelerated debt

from super-protection. That does not sound like even as much as was covered in the group 1 amendment of the noble Lord, Lord Hodgson, which I signed, but it is a start. Nevertheless, I am still concerned that it elevates all financial debt above pensions, as explained by the noble Baroness, Lady Drake. If I heard the Minister correctly, he implied that without being given priority, in return for none of the things that bind other companies, banks would not play ball—I paraphrase what was actually said. The reason why the banks will play ball is to get benefits. That still means that they will make greater demands and ask for bigger fees. They will still accelerate payments even if they do not get priority, but that will still suck funds out, because banks do not have a payment holiday.

I am attracted somewhat to what the noble Lord, Lord Balfe, said on whether the PPF will survive. I note that having to stand behind pensions actually comes from European legislation. I believe the UK was taken to court on this subject. Do the Government still stand behind legislation protecting pension benefits, or is that a piece of EU legislation headed for the dustbin of broken promises?

Like other noble Lords, I think that the Government need to think further about the legislation's effects on pensioners, the Pension Protection Fund, the Pensions Regulator, pension trustees, companies contributing to the PPF, which will face elevated contributions, and those self-same companies facing deficit repayment schedules that will need to be greater to compensate for the actions in this legislation, as well as the fact that many schemes are much further in deficit because of the current crisis situation that we are in.

Also, what does this blackmail change—I call it "blackmail" because that is what it sounded like when the Minister explained it—to the insolvency waterfall say about the stability of legal agreements and contracts in the UK, if securities that have been pledged to pension funds can be sold from under them through a retrospective law change made without any warning or notice? That is what this priority change is. "Moratorium" might have been trailed, but "moratorium" means delay, not a change of priorities and the inclusion of financial institutions in special arrangements for no consideration—for that is what it is: no consideration. It is more than simply consequential to the running of a moratorium.

Various amendments in the group aim to prevent harm to pensions, and my probing Amendment 118 suggests that the PPF should be consulted in any compromise arrangement. It could or probably should be made stronger and require consent, but then I do not really need to speak to it because the noble Baronesses, Lady Drake and Lady Altmann, have come up with extremely sound, detailed amendments. I support them and commend them to the Government.

I realise that the Minister indicated in his email last night that some movement in this direction will happen. He has also said that the Government will give creditor rights, which is the issue covered by Amendments 63 and 64 in the name of the noble Baroness, Lady Drake, but the extent and effect of those rights is important. I therefore remain concerned. Changing the ranking of creditors also opens up questions about, "Why just that change?" There are arguments, with which I have a lot of sympathy, that say pension deficits should have a higher ranking in insolvency anyway, given their origin as deferred pay. We will come to other provisions on that in the next group.

I am now quite glad that we have not finished the pensions Bill because, if these new priorities are enacted, they will take a wrecking ball to the difficult consensus that was being reached on the speed of paying down deficits, and other provisions coming from the regulator regarding its powers and what it would do to make sure that deficits were paid down. We will certainly have to take into account these new circumstances in this Bill and seek follow-on protections if it proceeds largely in the format it is in at the moment.

In summary, this group has four sensible proposals, independently made from across the House, that have significant overlap: scrap the financial institution priority, which weakens the position of pensions; ensure that pledged securities are not sold without the consent of the PPF; amend the Pensions Act 2004 so that a moratorium is an insolvency event and triggers a PPF assessment period; and have the PPF involved, with vetoes, in restructuring arrangements. I commend a composite of those arrangements to the Minister and I hope that productive discussions can follow because, welcome though the moves already flagged are on the PPF having creditor rights, we need to make sure that they fit the bill and that pension deficits do not still face significant losses.

6 pm

Lord Lennie (Lab) [V]: My Lords, I had rather thought that the Minister would speak at the beginning of this debate, as that might have obviated some of the discussion that we have had to have; he has not yet fulfilled what the Report stage amendments will be, based on the letter that he produced last night. There seem to be shared concerns among all speakers about the relative position of debt—finance debt, pension debt—and the weakness of the PPF. Does it or does it not have a seat on the discussion body? Would that be at the beginning of the discussions or, as someone put it, just a cc or copying in of the PPF into the information? Will the risk of gaming through acceleration of a company into insolvency by those who seek to gain from that position be guarded against? And so on.

At this stage, we should at least thank the Minister for his reconsideration in advance of signalling that there will be moves at Report stage. Whether they will be sufficient moves we will have to wait and see. This may not be the last word on these matters, but it may go some way towards putting in place a sensible, if not ideal, position for the PPF and the defined benefit pension scheme trustees, in the event of insolvency moratorium or restructuring plans. It is not yet clear how far he is prepared to go and it is a complex issue, as we have heard from all the speakers.

Secondly, I want to express my huge appreciation and admiration for the noble Baronesses, Lady Drake and Lady Warwick, from the Labour Benches, assisted by the noble Baroness, Lady Altmann, and the noble Lord, Lord Balfe, from the Conservatives, in their pursuit of this matter. It is hugely important to everyone that we get this right. The 2004 protection fund legislation was profound, important and lasting. It should not be

[Lord Lennie]
put at risk by what we are attempting to do in response to the Covid crisis, whether on a temporary or permanent basis. They deserve our thanks and praise for the thorough way in which they have conducted themselves. There is much more to come but, for now, we will have to await the amendments and judge on Report whether those intentions have been fulfilled.

Finally, I urge the Minister in the meantime to take up the offer of discussions made by the noble Baronesses, Lady Drake and Lady Warwick, in advance of Report stage, to see if they can iron out any creases that there may be in what he may propose.

Lord Callanan: I thank all noble Lords for tabling amendments on this important topic. I first clarify to the noble Lord, Lord Lennie, and others that I thought it would be helpful to email noble Lords last night to inform them of my intention to table an amendment on Report because, under the new procedures, I was not able to stand up at the start of this grouping to tell people in advance. I thought it would be helpful to give people advance notice of this to stop them asking for all the things that we were going to do anyway. I thought that it might have played some part in curtailing the debate on this.

I start by reminding the House that both the moratorium and the restructuring plan are not insolvency events—they are company rescue procedures. Where the company itself can be saved as a going concern, obviously, the returns to all creditors and stakeholders of the company will be better.

I turn specifically to Amendment 20 for Great Britain, tabled by the noble Baroness, Lady Drake, and others, and Amendment 39 for Northern Ireland. I do understand the intentions behind these amendments. However, removing financial services contracts from the list of liabilities for which a company does not have a payment holiday when it enters a moratorium would mean that the company does not have to pay these liabilities during the moratorium.

The purpose of excluding these contracts from the payment holiday is to ensure that the moratorium does not affect existing financial services legislation or the operation of the financial markets, and that financial markets participants continue to have legal certainty to facilitate the efficient functioning of those markets. Not excluding them could have potentially severe consequences for the operation of the markets and, in turn, the stability of the financial system and the availability and cost of these products.

In addition, it is important to recognise that financial services firms are a key part of making the moratorium provisions work. Critically, they are not excluded from the moratorium, as I said on the last grouping, where they are a creditor to a company in distress so that they continue to support those companies. It is recognised that not excluding financial services contracts from the payment holiday definition could remove the incentive for these firms to continue to provide finance. That could leave companies in financial difficulty in a far worse-off position than they would otherwise be.

I understand the purpose of these amendments, and the concerns that many noble Lords raised during this debate and at Second Reading on the super-priority of financial services debts in the moratorium. In discussions with the various stakeholders, it has become clear that unpaid financial services debts that have been accelerated for payment during the moratorium receive this super-priority status. We would not want this to provide an incentive for financial services firms to jeopardise the rescue of businesses during a moratorium by accelerating financial services contracts for payment, so as to benefit from this super-priority of their debt in a subsequent insolvency. I will therefore table an amendment on Report to address this issue, and I thank noble Lords who have raised it with me.

I turn to Amendments 27, 63, 64 and 118. Again, I understand the intentions of these proposals. We can all agree that recent high-profile insolvency cases that featured large deficits owed to the defined benefit pension scheme were worrying. We all recognise the uncertainty that this brings for employees, both past and present, in such cases. Again, I assure the Committee that the Government recognise the need for safeguards around these pension schemes and have been working closely with key stakeholders over the last few weeks on these issues. We have reflected on the concerns raised, so I confirm that it is our intention to table amendments on Report to ensure a greater role for the Pension Protection Fund and that pension protection is made clear in the Bill. Again, I am grateful to noble Lords for their engagement on this issue. Both the amendments that I have mentioned will be tabled tomorrow to give noble Lords the opportunity to study them in advance of Report.

Let me address some of the points made. Initially, the noble Baroness, Lady Drake, and I think the noble Lord, Lord Fox, asked—he may not have done so—whether pension schemes can be crammed down. The protections that apply generally will cover a pension scheme included in a restructuring plan proposal. There are strong protections, including a high threshold for class support of 75%, and where cross-class cram down is requested and none of the members of a dissenting class are worse off than they would have been under the next most likely outcome. Importantly, even if all the statutory requirements are met, the court can refuse to sanction a restructuring plan if it is fair and equitable for it so to do.

My noble friend Lady Altmann and, on this occasion, the noble Lord, Lord Fox, asked about the debt priority of pensions and whether the current ranking is appropriate. When insolvency occurs, there is a balance to be struck in considering the order in which those owed money are paid out of the available assets. There are seldom enough funds to pay all creditors in full in an insolvency. To ensure fairness, the law requires that available funds be distributed in a certain order. Unsecured creditors are paid once the secured creditors and preferential debts, which of course include employees' hard-earned wages and salary, have been dealt with; they share the funds that are then left over. Any deficit owed to a pension scheme ranks alongside all other unsecured creditors, which will inevitably include trade suppliers, some of which will be small and micro companies. I confirm to the noble Lord that this legislation has not changed the existing provision and that it carries on.

With those explanations, and with the notice I have given of the proposed government amendments on Report, I hope that I have provided sufficient justification for the noble Baroness to withdraw her amendment.

Baroness Barker (LD): I thank the Minister for his reply. I had the pleasure of taking part in the legislation that set up the Pension Protection Fund in this House many years ago and I remember that we spent a considerable amount of time—much more than we have done today—looking at the issue of moral hazard and questions of timescale and decision-making. Whatever the Government come up with in the context of this Bill, people will be forced to make decisions that in ordinary circumstances they would take over several months in which they could weigh up competing claims for priority. They will have to do that very quickly.

I recognise that the Minister said that he intends to publish his amendments tomorrow, but will he undertake to have a virtual meeting with the many Members of your Lordships' House who are clearly well versed in this subject, perhaps on Thursday, in order for there to be time for considered amendments from the Opposition on Report? The Minister is likely to find that there is not a great distance between his Benches and ours on this matter, but there may be some questions of nuance and technicality, and it would be good, for better legislation, if there could be a discussion on Thursday.

Lord Callanan: Without giving a specific commitment about Thursday, because I have a number of things in my diary, not least because I am answering further Questions in this House, I will attempt to ensure that the forum mentioned by the noble Baroness takes place before Report. Noble Lords who take an interest in this matter will get the opportunity to talk to me and the various Bill officials who are handling what is, I am sure she will accept, a complicated area of law.

Baroness Drake [V]: I thank the Minister for his reply and I am grateful for the advance notice from him yesterday evening, which I took in the spirit in which he gave it. It allowed us to make our contributions more relevant, so I thank him for that.

As my noble friend Lady Taylor of Bolton observed in the previous debate, the fast-tracking of emergency measures in the light of Covid is combined in the Bill with radical, permanent changes to the status and rights of creditors and stakeholders. This House and indeed Parliament have not had time to address the consequences of that and their significance, and we are beginning to see quite serious consequences—maybe unintended consequences—being revealed.

The moratorium is not an insolvency event, but it is the start of a process that moves towards insolvency or restructuring and it does trigger a change of creditor status. While I completely accept that a strong UK economy needs a strong, functioning financial market, there is also a question of balance. The definition of finance debt in the Bill, which is given superior status, is drafted very widely, way beyond being a simple issue of banks. On the arguments that noble Lords have put today, that balance between protecting the pensioners, on which the insolvency laws were changed back in 2004, as opposed to the interests of the financial markets, is tilted in the Bill against the pensioner and risks us going back to the position that existed in 2004 where pensioners were not protected sufficiently—or in that case, not at all—under UK insolvency laws.

I thank noble Lords who have spoken in this debate. Throughout Second Reading and Committee, we have put our concerns very clearly about how this Bill impacts the framework of protection for pensioners that has been finely crafted and built up over 60 years. I welcome the Minister's statements because they are a recognition of the concerns that we have all been expressing.

I look forward to seeing the government amendments but hope that the Minister will reflect on the seriously held views expressed today across the House on protecting pension schemes, their members and the lifeboat scheme. If it is possible to have any discussion so that these could be considered further, that would be helpful. In view of the significance of this matter, I may wish to return to it on Report, but I beg leave to withdraw Amendment 20.

Amendment 20 withdrawn.

Amendments 21 and 22 not moved.

6.15 pm

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): We now come to the group beginning with Amendment 23. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate, and that any Member wishing to press this or any other amendment in this group to a Division should make that clear in debate.

Amendment 23

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

23: Clause 1, page 11, line 22, at end insert—

"( ) the prescribed part of a company's net property available for the satisfaction of unsecured debts under section 176A of the Insolvency Act 1986"

Member's explanatory statement

This is a probing amendment to discuss the effect of priority advancing on unsecured creditors and in particular pension fund deficit, notwithstanding the power for rules to rank the order in inserted section A18.

Baroness Bowles of Berkhamsted [V]: My Lords, I will also speak to the other amendments in this group. In some ways, I see this group as a continuation of the previous debate concerning the effect of the moratorium on pension funds and small companies. Amendment 23 inserts the prescribed part for unsecured creditors into the A18 priority. It should in fact have had an extra condition to it that said "when there is a pension scheme" but, in the amendment rush, that somehow got left off. Noble Lords will see that in the explanatory statement I did reference pensions as being of particular relevance.

This was an idea I had as part of the continuing story of the adjusted insolvency waterfall and the damage that can be done to pensions. My objective was to probe how else the prescribed part could not be

[Baroness Bowles of Berkhamsted]
diminished or how there could be some form of compensating balance. Another way could be by putting an extra or reserved part into the higher priority, designated as a first tranche reserved towards pension deficit, with any remaining pension deficit still sharing in the later general pool of the prescribed part. For example, if the prescribed part is raised to 30% so that there is more available in general for pension deficits, as other noble Lords have suggested, could the extra 10% be moved to be given a higher exclusive priority reserved for pension debt alone?

As I said before in the group on pensions, the Government have lifted the lid on changing priorities, and what has to date been accepted as an uncomfortable compromise regarding the position of pension deficit is now open to challenge. Why should there not now be some extra reserved part or special preference in the mix, especially given the point made more than once already that pensions really belong with wages and salaries? They should never have been demoted to unsecured creditors.

As a generality, I see the raising to 30% as beneficial, not just for making more available for pension deficits but also for SMEs. Irrespective of whether there is any changed priority as part of the compensating measures that one will have to start looking at, the rise to 30% —which has been proposed before—is given more impetus in the light of what is happening in the Bill. I beg to move.

Lord Hendy [V]: My Lords, my contribution dovetails with that of the noble Baroness, Lady Bowles, whose remarks I support. I speak to Amendment 56, the purpose of which is to preserve for the unsecured creditors a larger share of the assets available for distribution than the legislation currently provides. The legislation recognises that something must be preserved for them, but the question is: how much?

The first part of our amendment seeks 30% of the "prescribed part" of the company's property. This is an arbitrary figure, intended to be reasonably fair. The problem is that the "prescribed part" is fixed by a formula and is capped. I understand it to be £800,000, or thereabouts, but I confess that I am no expert on this. Consequently, 30% may be a very small sum and spread very thin. The second part of the amendment therefore proposes that, in any event, if assets are being sold to pay debt, as is usual, at least 30% of the proceeds should be reserved for the unsecured creditors, leaving 70% for the secured and other creditors.

I add a word about unsecured creditors. Included in this, for reasons I touched on earlier, will be much of the debt owed to employees of the company, which falls outside that preserved for preferred creditors. The unsecured creditors also include all the workers for the company who are not classed in law as employees but who are nominally self-employed or engaged through a personal company. This is a significant sector of the workforce—over 5 million people in total.

As I mentioned earlier, it is right that workers should have priority because, unlike secured creditors, they cannot diversify the risk of the company becoming insolvent, and their stock of labour is ever-diminishing. There is another reason that they should be given preference: they spend their remuneration; they do not put it in hidden bank accounts in the Cayman Islands. They spend it because they and their families have to live on it. This creates demand and is good for the economy and for business.

Also included among the unsecured creditors are the many SMEs in the company's supply chain. This may involve dozens of suppliers who have supplied materials, items or labour on credit, but cannot recover them. In turn, they may employ hundreds or thousands of workers. It is right that, in a complex and interconnected economy, unsecured creditors and their workers should be guaranteed an appropriate slice of the cake.

Lord Mendelsohn [V]: My Lords, I reinforce my support for Amendment 56, in my name and those of my noble friends Lord Hendy, Lord Hain and Lord Monks, and Amendment 59, in the name of my noble friend Lord Stevenson of Balmacara. I had intended to introduce amendments in these areas, but these are far better crafted than I could ever have achieved.

I would like the Minister to address the operation of these arrangements, the changes to the status of different creditors and how these will be properly balanced to operate as intended, rather than to allow abuse and preserve value in the deal, and how changing creditor status provides for a successful rescue of the company.

We have to appreciate that monitors, moratoriums and restructurings under this legislation are still likely to be in a minority of cases, especially if the comparisons for evaluations, or evaluating the condition of the business, provide both a high bar and ample scope to game the outcome. The majority of cases will still be covered under a going concern administration, whether that leads to a pre-pack liquidation sale or a scheme of arrangements to maintain the company. In many circumstances, the need for protections is even greater.

The new restructuring regime, which should be significantly more attractive, has created a lot of complications by relying on the model of creditor-in-possession financing rather than debtor-in-possession financing. The crucial difference is that this means that external financing is encouraged and given super-priority status, while unsecured creditors can be further disadvantaged by both existing debts and further trading risks. Debtor-in-possession arrangements generally encourage existing shareholders, creditors and finance holders to participate in the future rescue of the business. The amendments would ensure that in this layering of priorities, the weakest in line are not the ones that the system continues to place at a disadvantage. It is important that the Minister should indicate whether the Government are willing to provide extra protections for unsecured creditors and workers who have an unsecured credit with the business.

Have the Government considered a debtor-in-possession financing model and will they consider allowing this in the future? In the spirit of providing a floor to support unsecured creditors, what flexibility can they look for in the system and how are they expected to operate, so that they can participate in the future upside, be that an equity upside or an arranged scheme, thereafter?

Finally, I support the amendments tabled by the noble Baronesses, Lady Bowles and Lady Neville-Rolfe. Can the Minister make it clear how these decisions will be reviewed and what role the Government expect the Insolvency Service to play in order to make sure that abuses can be dealt with and that all forms of creditor can be properly balanced and ensured?

Baroness Neville-Rolfe [V]: My Lords, as time is short, I will focus on my Amendment 60. A court of administration normally involves pre-packs, and that is why, with the support of my noble friend Lady Altmann, I want to provide a quick and easy way of ensuring that the power we gave HMG in the Small Business, Enterprise and Employment Act 2015 can be restored. This power was the victim of a sunset clause and a delay in making the necessary regulations. There are later amendments that we may reach today on pre-packs and the encouragement of the pre-pack pool. All of them reflect the fact that a group of us across the House who spoke at Second Reading, including the noble Lords, Lord Vaux and Lord Mendelsohn, think that we need early action on pre-packs. I imagine that we are all rather disappointed—although the usual opportunity for a discussion in the Bishops' Bar is not available—by the Minister's response at Second Reading. His suggestion was that strengthening professional standards and existing regulation would be adequate, and if not, there could be legislation at a future date —a sort of mañana.

My amendment is very simple: it would give the Government back the power to make the necessary regulation on pre-packs but it would sunset that power after a year, both to provide the incentive for speedy resolution of this issue and to avoid any unwelcome use of the delegated power for other purposes down the line. I would obviously be delighted if the simple sunset clause I have used in Clause 62 might also help us to consider and find a path to resolving some of the important delegated powers issues we were discussing earlier; I am very hopeful that the Government will be listening in that regard.

I hope that my noble friend the Minister and his department will listen to those of us who have concerns and agree to amend the Bill to deal with the pre-pack issue, perhaps in the way that I have proposed.

The Deputy Chairman of Committees: The noble Lord, Lord Adonis, does not seem to be in his place in the Chamber, so we will go to the noble Baroness, Lady Altmann.

Baroness Altmann [V]: My Lords, I will be brief. I support the amendments in this group. Amendment 23 from the noble Baroness, Lady Bowles, and the noble Lord, Lord Fox—which the noble Baroness, Lady Bowles, explained very well—helps to explain the importance of increasing the protection for unsecured creditors being pushed further down the list of priority by the measures in this Bill. Following on from some of the remarks by the noble Baroness, Lady Bowles, I suggest to my noble friend the Minister that the Government could even consider offering super-priority for less than a Section 75 debt but still recognise the debts owed to the pension scheme, if it has a deficit. That could be in the form of Section 179 debt, which would at least cover the PPF level of benefit, or even for technical provisions, so that at least that has some extra security, especially in light of the current level of annuity rates following extensive quantitative easing and the extra cost of Section 75 debt.

6.30 pm

I understand fears of pushing that all into a super-priority category, but offering extra security—at least for the pension deficits and the pension promises of workers, should an insolvency occur—seems to me to respect and reflect the environment we have had successfully for so many years to protect defined benefit schemes in the UK.

As far as my noble friend Lady Neville-Rolfe's Amendment 60 is concerned, I merely add my support to the wise words she has already laid before the Committee.

The Deputy Chairman of Committees: The noble Lord, Lord Hain, has had to withdraw, so I call the noble Lord, Lord Palmer of Childs Hill.

Lord Palmer of Childs Hill [V]: I did not realise someone was withdrawing. I asked to speak mainly to support Amendment 60, but also to inquire whether this will achieve what the movers want to achieve. With sale to connected persons, there is always a worry in any liquidation or moratorium as to whether those connected persons are getting a benefit, to the detriment of other creditors. It is also a fact that very often a sale or arrangement with connected persons is a way of saving a company by connected persons taking some of the business out of the company. If there is a situation in which that company can survive enough to pay all its creditors, sales to connected persons could be a valuable tool. I just want to ensure that the Minister says this is an open book and can help in some ways and police in others.

Lord Monks [V]: I do not wish to speak at this stage.

Lord Fox: My Lords, we have heard descriptions of a series of power imbalances. There are two large, powerful entities on the scene; one is covered by this Bill and the other is not. One is the banks and financial institutions, and the other is of course HMRC, which is covered in the Finance Bill but not in this. My noble friend Lord Palmer referred to that as the elephant in the room. Those two wield the power, and then we hear the tale of small creditors, small businesses, pensioners and workers eking out a return.

In proposing this Bill, the Government have destabilised what had been a static relationship. Things are moving, and we need to understand in detail how the Government see all this movement shaking out. The Bill, letters and now assurances from the Minister have moved everything around. It is still not clear to me—perhaps it is clear to others—where the power has moved in the end. At the moment, it still looks as if the financial institutions will get increased power as a result of this Bill and HMRC will get increased power as a result of the Finance Bill. If that is not the case, I am happy to be surprised by the Government.

[Lord Fox]

I will say just one other thing. I welcome the suggestion from the noble Baroness, Lady Altmann, to perhaps look at different levels of pension fund debt below that of the Section 75 debt. That could be one way of alleviating some of the concerns. I hope the Minister is able to catch up on what the noble Baroness, Lady Altmann, had to say just now, because there was some wise suggestion there.

The Deputy Chairman of Committees: I call the noble Lord, Lord Stevenson of Balmacara. Is he there? No? I call the Minister, the noble Baroness, Lady Bloomfield of Hinton Waldrist.

Baroness Bloomfield of Hinton Waldrist (Con): I thank noble Lords for their amendments on these important issues and their comments in this short debate. The amendments include making additional changes to insolvency legislation in the provisions regarding the prescribed part, which is the amount of a company's net property that must be reserved for the benefit of unsecured creditors when a company enters insolvency. There is what I take to be a probing amendment, which will provide the opportunity to discuss the effect of priority on creditors, such as pension fund deficit, as flagged by the noble Baroness, Lady Bowles. There is also an amendment in this group from my noble friend Lady Neville-Rolfe to enable the regulation of pre-packs and connected sales in administration. As this matter is being dealt with in group 10, I hope my noble friend will not mind if her amendment is spoken to in full in that group.

The measures in the Bill are intended to help companies maximise their chances of survival during the Covid-19 emergency, to protect jobs and to support the recovery of the economy. That is why other measures that would not alleviate the impact of the current emergency have not been included in the Bill.

I shall first deal with the probing amendment from the noble Baroness, Lady Bowles, and the noble Lord, Lord Fox. It is correct that the priority rules, which apply to some debts when a company enters insolvency following the end of a moratorium, change the way in which a company's assets are allocated among different types of creditor, but the Government consider there to be compelling reasons why the moratorium provisions should give priority to certain types of creditor. These relate to rent and goods and services supplied during the moratorium, which will enable the company to pull through as a going concern.

For example, they include amounts owed to employees —which, as I am sure noble Lords agree, should rightly be considered a special category—and liabilities involving financial services, where default could result in the company facing a demand to repay a much larger amount, which would prevent the rescue of the company as a going concern. For the moratorium measure to operate successfully, it is essential that providers supplying these types of goods and services during the moratorium have some level of assurance that they will receive payment for those supplies.

The amendments from the noble Lords, Lord Hendy, Lord Hain, Lord Monks and Lord Stevenson, would change the value of the prescribed part and alter the way in which an insolvent company's property is distributed between different categories of creditor. The rules for calculating the prescribed part were recently amended by statutory instrument in April this year. The noble Lord, Lord Hendy, asked how this was calculated: the proportion set aside for payment to unsecured is calculated at 50% of the first £10,000 of assets plus 20% of the rest up to—he was correct—a current cap of £800,000. This amendment was as a result of a consultation that ran between March and June 2018. As a result of these changes, the maximum amount of the prescribed part was increased from £600,000 to £800,000.

When this issue was consulted on, respondents expressed concern that further alterations to the rules for calculating the prescribed part were likely to have an adverse effect on lending, as floating charge holders may not be able to accurately assess their level of risk and anticipated recovery in the event of the debtor's insolvency.

The noble Lord, Lord Mendelsohn, asked why the Government have not introduced measures to support the provision of debtor-in-possession rescue finance for distressed companies, in line with other jurisdictions, such as the Chapter 11 arrangements in the US. While the current UK restructuring framework does not provide explicit debtor-in-possession finance provisions, it allows rescue finance to be used to help rescue a financially distressed company. The Government previously consulted on various ways in which rescue finance could form a more prominent part of the restructuring package but, at that time, feedback from stakeholders was that the new measures would still allow for rescue finance with all the features found in other jurisdictions. I hope that answers the noble Lord's question.

Lastly, the noble Lord, Lord Fox, mentioned the Finance Bill and HMRC taking precedence. I am not sure that he is aware that its precedence relates only to moneys it holds on behalf of employees, such as national insurance. For the reasons I have set out, the Government are not able to accept these amendments. I hope the noble Lords will therefore withdraw their amendments.

The Deputy Chairman of Committees: I have received a request to speak after the Minister from the noble Lord, Lord Stevenson of Balmacara. We were unable to hear him earlier due to a technical error.

Lord Stevenson of Balmacara [V]: My Lords, I want to make a brief point. The Minister's response was interesting but very much couched in the existing paradigm. We seem to be in a situation where, as somebody said, the Government have lifted the lid on the debate over how we work out what goes into the insolvency waterfall, as it were, and how to compensate those who lose out as a result of that compression. Pensions should be part of wages and salary; they should not be where they are. Small businesses always seem to suffer. Thirty per cent is just a figure; it is beneficial but it does not go to the heart of the problem of how we deal with creditors and who comprises the neediest in terms of the analysis of what must be paid back and how that should be organised.

As the Minister was trying to argue, I think, there may be a short-term fix to get this thing back on the road, but these reforms will not be sufficient to resolve the inadequacies of the present arrangement. Does she agree that the time has come—but perhaps it is already too late—to review this area critically, with particular reference to issues such as debtor-in-possession financing? Obviously, there is a crisis because of Covid-19; that crisis provides an opportunity to say that we need to look at this issue again. This would be a good time to do so.

Baroness Bloomfield of Hinton Waldrist: I take the noble Lord's point. The point of the Bill is to provide emergency relief in the current crisis. The restructuring planned provisions that we have tabled and are taking forward in the Bill are flexible and will permit complex funding arrangements to be used in a company rescue. This will bring our regime more in line with other jurisdictions where debtor in possession rescue finance is well established. These measures will add to the UK's existing first-class restructuring and insolvency framework and ensure that it keeps pace with developments in other highly regarded international jurisdictions.

Baroness Bowles of Berkhamsted [V]: My Lords, I thank everybody who spoke in this wide-ranging debate. We have explored further how the Bill has been a catalyst for looking at some long-standing issues with the fairness of the insolvency waterfall in general. I hear what the Minister says about the April update but that is still broadly based on the original tenets.

As the noble Lord, Lord Hendy, explained so well, the situation is different in modern times, with many more what would have been employees and other workers falling to the unsecured creditors. It is also they who are squeezed in the robbing of Peter to pay Paul that goes on in the adjustments to provide the impetus for a moratorium. We heard an interesting suggestion from the noble Baroness, Lady Altmann—one she has made before, perhaps in connection with the Pensions Bill—that, instead of looking at Section 75 debt, which tends to make you throw up your hands in horror and run away, we should look at technical provisions or the amount that would go to the PPF; that is another part that could be preserved.

I thank noble Lords. We have more food for thought. I accept that new Clause A18 is perhaps not the place to introduce new priority protection—that probably belongs more in Schedule 3—but these matters are serious enough that they must be brought back at a later date. For now, I beg leave to withdraw the amendment.

Amendment 23 withdrawn.

Amendments 24 and 25 not moved.

The Deputy Chairman of Committees: We now come to the group beginning with Amendment 26. I remind noble Lords that anyone wishing to speak after the Minister's reply should email the clerk during the debate. The Minister should allow me to call these Members before seeking a decision on Amendment 26, and anyone wishing to press this or any other amendment in this group to a Division should make that clear in the debate.

6.45 pm

Amendment 26

Moved by ***Lord Callanan***

26: Clause 1, page 15, line 12, at end insert—

"(7) This section does not apply in relation to a floating charge that is—

(a) a collateral security (as defined by section A27);

(b) a market charge (as defined by section A27);

(c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));

(d) a system-charge (as defined by section A27)."

Member's explanatory statement

This amendment ensures that section A22 does not apply to a collateral security, market charge, security financial collateral arrangement or system-charge.

Lord Callanan: My Lords, these are a number of technical amendments tabled by the Government in my name to ensure that financial collateral arrangements, charges and securities are carved out from the effects of the moratorium. This is part of the Government's intention to exclude certain financial services contracts from the moratorium.

I am conscious that time is getting on. I have an extensive speaking note and I can go through it in great detail if noble Lords wish me to do so, but it probably best serves the interests of the Committee if I stop at this point and let noble Lords who wish to contribute on this matter come in. I can respond at the end, rather than go through a lot of technical detail that might not be of interest to those present. That might be to the benefit of the Committee, given the late hour and the fact that we are pressed for time.

Lord Mendelsohn [V]: My Lords, I am encouraged by the Minister's indication during the debate that the Government are open to amendments and it is useful to hear that they have published material relating to insolvency practitioners, even though I am yet to find out where we can get hold of it. However, I am not entirely satisfied by the Government's assurance that they appreciate how to deal with some of the complexities that they have put forward. That is not least the case in this group of amendments. I would like to understand not the entire effect but the assumption of which particular cases and how many of them these amendments are likely to affect, and whether they are just technical or do in fact change some of the current core financing arrangements for larger companies.

While I welcome the progress towards a more flexible insolvency regime and appreciate the need for temporary arrangements to help to navigate the current emergency, this legislation, as necessary as it may be, ends up asking a lot more questions than it answers. The truncated process is of course, as many noble Lords have mentioned, wholly unsatisfactory not just for scrutiny but to allow the Government to consider these matters and others as they should. It defies logic that the process was done fully in one day in the other place.

[LORD MENDELSOHN]

It is not just that the impact assessment is based on out-of-date data and contradictory calculations; the permanent provisions were consulted on, although in their previous form they were never going to be implemented in such a piecemeal fashion. It appears to be widely accepted that it is not just the flaws but the time required to adjust this regime that will be complicated. The permanent measures will take longer to implement, and it will take time for people to get used to how they operate. The temporary measures are a bit too limited to operate in their own guise.

However, the Government cannot have it both ways. They cannot claim that these measures are to get things working in an emergency and at the same time widen the number of options, the required skills, the number of participants and the variety of arrangements required where practitioners or courts will need to be trained or practised in. And, of course, this omits some of the most significant elements that will still need to be addressed, such as whether HMRC will have a preference or take an active role in this, as well as the role of the pre-pack regime and others. It is not just a question of all the delegated powers that noble Lords have spoken so eloquently and raised such meaningful and compelling objections and warnings about. It is also that the regulatory regime is weak and unclear, and so much of this should be in the Bill.

However, we are where we are, and the Government are going to do this whatever we say. Bluntly, this is not this House's first rodeo, but it is our job to be realistic. This legislation will require further regulation and change, and much work is already taking place in a number of the agencies or in other places that is likely to lead to measures being added to the legislation at a later date. Therefore, we should address how this will work best in the future.

The most important element here is to receive proper reassurance from the Minister of an enhanced process to deal with the implementation, review, secondary legislation and regulation of this legislation, so any clear statements and undertakings in this regard would be important, whether given here or on Report. Will the Government create a post-legislative scrutiny process or, for example, would they be keen for this House to establish a process or a committee that could provide a meaningful role? Will the provision of information be sufficient, and what sort of information will be provided to this House? What will be measured by government, so that we can properly evaluate the operation of the legislation?

What other reviews or agencies, from the professional bodies to the Insolvency Service or the courts, are currently being consulted? What part of these discussions can we be told now, and what will be made available in the future to help resolve concerns or help us to have a debate prior to legislation or regulation being brought forward? Can clearer statements be made by Ministers about how they expect it to work, so that the courts have a clear indication on what to make rulings on and how they should do so? I suspect that the courts will be slightly busier than the Minister anticipates, not least because financial indemnity insurance will provide a very adequate target for people to exercise some degree of accountability in the courts.

Of course, the affirmative procedure for regulation is all that we have, but will the Government look at how this process can be enhanced with a greater provision of information, and possibly consultation, prior to the regulations being tabled? Any such assurances on how we will deal with where we are, and how we might deal with what might evolve into a better and more robust system, would be gratefully received.

Lord Thomas of Cwmgiedd [V]: In view of the course that the debate has taken and the statements by the Minister, I can be very brief. I welcome Amendments 92, 104 and 106, which ensure that unsecured bonds are caught by the exclusions of the moratorium and ipso facto provisions. However, there are many other technical issues to address, and I very much hope that this can be done by further government amendments before Report. That would certainly be preferable to making changes and correcting errors through the regulation-making powers. I welcome what the Minister has said so far and very much look forward to seeing the further amendments dealing with these technical problems.

Lord Fox: My Lords, the belated arrival of these amendments is further indication of the half-baked nature of this Bill. We were assured that the insurance for the permanent parts of this Bill was that they had already been through an extensive consultation period, which I guess they have. However, these important amendments have arrived in a lump afterwards, so that consultation process must have been flawed. I was looking forward to the Minister's piece-by-piece description of each one. I can understand perhaps why he has decided not to do that, but at the very least, to paraphrase what was said earlier, we need to know how Her Majesty's Government view these measures working. What problem are they intended to solve and what was the process by which these amendments arrived in the Government's purview?

Lord Stevenson of Balmacara [V]: My Lords, I had the benefit of a brief discussion with the Minister yesterday on these amendments. If we can get a response to the points made by my noble friend Lord Mendelsohn and the questions asked by the noble Lord, Lord Fox, we will be well served.

Lord Callanan: I am grateful for the patience of noble Lords. I propose to deal with the points raised by the noble Lord, Lord Mendelsohn. As for the technical amendments talked about by the noble Lord, Lord Fox, and other noble Lords, if it is acceptable to them, I shall write to them with the details of what we are proposing and how we propose to do it—soon, as the noble Lord, Lord Fox, reminded me. I shall get an email out to them as quickly as possible which I hope will resolve their issues, but there are no issues of principle or policy involved, since these are simply technical amendments that I think reflect the reality that the Bill, and the many temporary provisions, were drafted at pace. It is a long and complicated Bill and these issues have arisen that we wish to correct.

The noble Lord, Lord Mendelsohn, asked about the reporting structures through which the effectiveness of the measures in the Bill can be monitored. I can tell him that the Insolvency Service has for many years

published quarterly national statistics, covering both corporate and personal insolvency, approximately four weeks after the end of the quarter. In response to the pandemic, the Insolvency Service now additionally publishes monthly official statistics, covering corporate and personal insolvency, approximately two weeks after the end of the month. Data on the use of company moratoriums and flexible restructuring plans will be published regularly, either by the Insolvency Service or by Companies House through their existing schedules of national and official statistics. Under the Better Regulation framework, the Government are required to publish a post-implementation review of all these measures not more than five years after commencement and the Insolvency Service is currently considering its plans for monitoring and evaluation. We will, of course, publish further guidance as needed.

With that—and I am grateful for the patience of the Committee, I know that time is getting on—I beg to move.

Amendment 26 agreed.

Amendments 27 to 33 not moved.

Amendment 34

Moved by ***Lord Callanan***

34: Clause 1, page 30, line 21, at end insert—

"(4) Subsection (1) does not apply to a provision in an instrument creating a floating charge that is—

(a) a collateral security (as defined by section A27);

(b) a market charge (as defined by section A27);

(c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));

(d) a system-charge (as defined by section A27)."

Member's explanatory statement

This amendment ensures that section A50 does not apply to a collateral security, market charge, security financial collateral arrangement or system-charge.

Amendment 34 agreed.

Amendments 35 and 36 not moved.

Clause 1 agreed.

Amendment 37 not moved.

Lord Ashton of Hyde (Con): My Lords, due to the broadcasting restraints, the House was due to rise at 7 pm and I am grateful to the broadcasting team for extending this to 8 pm this evening. The usual channels agreed the scheduling of the Bill and that Committee should be completed today, so I urge all noble Lords to be as brief as they can when speaking to their amendments to allow us to finish in the remaining time this evening.

Amendment 38

Moved by ***Lord Fox***

38: After Clause 1, insert the following new Clause—

"Moratoriums in Great Britain: time-limited effect and renewal

(1) Part A1 of the Insolvency Act 1986 (inserted by section 1 of this Act) ceases to have effect on 30 September 2020, subject to the condition in subsection (2).

(2) The condition in this subsection is that the Secretary of State has made regulations by statutory instrument providing that Part A1 of the Insolvency Act 1986 should continue to have effect for a specified further period of no more than one year.

(3) Regulations under this section may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.

(4) The Secretary of State must keep under review the operation of Part A1 of the Insolvency Act 1986 during the period for which it has effect.

(5) The Secretary of State must arrange for a report of a review under subsection (4) to be laid before both Houses of Parliament no later than 15 September 2020."

Member's explanatory statement

This new clause would terminate the free-standing moratorium provision for Great Britain on 30 September 2020, subject to temporary renewal for up to one year.

Lord Fox: My Lords, *Hansard* will attest that I have been the very spirit of brevity thus far, and I will try to continue. This is about sunsetting. We heard, particularly when debating the second group of amendments, the very deep concerns people have about the permanent nature of this legislation being brought in under an emergency process. Indeed, the very announcement that the Chief Whip has just made underlines the problem we have with this Bill, in that there are very profound changes being proposed and we are trying to rush them through. We are being asked to be brief on issues that could determine the future of people's pensions, jobs and very livelihoods. It is serious stuff, but I think we all recognise that there is a job to be done and work to do and there is a need for legislation.

One way to do it, and the way the Government to propose to do it, is to take upon themselves really unprecedented secondary legislation powers and to mix and match and make this work over time. For my part, and for the part of the powerful committees of this House, that is the wrong way around: it is for Parliament, rather than for the Government, to change the way in which we structure this legislation. The alternative is to put a time limit on the legislation and that is what Amendment 38 does—and in different ways what the other amendments in this group do.

I shall not labour that point because we have all talked about the inadequacies of the Bill and about the fact that there is too much movement. We do not yet understand the creditor waterfall or where pensions sit here. There is a great deal about this legislation that we do not yet understand, although we understand the need for it and the need for haste. Therefore, putting a backstop of two years on this legislation gives the Government a chance to make some changes, if necessary, and it gives Parliament a chance to draw a line under this matter, to debate it properly, to take its time and to deliver proper legislation that takes us far into the future. I beg to move.

7 pm

The Deputy Chairman of Committees: I call the noble Baroness, Lady Neville-Rolfe. She is not there, so I shall call the noble Lord, Lord Stevenson of Balmacara.

Lord Stevenson of Balmacara [V]: My Lords, the point raised by the noble Lord, Lord Fox, is self-evident. We have already covered much of its ground, so I do not think that anything else needs to be said. I believe that the best thing is for the Minister to respond directly to the debate.

Earl Howe (Con): My Lords, I thank the noble Lord, Lord Fox, for tabling these amendments. As he said, they seek on the one hand to time-limit the period within which the moratorium provisions are in force and require a review of the operation of the provisions to be carried out, and, on the other hand, to limit the ability to extend the sunset date of the powers to make temporary amendments to insolvency and related legislation in Clauses 18 and 26. Here, I am referring to Amendments 68, 69 and 74, which I will cover as they are in this group.

I shall start with the moratorium. As the noble Lord knows, the point of this measure is to give financially distressed companies breathing space from their creditors so as to pursue a rescue or restructure. It forms part of a package of rescue tools in the Bill that will help ensure that viable companies do not fail, thereby saving businesses and jobs. This new procedure will of course be useful during the Covid-19 pandemic but it will also have a longer-lasting benefit to the economy after this period. Therefore, making this measure temporary will serve little purpose. Doing so would, instead, create uncertainty. I ask the noble Lord how a financially distressed company could conduct its rescue planning without some assurance that the restructuring tools would still be available after a certain point in time.

All the permanent provisions contained in the Bill, including the moratorium, have not just been developed in the short time since Covid-19 first appeared; rather, they have been subject to a considerable period of consultation and engagement dating back to 2015. This process included the then Government's review of the corporate insolvency framework public consultation in 2016 and, since then, there has been an extensive period of engagement with a wide range of stakeholders. The measures have been developed and refined over several years against a backdrop of strong calls to introduce them as early as possible to ensure that the UK keeps pace with restructuring reforms introduced in a number of other jurisdictions and to ensure that we remain one of the top restructuring hubs in the world.

Furthermore, I assure the noble Lord that the Government take their role in reviewing legislation very seriously. We will monitor information and feedback from stakeholders and the industry on the effectiveness of the new insolvency procedures generally. In due course, we are likely to want to commission a more formal evaluation of the impact, and a post-implementation review will be conducted in line with Better Regulation guidance. However, it will be important to ensure that the new measures have sufficient time to bed in before doing so.

Turning to Amendments 68, 69 and 74—which, I dare say, my noble friend Lady Neville-Rolfe would have introduced but the noble Lord, Lord Fox, has his name attached to them—I am grateful to both noble Lords for bringing up the matter of the sunsetting of the powers to make temporary changes to insolvency and related legislation in Clauses 18 and 26. As the Bill stands, those powers may not be used after 30 April 2021, but this expiry date may be extended. This would be for a period of no more than a year, although the power to extend can be used more than once. The amendments would either remove the powers to extend the expiry date, which would mean that the powers in Clauses 18 and 26 would sunset for ever on 30 April 2021, or would limit the power to extend so that it would expire two years after this Bill received Royal Assent at the latest.

I hope that it is helpful if I reassure the noble Lord and my noble friend in her absence that the purposes for which the Clause 18 and Clause 26 powers may be used are tightly circumscribed and very specifically set out in the Bill in the clauses that immediately follow in each case. These include helping to reduce the number of entities being forced to use corporate insolvency proceedings and mitigating the impact of Covid-19 on those proceedings, as well as the duties of persons with corporate responsibility.

The problem here is that we just do not know the long-term impact of this dreadful pandemic on business and insolvency, and we need to be able to move quickly to meet as yet unknown and unidentified challenges. Some of these may not become apparent for several months, so for the power to be most effective it must be capable of being extended.

Extension of the expiry date of 30 April 2021 may be made only after proper consideration and scrutiny by Parliament using the affirmative procedure. I hope that the noble Lord will agree that the existence of that parliamentary hurdle is not insignificant and will prevent the power continuing indefinitely if it is no longer needed.

So, for the reasons I have set out, I am not able to accept this group of amendments. I therefore hope that the noble Lord, Lord Fox, will agree to withdraw Amendment 38 and in due course will not press the other amendments in the group.

Lord Fox: I thank the Minister for his response. I did not expect the Government to accept the amendments, but there is an element of cake-and-eat-it here. On the one hand, the Government are saying that there needs to be certainty within the restructuring industry to make this happen; on the other hand, they are taking upon themselves the ability to change everything. It is quite clear that the Government expect to make changes, but they then say, "Well, after two years, Parliament will have had time to produce a replacement piece of legislation, which will have built on the legislation that we are seeing in front of us." I do not accept the idea that the amendment somehow creates uncertainty because there is enough uncertainty already; it does not make that much difference.

The Government are running this through emergency process. By definition, an emergency has an end. The process of forever renewing things, which is essentially what is there, leaves a bad taste in most people's mouths. I shall read the debate in more detail in *Hansard* tomorrow. In the meantime, I beg leave to withdraw Amendment 38.

Amendment 38 withdrawn.

Clauses 2 and 3 agreed.

Clause 4: Moratoriums in Northern Ireland

Amendments 39 and 40 not moved.

Amendment 41

Moved by ***Lord Callanan***

41: Clause 4, page 46, line 35, at end insert—

"(7) This Article does not apply in relation to a floating charge that is—

(a) a collateral security (as defined by Article 13DI);

(b) a market charge (as defined by Article 13DI);

(c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));

(d) a system-charge (as defined by Article 13DI)."

Member's explanatory statement

This amendment ensures that Article 13DD does not apply to a collateral security, market charge, security financial collateral arrangement or system-charge.

Amendment 41 agreed.

Amendment 42 not moved.

Amendment 43

Moved by ***Lord Callanan***

43: Clause 4, page 60, line 38, at end insert—

"(4) Paragraph (1) does not apply to a provision in an instrument creating a floating charge that is—

(a) a collateral security (as defined by Article 13DI);

(b) a market charge (as defined by Article 13DI);

(c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));

(d) a system-charge (as defined by Article 13DI)."

Member's explanatory statement

This amendment ensures that Article 13HB does not apply to a collateral security, market charge, security financial collateral arrangement or system-charge.

Amendment 43 agreed.

Clause 4, as amended, agreed.

Amendments 44 and 45 not moved.

Clauses 5 to 9 agreed.

The Deputy Chairman of Committees (Lord Bates) (Con): We now come to the group of amendments beginning with Amendment 46. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or any other amendment in the group to a Division should make that clear during the debate.

Clause 10: Suspension of liability for wrongful trading: Great Britain

Amendment 46

Moved by ***Lord Stevenson of Balmacara***

46: Clause 10, page 63, line 18, at end insert—

", unless the court has reason to suspect the person was in breach of the general duties under sections 171 to 177 of the Companies Act 2006 during the relevant period."

Lord Stevenson of Balmacara [V]: We now come to a group of amendments that contain a large number of different issues and I will go through them relatively quickly. I hope that that is in order. Amendment 46 in my name goes back to the biggest concern raised with us by people submitting evidence and ideas for the Bill and how we might discuss it as we go through the various stages. In moving to make sure that directors of companies who might be approaching insolvency were not caught by fiduciary duties and attract a personal liability for any act or actions they might take, it was suggested that the Bill should contain a full list of all the existing powers to make sure that directors are not affected by these issues. They are to be found in Sections 171 to 177 of the Companies Act 2006, which specify penalties for not fulfilling the fiduciary duty. My question for the Minister when he comes to respond is: would it not make sense to include within the Bill the powers that will be relied on to ensure that directors are somehow not gaming the system by allowing companies that would otherwise have gone insolvent to carry on little longer for any purpose, whether good or bad? That is all I wish to say on Amendment 46.

Amendment 75 takes us back to the wider context and in particular to the question of how we can help small businesses. The Bill does not specifically pick out any strands for SMEs, although it will be of use to them when it comes into force. But we felt that other things should perhaps be considered at the same time as part of the package. The main idea we came up with was about the prompt payment code, which is a voluntary arrangement under which payments from and to companies are organised, and the Small Business Commissioner, who has particular responsibilities in relation to making sure that the prompt payment code works properly. They could be brought up to a more important role, particularly by making the prompt payment code statutory and by giving real powers to the Small Business Commissioner—we would see a huge difference. Many people out there, including the Federation of Small Businesses, would support this and I know that in previous years the Small Business Commissioner has also supported it, so I would be interested to hear the Government's response.

Amendments 78 and 79 deal with the wider issue of what to do should the Government have the capacity and interest—I hope they do—to think harder and wider about the whole question of insolvency. It is obvious from the discussions that we have had today and earlier at Second Reading—and no doubt we will return to them on Report—that a lot of work still needs to be done in relation to insolvency. The issues that we have discussed today will help, there is no

[Lord Stevenson of Balmacara]
doubt about that, but, as we discussed in earlier amendments, they have also raised the lid on some of the issues that need further attention.

Within the various things that we know the Government are thinking about, there is work to change the way in which the Financial Reporting Council works. The Secretary of State previously indicated there would be legislation on that, so the amendment suggests that a report should be considered within a reasonable timescale to bring forward issues such as minimum standards for the oversight of auditors and the question about what happens to the big four—although they are named in the amendment, I should make it clear that this is not an attempt to hybridise the Bill—to make sure that standards are properly monitored and that the information reports of audit committees within companies are made more widely available, and various other points listed in the amendment. These are all good and sensible proposals. If they do not fit within this Bill, I am looking to the Government to respond by explaining how they can be brought forward in the future.

In a further look, building on comments made by the noble Baroness, Lady Bowles, when she introduced an earlier amendment about the need to reform Companies House, there are other corporate governance issues that the Secretary of State has previously mentioned. Again, it would be interesting for the Minister to see whether they will look at relevant powers that would bear on insolvency but also have a wider bearing on corporate governance. I look forward to the Minister's response and I beg to move.

7.15 pm

Lord Fox: My Lords, I will speak to Amendments 73, 78, 80 and 144. In previous groups we have discussed the need for the Secretary of State to return to Parliament with an update on the performance of the Bill, and relatively recently we discussed limiting the number of extensions. Amendment 73 moves on to making it mandatory for government to consider the effect the Bill is having on small and medium-sized enterprises, making it a criterion for deciding whether to extend the measures for a further six months. I know that the word "proportional" is in there somewhere, and that may well be how the Minister will explain this. However, it will reassure small and medium-sized businesses to be explicitly picked out by the legislation, saying that the effect on such businesses is important to the Government and central to their decision-making process.

As the noble Lord, Lord Stevenson, said, Amendment 78 adds a whole new clause that very much replaces the regulator. That would make the weather when it comes to regulating the financial industry. It is very unfortunate that, in the process of cherry picking some of the permanent measures that have gone into the Bill, this measure, which has of course had the same level of consultation as some of the measures that made it into the Bill, has not been included. It is the step that people need.

Amendment 80 adds another clause, which is very much about verification and money laundering. Amendment 144 deals with shareholders being able to raise questions in virtual AGMs. It cannot be beyond the wit of women and men to enable that to happen.

Lord Mendelsohn [V]: My Lords, I will briefly speak in support of Amendment 75, which is also in my name, on the Small Business Commissioner. Only in the UK system have we decided to have a Small Business Commissioner to deal with late payments and model it on existing arrangements in other countries. Every other country uses legislation to deal with late payments. However, they have found that the small business administration in America or in Australia, or other types of such agencies, have played a useful role in the insolvency process, building support and confidence for smaller businesses and being a useful vehicle for larger companies and professional services to do a variety of things—from the renegotiation of leases to dealing with supplier contracts, for example. Apart from the measures my noble friend Lord Stevenson described, there are of course other ways in which involving the Small Business Commissioner is a big help in making sure that this legislation works and that it properly protects the interests of smaller operators, ensuring that larger operators and the asymmetry of powers can be adequately addressed and a smoother process can be assured. Enhancing the role of the Small Business Commissioner by adopting this amendment and introducing some sort of formal role or consultative power would be a useful step toward ensuring that this process works smoothly.

Baroness Anelay of St Johns [V]: My Lords, I will speak to Amendment 143, which is in my name. The Bill is of course welcome and gives legal certainty to certain charities about how they can, without any penalty, "disobey" the rules in their own governing document on whether and when to hold AGMs and other meetings and file certain documents. But some charities are excluded from this sensible legal assistance—those established either by Act of Parliament or by Royal Charter. They are mostly long-established and include national museums and leading cultural organisations such as the Royal College of Music and the National Art Collection Fund, as well as some leading universities and colleges. It should also be noted that, even if a charity does not have to hold an AGM during the relevant period, it may none the less be advisable for it to take advantage of the temporary flexibility offered by the Bill to other charities and go ahead with a meeting to consider resolutions which might need to be passed in the next few months—for example, the appointment or re-appointment of board members.

My objective today is to ask the Government to explain why they have excluded certain categories of charities from the flexibilities provided by this Bill. If the Government have decided that the Bill is not the right vehicle for these charities, I would like my noble friend the Minister to explain why. It is important that the Government explain today what other guarantee of certainty they can give to the excluded charities, so that they will not face any disadvantage.

Much earlier this afternoon, in answer to the noble Baroness, Lady Falkner, my noble friend Lord Callanan stated that there had been extensive consultation over a long period about provisions in the Bill. I would be grateful if the Minister said now what discussions she or her officials have had with DCMS and the Charity

Commission in deciding what assistance should or should not be provided by legislation to the excluded charities. Did those discussions take place before the pandemic began, or have they taken into account discussions since then with representatives of the excluded charities about the impact of the pandemic on them and how they might be given certainty?

My concern is that there is a group of excepted—excluded—charities which do not have the same benefits as others listed in Schedule 14. I feel that it is unfair to leave them to the vagaries of decisions by the Charity Commission as to whether they can go ahead and break the rules of their own governing document. They are respectable charities; they need to have the respect of being given the flexibility to operate in the same way during this pandemic as charities currently covered by the Bill. I look forward to the Minister's response.

Baroness Altmann [V]: My Lords, I too will be brief in the interests of time. I echo the wise words of the noble Baroness, Lady Anelay, and I support her Amendment 143, but I particularly want to talk to my own Amendment 144. This amendment deals with an issue whereby the Bill has rightly removed barriers for those companies whose articles do not allow virtual AGMs to be held. It is clearly important to enable such meetings in the current environment, but Schedule 14 has some worrying implications for shareholder capitalism. I ask my noble friend the Minister to consider Amendment 144, and I thank the noble Baroness, Lady Bowles, for her support. The amendment would make a small change in respect of paragraph (b) of Schedule 14 (3)(6), which removes the right of shareholders to ask questions at AGMs and permits them only to vote.

That paragraph would clearly reduce shareholders' ability to scrutinise, engage with and hold to account a company's management. As ShareAction has pointed out, it would also damage the UK's reputation for protecting shareholder rights and the interests of both institutional and individual shareholders. My amendment would simply omit paragraph (b), so that ways can be found to allow shareholders to engage in dialogue and question their boards, as is already the case for US and European companies. I would also hope that, after these emergency measures expire, my noble friend might agree that there is a need to develop ways to modernise British AGMs to better reflect the era of modern stakeholder capitalism.

The Deputy Chairman of Committees: I now call the noble Earl, Lord Clancarty. No? I call the noble Lord, Lord Cormack.

Lord Cormack (Con) [V]: My Lords, today's proceedings have illustrated how impossible it is for a virtual or a hybrid House to hold the Government adequately to account. I ask those who arrange our proceedings to ensure that time is fairly and evenly distributed. We started with no time limits on speeches, and we are now having to gallop through a great many important issues.

I give my total support to what my noble friend Lady Anelay said on her Amendment 143. These charities include some of the most notable in the country, and many of them are connected with heritage and the arts, which is why I was anxious to give my support. It really is crucial, especially when the Bill has not had any real scrutiny in the other place, that adequate time is given to consider the vital points that have been made in this very wide-ranging group of amendments. I would like to go on at much greater length but, in deference to others, I will not. However, I repeat my strong support for my noble friend Lady Anelay.

Lord Palmer of Childs Hill [V]: I will not speak for long, bearing in mind the time constraints. I am concerned by Amendment 75 and the mention of the Small Business Commissioner. I wonder whether, perhaps separate from this debate, the Minister could say what successes the Small Business Commissioner has had. I have made previous speeches in your Lordships' House on his ineffectiveness.

The amendment before us now sounds sensible but it does not use the normal term "small and medium-sized enterprises"; it mentions "small business" and "larger businesses". From my professional life, I know that many firms that consider themselves small I would consider large, and that many firms that are large would consider themselves small. The vagueness that this amendment would introduce to the legislation, if it ever got in, would not be useful.

The Small Business Commissioner was really set up to deal with late payments, which of course affect small companies. Here, the amendment is trying to give the Small Business Commissioner a much wider remit, but I have never seen great success in the small remit it has.

While I am on my feet—in a theoretical sense—I want to mention that another Minister speaking from the Front Bench took issue with my comment on HMRC and VAT. She said that VAT was not being given special priority in the Finance Bill 2019-21. I advise her to look at Clause 95. Perhaps the noble Lord the Minister will write to me on this matter.

Baroness Bowles of Berkhamsted [V]: My Lords, this group deals with a range of issues which I broadly support, but I shall keep to those amendments with my name on.

I am not quite sure what my Amendment 73 is doing in this group, but its purpose was to ensure that the interests of SMEs are specifically taken into account when reviewing amendments to legislation made under Clause 18, the Henry VIII clause. Clause 21, governing the time-limited effect of Clause 18 amendments, states that regulations made under Clause 18 must be held under review, and revoked or amended if they are no longer expedient or proportionate. My amendment adds a third option if they cause harm to SMEs, as I fear that SMEs could fall between the two stools of expedience and proportionality.

I signed Amendment 78, concerning the FRC, because its replacement is long overdue and it is hard to understand why this top recommendation from the Kingman report has not yet come about. I know that there has already been one consultation on it because I replied to it over a year ago, so what happened to that and why is there prevarication? There is still so much

[Baroness Bowles of Berkhamsted]
more about the unsatisfactory past of the FRC that could come out—it is constantly dribbling out. It will taint ARGA if it is perceived as just the FRC by a new name, which is what the delay is doing.

7.30 pm

In my Amendment 80, I again call for Companies House to have formal ways to verify individuals. It has a system that relies on the public to find mistakes but there are some basics, such as setting up a company and verifying the identity of a director, that merit strengthening. These were consulted on by BEIS in a consultation that closed in August 2019; it would be good to know when its results are to be published. One section of that consultation was on HMG's recognition of weaknesses in the register undermining the UK's reputation—that was on pages 20 and 21. Another section was about weaknesses in the UK's anti-money-laundering framework. I have said before, when we debated the Sanctions and Anti-Money Laundering Bill, that this will come back to bite us. We cannot go on relying solely on public eyes, yet with no legislation actually stating what international standards we have. That will not pass anybody's equivalence tests.

I do not need to say any more about Amendment 144, in the name of the noble Baroness, Lady Altmann, other than that I wholeheartedly support it and have signed it.

The Deputy Chairman of Committees: I will now try the noble Earl, Lord Clancarty, again. No, that did not work, so we will go to the Minister, the noble Baroness, Lady Bloomfield.

Baroness Bloomfield of Hinton Waldrist: Can I correct for the record something that I said on the previous amendments? The money that will take precedence from HMRC includes VAT held on behalf of customers, as well as national insurance contributions. What it does not include is things such as corporation tax.

I thank noble Lords for their amendments on a range of important issues in this group. I will try to cover them all, as well as the Committee's questions, as best I can in the time available. I thank the noble Lord, Lord Stevenson, for highlighting the important matter of directors' duties under the Companies Act. These duties continue to apply during the period in which personal liability for wrongful trading is suspended. The purpose of this provision is to remove the deterrent of personal liability at the point at which the directors of the company are deciding whether it should continue to trade at a time of great economic uncertainty. At this time, it is important that directors can be certain that their decision to trade on will not result in personal liability.

I reassure the noble Lord that those directors' duties he refers to in his amendment will continue to operate, including the duty to protect the interests of creditors. I add that directors have legal responsibilities under wider company law; for example, to exercise independent judgment with reasonable care, skill and diligence. These duties will remain in place, as will measures in insolvency law to penalise directors who abuse their position. Therefore, directors will still face the threat of fraudulent trading, coupled with director disqualification from a compensation regime where their conduct merits it.

On Amendment 67, regarding the general power to amend insolvency law, I thank the noble Baroness, Lady Bowles, for raising the matter of ensuring that temporary amendments made using the general powers in Clauses 18 and 26 remain relevant and necessary while in effect and will be removed when they are not needed. Full consideration must be given to the impact of temporary amendments on anybody likely to be affected by them, not just small or medium-sized companies and unsecured creditors, and this consideration must be given before the powers are used. The amendments must then be proportionate to the purpose of making them, which must be one of the purposes set out in Clauses 19 and 27. This might be reducing the number of entities having to use corporate insolvency proceedings or mitigating the impact of Covid-19 on those processes. Further, the powers in Clauses 18 and 26 may not be used to create a provision to impose or increase a fee.

A temporary amendment which causes financial harm to small and medium-sized companies and unsecured creditors is unlikely to meet one of the purposes for which the powers in Clauses 18 and 26 may be used. Temporary amendments must remain under review. In the unfortunate circumstances where an amendment caused unforeseen and unintended harm, this would be addressed during the ongoing review process.

A number of noble Lords mentioned the Small Business Commissioner in relation to Amendment 75. The noble Lords, Lord Stevenson and Lord Mendelsohn, are right to highlight the office of the commissioner as a force for good in resolving payment issues for the smallest businesses which, as we know, are least able to weather the storm of cash flow issues. The Government are completely focused on their manifesto commitment to clamp down on late payment to small businesses. The SBC's intervention in late-payment disputes has recovered over £7 million in late or unpaid invoices for small businesses since it was created, and its work has been especially important in light of the cash flow issues all sizes of businesses have been facing in the current Covid situation. I hope this also goes some way to addressing the concerns of the noble Lord, Lord Palmer.

We have already pledged to consult on extending the powers of the SBC and we will bring forward that consultation as soon as we are able. The consultation period and engagement with interested parties will bring forward ideas for the extension of scope and powers and will be given consideration. I hope that noble Lords will understand our desire to consult carefully before making important decisions such as this one.

I turn to Amendment 48 on the Financial Reporting Council, tabled by the noble Lord, Lord Stevenson. The Government are committed to strengthening the UK's corporate governance and audit regime. We are drawing up plans to replace the Financial Reporting Council with a new regulator, as part of a wider programme of audit reform. This programme covers

the recommendations of three independent reviews by Sir John Kingman, Sir Donald Brydon and the Competition and Markets Authority. The Government are therefore already considering many, if not all, the specific issues highlighted by this amendment. Our intention is to set out our proposals in the coming months, seeking views on them where the Government have not already done so. The noble Lord will be aware that this Bill takes forward some of the corporate governance reforms related to his amendment, such as a freestanding moratorium and a new restructuring tool.

We were asked why we were not reforming Companies House. The consultation on reform received a significant number of responses. An official government response will be published in due course. We are considering a broad package of reforms to Companies House, to ensure that it is fit for the future and continues to contribute to the UK's business environment. The proposals amount to the most significant reform of the UK's company registration framework since the companies register was first introduced in 1844 and it is important to take the time to get it right.

Amendment 80, in the name of the noble Baroness, Lady Bowles, covers the role of the Registrar of Companies. The Government agree that there is a case for introducing further checks to verify the identities of individuals setting up, managing or controlling corporate entities. Last year's consultation proposed that those with a key role in companies should have their identity verified, and that Companies House should have greater powers to query and seek corroboration on information before it is entered on the register and to remove inaccurate information.

I turn to Amendment 143 in the name of my noble friend Lady Anelay. I will try to allay her concerns, and those of my noble friend Lord Cormack. There have been extensive discussions with DCMS and the Charity Commission, which have been involved in all the measures in the Bill. My noble friend will be aware that a small number of charities is incorporated and regulated by an Act of Parliament or by royal charter. In the limited time available it was not considered proportionate to extend the measures in Schedule 14 to the Bill to this small group of charities. Extending the relevant provisions to these groups of charities in a way that would be effective and avoid unintended consequences would be complex.

In cases where charities are not covered by the Bill's flexibility on AGMs, the Charity Commission has indicated in its published guidance that it will take a pragmatic and proportionate approach where members' meetings need to be postponed or held virtually in order to comply with social distancing, even where this may appear to be contrary to the rules of the charity's governing document.

I am grateful to my noble friend Lady Altmann and the noble Baroness, Lady Bowles, for tabling an amendment on shareholder representation that draws attention to the flexibilities offered regarding meetings of companies and other qualifying bodies. Given that, at present, public health measures preclude mass gatherings, it is right that the Government should temporarily suspend certain members' rights, the most fundamental being the right to attend a meeting in person. The measures on AGMs and other meetings enable them to be held in a way that is consistent with the coronavirus regulations and the Government guidelines on social distancing. The new measures will not prevent shareholders exercising their right to vote. They will still have the ability to vote by proxy where available.

To minimise the impact of not being able to attend, we expect companies to engage with shareholders ahead of and following meetings, including responding to shareholders' questions that are sent in by electronic and other means. We have issued guidance to industry that bodies which seek to make use of the range of meeting flexibilities that the Bill provides should explore all alternative avenues to ensure that their members are able to participate in AGMs and other meetings to as great an extent as is reasonably practical.

I turn now to the final point made by the noble Baroness, Lady Bowles, on the Financial Reporting Council UK audit reform in response to the review by Sir John Kingman of the FRC, Sir Donald Brydon's review of audit and the Competition and Markets Authority's study of competition in the statutory audit market. The Government have committed to bringing forward proposals for reform, including legislation to establish a new regulator in place of the FRC.

I would like to thank noble Lords for their insightful contributions. I have sought to offer reassurances regarding each of the issues raised, albeit in brevity given the range of issues in this group. I hope that the noble Lord will feel able to withdraw his amendment.

Lord Stevenson of Balmacara [V]: My Lords, I thank all speakers in this short debate. It has been very wide-ranging and we have ended up with what almost amounts to a raft of future changes that we would all like to see in the legislation relating to corporate governance and related matters. I look forward to hearing about progress on that in the near future.

I have one point to make which does not need a response from the noble Baroness at this stage. The noble Baroness, Lady Anelay of St Johns, rightly raised the question of charitable companies. We have been given a response to the effect that it is not felt appropriate to deal with the very small number which fall into the main category. However, I put it to the Minister that these days most charities have trading companies and all of those will be subject to the same rules and regulations that we have been talking about prior to this. Therefore, I assume that any charity which is set up—whether by royal charter or a company set up by Parliament or indeed by any other way in which charities are formed—and has a trading company would be caught by the main tenet of these things. I am afraid that insolvency is quite likely, given the very bad impact of the coronavirus on charities. Tourism numbers are down and we are likely to see problems, and I hope that that will be covered. Perhaps the Minister could drop me a note on this point.

In the same vein, I ask the Minister to confirm that companies which are set up through credit union legislation could have similar issues, so their particular circumstances need to be looked at, as are those companies set up on a social enterprise model for which there is not the same legal framework. However,

[Lord Stevenson of Balmacara]
the same intention lies behind them and they should be able to trade and operate in a way that is effective for their members. I beg leave to withdraw the amendment.

Amendment 46 withdrawn.

Amendment 47

Moved by ***Baroness Barker***

47: Clause 10, page 63, line 21, leave out "30 June 2020" and insert "30 September 2020"

Member's explanatory statement

This amendment would extend the relevant period for the suspension of liability for wrongful trading in Great Britain.

Baroness Barker: My Lords, following on neatly from the noble Lord, Lord Stevenson of Balmacara, those noble Lords who took part in the Second Reading debate will know that my experience is in the field of charitable companies and their subsidiary trading companies, CICs, friendly societies and so on. This amendment would not apply in particular to any one set of companies, but it acknowledges that there are different types of companies and that their incomes are derived in different ways. Given that, the impact of the period of wrongful trading or the relaxation of the wrongful trading regulations will have a different effect on some companies.

I do not want to rehearse the arguments I made at Second Reading, but we know that in the past three months, charities have lost £4 billion-worth of income and a lot of them are staring insolvency in the face. However, for them, as for commercial companies, all may well change within the next four weeks. We know, for example, that in fields such as entertainment, if a change is made to the social distancing rule—the physical distancing rule, as it should be called—that may have a direct impact on the viability of some companies.

7.45 pm

There are other announcements that the Government may choose to make that, at a stroke, could change the viability of a company. They could, for example, impact the viability of companies providing kinds of care that are not regulated.

My proposal in Amendment 47, and with the same provisions for Northern Ireland in Amendment 49, is to extend the wrongful trading provisions of the Bill from 30 June to 30 September 2020. The Government already recognise, because the legislation allows for the later date of July as the ending period for this, that it would be difficult for directors of companies to arrive at a decision, on a given day, that they will or will not be trading wrongfully in a week or so's time. The noble Lord, Lord Hodgson of Astley Abbotts, made the point about what it is like to face insolvency and the big decisions that come up—for example, about having to pay a payroll bill at a certain time—that make a difference to cash flow and the overall viability of a company.

Mine is nothing more than the pragmatic suggestion that the Government could, in this one respect, reduce some uncertainty for companies if they simply extended the provisions for the relaxation of wrongful trading from the end of June to the end of September. It is three months. Within that period, companies will still have to fit with the proposals in the Bill. They will still have to demonstrate that what is impacting their business is the virus, and that they are not knowingly gaming the system. This is an unsatisfactory debate, because it is so short, but that is the import of my amendments. I beg to move.

Lord Hodgson of Astley Abbotts: My Lords, I have Amendment 129 in this group. It seeks to equalise the different levels of protection afforded to firms in trouble under this legislation. It has been brought to my attention by a firm of solicitors that specialises in insolvency. The two critical dates in the legislation are 27 April, after which general protection is available; and 1 March, just under two months earlier, after which protection is afforded, but only if a statutory demand for payment has been made.

However, a statutory demand is not the only way that a company can be caused to fail. It is possible to go for a default judgment in a county court or a liability order in the magistrates' court and proceed directly to a winding-up. Firms that are subject to either of these other two procedures do not benefit from protection from 1 March, but from 27 April only.

Firms are able to object and to fight these proceedings but, from 23 March, the country was in lockdown. Understandably, courts have found it more difficult to inform defendants about cases brought against them and, in many cases, smaller companies—where the proprietor is running the business almost on their own—may have been involved in self-isolation. They are therefore unable to access proper legal advice to protect their position. My amendment seeks merely to extend protection for these cases, particularly those affecting small companies, from 27 April to 23 March—the date on which lockdown began and the inequality of legal arms may have commenced.

Baroness Bowles of Berkhamsted [V]: My Lords, I can be brief because my amendment in this group contains a separated half of the GB-Northern Ireland pair of amendments relating to small businesses that I spoke about in the previous group, so I do not need to explain those again, and in the interests of time I will forgo speaking on anything else.

Lord Wallace of Tankerness [V]: My Lords, I will seek to be brief. The point I will make relates to retrospection, which Amendment 129 from the noble Lord, Lord Hodgson of Astley Abbotts, perhaps illuminates; he is trying to make some of the provisions even more retrospective. I will not work through all the detail; suffice it to say that in Schedule 10 we are asked to enact a provision that would retrospectively void a court order that had been legally pursued and granted. In the words of the Government's Explanatory Notes, this

"may lead to the petitioner becoming liable for the cost of doing so."

I do not doubt that there are important business and commercial reasons underpinning these provisions. I ask simply that the Committee proceeds with the

utmost caution when making retrospective provision. I quote from the Constitution Committee's seventh report:

"We recognise that the COVID-19 pandemic presents companies with considerable challenges and that the Government is rightly seeking to protect businesses and the economy as a whole … However, measures with retrospective effect are exceptional and undesirable in principle, requiring the strongest possible justification. We do not think the Government has yet made the case for them in this Bill."

I simply invite the Minister, when he comes to reply, to try to make a justification and, if he is unable to do so in the time remaining in these foreshortened proceedings today, to undertake to make a response to the Constitution Committee's report before the House meets for Report.

Baroness Bloomfield of Hinton Waldrist: My Lords, if I might take just a couple of seconds of your Lordships' time, we have 10 minutes left to finish this group. I encourage people to make their comments as short as possible, so that we at least finish this group.

Lord Howarth of Newport [V]: My Lords, I will follow the noble and learned Lord, Lord Wallace of Tankerness, and make my comments in reference to Amendment 129 in the name of the noble Lord, Lord Hodgson of Astley Abbotts. I begin by commending him on the very strong statement of principle he made in the debate on the first group about the constitutional impropriety of too many aspects of this Bill.

His amendment dealing with the "relevant period" provides us the opportunity to touch on the constitutional principle of retrospectivity. The Bill's provisions are backdated, altering the law on winding-up petitions as it stood after 1 March in some aspects and after 27 April in others. I do not in any way dissent from the intention of the noble Lord, Lord Hodgson, to bring in a further measure to protect vulnerable businesses. None the less, we ought to recognise that it is generally held that retrospective legislation undermines the rule of law.

In this Bill, a legal right that people relied on is ex post facto wiped out, to the detriment of persons who relied on it. Provisions in Schedule 10 operate retrospectively to invalidate winding-up petitions made by creditors, albeit creditors exercising a statutory right. They could even be deprived of the benefit of a favourable court judgment previously made, as the noble and learned Lord just said. It allows the court to undo the effect of winding-up petitions and even to require petitioners to be liable for costs. This is a remarkable provision and appears to be incompatible with the rule of law.

Retrospective legislation should be very rare indeed. It is constitutionally objectionable in principle, so, like the noble and learned Lord, Lord Wallace, I ask: how does the Minister justify it? If he considers it necessary to deal with abuses by creditors, how widespread are these abuses? How many instances have been reported? Why is a change in the law needed to deal with them, and why a retrospective change in the law?

Lord Stevenson of Balmacara [V]: My Lords, I have nothing to add; the arguments make themselves. I look forward to hearing from the Minister.

Earl Howe: My Lords, I am most grateful to noble Lords for these amendments, which seek to extend the period of time that the range of temporary measures contained in the Bill will continue to operate. The temporary measures contained in the Bill are all necessary to ensure that otherwise viable companies are given the space to recover, if that is possible. I entirely understand noble Lords' desire to ensure that the measures continue for as long as they are needed. As I am sure they appreciate, the Bill contains provisions enabling these temporary measures to be extended, and I can reassure them that the Government have every intention of making use of this provision if the protections are needed beyond their present expiry date.

The temporary measures all have significant impacts on the normal working of various parts of insolvency legislation and the business community. The point that needs to be made here, though, is that the term of extension for one measure may not be desirable, or needed, for another. We therefore think it is right that any consideration of an extension, and for how long, should be done on an individual basis rather than in the round, taking into account all the circumstances and potential impacts.

My noble friend Lord Hodgson's amendment is slightly different from the other amendments in this group, in that it would extend backwards the period to which restrictions on winding-up petitions and orders apply, to include circumstances where petitions were filed after 23 March 2020, when lockdown began. As currently drafted, the restriction on winding-up petitions applies retrospectively from when the Government announced their intention to legislate. It seeks to avoid unfairness by ensuring that the restriction on winding-up petitions applies only in cases where the person presenting the petition would have known of the Government's intention to legislate in this area. I hope my noble friend will agree, on reflection, that it would not be appropriate to place such a requirement on anyone before they could have known about it. That is why we have chosen to apply the provisions in respect of windings up from 27 April 2020—the next working day following the Government's announcement of the change in policy.

I will write to the noble and learned Lord, Lord Wallace of Tankerness, and the noble Lord, Lord Howarth, in answer to their questions on retrospection, but for the reasons I have set out, I am not able to accept these amendments. I therefore hope that the noble Baroness, Lady Barker, will feel able to withdraw her Amendment 47 and that, in due course, the other amendments in the group will not be moved.

Baroness Barker: My Lords, in view of the hour I will simply say that I am not surprised by the noble Earl's answer. There is something to be said about the winding-up provision specifically running longer than 30 June, but at this hour I will withdraw my amendment.

Amendment 47 withdrawn.

Amendment 48

Moved by ***Lord Callanan***

48: Clause 10, page 63, line 22, leave out "Act" and insert "section"

Member's explanatory statement

This amendment changes the definition of the "relevant period" so that the term is defined by reference to the coming into force of the section rather than by reference to the coming into force of the Act as a whole.

Amendment 48 agreed.

Clause 10, as amended, agreed.

Clause 11: Suspension of liability for wrongful trading: Northern Ireland

Amendment 49 not moved.

Amendment 50

Moved by ***Lord Callanan***

50: Clause 11, page 64, line 47, leave out "Act" and insert "section"

Member's explanatory statement

This amendment changes the definition of the "relevant period" so that the term is defined by reference to the coming into force of the section rather than by reference to the coming into force of the Act as a whole.

Amendment 50 agreed.

Clause 11, as amended, agreed.

Clause 12: Protection of supplies of goods and services: Great Britain

Amendment 51

Moved by ***Lord Vaux of Harrowden***

51: Clause 12, page 67, line 17, at end insert—

"(7A) This section does not apply in relation to a contract for the supply of goods or services to a company where the supplier is not in its first financial year at the relevant time and meets at least two of the following conditions in the most recent financial year--

Condition 1: the supplier's turnover was not more than £5.1 million;

Condition 2: the supplier's balance sheet total was not more than £2.5 million;

Condition 3: the number of the supplier's employees was not more than 25.

(7B) For the purposes of Condition 1 in subsection (7A), if the supplier's most recent financial year was not 12 months, the maximum figure for turnover must be proportionately adjusted.

(7C) For the purposes of Condition 2 in subsection (7A), the supplier's balance sheet total means the aggregate of the amounts shown as assets in the supplier's balance sheet.

(7D) For the purposes of Condition 3 in subsection (7A), the number of employees is the number of employees at the most recent financial year end.

(7E) In subsections (7A) to (7D), the supplier's "most recent financial year" is the financial year of the supplier which, at the relevant time, has ended most recently.

(7F) This section does not apply in relation to a contract for the supply of goods or services to a company where the supplier is in its first financial year at the relevant time, if the supplier's average turnover for each complete month in the supplier's first financial year is not more than £425,000.

(7G) For the purpose of subsections (7A) and (7F) a supplier may be a company, a limited liability partnership, any other association or body of persons, whether or not incorporated, or an individual carrying on a trade or business."

Member's explanatory statement

This amendment introduces a permanent exemption to the termination of supply contracts rules for the smallest companies (set at 50% of the size of small companies that are subject to a temporary exemption in Clause 13).

Lord Vaux of Harrowden [V]: My Lords, I believe that I have a minute and a half and we have 18 amendments to get through, which is not terribly satisfactory. My Amendment 51 seeks to introduce a permanent exemption to the termination of supply clauses for very small businesses. I am very concerned that these clauses could be particularly difficult and burdensome for small businesses. The Government recognise this with a temporary exemption, but the clauses are permanent. Having to supply with uncertainty of payment, possibly on top of overdue debts prior to the moratorium, will be disproportionate at any time, pandemic or no pandemic.

Given the time, I will not go through more detailed arguments than that, other than to say, in response to the point that the Government made in one of the previous meetings we had that making it permanent for all small businesses would render the supply protections less useful, that I have therefore drafted the amendment so that it applies only to much smaller companies that are 50% of the size of the ones the temporary exemption applies to. That is arbitrary and I am very happy to discuss it further.

In addition, my Amendment 54 is a very small technical amendment that would simply reduce the tests that a small company that is less than a year old has to apply to meet the small company exemption. It would have to apply only a turnover test. It is a little, technical thing, but it would make life easier for small companies. I beg to move.

Lord Hendy [V]: Could I ask the Deputy Chairman of Committees how long we have?

The Deputy Chairman of Committees: If the Government Chief Whip would like to make a short statement, he can at this point.

Lord Ashton of Hyde: We will finish this group and then we will have to do the remaining group as first business tomorrow.

8 pm

Lord Hendy [V]: Thank you. Amendments 107 to 116 seek to add a third condition to the two proposed conditions for the court to approve a compromise or arrangement.

In Amendments 109 to 111, we seek to require that companies pay all outstanding payments of workers' remuneration et cetera. This is a reflection of the amendments moved in group one, and therefore I will not develop the arguments again.

Amendment 112 would ensure that the company's obligations to its pension scheme have absolute priority. Again, your Lordships heard the arguments for that in

the debate on the first group of amendments, with contributions from my noble friends Lady Drake and Lady Warwick, the noble Baronesses, Lady Bowles and Lady Altmann, and the noble Lord, Lord Balfe.

Amendment 113 is a repetition of the condition that we proposed in the debate on the fourth group of amendments, which is that 30% of the sale of any assets should be used for the satisfaction of unsecured creditors. I will not repeat those arguments.

Amendments 114 and 115 are, in our submission, important. They are intended to redress the striking deficiency in the Bill of failing to include any mechanism of industrial democracy by which workers may have a say in the vital decisions contained in the Bill that are likely to have a profound effect on their lives.

Amendment 114 proposes workers on boards, just as in most of the rest of Europe. Such a proposal has been the subject of discussion since the 19th century and particularly since the 1977 Bullock report. It was proposed by Mrs May when she was Prime Minister. This is a golden opportunity to put it into effect as a condition. Workers being on boards would make the interests of all stakeholders being properly taken into account much more likely.

Amendment 115 proposes an alternative form of industrial democracy: collective bargaining. Our amendment recognises that there are no recognised unions in many workplaces. We therefore deploy the mechanism for workplace representatives to be elected, which is found in the legislation for collective redundancy consultation. The statutory requirement to bargain collectively has a long history, going back to the Trade Boards Act 1909 and, in a different and more limited form, Schedule A1 to the 1992 trade union Act. It is normal in Europe. The Government would also have the satisfaction of complying with their obligations in international law.

Amendment 116 is intended to discourage restructures intended to raise cash simply to pay dividends, buy back shares or pay the directors excessively.

Amendment 117 is intended to extend the benefits of the previous measures to the broader legal category of workers as well as that of employees.

I am disappointed that, because of the time, I cannot develop further any of the merits of these amendments at this point.

Baroness Altmann [V]: My Lords, I will not detain the Committee for very long. I add my support for the protection of workers' rights that would be achieved by the amendments in this group.

Lord Hain [V]: Current UK company law prioritises the interests of company shareholders over those of anyone else with an interest in the company, such as employees, suppliers and subcontractors or local communities, but everyone involved in a firm in financial distress has something at stake, not just those in the boardroom or whose names appear on the company's share register. This includes each and every member of the workforce. Whatever happens, they deserve to have their tax, national insurance, redundancy and pension rights and responsibilities acknowledged and protected.

Amendment 112 recognises that pensions are really postponed pay packets and seeks to protect workers' deferred earnings. Workers who may have invested much of their working lives in the company and thereby have accumulated pension rights vital to the future of their family must not face losing some or all of those rights while shareholders and secured or unsecured creditors help themselves to whatever of value remains in a company that is facing failure.

Amendment 115 requires collective agreements to be reached between firms seeking a compromise or a reconstruction arrangement and representatives of employees affected by such a compromise or arrangement.

Amendment 116 makes it a condition for companies to receive state support under the Bill that they give priority to rebuilding their finances, ruling out for three years dividend payments, share buybacks or payments to any director of more than 10 times the rate received by the company's lowest-paid full-time equivalent employees.

Amendment 111 provides for any compromise or reconstruction arrangement for a firm in financial difficulty to provide immediate redress for past breaches of the sex equality clause under Section 66 of the Equality Act 2010 or of the sex equality rule under Section 67, and for the possibility of future such breaches to be eliminated.

Amendments 114 and 115 on elected workers on boards and requiring agreements with trade unions seek to take a leaf out of Germany's book by giving a voice to workers via elected seats on company boards. In Germany, about 90% of private sector workplaces with more than 500 employees elected works councils in 2011. This system of making co-operation at work between unions and employers a matter of routine has helped to deliver high living standards, unparalleled export success, strong manufacturing, world-class training and skills, and social cohesion.

So that we can decide what to do on Report about these issues, I appeal to the Minister to give strong and unequivocal guarantees on the issues we have raised in Amendments 107 to 117.

Finally, my Amendments 120, 121 and 122 on restructuring propose lowering these thresholds from the proposed three-quarters to two-thirds to make it quicker and easier for distressed companies to apply to the court for the approval of their restructuring plans. This would provide greater certainty for all stakeholders in those businesses, including employees. It would reduce the cost to businesses of restructuring negotiations, helping return more value to stakeholders, and would lead to quicker resolutions of corporate restructurings, helping to protect jobs. While the interests of minority creditors and shareholders are important, it cannot be right that their interests can prevail over those of a majority, exposing all to greater likelihood of the business subsequently falling into administration or liquidation.

I therefore hope that the Minister will accept these amendments, or, if he has technical or drafting quibbles, at least come back on Report to amend the Bill as I intend with these amendments.

Lord Monks [V]: I add my support to the contributions made by the three previous speakers on this group. It seems that there is one big gap in the Bill, which is to take account of the interests of the working people, for all the reasons that have been explained by other speakers, which are so essential to the future of the firm and of the country. This is a gaping gap, and I hope very much that the Government will address it. I am told that there are plans in government for perhaps another Bill at some time in the future, where the points that we are raising might be addressed. However, I want a clearer indication from the Government on whether they indeed intend to bring forward some proposals additional to the ones in the Bill at the moment, to improve the position of working people. The Prime Minister said that he wanted to embrace the working people of this country. The Bill and the amendments we have tabled to it are an opportunity to do that. I ask the Government to embrace the amendments and follow what the Prime Minister is apparently talking about.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, in view of the time constraints, I will limit my comments to just two issues. The first is that Committee has been limited to an afternoon, which I think is absolutely appalling. It is all in line with the way the Government are reducing Parliament to a series of nods that they think they can control. I say to the noble Lord, Lord Monks, that there are, in fact, two huge gaps in the Bill. The first is the environment, which I spoke about at Second Reading. There is an absence of any thought of protecting our environment, when the Bill could play quite a major role in our transition to a net-zero carbon economy.

As the noble Lord, Lord Monks, pointed out, the Bill has another major flaw, which is the lack of protection for workers' interests in this special insolvency scheme. Without these provisions, the Government will just have to hope that already wealthy people will not take advantage of this emergency scheme, but we all know that predatory capitalists use whatever legal loopholes they can to trash our planet, cheat our workers and strip the assets of companies to extract as much cash as possible. I think we will be able to point to today's *Hansard* in six months' time, when the inevitable happens and people are driven out of their livelihoods while bosses and shareholders are laughing all the way to the bank. I look forward to seeing the Government's new amendments next week and I hope that Report will perhaps show that this Government have a heart.

Baroness Bryan of Partick (Lab) [V]: My Lords, I have added my name to Amendments 110, 112 and 114, but I shall speak only to Amendment 114, which is a recognition that workers are truly a company's greatest asset. But how many company mission statements have used those words but gone on to treat their workers as expendable? If a restructuring plan is to work, it will need the benefit of workers at boardroom level. If the company is ready for insolvency, the ability of the current board to turn things around must be open to question. Elected workers' representatives are uniquely placed to identify improvements and ways to increase productivity, while at the same time assuring workers that their interests will be safeguarded. So, along with the other amendments, I hope that the Minister will reflect on this one in particular and bring some alternative to the next stage of the Bill.

Lord Fox: My Lords, I associate myself with some of the comments of the noble Lord, Lord Hain, around works councils. In my past life, working with works councils, particularly in the Netherlands and in Germany, I found them to be a positive, long-term force within companies. An earlier speaker mentioned that in private sector businesses, unions have low representation, which is why works councils should be important in this country, but on departing the European Union I understand that the Government are going to reduce or negate the need for companies to have works councils, which is something to be regretted. What is also to be regretted is that we cannot have a proper debate on these amendments, which means that Report will inevitably have to go on longer.

Baroness Bowles of Berkhamsted [V]: My Lords, I support the two amendments in the name of the noble Lord, Lord Vaux, that include changes to the definitions of the smallest businesses and a new definition to help first-year businesses. These both seem sensible. We have had a lot of instances in the various coronavirus reliefs where help is not extended to everywhere that might reasonably have been covered; therefore, examination of definitions in the light of that and other experiences seems worth while.

8.15 pm

The rest of the amendments I would normally have quite a lot to say on, because I am extremely interested in the balance of corporate governance, other stakeholders and the inclusion of workers on boards. But it is just not possible in this short time to do justice to them, though many are extremely worthy. Again, it is a huge disappointment that the Government should have accelerated some permanent measures and seem to have neglected many others.

Lord Lennie [V]: I thank my noble friends Lord Hendy, Lord Hain and Lord Monks for bringing forward their amendments on this part of the Bill. Given the constraints on time, I ask the Minister whether the Government intend to bring forward further legislation on this matter. Does this have to be dealt with now, or can it wait for further legislation?

Baroness Bloomfield of Hinton Waldrist: My Lords, these are important amendments, which deserve a proper response. The Government agree with much of the sentiment behind some of the amendments, and so I hope noble Lords will forgive me if I commit to write to them with a proper response tomorrow. Clearly, the Government are not able to accept the amendment, and I hope that the noble Lord will therefore withdraw it.

Lord Vaux of Harrowden [V]: My Lords, given the time, I will not try to sum up the brief debate we have had on these 18 amendments, including one dealing with small companies and one relating to employment situations. I look forward to the letter from the noble Baroness and ask that she has another look at how we might mitigate the impacts on the very smallest of

businesses, otherwise we may have to revisit the matter on Report. That said, I beg leave to withdraw the amendment.

Amendment 51 withdrawn.

Amendment 52 not moved.

Clause 12 agreed.

Clause 13: Temporary exclusion for small suppliers: Great Britain

Amendments 53 and 54 not moved.

Clause 13 agreed.

Clauses 14 to 16 agreed.

Clause 17: Temporary exclusion for small suppliers: Northern Ireland

Amendment 55 not moved.

Clause 17 agreed.

Amendment 56 not moved.

House resumed.

House adjourned at 8.18 pm.

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