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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind 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

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Thursday 3 September 2020

The House met in a Hybrid Sitting.

Noon

Prayers—read by the Lord Bishop of Bristol.

Arrangement of Business

Announcement

12.08 pm

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, respecting social distancing, others are participating remotely, but all Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

Oral Questions will now commence. Please can those asking supplementary questions keep them short and confined to two points; and I ask that Ministers' answers are also brief.

Aid Impact

Question

12.08 pm

Asked by ***Baroness Sheehan***

To ask Her Majesty's Government what assessment they have made of the quality of the work carried out by the Independent Commission for Aid Impact in the scrutiny of (1) the effectiveness, and (2) the value for money, of United Kingdom aid.

The Parliamentary Under-Secretary of State, Foreign, Commonwealth & Development Office (Baroness Sugg) (Con): My Lords, the Government highly value the Independent Commission for Aid Impact's scrutiny of UK aid and have assessed its quality in two reviews since its establishment in 2011. The last tailored review in 2017 found that ICAI's work continued to be both necessary and important. Since its inception, the commission has contributed to improving the impact and value for money of UK aid.

Baroness Sheehan (LD): My Lords, I thank the Minister for her reply. The retention of ICAI, at least in the short term, is welcome. Inevitably, however, the merger of two departments will see much jockeying for ideas. Therefore, first, does the Minister accept that it is important that ICAI's remit is not curtailed but, instead, bolstered to ensure that transparent scrutiny is maintained and that effective and accountable aid will be the hallmark of the new FCDO? Secondly, can she tell us to whom ICAI will report?

Baroness Sugg (Con): My Lords, we are committed to more effective and accountable aid spending under the new Foreign, Commonwealth and Development Office, and of course that includes transparency and external scrutiny. We will reinforce that external scrutiny by not just maintaining ICAI but strengthening its focus on the impact of our aid and the value that it adds to our policy agenda.

Baroness Blackstone (Ind Lab): My Lords, does the Minister accept that it is very disappointing that the Independent Commission for Aid Impact rated the UK's progress on international climate finance as inadequate? How do the Government intend to rectify this, given the urgency of much more progress before the UK hosts COP 26 next year?

Baroness Sugg (Con): My Lords, we are committed to increasing and improving our work on climate. We are doubling our funding to the International Climate Fund and, as the noble Baroness says, we are hosting COP. We are also absolutely committed to making sure that that funding is spent effectively.

Lord Bruce of Bennachie (LD) [V]: My Lords, I welcome the Government's decision on ICAI. I worked with Andrew Mitchell on its establishment and the set-up agreed then has proved successful. ICAI is subject to confirmatory hearings by the International Development Committee and, through the committee, reports its programme and findings. This needs to be maintained if the UK's global reputation is not to be risked. Therefore, I urge the Government to support a dedicated Commons Select Committee to monitor ICAI and UK aid, and to maintain the credibility of the great work that has been done to date.

Baroness Sugg (Con): I am grateful to the noble Lord for welcoming the commitment to keep ICAI. On the Select Committee point, the Government agree that Parliament has an important role in scrutinising UK aid spending, and Select Committees are of course fundamental in scrutinising the Government's spending and policies. We acknowledge that, as a consequence of the merger, the House of Commons might have to reconfigure the Select Committee structure, but the Government's view is that normally the committee structure mirrors the departmental structure.

Lord Howell of Guildford (Con) [V]: My Lords, the independent commission clearly does a good and much-needed job in evaluating aid flows, but does my noble friend agree that it has been particularly useful in bringing home the fact that aid alone is not an effective driver of development or indeed of poverty reduction, and that issues such as counterterrorism, security, human rights breaches, private investment conditions and, obviously, good governance under the law are just as much part of the modern development package? Does she further agree that the proposed merger between our aid and foreign policy departments, about which I think we are going to hear a Statement later today, offers a highly effective and rational way of bringing these essential modern-day strands of development closer together?

Baroness Sugg (Con): My noble friend is right that my noble friend Lord Ahmad will be repeating a Statement later today. The advantages that my noble friend highlights are exactly the reason why the Prime Minister has merged DfID and the FCO to

[Baroness Sugg]
become the new FCDO. My noble friend is right that aid alone is not going to resolve many of the world's problems. We need to make sure that we are taking a joined-up approach and bringing the strands of foreign policy, development and trade together in order to tackle these huge global challenges.

Lord Loomba (CB) [V]: My Lords, the Government have confirmed that the Independent Commission for Aid Impact will continue to scrutinise all aid spending across all government departments. However, I am concerned that with the forthcoming review of its remit, and in the light of reports that the aid budget will be reduced, how will the commission ensure its independence and maintain its primary purpose?

Baroness Sugg (Con): My Lords, the review will consider how ICAI can improve the impact of aid spending across government and challenge the big decisions around aid spending so that it can provide robust and evidence-based recommendations. It will continue to follow overseas development assistance across all departments. I take this opportunity to reiterate the point that I made yesterday: the Government are committed to spending 0.7% of our gross national income on international development.

The Senior Deputy Speaker (Lord McFall of Alcluith): I call the noble Lord, Lord Collins of Highbury.

The Earl of Courtown (Con): Could the noble Lord unmute?

The Senior Deputy Speaker (Lord McFall of Alcluith): We will come back to the noble Lord, Lord Collins. I call the noble Baroness, Lady Northover.

Baroness Northover (LD): My Lords, the Minister rightly argues that transparency and accountability are vital. The Government have said that it will be up to the Commons to decide whether there is an International Development Select Committee, which precedes the creation of a separate department. If a Motion is tabled to abolish that, will the Government be giving those on the government payroll and on the Back Benches a free vote, or will they be advised which way to vote?

Baroness Sugg (Con): My Lords, we will reflect carefully on the recommendations of the IDC and the Liaison Committee before bringing forward Motions to change existing the committee structures for the House to agree later this year.

The Senior Deputy Speaker (Lord McFall of Alcluith): Is the noble Lord, Lord Collins of Highbury, in a position to participate? If not, we will move on to the noble Baroness, Lady Falkner of Margravine.

Baroness Falkner of Margravine (Non-Afl): My Lords, I welcome the review. It is extremely timely, given the merger of the two departments. However, can the Minister confirm that the resources of ICAI will be strengthened? Surely three commissioners and a very small secretariat are not sufficient to provide the resources that the budget demands to provide assurance to Parliament and the public.

Baroness Sugg (Con): My Lords, that is certainly one of the issues that the review will look at. The terms of reference will be published on GOV.UK in due course. We are keeping ICAI because we welcome independent scrutiny, and we are committed to ensuring that it continues to give us robust and constructive criticism.

The Senior Deputy Speaker (Lord McFall of Alcluith): I call the noble Baroness, Lady Cox. No? I call the noble Baroness, Lady Goudie.

Baroness Goudie (Lab) [V]: My Lords, I welcome the review. I very much hope that as part of it, unlike what has happened previously, the gender and disability lenses are looked at along with culture, and that there is respect for all countries in the projects that we are working on. I feel that this is very important. Further, I know this is not quite right, but there is spending in Scotland and Wales on development, and maybe we could include this in some way as an exception.

Baroness Sugg (Con): My Lords, ICAI's reports have led to much substantive action in key areas, including the use of data and the preparation of results, as well as helping us to mainstream our policies on gender, making sure that all our policies are inclusive and that we reach the poorest and leave no one behind. We will encourage ICAI to continue to assist us on those measures. I also take the opportunity to reiterate the point that advancing gender equality and women's rights are of course a core part of the new Government's mission.

The Senior Deputy Speaker (Lord McFall of Alcluith): Lord Collins of Highbury? The noble Baroness, Lady Cox, is with us.

Baroness Cox (CB) [V]: Is the Minister aware that the recent report by the All-Party Parliamentary Group for International Freedom of Religion or Belief, which I co-chair, highlights urgent concerns about British aid to Nigeria, especially the refusal of aid to the Middle Belt states, which are among the areas worst affected by Islamist killings, abductions, atrocities and the displacement of thousands of civilians? Will the Minister ensure a more rigorous and effective use of British aid, including food, medical care and shelter, for Nigeria's Middle Belt states?

Baroness Sugg (Con): My Lords, I am of course aware of the report that the noble Baroness refers to, and we are looking at it very carefully. We all want to ensure that our aid is spent effectively and in a way that gives value for money but that it also really helps the people that it is designed to help. That is something that ICAI helps the department to do.

The Senior Deputy Speaker (Lord McFall of Alcluith): I make one last call for the noble Lord, Lord Collins of Highbury. If he is not responding, all supplementary questions have been asked and we will move to the next Question.

Tree Planting

Question

12.19 pm

Asked by ***Lord Colgrain***

To ask Her Majesty's Government what steps they are taking to increase the rate of tree planting.

The Minister of State, Foreign, Commonwealth & Development Office (Lord Goldsmith of Richmond Park) (Con) [V]: My Lords, we committed to increasing planting across the UK to 30,000 hectares per year by 2025 in line with the Committee on Climate Change recommendations. We are consulting on a new England tree strategy to drive this change in England and to shape the deployment of the £640 million Nature for Climate Fund. We recently made a £2 million joint investment in domestic tree nurseries with the Scottish and Welsh Governments and announced a Green Recovery Challenge Fund to support immediate environmental work.

Lord Colgrain (Con): I thank the Minister for his encouraging reply. There is considerable enthusiasm across the country for this tree-planting initiative, but also some concern that the targets set are overambitious. Can he confirm that his department will do everything it can to reduce red tape and form-filling, within current schemes and the new ELMS, to encourage individual, corporate and local authority uptake? Can he also confirm that funds will be made available for the maintenance of trees and woods that are planted, so that those plantings can reach their full commercial and environmental potential?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, we have seen an increase in planting rates in England over the last year. They are up from 1,400 hectares in 2019 to 2,200 in this planting season but, as the noble Lord will acknowledge, that is a long way off from the target we have set ourselves by the end of this Parliament. We absolutely acknowledge that we need to ramp up rates, and rapidly. However, we have backed up that commitment with funding. The £640 million Nature for Climate Fund is part of that funding package. We are funding the new Northern and Great Northumberland forests; we have introduced a £50 million carbon guarantee. As he pointed out, the shift from the common agriculture policy to the ELM system will also provide support. We absolutely want to make that support as accessible and unbureaucratic as possible.

The Lord Bishop of St Albans [V]: My Lords, it is encouraging to hear about the progress being made, but we are fighting a losing battle if we continue to import saplings rife with diseases that then kill significant numbers of trees. Will the Minister update your Lordships' House on the tree health resilience strategy and what other steps Her Majesty's Government are taking to increase biosecurity?

Lord Goldsmith of Richmond Park (Con) [V]: Biosecurity is enormously important, not least because we are an island nation. We announced a £2 million partnership investment, which I mentioned earlier, alongside the Scottish and Welsh Governments. The Government support the Grown in Britain agenda and the Woodland Trust's UK sourced and grown assurance scheme. Any initiatives which increase domestic production and grow more trees and plants in this country are welcome and will merit government support. In addition, for exactly the same reason, we are taking steps to increase demand for domestically grown timber. Demand massively exceeds supply in this country: we import 81% of the timber and wood products that we need, while only about 23% of homes in England are currently built with timber frames, compared to 83% in Scotland. We want to reverse that ratio as much as we possibly can to stimulate demand and the sector, while encouraging more tree-planting.

Lord Cormack (Con): My Lords, while I appreciate my noble friend's personal commitment, does he share my concern at the disappearance of ancient woodlands which will be consequent upon the building of HS2? Does he also guarantee that the new, threatened changes to planning law will ensure that development is concentrated on brownfield sites and not on places where trees could be planted, and that trees will be planted around new developments anyhow?

Lord Goldsmith of Richmond Park (Con) [V]: The Government are committed to protecting our ancient woodlands. Two years ago, in 2018, we strengthened the protection of ancient woodlands, ancient trees and veteran trees through the then National Planning Policy Framework. That framework also recognises the importance of community forests. Last year, we set aside and announced £210,000 to support the Woodland Trust and Natural England's work to update the ancient woodland inventory, which we will need to protect that habitat. So far, £7 million has been committed to the HS2 woodland fund, supporting projects to restore, enhance and extend ancient woodland on private land or in partnership with multiple landowners. We have ramped up protection; that is also reflected in the Environment Bill, which will come to this House in a few months' time.

Baroness Boycott (CB): It is encouraging to hear of the Government's tree-planting programme but the belief that new trees absorb more carbon than ancient ones is now proved wrong. With that in mind, what is the Minister's assessment of the current rate of international deforestation and what will he and his department do to stop that? Also, will he ensure that in our future trade arrangements we take into account not just carbon sequestration and emissions reductions by the country we are trading with but what a country itself is doing about deforestation, because what one person does affects us all on this planet?

Lord Goldsmith of Richmond Park (Con) [V]: The noble Baroness makes a hugely important point. The picture for international deforestation is depressing; around the world, we think that we are losing around 30 football pitches-worth of forest every single minute. However, the Prime Minister announced at the end of last year that we are to double our climate finance to £11.6 billion over the five-year period and, even more

[Lord Goldsmith of Richmond Park]
importantly, that a major part of the uplift will be spent on nature-based solutions such as protecting forests and restoring degraded land. We are developing ambitious programmes around the world. Finally, relating to the last part of the noble Baroness's question, we announced just a few days ago that we are consulting on a due-diligence mechanism, requiring those large companies which import commodities to do so in a way that does not also mean that we inadvertently import deforestation from countries that grow those commodities. It is a world first and if we get it right, as I have no doubt we will, other countries will follow. That could have a meaningful impact globally on deforestation rates.

Lord Browne of Ladyton (Lab) [V]: My Lords, the Minister admits that England is well below where it needs to be to meet its share of the UK's 35,000-hectare target but Scotland is not. Scotland is living up to its commitment; it is the only part of the UK doing so. My simple question is: what is Scotland doing differently and why has the rest of the UK fallen so far behind?

Lord Goldsmith of Richmond Park (Con) [V]: There are many reasons. First, the noble Lord is right: Scotland is doing its bit. It is planting at a much higher level than we are seeing elsewhere. Scotland retains that ambition and it is a very good thing. The England tree strategy that was launched, the consultation part of which comes to an end in a week's time, is clearly about England and not the whole United Kingdom. But we know that to deliver that manifesto commitment, which is a UK-wide commitment, we will need to work closely with the devolved areas and will certainly do so. Whatever lessons can be learned from Scotland, we will learn them.

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, the Woodland Trust estimates that there are at least 20 non-native pests and diseases affecting native UK trees, six of which it says have reached epidemic levels, and a further 11 diseases that have not yet reached the UK. Can the Minister reassure the House that the Government have a robust strategy for ensuring that these diseases do not reach our shores and decimate our native trees?

Lord Goldsmith of Richmond Park (Con) [V]: This is a priority area for Defra, a department that I belong to. Yes, we are seeing increasing numbers of threats to our native trees. The whole country is aware of ash dieback and we expect a very large number of our ash trees to be infected and die. The good news is that they will not all die; we expect up to 5% of those trees to have a natural tolerance, so the UK Government are funding research into future breeding programmes for tolerant trees. We are also conducting the world's largest screening trials and will plant the first of the tolerant trees this year. That is just part of our biosecurity focus in Defra and our plans to stave off the threat of tree diseases from this country.

Baroness Redfern (Con) [V]: My Lords, with the UK having one of the lowest levels of woodland cover of any European country, and as the England tree strategy consultation closes next week, will there be extra support for widening the eligibility criteria for the woodland creation grants as a bonus to the Government's commitment to increase planting to 30,000 hectares a year by 2025?

Lord Goldsmith of Richmond Park (Con) [V]: We will use the outcome of the consultation—it is a genuine consultation; we know we need to hear from stakeholders across the country—to guide the manner in which we deploy the Nature for Climate Fund and ensure that it runs, in an effective manner, alongside existing sources of funding for new woodland. But given that we will be using public money, we want to achieve the biggest possible return. That means using those funds and the wider programme to deliver for biodiversity, people and climate change. Our strong default will be for mixed native woodlands and, in some cases, facilitating natural regeneration of land. It is incumbent on us, using public money, to get the biggest bang for our buck.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed.

Folic Acid

Question

12.30 pm

Asked by ***Lord Rooker***

To ask Her Majesty's Government whether they have yet been able to form a conclusion on the proposal to add folic acid to flour following the consultation between 13 June and 9 September 2019.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, there are about 1,000 births with NTDs each year. Folic acid is a valuable prophylactic. We recognise that around half of the 700,000 births each year in this country are unplanned; some of mine were. Therefore, adding it as a supplement to some flours potentially offers great value.

Lord Rooker (Lab) [V]: My Lords, that is a deplorable Answer. I at least expected an answer to the question. I wanted a date. Would the Minister discuss this with the Prime Minister, who takes an interest in issues only where he has personal experience, such as Covid and obesity? Thankfully, he has no experience of babies born with a lifelong disability, which is what my question is about. Does the Minister recall that the English Government consulted on how, not whether, to implement a policy agreed by the three devolved Governments and the *Daily Mail* and operated by over 80 other nations? No action is like having a vaccine and not using it. We must do better.

Lord Bethell (Con): My Lords, I pay testimony to the good work of my noble friend Lord Rooker on the campaign for mandatory fortification of flour with folic acid. He introduced a Private Member's Bill and his work has been earnest. My personal experience is

that my cousin James was born with an NTD; he survived two weeks and, sadly, passed away. Therefore, this is a matter that has my personal commitment. However, I am not in a position to give him the date he wishes, but we will come back to the House and answer his Question in due time.

Lord Balfe (Con): I welcome the Minister to his three and a half hours at the Dispatch Box. I first raised this matter as president of the British Dietetic Association, the trade union that represents dieticians. There is overwhelming evidence in support of adding folic acid. As long ago as 1 March 2018, I was promised that the Government would be looking at a date for this to be done. I join the noble Lord, Lord Rooker, in being very disappointed about this. I ask the Minister to get on with this, please. As long ago as March 2018, we were being promised a date and we still have not got one. Please take some action.

Lord Bethell (Con): My Lords, I completely accept the urging of my noble friend Lord Balfe on this matter. He is entirely right. There is very strong scientific evidence in this area; the Government accept that, and this is why they have launched a consultation, which was due to be published earlier this year. However, Covid has blown us away and that is why the announcement has been delayed. The Government have listened to the scientific evidence, which is very persuasive, and the decision will be made when the time is right.

Lord Patel (CB) [V]: My Lords, this is the fourth occasion that I have supported this Question put down by the noble Lord, Lord Rooker. Every time, there has been a disappointing Answer. As an obstetrician, I have seen many, many pregnancies result in serious spina bifida and anencephaly. Previously, the Government have used the excuse that overdosing might result if we put folic acid in flour. Would the Minister confirm that the recent research does not support that view?

Lord Bethell (Con): My Lords, the consultation on the proposal to fortify flour ran for 12 weeks from 13 June to 9 September 2019 and was undertaken on a UK-wide basis. The pilot ran extremely successfully; the use of the supplements by the flour manufacturers was affordable and their implementation of the pilot was achieved without much disruption, and it was an encouraging experience that gives us good evidence for taking this matter forwards.

Lord Turnberg (Lab) [V]: My Lords, the science is clear that folate supplementation is absolutely safe and a remarkably effective public health measure. Does the noble Lord agree that further delay would be unconscionable, especially for the children still being born with spina bifida?

Lord Bethell (Con): My Lords, delay is frustrating. I completely share the noble Lord's frustration. Unfortunately, we are handling an epidemic and, once we have got plans in place for the second wave, we will turn our attention to this important and valued matter.

Lord Palmer of Childs Hill (LD): My Lords, I support adding folic acid to flour and, as other noble Lords have all said, the sooner, the better. Has the Minister also considered action using Instagram influencers to encourage young women who diet to use leafy green vegetables, such as spinach, which contains B-vitamin folic acid? Would the Minster agree that, while "Eat your greens" might be a call from the past, it is cheap and still relevant today?

Lord Bethell (Con): My Lords, I entirely endorse the noble Lord's appeal for us to eat our greens. The concern with this specific matter is unplanned pregnancies, and the suggestion of putting folic acid into flour is to target those mothers who may need the additional supplements at a time when they do not realise they need them.

Baroness Wheeler (Lab): My Lords, we on these Benches and across the House share the deep frustration of my noble friend Lord Rooker about the delay on this vital issue. When the consultation was announced in June last year, the Government also promised that the results would be dealt with speedily and would go hand in hand with major efforts to step up awareness raising, particularly among at-risk groups, such as Afro-Caribbean women and women under 20 years old. What actions have been taken? What assessment has been made of the reason for the stubbornly low take-up of folic acid supplements? What measurable impact has awareness raising had on reaching at-risk groups or ensuring that women whose pregnancies were unplanned are not missing out on these vital nutrients in the early stages of their pregnancies?

Lord Bethell (Con): My Lords, the noble Baroness did, in part, answer her own question. Work to improve the diet of pregnant mothers has progressed impressively, particularly among at-risk groups. However, it is those mothers who do not know that they are pregnant that this measure particularly targets, and that is where its inherent value is. This is why we have conducted a consultation and are looking to make a decision on it in the near future.

Lord McColl of Dulwich (Con) [V]: May I congratulate the noble Lord, Lord Rooker, on his importunity in promoting the addition of folic acid to flour? Folic acid is essential to prevent spina bifida and anencephaly, which occur in utero before the lady knows that she is pregnant; hence the importance of putting it into flour, as they have done in the United States for years without any problems. There really can be no possible excuse for delaying the implementation any longer. Preventing this distressing condition is so essential and costs so little. Therefore, can we have a date for when it will be put into practice?

Lord Bethell (Con): My Lords, I entirely endorse the insight of my noble friend Lord McColl. The United States, Canada and Chile were the first three countries to introduce mandatory fortification, and I note that studies demonstrate a decline in NTDs of between 20% and 25%. These are encouraging statistics and the Government recognise them.

Baroness Bull (CB): My Lords, the 2006 SACN report *Folate and Disease Prevention* found that there was insufficient human data to say conclusively whether increased levels of blood folate from fortification might impact on the efficacy of anti-folate medication, which acts in chemotherapy by blocking the action of folic acid. The 2017 update is silent on this issue. Can the Minister clarify whether the absence of a reference to this issue is because there is still insufficient data, or is it because research has ruled out any adverse impact of mandatory fortification on those patients taking anti-folate medication?

Lord Bethell (Con): My Lords, I am not aware of any conclusive scientific evidence that contradicts the benefits of folic acid. As I said, the demographic data would seem to suggest that experiences in other countries have been benign. Longitudinal studies take a very long time to emerge and, therefore, we are not expecting a massive change in that data. However, back at the department, I will ask if any science has emerged and I will write to the noble Baroness if I can put my hands on anything.

Baroness Blackwood of North Oxford (Con) [V]: I of course join other noble Lords in pressing the Minister to implement mandatory fortification as soon as possible—it really is time—but if he needs additional motivation, can I point to the potential wider benefits in addition to vital prevention of NTDs: reducing anaemia caused by folic deficiency in older adults, for example? Given the inequalities associated with these deficiencies, is the Minister confident that such wider benefits have been fully considered? If not, will he commission the relevant research as a matter of urgency?

Lord Bethell (Con): The noble Baroness is entirely right to explain and expand on the wider benefits, but the benefits in respect of NTDs are extremely persuasive in themselves and the consultation focuses on them. I understand that it is an analysis of those benefits that will form the basis of our decision-making.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed.

Covid-19: Local Restrictions

Question

12.41 pm

Asked by ***Baroness Thornton***

To ask Her Majesty's Government what plans they have to publish the scientific advice which informs decisions to lift restrictions put in place to address Covid-19 in specific local areas.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, data is the key scientific commodity in our fight against Covid. We started with very little; now we have lots, and we are sharing it with our local partners as quickly as the legal, technical and privacy constraints allow. This shared intelligence informs collaborative decisions on local restrictions.

Baroness Thornton (Lab): I thank the Minister. On the ministerial Zoom, I witnessed the Conservative MP for Shipley having what looked like a hissy fit when the Bradford lockdown was announced. Despite recommendations to the contrary from the leader of the council and local public health officials, a month later Shipley has been lifted out of lockdown when other parts of Bradford still in lockdown have lower infection rates. On Friday, the Health Secretary announced that restrictions in Bolton and Trafford would be eased on Wednesday, despite leaving Labour constituencies with lower infection rates in lockdown. It seems that the Government were again lobbied by local Conservative MPs to lift restrictions. However, yesterday, the Health Secretary, with what might be called a skidding U-turn, announced that current restrictions would remain following a significant increase in infection. Will the Minister commit to publishing the scientific evidence behind decisions to impose, maintain and lift lockdown restrictions? Would it be better if discussions with local MPs were on the record? Does he agree that political neutrality and transparency are essential to securing public trust and support for measures locally to prevent a national lockdown?

Lord Bethell (Con): My Lords, I entirely agree with the noble Baroness that local support, trust and collaboration between actors from all political parties are essential to fighting Covid effectively. I pay tribute to the very large number of dialogues and collaborative interventions we have had across the country with local actors from all political parties. Yes, local lockdown decisions are not always popular. They are tough choices and elected representatives find them difficult, but we have found that politics does not play a part in those decisions and we stick to that.

Baroness Andrews (Lab) [V]: My Lords, it seems to have been decided that areas of low infection do not need the same degree of access to testing as the known hotspots. Indeed, there are accounts of people in London being directed to Wales because there is not sufficient testing capacity. Is this not exactly the way in which to miss the next hotspots and possibly the trigger of a national spike? Is it not another stable door that is left open? On what scientific evidence was this decision made and will it be published?

Lord Bethell (Con): My Lords, the noble Baroness is right that testing capacity is naturally prioritised to those areas with a major outbreak and that, when supply is constrained, some of the recommendations for travelling, particularly later in the day and in the afternoon, can involve long distances. Our objective is to put in place massive testing capacity right across the country in all areas, whether high or low in infection prevalence. That is our ambition.

Lord Empey (UUP): My noble friend will be aware that regulations differ in each of the home nations and within those home nations. In addition to publishing scientific advice, is he prepared to ensure that there is a single point where persons travelling within or visiting the United Kingdom can go to get the latest restrictions in each particular area so that they are properly informed of what the position is geographically?

Lord Bethell (Con): My Lords, I have before me a large list of eight or nine public portals where exactly that information can be received. I will lodge links to those portals in the Library and on my Twitter -feed.

Lord Farmer (Con) [V]: My Lords, there is a marked polarisation in the country, particularly evident in attitudes towards and poor rates of return to work. Many would agree that this is not about where people can work most effectively but about unnecessary fear, given what the science says about transmission. What are the Government doing to reduce the level of polarisation in the country?

Lord Bethell (Con): My Lords, we are working extremely hard to create confidence in the Test and Trace system and in the effectiveness of our two-tier system of hands, face and space combined with Test and Trace. We are appealing to the country to take necessary precautions but within those precautions to go about everyday life.

Baroness Jolly (LD): My Lords, in the pandemic, I fear that some sectors of the public are losing confidence in politicians. Scientists, on the other hand, are seen as independent and trusted. Surely, advice for politicians from scientists should be published in the interests of openness and transparency. Does the Minister agree?

Lord Bethell (Con): I completely agree with the noble Baroness. The collapse in confidence in politicians is nothing new, I am afraid. I can only pay tribute to British scientists, who have been extraordinary in terms not only of the integrity of their work but its pioneering nature. In many fields, Britain has led the world in the innovative and brave science that we have pioneered.

Baroness Helic (Con) [V]: My Lords, lockdowns have seen victims of domestic violence trapped at home with no escape, and underfunded and understaffed support services struggling to provide the necessary help and assistance. In the United Kingdom, support for domestic abuse survivors is often patchwork, with the availability of emergency shelters varying wildly. Can the Minister therefore say what consideration is given in the Government's scientific advice to the impact of local lockdowns on victims of domestic violence? What measures have the Government taken to provide additional support for services for domestic abuse survivors in the areas subject to local restrictions?

Lord Bethell (Con): The noble Baroness is entirely right that the impact of local lockdowns is far reaching. The impact is not only on families where there is domestic abuse but on children, those who are shielded, the elderly and so forth. The responsibility for caring for those vulnerable groups is with the local authorities. Central government has provided additional funding to support those interventions by local authorities; it is up to local actors to make those interventions, and we are grateful for their work.

Baroness Meacher (CB) [V]: My Lords, finally the Government are investing in preparations for widespread home testing, producing results within minutes. What priorities does the Government's scientific advice recommend for that mass testing? Do they include avoiding local lockdowns, enabling the former shielded parents of schoolchildren to test their children daily on return from school to protect the parent, and solving the nursing-home visitor problem?

Lord Bethell (Con): My Lords, I cannot help but feel that it is not a case of "finally". This Government could not have worked harder to push for home testing, and we are extremely grateful for the innovations in business and government that have made home testing possible and effective. When home testing is deployable on a mass scale, we will work on a prioritisation of how best to use it. But the noble Baroness is entirely right; the kinds of use cases that she articulated are the ones that we have in mind.

Baroness Young of Old Scone (Lab) [V]: Could I press the Minister on the specific Question asked by the noble Baroness, Lady Thornton? The council leader of Trafford has blasted the chaotic way in which the Government have handled local lockdowns, where application and lifting of restrictions has yo-yoed sometimes daily and sometimes hourly, with inadequate consultation with local leaders. It is impossible for councils and local people to plan life on that basis, and it continues to erode trust in the Government. When will the Minister guarantee the publication of clear thresholds and criteria, backed up by published science, on which local lockdowns and their liftings will be based in future? Will he give us a date for that?

Lord Bethell (Con): I apologise to the noble Baroness for disrupting the lives of local officials, but this disease is completely unpredictable. It is prevalent where we least expect it and it travels long distances very quickly. It is a fact of life—one that local authorities will have to get used to—that we cannot always predict where it is going to pop up and that fighting this epidemic is going to require fast action, which is why we have brought about the kinds of regulations that we will debate in this Chamber later this afternoon.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed.

12.52 pm

Sitting suspended.

Arrangement of Business

Announcement

1.01 pm

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, the Hybrid Sitting of the House will now resume. Some Members are here in the Chamber, respecting social distancing, others are participating virtually, but all Members are treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

Covid-19
Statement

The following Statement was made on Tuesday 1 September in the House of Commons.

"With your permission, and indeed your encouragement, Mr Speaker, I would like to make a statement on coronavirus. The latest figures demonstrate how much progress we are making in our fight against this invisible killer. There are currently 60 patients in mechanical ventilator beds with coronavirus—that is down from 3,300 at the peak—and the latest daily number for recorded deaths is two. However, although those figures are lower than before, we must remain vigilant. I said in July that a second wave was rolling across Europe and, sadly, we are now seeing an exponential rise in the number of cases in France and Spain—hospitalisations are rising there too. We must do everything in our power to protect against a second wave here in the UK, so I would like to update the House on the work we are doing to that end.

To support the return of education, and to get our economy moving again, it is critical that we all play our part. The first line of defence is, and has always been, social distancing and personal hygiene. We will soon be launching a new campaign reminding people of how they can help to stop the spread of coronavirus: 'Hands, face, space and get a test if you have symptoms.' Everyone has a part to play in following the social distancing rules and doing the basics. After all, this is a virus that thrives on social contact. I would like to thank the British public for everything they have done so far, but we must continue and we must maintain our resolve.

The second line of defence is testing and contact tracing. We have now processed over 16 million tests in this country, and we are investing in new testing technologies, including a rapid test for coronavirus and other winter viruses that will help to provide on-the-spot results in under 90 minutes, helping us to break chains of transmission quickly. These tests do not require a trained health professional to operate them, so they can be rolled out in more non-clinical settings. We now have one of the most comprehensive systems of testing in the world, and we want to go much, much further.

Next, we come to contact tracing. NHS Test and Trace is consistently reaching tens of thousands of people who need to isolate each week. As I mentioned in answer to a question earlier, the latest week's data shows that 84.3% of contacts were reached and asked to self-isolate, where contact details were provided. Since its launch, we have reached over 300,000 people, who may have been unwittingly carrying the virus. Today, we also launch our new system of pay to isolate. We want to support people on low incomes in areas with a high incidence of Covid-19 who need to self-isolate and are unable to work from home. Under the scheme, people who test positive for the virus will receive £130 for the 10-day period they have to stay at home. Other contacts, including, for instance, members of their household, who have to self-isolate for 14 days, will be entitled to a payment of £182. We have rolled out the scheme in Blackburn with Darwen, Pendle and Oldham, and we will look to expand it as we see how it operates on the ground.

The third line of defence is targeted local intervention. Over the summer, we have worked hard to integrate our national system with the local response, and the local action that we are taking is working. In Leicester, as the honourable Member for Leicester South (Jonathan Ashworth) knows well, as a local MP, in Luton and in parts of northern England, we have been able to release local interventions, because the case rate has come down. We also now publish significantly more local information, and I put in place a system for building local consensus with all elected officials, including colleagues across this House, wherever possible. Our goal is that local action should be as targeted as possible. This combination of social distancing, test and trace and local action is a system in which we all have a responsibility to act, and this gives us the tools to control the virus while protecting education, the economy and the things we hold dear.

Meanwhile, work on a vaccine continues to progress. The best-case scenario remains a vaccine this year. While no vaccine technology is certain, since the House last met, vaccine trials have gone well. The Oxford vaccine continues to be the world leader, and we have now contracted with six different vaccine providers so that whichever comes off, we can get access in this country. While we give vaccine development all our support, we will insist on safety and efficacy.

I can update the House on changes to legislation that I propose to bring forward in the coming weeks to ensure that a vaccine approved by the Medicines and Healthcare Products Regulatory Agency can be deployed here, whether or not it has a European licence. The MHRA standards are equal to the highest in the world. Furthermore, on the development of the vaccine, which proceeds at pace, I will shortly ask the House to approve a broader range of qualified clinical personnel who can deploy the vaccine in order of clinical priority, as I mentioned in questions. As well as the potential vaccine, we also have a flu vaccination programme—the biggest flu vaccination programme in history—to roll out this year.

Finally, Mr Speaker, in preparation for this winter, we are expanding A&E capacity. We have allocated billions more funding to the NHS. We have retained the Nightingale hospitals to ensure that the NHS is fully prepared, and we published last month updated guidance on the protection of social care. As well as this, last month, figures showed a record number of nurses in the NHS—over 13,000 more than last year—and record numbers of both doctors and nurses going into training. We are doing all we can to prevent a second peak to prepare the NHS for winter and to restore as much of life and the things we love as possible. As schools go back, we must all remain vigilant and throughout the crisis we all have a role to play.

This is a war against an invisible enemy in which we are all on the same side. As we learn more and more about this unprecedented virus, so we constantly seek to improve our response to protect the health of the nation and the things we hold dear. I commend this Statement to the House."

1.01 pm

Baroness Thornton (Lab): My Lords, I thank the Minister for the Statement and the Covid update that the House will discuss today. We are, of course, all on the same side in fighting this virus. I hope the Minister will understand that when we raise issues it is to urge the Government to improve their response to fighting the virus which, as he said earlier today, remains lethal and leaves many with serious, debilitating sickness. Everything must be done to drive down and eliminate infections and suppress the virus completely.

Given the news today about testing availability and the aspirations of the Secretary of State in that regard, I start by asking the Minister about the current state of testing and tracing. From the news this morning, it would seem that coronavirus testing was being prioritised in high-risk areas, leading to shortages in others. This has led to some people with symptoms being asked to drive significant distances for a swab. The Government say that areas with fewer Covid-19 cases have had their testing capacity reduced to cope with outbreaks elsewhere. Is this within the 300,000 tests which the Secretary of State has mentioned as being his aspiration? As the Minister will be aware, public health experts warn that this could miss the start of new spikes, so I would be very grateful if he could clarify the exact position on the rollout of mass testing.

Saliva testing is being used in Hong Kong, as we know. Would the Minister be able to ensure a quick turnaround of these tests? Has he seen the study from Yale which suggests that saliva testing could be as sensitive as nose and throat swabs? What is his attitude towards pool testing, which surely could increase capacity in areas of low prevalence? Does the Minister have a plan to introduce pool testing? Will we now allow GPs to carry out testing or, at the very least, arrange tests for their patients directly? They currently have to ask patients to log on to the national system, which may be causing huge delays.

A testing problem came to my notice in an email I received from an English family on holiday in Northern Ireland. They went there to have a break and did everything they could to ensure their safe passage—they did not stop for toilet breaks, they packed lunches, they booked the shortest ferry crossing, and they were heading to a house that had not been occupied for a week. However, something went wrong, and the father became ill. He said: "Getting a test should be easy, right? Well, wrong. When we first tried to get a test, the booking system was completely down. It was not working online or by telephone. When it eventually resumed, I was offered a test appointment 460 miles, and a ferry journey, away in Scotland. I was worried about having potentially to drive 20 or 30 minutes with a raging fever, so we ordered the home tests. The kits took 48 hours to arrive. Remarkably, there seems to be no test-kit storage site in Northern Ireland itself, so they have to come from the mainland, even though one of the companies than manufactures tests—Randox—is based in Northern Ireland."

This person had the usual problems that lots of people have when doing a self-administered test and returning the results. They were in an isolated place, so they chose to use the specially designated postal box, which meant his wife driving 25 minutes. That box was inside a building. It did not seem to cross anybody's mind that potentially infectious people should not be entering a building full of people. When the wife talked to someone about their concerns, they said that they were not allowed to handle parcels and she should put the results in another post box. It took six days from the husband developing the fever and seeking a test to getting the result. When it came, it was not absolutely conclusive. We know that these tests can sometimes be only 70% accurate. This person is still very ill and still in Northern Ireland. He is an academic who, as it happens, is also a scientist. He is very disappointed with the 111 service, which he called to ask for another test. He was told that he could not have one, that he probably did not have Covid, and that he should go back to work. It seems to me that this system is not working terribly well. What is the Minister's view of this sorry tale, which raises all sorts of issues about testing and tracing, at least in Northern Ireland?

I move on to the cancer plan and whether a task force will be in operation. The number of new cancer patients presenting is down by one-quarter this year, the number of appointments for specialist cancer treatment is now also falling, and the amount of money available for clinical trials has fallen through the floor. This means that people will die. What are the Government's plans to move this forward?

We know that a vaccine is our best hope to stop this pandemic. It will save hundreds of millions of lives. We on this side of the House have offered to work with the Minister on a cross-party basis to promote uptake and challenge the poison of anti-vax myths. That offer remains in place. We would work constructively with the Government on any proposals that they bring to the House to deal with those myths.

On Public Health England, the Minister is aware that we on this side of the House think that embarking on a distracting restructuring of Public Health England in the middle of a pandemic is very risky. Conservative MPs seem to like to blame Public Health England and this will sap morale even further. The UK has suffered the highest per capita death rate of any major world economy. To get through this winter safely, our NHS and public health services need resources, staff, protective equipment, fair-pay security and the support of this Government. I hope they will be able to deliver that.

Finally, the Minister said a few minutes ago that the folic acid issue would not be dealt with until after the pandemic. He needs to write to the House about exactly what that means and what the timeline is.

Baroness Jolly (LD): My Lords, yesterday it was raining when I left the house, so I decided to catch a bus. I donned my mask and got on. There were signs to say that only 30 passengers would be allowed, but I was disappointed that not only was that number exceeded, but masks were not universally worn. Some came off when the individual wanted to use their phone or talk to a friend, and there appeared to be no awareness of the reason for wearing one. I was glad to get off. It raised as many questions as it answered.

I appreciate that there is positive movement in some parts of the country. In my own part of the world, the far south-west, despite many visitors from elsewhere—the

[Baroness Jolly]
locals were anxious that they would bring the virus with them—they mainly kept to themselves and only left their footprints in the sand behind. Areas have been locked down in north-west England, Yorkshire and Greater Manchester, as there have been many cases identified. Will the Minister outline how these cases were identified?

Social distancing is difficult when you are young. We all might remember when we felt immortal; many young people catch the virus, are barely unwell but are spreaders among their generation. They then take it home and pass it on to their older family members. Mass testing would avoid this.

What is the Government's policy on testing key workers? Do they have to book their own tests, or are some professions automatically tested or encouraged to book a test? I was contacted by text quite out of the blue by my local authority to take a test, which I dutifully did. No reason was given; perhaps it was a contact trace. I therefore looked at where the local testing stations were located and no station was nearer than 50 miles, so I ordered a postal test. Easy, excellent directions came with the test and the result came back quickly, so I had a completely different experience from that of the person who wrote to the noble Baroness, Lady Thornton. Could the Minister outline where test and trace is being used and what system is in operation? I know that it is going well in Northern Ireland. Have the Government considered using this in England?

The Government pay-to-isolate scheme also seems a good idea for those who cannot afford to miss work. Will the Minister tell the House what the take-up is and where the department might use it in future?

When do the Government expect to roll out a vaccine? I would like to know how many volunteers are taking part in the programme and how that number compares with the development of any other new vaccine that would be working to the usual timetable. I would expect Public Health England to organise vaccinations when it is ready. Now that Public Health England's future is uncertain and it is being disbanded, how will this happen? What clinical personnel would the Government consider capable to deliver the vaccine? Presumably, as local pharmacies deliver flu vaccines, they would be capable of delivering coronavirus ones as well. Would this be something paid for by the patient, as with flu, or paid for by the Government? Has the department had conversations with the pharmacy profession about doing this work?

May I ask the Minister a question about numbers? In the Statement, it was mentioned that 84.3% of contacts were reached and asked to self-isolate. Do we have any certainty that they did so? Are local authorities or call centres checking on this?

My final point is about nurse numbers. I am delighted that they are higher, although we will still be far off full complement. Will the Minister comment on care-worker numbers? In the new year, some EU-origin workers might not be able to afford to stay under the new system. The Home Secretary suggested that we could use British care workers. Is the Minister confident that they will exist in sufficient numbers?

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, I thank both the noble Baronesses for extremely perceptive and thoughtful contributions and I will try to get through as much data as I possibly can.

I completely and utterly agree with the noble Baroness, Lady Thornton: we are all on the same side. As I said earlier, I pay tribute to the huge efforts across the nation of national and local politicians and officials working collaboratively. There are the occasional lightning points that hit the headlines, but that completely disguises the overall picture up and down the country of a huge amount of collaboration that is going on to great effect. I will talk later about the impact of the local restrictions, lockdowns and infection-control efforts that are making a big impact on this disease.

The noble Baroness, Lady Thornton, is absolutely right to raise the question of capacity for testing because the testing that we have got is proving to be incredibly effective. It is being put to work extremely hard. The marketing that we have done to the population took a massive reboot recently and is proving much more effective. The take-up of testing is up 63% since June. The amount of surveillance that we do now has been hugely upgraded in order to give local authorities and local actors the data that they have cried out for. We provide that data for them in as much quantity as we possibly can.

The regular testing in hospitals and social care, which has been the subject of a huge amount of comment here in this Chamber, is up enormously. Testing is allocated to outbreak management in areas such as some of the cities that have been mentioned here earlier and has had huge effect. Our ambition is to have 500,000 tests by the end of October. Earlier today, the Secretary of State made announcements in detail of how we are going to achieve that. I would particularly like to mention the Lighthouse Lab in Charnwood, which is exactly the kind of modern, impressive, industrialised outfit that is going to help us achieve a huge amount of capacity over the next few months.

The noble Baroness, Lady Thornton, was absolutely on the money when she mentioned saliva tests. Saliva tests are an incredibly exciting opportunity because they are much more usable. For any of those in the Chamber who may have had a swab test, they would know that it was okay, but you do not necessarily want to have a load of them. Saliva tests are much more accessible. The Yale study she mentioned was incredibly impactful when it was published earlier this year and it surprised everyone with conclusive evidence that saliva tests would be just as accurate as a nasal or swab test. That has opened up a huge amount of interest in this area. That is one of the ideas for which we put £500 million into the innovative tests kitty. There is a huge project in Southampton, and hopefully another one in Salford, which will be using saliva testing. I pay tribute to the Southampton authorities, the hospital, and OptiGene and its LAMP test, which uses saliva, and we are really hopeful about that.

The noble Baroness, Lady Thornton, mentioned pool tests. I suspect that she meant multiplex testing, which is the combination of testing in the same well. That is, again, another technology that has the opportunity

to massively increase our capacity for testing. It is exactly these kinds of innovations that we have spent the spring and summer pushing really hard on in order to get our capacity up to do the kind of mass testing that has been mentioned by several noble Lords in the discussion.

We have worked really hard in order to get access to GPs for registering patients for testing. This is a not inconsiderable technical challenge. I remind everyone that it is not that difficult for a GP to register a patient on the normal coronavirus testing page. It takes about 45 to 50 seconds. We have worked hard in order to ensure that all testing results go into the GP records and to upgrade the booking system to give GPs that special access.

In terms of the testimony of the noble Baroness, Lady Thornton, it is very difficult for me to comment on an individual's experience. I do not in any way question any of that testimony. What can I say that is constructive? I share completely the frustration of the experience of the person involved. In particular, there are millions of people who want to know whether the symptoms they have are Covid or not. The ONS data suggest that a lot of people who think that they might have Covid do not actually have it. It is extremely frustrating for them not to be able to clarify that. That is one of the reasons why we are pushing so hard in order to get our capacity up. The long-distance question of when you book a test and get sent to Inverness to have your test is an odd thing to happen, but we are trying to make as many tests possible to as many people as possible. It is up to the individual to decide whether they want to travel a long distance.

The noble Baroness, Lady Jolly, mentioned home testing, which has proved hugely effective. We recently celebrated 1 million home tests. On the whole, that experience has been extremely positive for the vast majority of people, and we have worked hard with our contractors to get the turnaround time down to 20 hours, although there is more that we could do. Not everyone is able to drive to a test site; test sites are not available in many city centres. That is why home testing is important and why we continue to prioritise it.

The noble Baroness, Lady Jolly, is entirely right about cancer. It is a huge problem that, over the last six months, cancer screenings and referrals, and the attendance for cancer procedures, have not kept up with the needs of patients. We are working incredibly hard. I pay tribute to colleagues in the NHS, Sir Simon Stevens and others who are working hard to open up facilities, to use marketing to get people back into hospitals and to create community-based facilities, so that people do not have to travel to hospitals for some of their diagnostic and procedural treatments. Those efforts are making a massive difference. Referrals in June were up by 90%, and 92% of the referrals in June were seen within two weeks. We are working through the backlog more quickly than the current numbers seem to suggest.

The noble Baroness, Lady Thornton, raised important questions about PHE. PHE is incredibly important to both the science and organisation of our response to this public health challenge. We do not blame anyone at PHE for anything—quite the opposite. The Prime Minister, the Secretary of State and others have paid tribute to the expertise and effectiveness of PHE—the staff, the scientists and the organisation—but there are immense operational benefits in getting PHE, test and trace and the joint biosecurity centre to work more closely together. I see that in my own life in the department, in the collaborative working we can do. You can decide to wait to do these things, maybe until after the epidemic, but it is right that we have used the summer months to mend the roof and to take the tough decision to pull through this organisational change now, in preparation for the second wave. No criticism is implied. We want to see these three important organisations working closer together, under joint leadership. I pay tribute to all who have collaborated in this change.

The noble Baroness, Lady Jolly, asked about mass testing. It presents an enormous opportunity, but our capacity needs to meet its needs. As Innovation Minister, I have been blown away by the rate of progress and innovation of our partners in the NHS, business and the big medical organisations on the scale, price, speed and accuracy of tests. It has been phenomenal, and we are beginning to see a route towards mass testing opportunities that we would not have been able to dream of in February or March, when we began this odyssey.

We are conscious of testing of a diagnostic or preventive fashion to break the chain of transmission. That needs to be swift, accurate, prompt and specified on individuals who either are at risk or present symptoms. But, as alluded to by the noble Baronesses, Lady Jolly and Lady Thornton, there is also an opportunity to use testing to provide reassurance that someone is not carrying the infection and perhaps is not infectious to others. This would give them the confidence to return to the workplace and to areas where social distancing is challenging, or to see people who are at risk. We are looking at avenues to develop that kind of testing in every way possible.

We are hugely encouraged by progress made on a vaccine, not only by our own teams in Oxford and Imperial, but by vaccine teams around the world. But let me be frank with the Chamber: vaccines for coronaviruses are notoriously difficult. Vaccines for anything to do with the respiratory system are also very complex, difficult to deliver and unreliable in their long-term impact. The macro challenge is enormous but, given its size, the progress made by some of the vaccine teams is phenomenal. We are giving them all the resources they need to continue making that progress.

The delivery of a vaccine, when it arrives, will be a massive national challenge and the noble Baroness, Lady Jolly, is entirely right to raise it as something worthy of scrutiny. We will need all the resources that our National Health Service, private partners and the whole nation can provide. A huge number of personnel will be required to deliver one or two doses to a large proportion of the population. Certainly, pharmacies and the pharmaceutical profession will play a pivotal and important role in that. We are deeply engaged in consultations with all parties that have a role in delivering vaccines, and we are putting plans together to do that.

We are making great progress with track and trace. I mention the outbreak in Herefordshire because it does not exist. There is no outbreak in Herefordshire:

[Lord Bethell]
when we spotted a contagion among migrant workers on a farm in Herefordshire, we used track and trace to break the chain of transmission and close down that mini-outbreak. As a result, it did not expand widely into the community and there is no communal outbreak in Herefordshire. In the last week, 81.4% of people transferred to the contact system were reached, 80% of contacts on whom we had information were reached and 452,679 people have been newly tested under pillars 1 and 2. These are incredibly impressive numbers. Track and trace comes in for much scrutiny and attack, but I reassure noble Lords that it is an incredibly important system that provides an important tier in our fight against the epidemic, and has proved effective already.

1.27 pm

Baroness Prashar (CB) [V]: My Lords, why do we not have testing at airports yet? Leading figures in the aviation industry are expressing frustration and it is having a detrimental impact on the industry. Other countries have managed to introduce testing at airports; why are we lagging behind?

Lord Bethell (Con): My Lords, I completely hear the frustrations of the airport and airlines industries about testing, but I cannot hide from them the simple epidemiological facts. If someone arrives at an airport, they may not test positive if they are harbouring the infection deep inside themselves. It may take days—up to 14 days—for that infection to manifest. I wish it were different; I wish we could set our airports free. Until we find a system that can handle that complexity, I am afraid that we will have to live with the system we have.

The Lord Bishop of Bristol: My Lords, North Bristol NHS Trust has recently reported on an audit of 110 patients discharged after being severely ill with Covid-19. Of these, 75% were still experiencing serious symptoms three months later. This is just part of the mounting evidence of the long-term effects of Covid-19 even on those with mild infection in the acute phase. What steps are the Government taking to raise public awareness of so-called long Covid and to invest in the care of those who are now chronically ill?

Lord Bethell (Con): The right reverend Prelate is entirely right to raise this point; it is emerging as a massive concern. The idea that Covid will somehow pass through Britain and leave people untouched, a bit like simple winter flu, is beginning to prove worryingly untrue. Her anecdote from Bristol is completely consistent with what we are seeing across the piece. In particular, those who have had acute infection but also, I fear, some who have had relatively asymptomatic or low-symptom Covid have found in later weeks and months symptoms of fatigue, arrythmia, renal impact, scarring on the lungs and memory loss. These are extremely worrying symptoms. Sir Patrick Vallance, the Government Chief Scientific Adviser, is running an operation to understand what the right reverend Prelate rightly calls long Covid; we are using big data to analyse the scans we have collected from acute patients and to understand the impact of asymptomatic infection. This is an extremely worrying manifestation of Covid, one that we are acutely aware of, and we are investigating very urgently.

Baroness Browning (Con) [V]: My noble friend will be only too aware of the consequences of non-Covid patients' reluctance to present themselves at hospitals and even to GPs for treatment and support. With the winter months approaching, what can he do to make sure that, at a local level, in advance of people having symptoms, they are reassured that they will be safe to approach the NHS? The idea that "it will be all right on the night" and just requires encouragement has clearly not been enough in the past and, I fear, will not be enough in the coming months.

Lord Bethell (Con): My Lords, my noble friend is entirely right that confidence in attending NHS venues is hard hit by Covid. One of the inspiring and interesting things that has happened has been the switch to using telemedicine—video and telephone calls—for referrals. This has been particularly and interestingly used in mental health, where attendance at clinics is something that many patients would wisely seek to avoid, but in fact the delivery of mental health therapy through telemedicine and calls has proved to be incredibly effective and has worked very well. We are working hard, through the NHS, to try to de-weight attendance at venues, particularly big central hospitals, and move much more towards attendance in the community, or through technology, in order to give patients a choice and to increase our engagement at a time when people are fearful of going back to their GP surgeries.

Baroness Armstrong of Hill Top (Lab) [V]: My Lords, one of the reasons for the Statement is to look at lessons learned. As the Minister and others have already discussed, the trust of the British people in what they are being told and advised is important. Therefore, what was said yesterday about Bolton and Trafford and their local spikes was not very helpful. Because transparency is really important in building trust, can the Minister tell us what happened between 9 am and the Statement from the Minister after noon to change his mind? He tells us that it was data. What was the data?

Lord Bethell (Con): The noble Baroness is entirely right that trust is critical, and we have to forge a system where local authorities, local MPs and central government work together on these local restrictions. The only thing that changed was that that group of people sat down at 9 am yesterday and looked at the data, and the data was deeply uncomfortable—it did not tell the story that everyone wanted it to tell. No one wanted to lock down those areas, but the data pointed in only one direction. That is the story that is playing out in communities around the country and it is a story that we will all have to get used to. One of the frustrating aspects of this epidemic is that the disease moves incredibly quickly and does not always go the way one would like it to go. That creates turbulence, as discussed earlier, but that turbulence is something that we have to get used to. Politicians, local officials and central government mandarins are all learning to work together in order to interpret that data and apply its implications in a thoughtful and trusted way.

Baroness Scott of Needham Market (LD) [V]: Is the noble Lord aware of the situation at Banham Poultry in Norfolk where, as of this morning, 104 people at the factory have tested positive and the public health director has reported that only 52% of contacts have been traced? This has led to the local authority bringing in a company to see if it can improve that figure. What conclusions are being reached as to why, in this instance, there is such a low rate of positive contact with people who may be affected?

Lord Bethell (Con): The truthful answer to the noble Baroness is that I know that there is an outbreak at Banham but I do not know the operational details of the kind she describes. What I can say is that the system is deliberately constructed so that a local director of public health, or the local authority, has the option, if they think it has local relevance, to bring in the resources that are needed for any particular arrangement. If, for some reason, a local director of public health, or the local infection control team, sees an opportunity for bringing in outside resources—a charity, a company, a technology—that is entirely appropriate and welcome. That is exactly the kind of local intelligence and expertise that we depend on to be effective. A central track and trace operation cannot do everything; that point that has been made in this Chamber hundreds of times and is a point that we entirely embrace. I am, in fact, hugely encouraged by the anecdote the noble Baroness tells.

Baroness Neville-Rolfe (Con): My Lords, I was not surprised to see a report in July that a majority of postal tests were not really working. My husband received a surveillance test, but the lancets did not make a hole big enough to provide enough blood, the little bottle for collecting it was too narrow, and follow-up tests were equally problematic. However, my question today is about masks, which were not mentioned in the Statement. On what scientific advice are government recommendations on the wearing of masks based? This is a subject of heated debate in my household—my positive experience of masks in Asia against the scepticism of the scientifically trained.

Lord Bethell (Con): My Lords, I am terribly sorry that my noble friend's husband had a tough time with the home testing kit. That is not the experience of hundreds of thousands of people who have taken those surveillance kits, and we know that for a fact because hundreds of thousands have been returned, providing incredibly valuable information that is informing all the conversations and decisions that we discussed earlier. As for masks, the CMO has made it very clear that the scientific evidence is not conclusive, but it is reasonably evenly balanced. It is extremely difficult to prove one way or the other the efficacy of masks, but the experience of countries that are fighting the epidemic effectively has often involved masks in one way or another, and my own experience in Asia reinforces that. That is why we have made the recommendations that we have, and we keep it under review until further science emerges. The British public have shown for themselves an interest in and a relatively high commitment to wearing masks, which I think is instructive.

Baroness Andrews (Lab): My Lords, I take the Minister back to airports. I have three questions. First, what is the science telling us about the likely impact—I know that this is a difficult question—of people coming off planes from highly affected countries? Have we done any research on that? Secondly, the Minister said that it is very difficult to test when people come off aircraft because the disease may be inhabiting them but not presenting. Other countries, however, are testing at five-day and even 10-day intervals: have we considered that? Thirdly, if our only strategy is quarantining, are we collecting data on how people are conforming? Are they staying in isolation? How do we know that? Can the science and the data be made available to us? If there is an unknown or even a known loophole, how do we fill that if quarantining is our only strategy?

Lord Bethell (Con): The noble Baroness asks three extremely perceptive questions. With regard to the science of testing at airports, a huge amount of work is being done on this, and I pay tribute to the work of the scientists at SAGE, who have, I think, published several papers on this matter.

The number that sticks in my mind is SAGE's estimate that of those infected who pass through an airport only 7% would be captured by what is called day zero testing—a tiny proportion. That uncomfortable and inconvenient statistic holds us back from doing what we would love to do—it just does not work. We are looking at seven-day testing, eight-day testing and 10-day testing. This is a lot about risk management: there is a risk curve. I would be happy to share a copy of the SAGE report, which is public, that shows that curve.

The noble Baroness is right to raise quarantine implementation: it is a cause of concern. Quarantine is critical to the effective implementation of our epidemic management. It is a trust-based system. Anyone who has read the papers will know that that trust-based system is under pressure. We are keeping it under review and will be looking at whether it needs to be updated.

Baroness Benjamin (LD) [V]: My Lords, it has been widely acknowledged that Covid-19 has disproportionately affected the black, Asian and other diverse communities, with many dying—especially men. There is also a high risk of suicide among these groups. Sadly, I personally know of two people who have taken their lives because they could not cope with the uncertainty of the future. What measures, therefore, are the Government putting in place to ensure that suicide prevention is a government priority and that this group receives the support it needs to face the Covid-19 pandemic?

Lord Bethell (Con): My Lords, on behalf of the House I pass on our sympathy to the noble Baroness, Lady Benjamin, for her experience with the friend who committed suicide. It is a touching story and we feel sorry them.

Suicide is important for this Government and we have a number of programmes that address it. One of the peculiar aspects of the epidemic is that the mental health tsunami that we were all braced for and deeply concerned about has not manifested itself in the way

[Lord Bethell]
we thought it might. There is currently no evidence that the suicide rate has increased in any way. We keep a careful eye on this. When a major epidemic such as this happens, we worry that it will have a huge impact, particularly on the young—particularly young girls—and those groups, such as BAME, who may feel that the prevalence is higher in their community. To date, however, the statistics suggest that we are blessed by having avoided harsh effects so far.

Baroness Verma (Con) [V]: Will my noble friend tell the House what communication plans are in place to ensure that, as winter approaches, all communities are well informed on what measures need to be followed to prevent or reduce the impact of a second wave, and that where spikes are found in local communities, wider immediate testing is available to everyone in that locality? I also thank my noble friend for the funds that the Government gave us in Leicester to ensure that communications were sent out in languages other than English.

Lord Bethell (Con): I thank the noble Baroness, Lady Verma, for her comments. What happened in Leicester has informed our response to the epidemic in many ways, including a much greater emphasis on languages. Many of the publications and technologies that we are rolling out in preparation for the second wave will use a hugely increased number of languages, so that we reach those communities which might otherwise have been overlooked.

In answer to the overall question put by the noble Baroness, I would place massive emphasis on our preparations for the flu vaccine. If we can spare the NHS the pressure of the annual flood of flu infections, we will do the country a huge favour. If we can spare patients the impact of flu that runs down their immunity and leaves them vulnerable to Covid, we will do them a huge favour. If we can get flu vaccine take-up higher, that will be a huge benefit for the system and the country.

Lord Mackenzie of Framwellgate (Non-Afl) [V]: My Lords, can the Minister advise the House whether self-isolation—in any setting—is enforceable, and if so, by whom? If it is not a legal requirement, is the moral obligation to isolate sufficient in such a serious public health crisis?

Lord Bethell (Con): My Lords, we have limited powers to isolate individuals under the very initial regulations that were published, I think, in March. Our overall approach, however, has been a trust-based system. I pay tribute to the British public, who, on the whole, have gone along with this approach hugely, and it is a tribute to the British way of doing things that we have not been using the police or fines like some other countries have. As the second wave approaches, we must acknowledge that there is more social exhaustion with the disciplines of isolation, quarantine, hygiene and social distancing, and assess whether that approach will last the course. That review is going on now and in the near future we will be putting in place the measures we think are necessary and proportionate.

Lord Greaves (LD) [V]: My Lords, yesterday the Minister praised Pendle Borough Council—I repeat my interest—for its work on Covid, which now includes local tracking of positive cases; that is, the kinds of cases that the national system has failed to reach. Can the Minister explain why passing cases to the local level, which should be done within 24 hours, has in some cases taken four or five days? Furthermore, when a case has been reached, and more local contacts have been discovered, why do they have to be passed back to the national level and not quickly followed up locally? They might even be in the same street. Why are district councils such as Pendle not being provided with sufficient funding to cover all the costs of this work?

Lord Bethell (Con): My Lords, once again I pay tribute to Pendle Borough Council, which is an absolute model of local collaboration in the handling of a local outbreak. I am greatly encouraged that Pendle has stepped forward to do local tracing. I do not know the precise details and will not pretend otherwise, but the story the noble Lord tells illustrates a harsh truth: not everyone wants to be traced. Not everyone participates in the system with the kind of enthusiasm one would like. It sometimes takes persistence and determination to track people who may be recipients of some very difficult news about their isolation and how they are going to spend the next 14 days—news that may either have an economic impact on them or seriously disrupt plans for them and their family. It is tough to track and trace people. That is why we work with local authorities to do it, why I was proud to announce the numbers earlier and why I am grateful to the noble Lord for illustrating the point with his story from Pendle.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, reference has already been made by the Minister to the quicker saliva tests for Covid-19. For the avoidance of doubt, can he outline to the House the timeframe for these trials and an implementation timeframe if they are successful?

Lord Bethell (Con): The noble Baroness is completely talking my game here. I wish I could be 100% specific about the timeframes, but we are still going through the validation process. Personally, I am hugely optimistic. The noble Baroness, Lady Thornton, mentioned the work in this area of Yale University, which really changed our perceptions of the role that saliva testing could play. It can be used in the big PCR machines, it may be used in point-of-care machines and there is even a possibility that it could be used in the small plastic lateral-flow machines much loved by the husband of the noble Baroness, Lady Neville-Rolfe. I hope very much indeed to be able to update the House soon and to lay out a framework, but I afraid that at present the validation results have not come through and it would be premature of me to try.

Lord Balfe (Con): Although the Minister mentioned the need to get back to face-to-face visits, it is not mentioned in the Statement. In our local hospital, Addenbrooke's, the instruction has been that no people are to be seen unless it is absolutely necessary. Indeed,

one consultant told me they had been forbidden to see a patient unless they needed to. Our local GP service provides no face-to-face meetings other than after you have been triaged and jumped through some hoops. It even had a tent outside for a time. Can the Minister assure us that some pressure will be put on local hospitals and GPs to get back to normal and start seeing people? As letters in the *Times* have proved, the fact that you do not see people means you miss serious diagnoses.

Lord Bethell (Con): My Lords, massive pressure is on the NHS from every level to get back to normal. Attendance rates are increasing dramatically in every area of the NHS. I pay tribute to those who have gone through enormous hoops to create safe and protected protocols to have people back in the system, but I cannot hide from my noble friend the fact that the health system will not be the same, going forward. We will have to change our approach to infection control and hygiene and have face-to-face contact in a completely different way. It makes no sense for lots of ill people to congregate in a GP surgery and to spread their disease among one another. We have to rethink the way we did our healthcare in the past in order to protect healthcare workers and patients from each other's infections and to afford a sustainable healthcare system that can afford to look after everyone.

Lord Taylor of Warwick (Non-Afl): My Lords, one in five NHS staff is from black and ethnic-minority communities, yet six out of every 10 UK health workers killed by Covid-19 have been BAME. What progress are the Government making in urgently finding out why so many BAME health workers have been so vulnerable, even to the point of losing their lives in the cause of serving others?

Lord Bethell (Con): The noble Lord is entirely right to raise the terrible statistics on BAME health workers. It is not conclusively understood why the numbers are as dramatic as he articulated. I am afraid we are still speculating, and a huge amount of work is being undertaken by PHE in this area to understand it better. Some of it is because BAME front-line workers selflessly put themselves in harm's way in environments where there are higher risks, despite the extraordinary efforts of trusts and CCGs to protect them. Part of it is the living arrangements and part is the behavioural arrangements. These things are explicitly explained in the PHE report, but it is a matter of huge concern. Trusts and CCGs have been urged to put risk-management practices in place according to local needs and arrangements, and the numbers have changed as a result of these policies.

Lord Bradshaw (LD) [V]: I want to talk about areas other than London. The bus industry has made huge efforts to make its buses safe for people to use, yet people who put in local lockdowns are still advising people not to use public transport. What is the scientific basis for that advice?

Lord Bethell (Con): My Lords, I do not support that advice. I took the bus to work today and encourage others to do the same.

Baroness Jones of Moulsecoomb (GP): I asked the Minister about this earlier and will send details to him so that it can be checked. Somebody complained that when they went to get a home test for Covid, they were asked to share their information with an American credit-check company called TransUnion, which sounds like data harvesting. I am sure we are all against that. My question is this. The Government have promised regular, weekly tests for care home staff from 7 September. Is that still happening?

Lord Bethell (Con): My Lords, I would be grateful to the noble Baroness for sharing with me the specific detail. It seems extremely strange to me; I do not recognise it at all. The way in which we put together our test registration protocols is to encourage the greatest number of people to register as possible. I am sometimes asked why we do not have more information on the gender, ethnicity and background of people tested. It is for exactly that reason. I would be grateful if the noble Baroness could send me those details and will be glad to check them out.

Huge progress has been made on care home testing. We have massively prioritised the delivery of testing kits and services through the packaging of large numbers of tests to the kinds of care homes that can deliver tests themselves; the attendance of mobile testing units to those that need that kind of support; the connection with local trusts and hospital services so that NHS resources can be used for care homes; or the attendance of care home workers at local NHS trusts for their tests if that is more convenient for them. A huge operation has gone into place, massive progress has been made and I am extremely grateful to all those concerned.

1.58 pm

Sitting suspended.

Arrangement of Business

Announcement

2.03 pm

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, respecting social distancing, and others are participating remotely, but all Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

We now come to the Motion in the name of Lord Bethell. The time limit is one and a half hours.

Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020

Motion to Approve

2.04 pm

Moved by ***Lord Bethell***

That the draft Regulations laid before the House on 17 July be approved.

Relevant document: 24th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, these regulations were made on 16 July and came into effect on 18 July. They were necessary to give effect to the announcement made on 3 July by my right honourable friend the Prime Minister setting out the Government's goal to enable as many people as possible to live their lives as normally as possible in a way that is as fair and safe as possible. To achieve this, he set out the need to move away from blanket national measures towards targeted local measures.

Three main activities are being undertaken to support the shift in focus to managing localised outbreaks through proportionate localised responses. First, local authorities have now drafted local outbreak management plans, which set out how they will manage outbreaks in their local areas. I cannot emphasise enough the importance of these frameworks, and I thank all those who have worked so hard and so collaboratively on these important plans. Secondly, we have published the contain framework, which sets out national expectations of how and when upper-tier local authorities should make community protection orders to manage the transmission Covid-19. Thirdly, open businesses and venues have been asked to assist the NHS Test and Trace service by keeping a temporary log of their customers and visitors for 21 days—this is critical.

Local authorities already have some legal powers under existing public health, environmental health and health and safety laws. These existing powers are complicated; they apply under a confusing patchwork of triggers and, in some cases, require a time-consuming application to a magistrate. They are simply not sufficient to enable local authorities fully to implement the community protections set out in the contain framework or to do so with the speed needed to manage outbreaks effectively. The Government's ambition is to empower upper-tier local authorities to introduce targeted restrictions; this is an important rebalance that means the need for the Government to impose more serious restrictions is greatly reduced. Before these local intervention power regulations came into force, local authorities did not have the powers to impose fully the community protection actions set out in the contain framework. These regulations are a response to points made by local authorities, which have been echoed in the Chamber, and I therefore hope this uniform set of powers to enable local decision-makers to take prompt and sufficient action will be welcomed.

The local intervention powers in the regulations are exercisable by upper-tier local authorities in England. A local authority may give directions imposing prohibitions, requirements or restrictions relating to individual premises, as in Regulation 4; events, as in Regulation 5; or outdoor public spaces, as in Regulation 6. Before giving a direction, the local authority must deem that there is a serious and imminent threat to public health in their area due to coronavirus and that giving the direction is necessary and proportionate to control the incidence or spread of coronavirus in that area.

Local intelligence is key to decision-making. The local authority must have regard to advice from its director of public health. Local authorities are supported in such decision-making by guidance published alongside the regulations. As Secretary of State, my right honourable friend has the power to direct a local authority to use its powers under the regulations where he considers that the same criteria are met. Before directing a local authority to use its powers, he is required to consult the Chief Medical Officer or one of the Deputy Chief Medical Officers of the Department of Health and Social Care. We have not, to date, had cause to issue any such direction to a local authority.

There is a mandatory requirement for local authorities to review every seven days the continuing need for any measures they impose under the regulations. The regulations require that, following the review, if the local authority considers that any restrictions or requirements set out in the direction are no longer necessary or proportionate, it must revoke the direction and either not replace it or replace it with a direction that meets the necessary conditions. A similar duty applies to the Secretary of State, who must direct the local authority to revoke the direction if he considers that the restriction or requirement is no longer necessary. If my right honourable friend directed a local authority to impose a direction, it is still for the local authority to terminate, although this could be directed by my right honourable friend.

The local authority must notify the Secretary of State as soon as is reasonably practicable once it has given a direction under these regulations. To date, 48 notifications have been received from 18 local authorities.

To manage cross-boundary impacts, the local authority must provide neighbouring authorities with notice when these powers are exercised. Neighbouring authorities are required to consider whether they should also implement any measures under their own powers.

If a local authority decides to give a direction, it must publish the decision and ensure it is brought to the attention of any person who may be affected by it. Where a direction or decision by a local authority imposes or revokes a direction, it must notify any affected person in writing.

The regulations permit someone affected by a decision to appeal the decision to a magistrates' court and to make representations to the Secretary of State. Where representations are made to the Secretary of State, the joint biosecurity centre will consider them and make recommendations to my right honourable friend. If he determines that the local authority in question should have exercised its powers differently, he will direct it to amend its direction.

The enforcement regime is broadly based on provisions set out in the national regulations. Police will also have the power to direct an event that contravenes restrictions to stop, to direct people to leave or to remove people from the relevant area if need be. Offences are created for breaching a direction, obstructing police or local authority officers and failing to comply with reasonable instructions. These regulations have their own six-month sunset clause.

Coronavirus is the biggest challenge the UK has faced in decades. The resilience and fortitude of the British people in complying with the national lockdown that we introduced in March has been a true national

effort, but we always knew that the path out of the lockdown would not be entirely smooth. These regulations have demonstrated our willingness and ability to empower local authorities to take action where they need to. I am grateful to your Lordships for your continued engagement in this challenging process and your scrutiny of these regulations. We will of course reflect on this debate as we consider the response to any future local outbreaks. I commend the regulations to the House.

2.11 pm

Lord Harris of Haringey (Lab): My Lords, as ever, we are grateful to the Minister for introducing these regulations. They are, of course, an urgent measure and I do not disagree with their urgency, but what is deeply regrettable is that, in the name of urgency, so little that the Government and in particular the Minister's department does is properly considered and scrutinised by either this House or the other Place.

I therefore make no apology for raising another group of issues where the Government have acted in the name of urgency, evading proper scrutiny. I refer to the fast-track procurement processes. Some of the contracts that have been awarded seem strange to say the least. Can the Minister explain why, in April, two contracts worth £8.4 million were awarded to Taeg Energy Ltd for hand sanitiser? Taeg Energy is listed as a dormant electricity production company, owned by a Mr Matthew Gowing. How and why was it selected? Who did it know in the Department of Health and Social Care to come to be awarded these contracts?

Why, in the same month, was another contract worth £692,000 for the supply of PPE gowns awarded to Kau Media Group Ltd, which is based in Hammersmith? How was a company specialising in social media, search engine optimisation and online advertising even considered by the department for such a contract? Who did it know?

Finally, how was Ayanda Capital, a company specialising in currency trading, offshore property and private equity, selected for a contract to supply £252 million-worth of face masks? How did this happen? Is it true that about £150 million-worth of these were not fit for use in the NHS? Again, who did it know?

The Minister must understand that these contracts, all rushed through without going through normal procurement policies—I do not argue with the need to get PPE—create the impression that something fishy is going on.

Baroness Penn (Con): I remind the noble Lord of the time limit on Back-Bench speeches.

Lord Harris of Haringey (Lab): I would have finished in the time you took to make that intervention. If we saw this in some other jurisdiction we would say that it reeks of corruption, stinks of cronyism or, at the very best, demonstrates rank incompetence and naivety. Can the Minister reassure us?

2.14 pm

Baroness Jolly (LD): My Lords, I apologise to the House. I came here from my office in Millbank for the beginning of Questions. I picked up my papers from my desk, and it was not until I was sitting that I realised I do not have my full speech. But we have been through this before—we have just changed the number to three. I welcome the move to local powers in this measure.

In the first of these debates, I asked the Minister about fixed penalty notices. Since we are now up to the third set of regulations, how many fixed penalty notices have been served since the first debate? How many have not been paid? Is the Minister of a view that they are a deterrent? I certainly do not think that the average member of the public would even know that they exist, but I just ask the question.

2.15 pm

Lord Lansley (Con) [V]: My Lords, I am grateful to my noble friend for his very clear introduction to and explanation of these regulations. I will make two points. I was very pleased to hear my noble friend make it clear that Regulation 3, on the powers of the Secretary of State, has not been used. It would effectively be a failure were that to happen, so it is very good news that the collaborative work to which my noble friend referred is continuing.

As my noble friend will recall and noble Lords may remember, one of the central arguments I have made from the beginning is that the public health infrastructure established from 2013 onwards was intended to rely substantially on the work of local authorities, to which public health functions and capacities were returned. However, that capacity was not supported with the funding required in subsequent spending reviews. The public health infrastructure should have had increasing resources, at least at the pace of increase provided to the NHS as a whole.

My two points to my noble friend are, first, will he undertake that the Government will continue to work with local authorities so that the powers in these regulations continue to be used collaboratively, with local authorities working with central government rather than by way of Secretary of State directions, which should be avoided wherever possible? Secondly, we must rebuild the capacity in local authorities, not simply for the Covid crisis, but for public health infrastructure more generally.

2.17 pm

Baroness Bull (CB): My Lords, the statutory guidance to these regulations is clear that, prior to issuing a direction, local authorities must have due regard to the Equality Act 2010 and should consider carrying out an equalities impact assessment to determine whether the measure might disproportionately affect people with protected characteristics. However, the guidance makes no provision for those with impaired mental and decision-making capacity, which means it is unclear whether and how these regulations apply to people who cannot fully understand them, or what the consequences are of them not following them.

It is therefore not clear whether someone with reduced mental capacity would be subject to criminal sanction for unwittingly breaking local lockdown rules. Nor is it clear what is supposed to happen in a case where this new power is used to remove someone with impaired capacity from a restricted area or a mass

[Baroness Bull]
gathering. Can the power also be used to return the person to their home, or does it seize as soon as they are outside?

Expanding the statutory guidance would help local authorities to meet their obligations to those people with reduced mental capacity, while clear, unambiguous guidance would help those people and the people who care for them to comply more easily with the regulations. It would also reduce the potential for unintended contravention, avoiding the messy question of whether criminal prosecution could follow. Can the Minister commit to reviewing the statutory guidance to include the need for local authorities to take into consideration reduced mental capacity, in accordance with the Mental Capacity Act, when exercising their power to impose restrictions?

2.19 pm

Lord McCrea of Magherafelt and Cookstown (DUP) [V]: My Lords, I appreciate that the powers under these regulations relate only to England, yet we from Northern Ireland stand firmly behind the underlying principle, which is to allow local authorities to make decisions based on the need of their respective communities in these challenging and unprecedented times. The reality is that the spread of this virus has affected different countries in different ways at different speeds. The same is true of different communities and populations right across our nation, who have experienced varying rates of—

The Deputy Speaker (Lord Duncan of Springbank) (Con): We will try to find the noble Lord, Lord McCrea, again. I do not think that he was quite finished. However, we will move on to the next speaker, the noble Lord, Lord Hunt of Kings Heath.

2.20 pm

Lord Hunt of Kings Heath (Lab): I hope I am not cut off like that, my Lords.

I certainly welcome the opportunity to debate these regulations, which show up the inadequacy of our procedures to scrutinise such instruments. Last night, the Minister, in the Second Reading of the medicines Bill, extolled the virtues of regulations. He said they come to Parliament and we can scrutinise them effectively, but this afternoon we can see how scanty that scrutiny actually is. These regulations came into force on 18 July. It has taken until today to have a debate on it. There are many more Covid regulations that we still have to debate, which are in power. As Big Brother Watch has pointed out, the regulations have a major impact on how people live their lives and they deserve much tougher parliamentary scrutiny. I would also remind the Minister that very few SIs have been defeated and, the last time the House defeated an SI, we were threatened with abolition by his own Government. Coming back to the medicines Bill, the idea that regulations provide a degree of parliamentary oversight and scrutiny is, I am afraid, very much mistaken.

The noble Lord who got cut off was talking about the importance of local authority leadership—I agree. The trouble is that Regulation 3 gives the Secretary of State power to override local councils. That might be justified if the intervention was based on science or some other rational explanation, whereas we have seen, in the north-west, that the decision of the Government was based on lobbying by Conservative MPs, which had to be reversed when the data came to light.

The noble Lord quoted Regulation 3. Can he explain to the House—so far today he has had two opportunities—what representations his department has received, in the last few weeks, from Conservative MPs in the north-west, to ease the lockdown? Did the Minister take account of the advice of the Chief Medical Officer or Deputy Chief Medical Officer?

The Deputy Speaker (Lord Duncan of Springbank) (Con): The House will be pleased to know that we have managed to recover the noble Lord, Lord McCrea.

2.22 pm

Lord McCrea of Magherafelt and Cookstown (DUP) [V]: My Lords, it is certain that local authorities and councils will hold unique insight into imminent threats facing their communities. The extension of these powers to direct closure of certain premises and events is prudent. I also accept that the safeguard included legislation that allows the Health Secretary to intervene, or revoke particular directives, should it be in the national common good. It may be necessary in certain circumstances.

The foundations of our vibrant democracy allow the UK to adopt a localised and targeted approach to Covid-19 interventions, as well as enforcement of the rules. All of this is placed within a wider framework agreed between the four nations. Ultimately, it is collaboration and delegation of powers that will continue to be vital as we seek to face down this deadly threat with God's help.

I also welcome the focus on ensuring that the coronavirus regulations, and the enforcement of them, take into consideration the impact on the fundamental freedoms of those with disabilities or other impairments.

2.23 pm

Lord Scriven (LD): My Lords, I bring to the attention of the House my registered interest as a vice-president of the Local Government Association.

These regulations were too little, too late and introduced in a way that is becoming a national disgrace. No longer should Whitehall know best, nor emergency legislation without the proper scrutiny and revision by Parliament be enacted from the tip of a Minister's pen, when there are significant implications for people's freedoms and business survival. This kind of knee-jerk reaction indicates a Government not on top of the issues that this virus is seeks a competent Government to deal with.

I sought a power of general direction for local authorities back in March, but Whitehall knew best and said no. It should now be clear to those in the Whitehall bunker that they cannot control the spread of this virus from SW1A. Rather than continual emergency legislation on the back of a fag packet, a competent Government would have sat down with the

local government and come up with powers and legislation useful in laying down actions, responsibilities and resources that councils up and down the country require to keep people safe and help stop the spread of the virus.

What is required is proper strategic discussion with local government, treating it as an equal partner in the fight against Covid-19, so that effective powers and responsibilities can be taken up in local areas. They should be drawn up in a proper legislative process and scrutinised and revised by this Parliament, so that when the next wave of Covid-19 hits us, powers, responsibilities and resources are in place at a local level that can be used proactively and are effective in slowing the spread of the virus.

Whitehall and the Minister said no in March when I came up with a constructive amendment. This time, I hope the Minister is listening a little more closely, and will do what I have suggested: stop relying on the Whitehall-knows-best reactive emergency regulations and produce more detailed and informed legislation—scrutinised by this Parliament—that will be far more effective in dealing with this deadly virus at a local level.

2.26 pm

Lord McColl of Dulwich (Con) [V]: My Lords, I welcome these regulations, because the trouble with the present local arrangements is that they are far too bureaucratic. Sometimes, they even require the participation of the law. It really is so difficult to get things done. Effective local decision-making is what is required, and we should have much more of it, rather than central control.

Perhaps the local authorities could also point out to all and sundry that politicians and the media, with their enormous power, spend so much time in destructive criticism of the Government, which demoralises the public. Blaming the Government for the high mortality rate of Covid-19 is false. The high mortality rate is due to the fact that over 70% of the people in this country are obese. Obesity and Covid-19 is a potentially fatal combination. If politicians and the all-powerful media really want to help the British people, they should support the Prime Minister in his campaign to combat the obesity epidemic.

2.27 pm

The Earl of Clancarty (CB): My Lords, giving local authorities these powers was the right thing to do, although we should have been discussing this in Parliament in July, not September. At present, the key issue is that local authorities need the best evidence on which to base their decisions. The gathering of that data now ought to be controlled by local authorities. I agree with the noble Lord, Lord Greaves, when he said in the House yesterday:

"Give us the tools and we will get on with the job."—[*Official Report*, 2/9/20; col. 350.]

If local councillors and others are saying that there is a problem, the Government need to listen and ask what they can do. They should listen to those such as Andy Burnham when he said yesterday that the emphasis should be on local door-to-door testing, rather than a national test and trace system.

Do the Government believe that testing is increasingly important in those situations where people are on the move—going back to work or school—when there is a greater chance of the disease being spread? We know, for instance, that Berlin has had to shut 5% of schools already. That is not an argument for the country not to open up; it is an argument for much more comprehensive testing, including in schools, in workplaces and before and after flying abroad.

We should, however, go further than that. If you can easily buy a reliable test kit online from one of numerous private practices, I do not see why you cannot now get a test easily and informally from your own NHS doctor, whether you have symptoms or not. The problem needs to be understood as one of availability at the local level, not capacity. I suggest to the Government that when people go for a flu jab this autumn, it will be the perfect time for a large section of the population to get tested for Covid, if mass testing is now a government objective.

2.29 pm

Lord Blencathra (Con) [V]: My Lords, once again I congratulate the Minister on his sheer hard work, and on setting out so clearly the content of these regulations, which I support.

I want to focus again on the penalty and enforcement provisions in the regulations, which on paper are excellent. However, as we have seen time after time over the last few months, the police are simply not bothering to enforce them, and that is not the fault of the Minister or of the Department of Health and Social Care.

I am tempted to report every police force in this country as committing mass hate crimes against elderly and disabled people. We have spent four months locked away obeying the law, but what of many others? We saw mass demonstrations of Black Lives Matter and not a single person fined but the police bowing down to them. We saw mass lawbreaking of every sort in Leicester by Asian sweatshop owners, and again the police and authorities did nothing because they did not want to offend their communities. There have been hundreds of illegal raves all over the country and not a single person fined. I accept that where thousands turn up it is a problem, but the police have failed to break up and penalise small raves and house parties. Two days ago, a bunch of yobs roamed up and down a TUI flight dispensing Covid-19 to all and sundry. Not a single person has been fined or prosecuted. The police boast that they have spoken to tens of thousands of people and urged them to comply. What a joke; every young person now knows that they can pack into pubs, houses, raves and planes not wearing a mask, and not a single thing will be done about it. Fining Jeremy Corbyn's brother £10,000 is no alternative to fining the other tens of thousands of lawbreakers.

We old gits will continue obeying the law and being put at risk every day by some people who do not give a damn and by a police force that is unwilling to enforce the law. I regret that I will not join those who say that the police are doing a wonderful job. They are not, and they should be ordered to enforce the law.

2.31 pm

Baroness Wheatcroft (Non-Afl) [V]: My Lords, I thank the Minister for his clear explanation of the regulations. Clearly it is right that local authorities have these powers, but as he said, local intelligence is key to decision-making in coping with this pandemic. In 2018, with the horrific Novichok poisonings in Salisbury, we saw that local public health officials were able to deal brilliantly with containing the problem, yet while the Government pay lip service to local empowerment, their tendency is still to centralise. This was all too evident in the recent fiasco over restrictions in Stockport, Bolton and Trafford. While the Mayor of Manchester, Andy Burnham, was adamant that the restrictions should not be lifted, the Government insisted on doing so. The Mayor went as far as advising people to continue to follow the restrictions. The local intelligence of the Mayor was right, and within hours the Government U-turned—something of a habit. Can the Minister explain why the Government originally overruled the local intelligence?

In a similar vein, we learned today that last week was the worst ever for test and trace, with a contact rate of less than 70%. Local health protection teams have a contact tracing success rate that is very close to 100%, so again, can the Minister explain why we have such a centralised test and trace system when the problem is localised?

2.33 pm

Baroness Crawley (Lab) [V]: My Lords, I have a couple of questions arising from these regulations. In asking the Minister, I acknowledge the work that he is undertaking personally in these very challenging times despite his Government's best efforts to sow chaos and uncertainty all around him.

Can the Minister say a little about the particular support being given to BAME communities during local restrictions and lockdowns, as we are all aware of the disproportionate effect of Covid-19 on these communities? How is clarity and transparency in official communications being addressed when focusing on BAME communities?

In the case of Birmingham, a city that I used to represent and which is now, as he knows, an area of enhanced support—meaning that it is one step away from intervention—does it really make sense for us to see the city's drive-through testing facility close? I am aware that there are other facilities outside the city boundaries, such as at West Bromwich and Solihull, but this must be the most convenient facility for people to access. Has there been any more progress in looking at alternatives as far as drive-through testing sites in Birmingham are concerned?

2.35 pm

Baroness Walmsley (LD) [V]: My Lords, often during the recent series of local lockdowns the voice of the local authorities has not been heard. When eventually it is heard, such as in the recent case of Bolton and Trafford, changes have been at such short notice as to confuse local people and make them much less likely to abide by the new restrictions. Local authorities must give reasonable notice to the public and businesses about closures. How can they do that if the Government change their mind with 12 hours' notice?

Recently, many businesses have gone to enormous trouble to protect their clients with cleaning and distancing arrangements and PPE, which have cost them time and money, and yet sometimes they must close because of the behaviour of others or virus spikes at the far side of a large local authority area. I want to ask about their rights in those situations. According to these regulations, they can appeal to the magistrates' court. How many such appeals have there been, and how long have they taken to be considered? What training have magistrates been given in considering these cases? Have any closure notices been overturned by a magistrate because of the rigorous safety measures being taken on the premises? Proprietors can also appeal to the Secretary of State. How many such appeals have there been, and how long have they taken to be considered? What steps have been taken to inform those running premises of their rights in this matter?

The enforcement section of this regulation contains an increasing list of fixed penalties, depending on the number of offences. What discretion do magistrates have to consider the case of an organiser or a participant in a peaceful protest where all possible precautions have been taken to protect public safety?

2.37 pm

Baroness Altmann (Con): My Lords, I congratulate the Minister on laying these regulations, his explanation for them and all his hard work in connection with the current emergency. I support the idea that the Government should not impose more nationwide controls, and the Minister's words about people needing to get on with their lives as much as possible around the country. Targeted local measures to manage health locally are vital.

However, I echo concerns about these regulations being debated only weeks after they came into force. I am also concerned that we do not have adequate localised testing and that results from testing, where it is done, are received with such delay in too many cases. The consequence of that makes it very difficult for local authorities, or indeed the national authorities, to understand the serious and imminent threat to public health from Covid-19 and what measures are necessary and proportionate to protect public health. These very blunt instruments are all that we have at the moment. I hope that we will improve the ability to track and trace local outbreaks in the coming weeks.

The idea of using flu jab appointments as an opportunity for widespread testing is an excellent one, and freeing up local authorities to do some testing rather than being straitjacketed into a national system would encourage local authorities to use whatever local facilities are available to them to serve their local population as best they can in tracing and testing.

2.39 pm

Baroness Jones of Moulsecoomb (GP): I express sympathy for the Minister, who, before this debate began, had already been under interrogation for an hour. However, it is almost six months since the first

emergency legislation was brought in to deal with the coronavirus. The sheer urgency and importance required Parliament to pass an emergency Bill, now the Coronavirus Act, and then approve emergency regulations made under the health protection legislation.

The Government have now had plenty of time to get a handle on this, and I echo other noble Lords who are exasperated by the fact that we are still seeing emergency statutory instruments coming in on the "made affirmative" procedure. The Government should bring forth a Bill setting out a proper framework for scrutiny of future restrictions. Let Parliament debate, amend and pass legislation, so that there is a proper democratic backing for these measures.

The other piece of scrutiny is around the Coronavirus Act, which has to be reviewed by the end of this month. Can the Minister outline what the Government's plans are regarding the Act and what will happen with the review? There are huge parts of it—the most restrictive of people's liberties—that are obsolete and should be repealed. In particular, I refer to the parts that allow for people to be detained for testing and treatment. These were always very concerning provisions, but the Government told us that they were absolutely necessary for dealing with the pandemic—though apparently not. Can the Minister confirm that Section 51 of the Act has never been used, is not necessary, and should be repealed? Will the Government use the powers in Sections 88 or 90 to repeal those parts of the Act that are no longer necessary?

2.41 pm

Lord Naseby (Con) [V]: I thank my noble friend, who must be one of the hardest-working Peers in history, I would think. I declare an interest in that my wife is a doctor who has worked in India, Hackney and Islington. We are celebrating our diamond jubilee today and we discussed this particular SI over lunch.

The linkage with local government is not working properly, because people in central government do not fully respect local medical officers of health. I have been a leader of the London Borough of Islington and I know what a good job they do.

In today's *Telegraph*, the Governor of the Bank of England said that consumer caution was derailing the economy. One area of the economy that is closed is the sporting world, be it cricket, rugby, football or other things. DCMS is exceedingly slow and ultra-cautious, with only 15% of its staff at their desks. We have an opportunity here. All first-class cricket clubs were ready to open for business in July, with proper Covid-19 preparations fully approved. Why do we not use local government to inspect these sporting grounds to approve them or otherwise? It already does it for safety. The cricket finishes in four weeks, and there is a real business opportunity as we deal with the T20 Blast. It will encourage our dear people to go out and enjoy themselves, spend money and get the economy moving.

While I am about it, can we please use the phrase "possible second wave", not simply "second wave"—the Minister did use the words "second wave" earlier on today—particularly as we see falls in hospital admissions and death rates? Above all, can we forget the phrase "world-beating"?

2.43 pm

Baroness McIntosh of Pickering (Con) [V]: My Lords, I have a brief question to put to my noble friend the Minister regarding the consultation on local lockdowns: how, in future, can we strive to avoid the tension that appears to have arisen in local cases, particularly in the north-west? I urge the Government, in the next campaign that I gather will be announced about face-based test and trace, to look to ensure, if possible, that young people are targeted in any campaign that we have.

In terms of the potential flu epidemic that might coincide with a national spike in Covid, can my noble friend assure the House today that his department has had contact with doctors and pharmacists to ensure that not just the over-65s will have sufficient access to vaccines and that, with the new demand, over-50s will also be able to be vaccinated and that there will be sufficient availability for both categories? My understanding is that flu vaccines are ordered months, if not a year, in advance and there may not be sufficient to cover both categories.

The Deputy Speaker (Lord Duncan of Springbank) (Con): The noble Baroness has quite a fetching scarf. The next speaker is the noble Lord, Lord Bhatia.

2.45 pm

Lord Bhatia (Non-Afl) [V]: My Lords, this SI gives local authorities powers relating to the control and prevention of coronavirus. This SI requires the approval of both Houses. The regulations came into force on 18 July 2020 but, if they are not approved by the House of Lords, they will cease to apply.

These are important powers to control the spread of the coronavirus. In these difficult times, it is important to give powers to local authorities to close down certain properties, such as bars, restaurants and shops. We have witnessed the various towns where there has been a flare-up of the pandemic and the powers of the local authorities have helped to close down such premises before it spreads further. Communities and local government have to work together to ensure that people wear masks, maintain social distance and regularly wash their hands with soap. Local authorities must have powers to fine individuals in premises if they do not conform to the regulations. Repeated breaking of the regulations should mean heavy fines and perhaps imprisonment.

We must realise that such powers are for the safety of public health. These powers are fair and proportionate in the present circumstances. I trust that both Houses will ensure that politics will not interfere with these regulations. Lives can be lost in these difficult times.

2.47 pm

Lord Willis of Knaresborough (LD) [V]: My Lords, does the Minister agree that it is essential that there is public buy-in for these and future regulations, and that that has not been the case? That buy-in can come only from a Government who gain credibility by having clear, unambiguous messaging and the courage at times to admit failure.

That being the case, why, when Public Health England was created by the Government and reports directly to the Secretary of State, has the Secretary of State not

[Lord Willis of Knaresborough]
accepted responsibility for its failure? Why, given the consistent underperformance of his own track and trace system, has the person leading that failure now been given an even greater role in the Covid response programme? Is not a lack of government credibility the reason for the public increasingly ignoring these regulations, and not the police and local councils, which are totally frustrated because they do not have the means to enforce these confusing regulations?

The previous policy of whole-council lockdowns, often announced in the media before local officials are told, is now seen as disproportionate and unfair, but will the new regulations be any better? Where are the criteria by which local authorities need to judge their lockdown policies? What is the process for including or excluding individual businesses or leisure facilities within locked-down areas where no evidence of rising infections exist? How about dedicated local track-and-trace systems? They do not exist, but could accurately give evidence of an effective lockdown. People have to understand why they or their business are being targeted. They need criteria for action, rapid testing, swift and consistent feedback, and immediate support. Simply waving the threat of meaningless and unenforceable penalties will not do.

When will the long-awaited app—so effective in Germany, with over 15 million people using it—be available here? No doubt its failure to appear will be blamed on some hapless official to save the face of Government Ministers during this disaster.

2.49 pm

Baroness Noakes (Con) [V]: My Lords, these regulations are authoritarian and disproportionate. Under the banner of responding to Covid-19, the Government's default position is to take sweeping powers to tell citizens what to do and to punish them if they do not do it. Recruiting local authorities to this cause does not make it any better. The only good thing about the regulations is that they have a sunset clause.

Covid-19 may well have been a major public health danger in the early part of this year, but it is not one now. Hospitalisation rates and deaths are extremely low, despite a rising number of recorded infections. However, we now have two massive problems that are exacerbated by the obsession with Covid-19.

First, the NHS has virtually abandoned most patients. Access to primary care, undetected and untreated cancer patients, massive hidden waiting lists for consultations and diagnostics, and a huge backlog of elective surgery are just some of the problems.

Secondly, we have a very great economic crisis. Lockdown has had a huge, negative impact on the economy. Government borrowing is at levels not previously seen in peacetime. Businesses are struggling to get back to anything like normal and many will not survive.

These regulations are nothing to be proud of. The Government need to prioritise the real problems facing our country.

2.51 pm

Baroness Uddin (Non-Afl): My Lords, I am pleased to follow the noble Baroness, Lady Noakes. We are in the seventh week of the regulations being in place and once more we are sleepwalking into approving regulations without an opportunity to amend or challenge decisions, undermining any notion of meaningful oversight.

I wish to make two points, the first being about localised lockdown. Despite what the Minister said, confusion seems to have reigned, creating significant turbulence in communities. By now, we should have established a blueprint for multiagency intervention in partnership with local leadership and health organisations, including local testing, as I have said before in this House. When the Government say that they are being decisive, that is not recognised by many communities, which consider that government approaches cause anxiety and resentment among residents, businesses, health professionals and law enforcement alike. Can the Minister inform the House what criteria and benchmarks are activating local lockdowns? I understand that the virus remains worryingly active, and I hope that noble Lords will agree that we must do all we can to mitigate the effect of uncertainties and the erosion of trust and confidence. That includes improving communication among minority communities, which at the moment can be considered negligent.

The other point that I wish to raise is on the impact of regulations on public gatherings. Every weekend I see young people in public and at social gatherings breaching the mask-wearing and social distancing rules, with no enforcement in sight. The health protection regulations are in place to protect the public from health risks, but they must not transgress, being used to impinge on civil liberties or stop peaceful, democratic protests. During these protests, some people have received excessive, punitive fines. Any draconian interpretation of the rules must not be countenanced or allowed to curtail our basic rights at a time when we are witnessing historic movements led by young people campaigning for social and political justice, equality and action on climate change. I agree wholeheartedly with the noble Baronesses, Lady Jolly and Lady Bull. Can the Minister assure the House that the Government are collecting robust data for equality impact assessments, on how and where fines are being issued, and on the ethnic and age breakdown?

2.53 pm

Lord Balfe (Con): My Lords, we are at a tipping point in this matter. Much of the population no longer believes in the measures that are being put forward. On Monday this week, the *Times* carried a story with the headline:

"Second wave … this winter could kill 85,000 people"—

that is, twice as many people who have already died. In the middle of the article was a little table showing that one person died the day before the story was published.

Many people, particularly the young, think that old people are legislating for them. Many old people feel that middle-aged people are pushing them around and telling them to isolate. Now, we have this legislation, which effectively ends political protest. I carry no brief for Extinction Rebellion, but it could easily be banned under this legislation, and that would be wrong. We will face an inability of the state to get its citizens to behave in the way we wish without coercive measures, and that we cannot do. Therefore, the Government

should look, first, at exempting political protests from the regulations and, secondly, at easing up, because if they do not, the population will. The fact is that there is freedom to dissent in this country. There is also a freedom to do foolish things, and people should defend that. That is what this is about.

Finally, people often used to say to me, "Do you know that Jeremy Corbyn? He's dreadful, isn't he?" I used to say to them, "You should meet his brother." I do not think that we were right to fine Piers Corbyn £10,000. He has very quickly raised that sum on the net, and if we carry on with this level of confrontation, we will regret it.

2.55 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I take this opportunity to thank the Minister for his explanation of the SI. It is good that local authorities are given local powers to deal with local situations where there have been spikes of Covid. However, to assist with these mitigating measures, I would like to ask him a few questions.

Can he tell your Lordships' House what progress has been made on global vaccine development? I believe that people will feel safe only when a vaccine becomes available. What preparations have been made for a possible second spike of Covid? Will those preparations take the form of local lockdowns and directions to be given by councils in relation to premises, and what staff and funding resources will be devoted to such an outbreak? Is there an available supply of PPE and ventilators, and are care homes now fully equipped to deal with emergencies such as a further possible spike of Covid?

Also, what assessments have been made of the track and trace programme? If applicable, will those results be made available, and how will they instruct government on the allocation of medical, care and nursing staff resources, as well as the ready need for financial resources?

2.57 pm

Baroness Neville-Rolfe (Con): My Lords, we had a very good PQ debate on 28 July about the need to give greater priority to the economic impact of Covid. I argued on the basis of analysis from leading academics that the costs of the severe restrictions that we have imposed for medical reasons are much larger than the benefits. So there was a strong case for the recent lifting of national lockdown restrictions. Taking a lead from my noble friend Lady Penn, who is in her place and spoke very convincingly then, there was agreement that measures adopted to counter any flare-up in infections should be carefully targeted locally rather than being general in effect. I therefore support these regulations, the provision they rightly make for local lockdowns and the January sunset clause.

However, I have four concerns today. First, since lockdowns and local measures have now become more routine, I think that it was wrong not to consult formally on these regulations, and I would like to know who was consulted informally beyond charities. As we have seen, local closures have a huge impact and we are now talking about very few deaths, as my noble friend Lady Noakes said, and much improved hospital care.

Secondly, with these emergency measures as with others, there is no attempt to measure economic impact and, I believe, still no economist on SAGE. All we know is that the debt load for our children to tackle is already horrific; we must reverse that trend.

Thirdly, the Secretary of State for Health and Social Care appears to be responsible for policing whether local measures are necessary and proportionate. How is this checked and enforced? Is there not a bias here in favour of caution and Covid, when the adverse impact on shops, education and the world of work and on the number of deaths of people on NHS waiting lists are a worry?

Fourthly, why is there not more local and workplace testing—including, indeed, here in the House of Lords? Care homes, in particular, are crying out for frequent testing. There is lots of capacity, so, as the Minister in charge, my noble friend should lay down the law.

3 pm

Viscount Eccles (Con): My Lords, I will follow the thrust of the speeches made much earlier by the noble Lords, Lord Hunt of Kings Heath and Lord Scriven. In this intervention, I am questioning not the policy but its legislative implementation. In the early days when things were very hectic we could understand why the policy was being implemented in the way that it was, but now, when we know much more, it must be a matter of doubt.

The policy is being implemented under a 36 year-old Act, the Public Health (Control of Disease) Act 1984—I apologise to all noble Lords who know this story very well—including the emergency powers in that Act. The Act imposed duties upon bodies such as the Port of London, port health authorities and aerodromes controlled by the Secretary of State, and their duties were to report notifiable diseases. The powers in the Act were designed to make sure that they carried out their duties in a proper manner. There were even duties about the conditions in which people might live in canal boats.

My question to the Minister is: is there a precedent for picking a conveniently drafted set of powers and using them for a very different purpose? Will the Government, with their much greater knowledge, continue to use this, or do they intend to change the way in which they implement the legislation to give much more scope to Parliament for scrutiny and even possibly amendment?

3.02 pm

Baroness Barker (LD): My Lords, I hope the Minister managed to get a small break over the summer. I did, and I visited Salisbury Cathedral and its most famous exhibit from 1215. The entrance to the exhibition has a copy of the emergency Coronavirus Act 2020. The display says, "Do you know that the Government has taken unto itself the following powers and taken away the following rights from citizens?", and lists them. Looking at these regulations today, it is tempting to repeat the most famous question of all: "Magna Carta:

[Baroness Barker]
did she die in vain?" Six months ago, when we were looking at that Act, we said to the Government that it was predicated on some wrong assumptions. One of the key assumptions that was wrong was that it did not take into account the role of locally elected officials and their accountable rule in public health.

I want to draw attention to four problems that underlie all the regulations that we are having to deal with. The first is the mistaken belief that Department of Health Ministers, their spads and their friends in tech companies know better than local government and public agencies how to handle the pandemic. With every passing week, it is more evident that what my noble friend Lord Scriven said in March, which was ignored, was absolutely right: the key to managing a pandemic is to give local authorities a general power of competence, and that is becoming more and more urgent. I ask the Minister when the Government will remedy that.

I checked throughout the summer with colleagues throughout local government and found that the same issue has arisen time and again: they are ordered by central government to take action to close down establishments and to install barriers for physical distancing, but they have no power of enforcement. They are managing at the moment on the power of their own authority negotiated with local populations, but they need the Government to understand that what is being achieved is done so despite the orders from central government, not because of them.

The second problem is the failure to understand that, while central government and the NHS can focus solely on Covid if they have to, and they have done so, others cannot. The police have to deal with the consequences of the virus at the same time as carrying out routine crime policing. Local authorities have had to reorganise social care completely, maintain sanitation services, try to support local businesses to keep open and, in one case, try to decide what the consequences were of Zippos Circus not being able to open on common land. That may seem trivial, but that is what people in local government are having to deal with as yet more "helpful" advice and guidance comes from the Government. So my next point to the Minister is this: will the Government ban officials from issuing yet more advice to local government that gets changed day by day and gets in the way of implementing things properly?

The third and most important problem is the one that we have alluded to and which we knew was coming: the failure to have an effective track and trace system. The Government have thrown millions at companies that did not have to tender or even show any competence in the area at all. Directors of public health still do not have timely household data about infections so that they can use their local intelligence to work out what the transmission patterns are and take precise precautionary action. Ministers can stand there and bluster and blame all they like, but until such time as they own up to that and work with people in local government to rectify the systems and build on local intelligence, we are not going to be able to make any of this work.

The fourth problem is that immunity from parliamentary scrutiny has clearly enabled the Government to do something that has been quite counterproductive: to pay no attention whatever to the communications strategy for what they want to do. Time and again they have announced at the last minute to professionals what they are expected to do within hours rather than days. I can tell the Minister that in Oldham, hours before the beginning of Eid, it was announced that two families from separate households could not meet in a garden but it was still all right to go to the pub. That went down very badly with everyone in Oldham because they understood entirely what its effect would be. I have to say, looking at some of the other public announcements since, it is clear that people in central government have yet to understand what people in the streets understand: that they are making this up as they go along.

The noble Baroness, Lady Jones, rightly pointed us to the really important matter: the Act has to be reviewed by the end of this month. We have a backlog of regulations that are every bit as ineffective as these are. I do not think that in all conscience this Parliament can let the Government hide as they did behind the emergency nature of the virus outbreak six months ago. The Government have to start telling us now how they intend to revise the legislation, who they intend to involve in consultation and, above all, how they will be led by local professionals who understand what is happening in their communities, so that not only do we get something that is effective but we get ourselves back on the right side of human rights and public responsibilities.

3.08 pm

Baroness Thornton (Lab): I agree with everything that the noble Baroness, Lady Barker, has just said. We shall get to that point by the end of this month. I congratulate the Minister on the marathon session that he has done today. I have just agreed to almost three days this month of statutory instrument conversations like the ones that we are going to have today about things that have already been enacted. They all have to be done by 25 September, so for two Fridays and a Thursday the Minister and I and many noble Lords here will be in the Chamber having similar conversations. The time has come when we actually need to review the whole process. I say that for a number of reasons.

The Minister has said a few things today that I completely agree with; for example, he says that the population are getting a bit exhausted, that we definitely have a second wave coming and that there are things that we therefore need to think seriously about. The Minister has also said that we now know a great deal more about Covid, what happens and how to deal with outbreaks than we did at the beginning of March. When you put all those things together, it should say to us that we do not need the urgent legislation on the statute book that we agreed back in March. It needs to be reviewed. There is now time to plan for the next wave if it is going to happen. There is time to have discussions in Parliament about what needs to be done, what local authorities should be doing, what resources are needed, how the NHS can function and

continue cancer and other treatments at the same time as manage a Covid outbreak. We have time to do that. It is about time to ask the Minister to say to the Government that we need to end the emergency legislation. We need to review it and we need to stop it. We now need proper scrutiny of the regulations that we are discussing today.

These regulations should have been debated two months ago. I put on the record again that this process needs to be reviewed as a matter of urgency. If we are to believe the Minister and his colleagues about testing and tracing, the readiness of the NHS, the scientific basis for local lockdowns, the strengthening of local public health efforts, and the greater understanding of the virus, we do not need emergency legislation to facilitate and to avoid a national lockdown. The question that the Minister needs to answer is: when will we see a proper review and revoking of these powers instead of just rolling forward, with Parliament unable to play its part in the legitimate scrutiny of this legislation?

Another legitimate concern which the Minister has heard from several parts of the House is that this piece of legislation can be used to stop legitimate political activity. Can the Minister say whether the legislation has indeed been used to stop legitimate political protest, which this country prides itself on allowing to happen, even in its most bonkers forms?

The noble Baroness, Lady Bull, and others raised important questions about the equality issues raised by this legislation. I would like the Minister to address those questions.

Can the Minister expand on the criteria for serious and imminent threats to public health and the necessary precautions? According to the Local Government Association, local authorities are unsure of the circumstances in which they can use these powers and the threshold for meeting these two tests. For example, many councils have been grappling with the lack of social distancing in venues, including licensed premises, such as pubs, but found that a small minority ignored the requirements to ensure social distancing altogether.

Where areas are on the Government's watchlist, and there is a clear imminent public health ground to take action, councils feel confident in taking enforcement action under the regulations. However, where there is not a known spike of Covid cases locally, councils have advised that they are less certain about whether they can take enforcement action under the regulations to prevent a local outbreak. Does the Minister believe that a lack of social distancing in itself constitutes a serious and imminent threat to public health?

Hesitancy is not helpful in the fight against Covid-19. The clarity for which we have been calling for months remains a priority. I think that these regulations give a Secretary of State the power to require a local authority to make or revoke a direction after consulting with the CMO or deputy CMO. Can the Minister advise whether the Secretary of State has given any such directions and, if so, where has he done that? Can he confirm whether the CMO or deputy CMO were consulted and whether their responses were shared with the appropriate authority?

I would be grateful if the Minister could explain how this particular set of regulations interacts with the Government's guidance on other legislative regimes. However, basically, the Government need to take a thorough look at the appropriateness of these regulations and the way in which they are carried out.

3.15 pm

Lord Bethell (Con): My Lords, I thank everyone involved for this important debate. The restrictions that we have debated today are incredibly necessary and do, in fact, answer many of the points that have been raised in this Chamber about the way in which the Government are going about their fight against Covid, and in particular, about the interaction between central government and local authorities. Empowering local authorities to protect the people in their areas from this terrible virus is the exact reason for these regulations. I would like to pay tribute to those local authorities which are working so closely with government and bringing about important impacts in their areas that close down outbreaks that we never hear about.

I will focus on individual answers to questions, and then wrap up. I reassure the noble Lord, Lord Hunt, that all decisions by local action committees are based on the latest data and advice from experts, including the CMO in consultation with local authorities. That interaction between central government and local authorities has come a huge way since we last spoke in this Chamber and a huge investment has taken place during the summer in building those relationships and getting the data moving between the two. It works nine times out of 10 without any impact on the headlines whatever, and those relationships are being forged extremely closely.

The noble Baroness, Lady Jolly, asked about fixed penalty notices. I reassure her that under Regulation 3 no fixed penalty notices have been issued. I think that is a tribute to the way in which the police have gone about marshalling these restrictions, which, despite the comments of some noble Lords, has been extremely responsible, light-touch and has relied on encouragement wherever possible.

I very much welcome my noble friend Lord Lansley's comments on the collaborative work between government and local authorities. We are extremely committed to local-led leadership in the fight against Covid. In answer to his question, we are investing massively in systems, data, personnel and the culture of collaboration in that relationship between central and local government.

I completely agree with the noble Lord, Lord McCrea, that the virus hits different people in different ways. When I speak to my counterparts in other countries, what is amazing to me is the reassurance I get that many of the challenges they face are the same, but also how the disease hits different people in different ways.

I remind the noble Lord, Lord Hunt, that some of his comparisons between the regulations before us today and the regulations envisaged in the Medicines and Medical Devices Bill are completely different and an unfair comparison. What we have before us today is emergency regulation in the face of an unexpected, unprecedented and horrible epidemic. It was passed quickly to fight a virus that is killing tens of thousands of people. The regulations anticipated for the Medicines and Medical Devices Bill will be highly considered,

[Lord Bethell]
highly consultative and under the affirmative action in most cases. It is very important to get that comparison right.

I make a special note on the comments of the noble Lord, Lord Scriven, many of which were echoed by the noble Baroness, Lady Barker. I completely pay tribute to the noble Lord, who is absolutely an advocate for local decision-making and enhanced powers for local authorities. I remember well his interventions during the passage of the Coronavirus Bill and his draft amendment. The processes and resources that we are looking at today, at the beginning of September, for local intervention by local authorities, are completely different from what they were in March. We have made a massive investment of time, money, people, technology and systems to beef up those resources. Today, local authorities, local infection teams and directors of public health are being as effective as they are—and they are being effective—because we have worked so hard to build those resources. If it was not for that work, the impact would not be felt. While I completely pay tribute to the vision and accurate analysis by the noble Lord, Lord Scriven, and others on this point, the truth is that if we had taken that approach in March it would not have worked. But we are building those systems today, and I pay tribute to those involved who have taken it so far.

Also in response to the noble Lord, Lord Scriven, I pay tribute to the hard work that went into these regulations. They are characterised as having arrived here unexpected and unscrutinised. That is not true in this case. These regulations were hammered out in conversations between government, local authorities and DPHs in response to the needs and requirements of those local authorities and directors of public health. They were in response to the political call of those in this Chamber and elsewhere. They were not unexpected or rushed; they were the subject of extensive consultation. On their quality, I remark that no one has particularly questioned the regulations themselves. Their quality is first class; they are completely fit for purpose, and I am extremely grateful to those involved in the drafting of these regulations, which have already proved to be extremely effective and have had a huge impact.

On the comments of my noble friend Lord McColl, I am afraid that I could not hear them all, but I believe that they were a sobering reminder that, as a country, we have not tackled the challenge of obesity, which has correlated the impact of coronavirus in this country. The Government take that extremely seriously. It starts at the top with the Prime Minister and his own personal experience and goes through the announcement in July of our obesity strategy, which we debated in this Chamber yesterday. It is a long-term commitment of the Prime Minister and Secretary of State for Health to address the matter properly.

In response to the question from the noble Earl, Lord Clancarty, yes, you can get a test wherever you live, but typically it costs around £100. That is why we are working on dramatically reducing their cost, so that we can introduce the sort of mass surveillance that he discussed.

In response to my noble friend Lady Wheatcroft, I completely welcome U-turns when the evidence changes. We need to balance between national and local resources and decision-making and analysis.

In response to the noble Baroness, Lady Crawley, I am very sad about the disproportionate effect on BAME. We are studying it extensively to try to understand it properly.

I completely and utterly reject the characterisation by my noble friend Lord Naseby of the Department for Digital, Culture, Media and Sport, which has been extremely active in this space. It is deeply engaged with cricket. The second wave has already hit France and Spain hard and it seems unlikely to avoid Lords cricket ground for any cultural superiority reasons.

In response to the noble Baroness, Lady McIntosh—gosh, I am running out of time here—we are offering the flu jab to 30 million people, and plans are in place to extend it to 50 million to 64 million people.

I have massively misjudged my timing on this, and there are a large number of questions that I would have liked to answer, but I have got it completely wrong. My key points are that a second wave is already reaching across Europe. If you go to Marseille or Barcelona, or, if you are in America, you go to Florida, you will see that the rise in prevalence leads to a rise in hospitalisations as night follows day. We have to be prepared for winter. The days are already shorter, and the schools are back. It is only 113 days to Christmas. We have put into place during this summer important preparations for the winter, and these regulations are an important part of it. They meet the challenge of getting central government to work closely with local authorities. They are very good regulations and answer many of the challenges that I have heard here in this Chamber. For that reason, I commend these regulations to the House.

Motion agreed.

3.25 pm

Sitting suspended.

Arrangement of Business

Announcement

3.45 pm

The Deputy Speaker (Baroness Henig) (Lab): My Lords, the Hybrid Sitting of the House will now resume. Some Members are here in the Chamber, respecting social distancing and others are participating virtually, but all Members are treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House. We now come to the Motion in the name of the noble Lord, Lord True. The time limit is one hour.

Representation of the People (Electoral Registers Publication Date) Regulations 2020

Motion to Approve

3.46 pm

Moved by ***Lord True***

That the draft Regulations laid before the House on 15 June be approved.

Relevant document: 20th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, on 9 June I announced to the House that, in the light of the Covid-19 pandemic, the Government intended to bring forward legislation to delay the deadline for publication of this year's revised parliamentary and English local government registers by two months, from 1 December 2020 to 1 February 2021. As we all know, the electoral registers are lists compiled by electoral registration officers—EROs, in the jargon—of people in their areas who are registered to vote. EROs are appointed by local authorities across Britain and each holds two registers: a local government register for local polls and a parliamentary register for national polls, primarily parliamentary general and by-elections. Both registers are also used as an information source for credit reference agencies and in jury summons.

The annual canvass is an information-gathering exercise which ordinarily runs for five months, from 1 July to 1 December, and which EROs are obliged to conduct each year to ensure that their electoral registers are as complete and accurate as possible. The information gathered during the canvass is used to identify both electors who should be deleted from the registers, for reasons such as death, ineligibility or moving address, and eligible electors who are not on the register and therefore to whom invitations to register, or ITRs, should be sent. The ITRs are a separate form from the canvass and may be completed throughout the year, either digitally or in hard copy. The revised register is then published by EROs on or before 1 December, except when an election is held in an ERO's area during the canvass period, in which case it is automatically delayed until the following 1 February.

This legislation would allow EROs an additional two months in which to conduct their vital work, if they require it, due to the challenges caused by Covid-19. For instance, in addition to the challenges all have faced, the members of electoral services teams in many local authorities have had to contend with reallocation to focus on providing other essential services in local communities. At present, however, EROs in England, Scotland and Wales remain legally obliged to publish the revised electoral register by 1 December 2020, or they will be potentially liable for prosecution for failure to conduct their statutory duties under the Representation of the People Act 1983.

As noble Lords will remember, we brought forward secondary legislation last autumn to make much-needed reforms to the annual canvass process, which were widely welcomed. The most significant change is a new data-matching step at the outset, informing the ERO which households are likely to remain unchanged. This allows the canvass to move away from the cumbersome, one-size-fits-all, paper-based system to a modern and adaptable model in which EROs are now able to use e-communication and phone calls to communicate with electors, as well as being able to continue to use hard copy where appropriate.

Thanks to those reforms, we have reduced the number of people who will need to respond to EROs at all; introduced digital contact methods in place of paper forms, reducing the amount of paper to be manually processed; and introduced the option to use phone contacts where possible, in place of door-knocking. This year's annual canvass will allow EROs to conduct safer and more responsive canvasses than ever before. None the less, the canvass will still involve large amounts of paper responses and, where phone calls are impossible, door-knocking where a household has not responded to previous attempts to contact them. The in-person contacts and paper elements of the canvass still play a vital role in ensuring the completeness and accuracy of our electoral registers, as they allow those for whom local authorities do not hold phone or digital contact details to be canvassed.

In spite of the impact of Covid-19, the 2020 annual canvass under the reformed system is successfully and safely under way in local authorities across the country; I thank all those involved. The rollout of the national data-matching service successfully matched the records in all local authorities and valuation joint boards across Great Britain, amounting to over 48 million electors, an impressive feat considering the current disruption. This work has been undertaken with full compliance with all data protection regulations and while safeguarding the data of all citizens.

Before bringing forward this legislation, the Government engaged with the electoral services community to consider a range of options to support EROs. One of the alternative options raised was cancelling this year's canvass and removing the in-person contact requirement—the door knocking. However, the canvass plays a vital role in ensuring the completeness and accuracy of registers on which elections are based. This includes those elections currently due to take place in May 2021, because of the deferment of elections. By cancelling the canvass, we would risk disfranchising voters who had recently reached voting age, moved house, or for some other reason should be added to the register. This would, of course, be unacceptable.

The other option, removing the in-person canvass requirement, has been proved unnecessary due to progress in the response to Covid-19 and the success so far in controlling its spread. Much of society has reopened and we have adapted to the new necessities of Covid-secure working, as we see around us every day. The extension of the publication date, in concert with clear and carefully considered public health guidance for canvassers, will allow EROs to undertake the canvass in full compliance with all Covid-secure requirements.

The Electoral Commission has, in close co-operation with the public health agencies in each of the three nations, already issued guidance to EROs on carrying out a Covid-secure canvass, and my officials are monitoring the situation to provide further non-legislative support as needed. These measures will, together, allow EROs the flexibility to respond to local needs while complying with the prevailing public health guidance. Not only would removing the personal canvass therefore be unnecessary to protect public health, and might risk undermining the quality of the register, it would be legally extremely difficult due to the statutory requirement to consult with the Electoral Commission for three months on any changes to the conduct of the canvass. Having considered the various options, we

[LORD TRUE]
are bringing forward this legislation to allow EROs additional time to complete the canvass. However, they would still be able to publish before 1 February 2021 if they chose to, in line with current legislation.

The Government have consulted widely across the sector, including with the Electoral Commission, the Association of Electoral Administrators, the Scottish Assessors Association, the LGA—I declare an interest as vice-president of that association—and the Society of Local Authority Chief Executives, all of which have expressed their support for this measure. I thank my counterparts in Scotland and Wales, and their Governments, for their proactive and positive engagement on this issue. They have brought forward complementary legislation in their respective legislatures.

This legislation will provide the flexibility that EROs need to run a Covid-secure canvass, while safeguarding the completeness and accuracy of electoral registers. I hope and believe that these regulations are uncontentious and technical. They have the support of all major electoral stakeholders, of the Welsh and Scottish Governments and, I venture to hope, of your Lordships' House. I beg to move.

3.55 pm

Lord Adonis (Lab) [V]: My Lords, I commend the Minister both for the extremely fluent manner in which he introduced this legislation and for its sensible and proportionate content. He invited the House to support it and I doubt that there will be any dissent. It is important that we give the Government credit when they do a good job, because we are always critical when they do not. The way that the consultation on these regulations was conducted, with the devolved authorities, local authorities, electoral administrators and so on, has been almost a model of its kind. The conclusion which the Government drew—to have a short delay in the permissible period for the publication of the register but not to cancel the canvass, which would have potentially led to large numbers of people being disfranchised, as the Minister said—was the right outcome and the response to a well-conducted consultation.

Since the Minister is inviting the House to agree to these arrangements for electoral registration, I will raise a wider issue. One thing that is seriously wrong with our system of electoral registration at the moment, which goes back to the introduction of individual registration, is the way that we deal with people who live in institutions. The two largest groups of those are students in higher education and people who live in care institutions—who have been much in our mind in respect of Covid. Right back to 2015, when individual registration was introduced, electoral administrators and others have been seriously worried about the underregistration of people in institutions, who often move in and out in quite short order. They are often not aware of the fact that they are not registered and there is now no system for automatic registration as there was before. The Minister has introduced these regulations in such a reasonable way. May I invite him to at least agree to look at this further? It is obviously not going to make any change for this year, because it would require legislation, but there would be widespread support for a system allowing EROs automatically to register those in institutions. This could lead to a justifiable improvement in the way that the register works.

It was notable that the report on registrations for last December's general election by the Office for National Statistics showed a very large increase in registrations in the run-up to the election. Total registration increased by 2.8% between December 2018 and December 2019, to its highest level ever. That is a welcome reflection of engagement in the democratic process, but it is also a commentary on how inaccurate the register was at the start of that period. If it were possible to get an automatically more accurate register, not only through the improvements such as data matching that the Minister rightly noted, but also by means of automatic registration of those in institutions, this would be a welcome advance.

4 pm

Lord Wallace of Saltaire (LD) [V]: My Lords, it matters enormously to English democracy to get the 2021 local elections right, after cancelling the local elections this year. Delaying the date for completing and publishing the electoral registers from December to February 2021 is therefore entirely justifiable. I therefore support this statutory instrument, but I have a number of questions for the Minister on how electoral registration will be improved further.

I note the references in the guidance notes for electoral registration officers to local and national data matching with other local authority datasets and the DWP dataset on national insurance. How does this evolution of data matching fit in with the ambitious proposals that we have just heard about to establish online identity verification throughout the UK, a project that we know is close to Dominic Cummings' heart? Does the Cabinet Office intend to integrate data matching for electoral registers with identity verification for other purposes beyond the DWP? Will it report to Parliament on how this will be carried forward, and what safeguards against errors will be built in? We know from the controversies over AI that errors can easily be built into such activities.

The more suspicious among us sometimes suspect that Conservatives are more concerned to keep doubtful names off the register than to make sure that every citizen is registered. All democrats ought to be worried that our electoral registers remain incomplete, as the noble Lord, Lord Adonis, just pointed out, and that citizens at the margin, in poverty or out of work are most likely to be left off. The references to data matching that I read in the guidance implied that it would be used to remove names from the register, but not to add any of those missing. Are the Government considering moving, in good time, towards automatic voter registration for all citizens, which the move to digital government, at both national and local level, should make possible? If not, will the Minister commit to raising this issue within government as one that the digital enthusiasts around Mr Cummings should include in their plans?

I welcome the debate on this SI in the Chamber. The House must anticipate a flood of SIs this autumn, as the Government struggle to catch up with the legislation needed to complete our break from the

European Union. Will the Minister and the Government Front Bench also note that Members will expect to be able to scrutinise and approve these SIs, not to face ministerial attempts to cram them through in large batches. The Brexit campaign promised to restore parliamentary sovereignty. Our current Prime Minister wants instead to restore executive prerogatives. We will resist his efforts.

The Deputy Speaker (Lord Bates) (Con): The noble Lord, Lord Mackay of Clashfern, is not here. I call the next speaker.

4.02 pm

Lord Mann (Non-Afl): My Lords, like other noble Lords, I welcome this sensible proposal from government. I am sure it will have unanimity, because of its common sense. I have a few questions, even suggestions, to government to facilitate the process over the next few months.

I remain concerned about the situation for registration in care homes. I may be out of date, but I understand that managers of care homes are able to register those living in care homes and submit that to an ERO. I want to confirm that that remains the case, because the last thing we want is any requirement for visits from any council official into a care home to ensure that perhaps 50 or 60 people, some of whom would both be capable and want to participate in an election, are able to be registered. That is an important clarification. Perhaps further guidance is needed for local authorities on dealing with care homes in the current situation.

If, during January, any local authority area is hit by an ongoing lockdown, as recently with Leicester, and their staff are therefore unable to access work fully or even at all, will there be any discretion in relation to the 1 February deadline because of that longer localised lockdown? Has that been considered by government?

Perhaps most important in the current situation, where we all want to encourage the maximum economic enterprise, is the situation with young people, not least those in universities but also in school sixth forms and further education colleges. There is a danger that there will be underregistration. There has tended to be among such groups, particularly those in further education. As the Government have identified, credit reference agencies use the electoral register as a basis for credit referencing. Any young person eligible to go on the register, as they are at 17 or 18 years old, who fails to will have more expensive credit in the future, be it for a car loan, a credit card or mortgage offers. It directly impacts on their economic viability and prosperity in the immediate future. Very few realise that. I wonder whether a guidance note for local authorities and FE colleges could be given by government to assist that process.

4.05 pm

Lord Rennard (LD): My Lords, I concur with the generous opening remarks of the noble Lord, Lord Adonis, but I have questions that need to be asked about the Government's approach to these issues. First, does the Minister accept what is set out in the 2014 legislation, which maintains the principle that it is a legal requirement to co-operate with the electoral registration process? It is a serious legal requirement, because failure to co-operate can result in a £1,000 fine. A fine may very rarely be imposed, but the mention of it on registration forms improves the rate of response. Will the Cabinet Office therefore work with the Electoral Commission and electoral registration officers to ensure that the best practice of highlighting the legal requirement and the possibility of a £1,000 fine is prominent on all the relevant forms? This should not be a matter for more than 400 electoral registration officers to determine individually.

Does the Minister also accept that Parliament determined that individuals who do not co-operate with later stages of the registration process can be subject to a civil penalty? Again, the frequency with which such penalties are imposed is not relevant; prominent reference to the possibility of such penalties can only assist the process of making the registers more complete.

Will the Minister look again at some of the problems associated with people seeking to register themselves, unaware of whether they are already registered? Many of them waste time applying, as they are already registered. They also waste the valuable time of electoral registration officers. Will he look again at models, such as those in Australia and New Zealand, where people can easily check online whether they are already registered?

Fundamentally, will the Minister accept that the right to vote should not be based on opting in, any more than people have to opt in to the right to receive medical attention, the support of the police, or other emergency services when necessary. The right to vote depends upon being included in the electoral registers. As the Electoral Commission's market research has shown, most people wrongly assume that they are automatically included in these registers. That must be a big reason why so many of them do not return the registration forms and are therefore not able to vote, unless they realise that they must act in time to get registered.

According to the Electoral Commission, some 9 million people may be missing from the electoral registers or are not correctly included on them. This seriously distorts calculations for drawing up constituency boundaries. Finally, I ask the Minister if he has considered yet the excellent report of the House's Select Committee, which looked at the working of the 2014 electoral registration legislation and sensibly concluded that we now need a system of automatic voter registration.

4.09 pm

Lord Patten (Con): My Lords, my noble friend Lord True spoke of Covid-secure working. It is very good to see him on the Bench today and so many Members speaking in the Chamber. That has been a characteristic of the Order Paper today, with far more Peers here and speaking. It is an important symbol to the country at large as we encourage people to get back to work. Going on the Underground this week to my own office and coming back to your Lordships' House to take part in this debate, I have seen how good it is for people to get together again. The more we have Covid-secure working, the better—whether in electoral calculations or in any other way.

[Lord Patten]

That said, I intend to concentrate my remarks on two areas aimed particularly at parliamentary rather than local government registration. First, people changing constituencies, as is going to happen, and seeing them carved up and redistributed is always disturbing for the Members of Parliament involved. About 20% or 21% of your Lordships—about 170 in number—have been Members of Parliament before and have been through this turmoil. I went through it once in my life. It was disturbing in some ways but reassuring when I suddenly found I had my noble friend Lord Hayward's family as my new constituents. They seemed to put up with the situation pretty well as time went on.

None of us knows what will happen in the next few months, and I think we need reassurances. My noble friend the Minister took us through the new forms of electoral registration—online, telephoning, less knocking on the doors and all the rest of it—which cause problems, of course. If any other Covid-19 problems suddenly occur, we must not give way to again delaying this process, because we must have the parliamentary redistribution ready by 2023. It is easy for me to say that, but the fog of pandemic seems more all-enveloping and all-confusing than the fog of war ever was. I do not know what will happen, but I look for reassurances that we are going to get on with the task, which hard-working EROs and their teams, working in a Covid-secure way, are doing.

My second point is that security is very important. As I just said, my noble friend took us through the different ways in which potential electors are being approached—telephones and all the rest of it. It is quite clear that the next general election, whenever that is, will be beset by accusations that people are trying to interfere with the elections themselves, whether they are foreign actors, hackers or whoever else. The last thing we want is to see the veracity and truthfulness of the electoral registers undermined in any way with accusations that they were improperly collected. Mercifully, as far as I heard in the list of changes my noble friend read, algorithms were not introduced at all as something that might come along down the track. We should be grateful for that. I urge the Government and EROs nationally to do all they possibly can to ensure that no security breaches happen in any way at all and that security is maintained.

4.13 pm

Lord Hayward (Con): My Lords, I first thank my noble friend Lord Patten for his kind comments about my family. From the elections he fought, he will have noticed that the fields and farms voted very heavily indeed for him. I also thank the noble Baroness, Lady Bennett, for giving me due notice that she is unable to be present this afternoon and that therefore the order has been changed.

There is general agreement that these regulations are necessary, and I will not touch on that further because I share that view. I will raise just one or two points. I particularly welcome my noble friend's comment, in his introduction of these regulations, that the AEA has been consulted. The committee to which the noble Lord, Lord Rennard, referred was regularly overwhelmingly impressed by the effort the EROs put in as we legislators impose more and more elections on them with more regularity. They had such a positive, can-do attitude and no doubt are approaching these regulations in exactly the same way. I am under the impression from the introduction that this is providing general flexibility and building on a basis of flexibility for the system to ensure that we can adequately cope with the circumstances we face under Covid.

I will touch on two other points. First, for the record I ask my noble friend to identify the reasons why Northern Ireland is not included in these regulations. As I understand it, it is because it operates a different system, but it is worth identifying that it does not do an annual canvass.

Secondly, in the Explanatory Memorandum there is a reference to EROs and, on page 3, the

"lack of access to specialist software and printed correspondence".

I am somewhat confused by the persistent reference to the absence of adequate software. IT programmes have been in existence for rather a long time. We heard this the other day in the committee at the other end of this building on the parliamentary constituency boundaries, and I am really not sure why the software was not available. I am beginning to wonder why that is so regularly the case.

In conclusion, I pick up on one thing the noble Lord, Lord Rennard, said. He cited Australia and New Zealand. In fact, Ireland operates exactly the same system. Our committee heard evidence from the Cabinet Office that the cost was exorbitant. Not only does it seem to me that software packages in EROs' offices are inadequate, but I encourage the Cabinet Office to look more seriously at the costings it has been given for some of these alternative programmes.

4.16 pm

Lord Tyler (LD) [V]: My Lords, shortly I will have some welcoming comments to add to the substantial points made by my noble friends Lord Wallace of Saltaire and Lord Rennard and other Members of your Lordships' House, but first I register a double disappointment with the Minister's introduction to this short debate. It was an obvious opportunity for him to give the Government's outline response to the formidable report of the Select Committee on the Electoral Registration and Administration Act 2013, published shortly before the recess, if only to indicate the likely timing for a fuller response. Other noble Lords have referred to that excellent report. Its key recommendation for the Government was that they must ensure that they treat improving accuracy and completeness as a major priority in future reforms to electoral registration and administration. Clearly, this SI forms part of that exercise.

As we have heard from colleagues on all sides, the date for revised registers to be published can have a long-term impact on their value. However, a more substantial issue that lies behind these discussions is the central priority objective of seeking to ensure that the absolute maximum of eligible fellow citizens are on that register. It would have been encouraging to hear the Minister reiterate the Government's clear commitment to that effect.

My second disappointment relates to the Minister's failure to make an unequivocal statement of support for the Electoral Commission. It is a statutory consultee for this SI under the Political Parties, Elections and Referendums Act 2000. He will have seen, as we all have, an extraordinary attack on the commission last weekend by Amanda Milling, who is apparently something in the Conservative Party hierarchy. She was widely reported as accusing the commission of being "accountable to no one". Whatever her position there, she surely has only a very limited grasp of the fundamentals of the UK constitution and particularly of the role of Parliament.

The Electoral Commission is a statutory regulator for our democracy whose independence and integrity are recognised worldwide. It is not accountable to the Government, let alone any political party, but it is accountable to Parliament. For Miss Milling to seek to undermine its authority in this way, with or without No. 10 approval, is surely outrageous. Why is she, presumably with her party colleagues, so scared of the commission undertaking the role it has been given by Parliament? For her to suggest that some of the commission's investigatory responsibilities should be handed over to local police forces is plainly ridiculous and will rightly be condemned by her own party's MPs and candidates. I hope and trust that the Minister will take the opportunity in this debate to disassociate the Government from this idiotic attack on the commission.

I cannot emphasise strongly enough the importance of a comprehensive electoral register for the credibility of, and public respect for, all levels of elections in this country. Since, as we now know, May 2021 will see an unprecedented number and range of elections as a result of the Covid-19 postponement, this is especially topical and relevant in the months leading up to them, as my noble friend Lord Wallace reminded the House. Therefore, I echo the concerns expressed on all sides of the House and, to be brief, I will not repeat them all.

In particular, I hope the Minister will be able to answer in detail the relevant questions posed by my noble friends Lord Wallace and Lord Rennard and by other Members, if not today, then in a written response to all participating in this debate.

I was glad that the noble Lord, Lord Hayward, referred to Northern Ireland because I, too, do not fully understand exactly why it is not taken as read that it has an improved system for assuring that young attainers are registered. Surely, if it is a better system, we should be looking at it more carefully to see whether it could be more relevant on this side of the Irish Sea.

I also want to reinforce what was just said by the noble Lord, Lord Patten, about the effect on constituency boundaries, with which we will, of course, be very much concerned in your Lordships' House in the coming weeks.

The key question for the Minister is that, surely, it must be important for the Government to have a clear picture—an updated estimate—of the number of eligible citizens not currently registered to vote. That is the bedrock of our parliamentary and local democracy, and it needs urgent attention.

4.21 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, first, I draw the attention of the House to my relevant interest as a vice-president of the Local Government Association. I thank the noble Lord, Lord True, for introducing the regulations and setting out for the House the reasons for their introduction. I support the regulations as they stand; they give EROs two additional months before they must publish the new electoral register for the area they are responsible for. I have a few questions and some observations to make.

One of the problems, referred to by a number of noble Lords, is underregistration in the United Kingdom. One of my concerns is that the pandemic will have made matters worse. There is nothing in this proposal that addresses that situation, other than extending the period by two months. I concur very much with the comments of my noble friend Lord Adonis when he referred to the problem of underregistration, as many other noble Lords have done. The noble Lord, Lord Wallace of Saltaire, also pointed out that it is often people on the margins of society who find themselves excluded and left off the register.

As many noble Lords, including my noble friend Lord Mann, said, this particularly affects not only people's right to express their view and support a party, or whoever, at an election but also their ability to confirm their identity, particularly in terms of their credit rating. If you are not registered to vote, it has huge implications for that and we really need to make sure that people, particularly young people, fully understand the consequences for them on this issue.

The noble Lord, Lord True, is vastly experienced in local government and led a London borough for many years. I am sure he appreciates the difficulties that many local authorities face at present. A vast array of duties and burdens is placed on local government, but there also must be an adequate level of resource to fulfil those obligations. Paragraph 7.3 of the Explanatory Memorandum refers to the difficulties caused by the redeployment of staff to other duties in some cases, the inability to carry out some functions at home, and the lack of specialist software and printed correspondence, referred to by the noble Lord, Lord Hayward. However, other than extending by two months, we have not addressed those issues at all because this is not a normal year—this is not an election year—so what are we going to do beyond that?

It was good to hear from the noble Lord that there has been consultation with the wider electoral community. When I looked through the Explanatory Notes, that was not very clear. There was a reference to the Electoral Commission, but it is good to hear that the Government have consulted it, and I thank them very much for that. The Electoral Commission has a very important role. It expresses a view, collects data from the EROs, publishes data, develops standards and comes up with proposals, but it does not do the work on the ground. It is the EROs who do this and it is very important that they are consulted, so I was pleased to hear that we have done that.

I agree with the noble Lord, Lord Patten, about the security of the ballot. This is vital and it must be the Government's most important job to ensure that

[Lord Kennedy of Southwark]
the elections next year, and in future, are free and fair. We cannot go on with any suggestion that elections are being manipulated. However, it goes beyond the register. The Government have a serious job to look at the activities of foreign states—and what it is alleged that they did or did not do—and the failure of some companies that have their platforms abused by all sorts of people but do nothing about it. It is vital that the Government get a grip on this issue; we have to be confident that our elections are free and fair and that the people elected are legitimate. It is important to ensure that we do this.

However, there is no reference to consultation with political parties in the Explanatory Memorandum, which says, at paragraph 12, that for businesses, voluntary groups and everybody else the impact is minimal. I think political parties are voluntary groups and the Cabinet Office meets with political parties at the political parties panel. They usually meet on the same day that the parties meet the Electoral Commission, but it is an entirely separate meeting. This should have been brought up there because I think that the impact will not be minimal for all parties and this has not been recognised, which is regrettable.

The elections will take place in May 2021. The register will be published two months later and you then have less time to get the data on to the computer systems to run elections. Parties are a vital part of the political process in this country, so they should have been recognised there. If, as a political party, you are working from an incorrect register, you could knock on a door and find that the person behind it is not who you thought they would be. This is an issue; it is annoying and should be corrected.

Many noble Lords have made many other points and I cannot comment on them all, but I am sure the noble Lord will respond to them clearly today or, as has been suggested, we will get a round-robin letter. I look forward to the Minister's response.

4.27 pm

Lord True (Con): My Lords, I thank all those who have spoken with grace, in every sense of the word, for the kind reception to the regulations and the thoughtful contributions that have been made. Certainly, I will take up the point asked about by the noble Lords, Lord Tyler and Lord Kennedy. If I fail to answer any points in the time available, I will make sure that the House is informed.

The noble Lord, Lord Adonis, was the first to express his very understandable concern—which I and the Government share—about those who are hard to reach, including people in student accommodation and care homes. It is extremely important and the Government are concerned to make sure that the maximum number of people who should have the right to vote do have the right to vote.

I do not accept the implication of the remarks of the noble Lord, Lord Wallace of Saltaire, that there is a suspicion that the Government or the Conservatives wish to stop people registering in any way. That is entirely unfounded and I thought it a little aside from the general tone of the debate. Indeed, I explained to the House that the Government had declined to abandon the personal canvass—the door knocking—which was put forward as one of the things that we might do, because that is a way in which one can visit and get to people.

On automatic registration, which crept out in the remarks of the noble Lords, Lord Adonis, Lord Wallace, Lord Rennard, and others, I know that an amendment has been tabled for the discussions we will shortly have on the Parliamentary Constituencies Bill, when there will be more time to explore this topic than there is now. Some argue that automatic registration negates the need for a canvass at all. However, automatic registration, in the eyes of some, goes against the fundamental principle of individual electoral registration —of individuals taking ownership of registering to vote. Significant practical issues would need to be overcome. For example, there was reference to data matching. No single dataset has been identified that would allow an ERO to establish all aspects of eligibility to register to vote, in particular nationality. The Government are therefore opposed to the creation of a new database containing personal identifiers that has national coverage. Such a database would clearly pose a significant risk to data security, to pick up on my noble friend Lord Patten's point.

My noble friend Lord Hayward raised Northern Ireland. He is right to say that the canvass in Northern Ireland is not an annual event like in Great Britain. Because of a different approach to voter identification it is undertaken only once every 10 years. That means that when the canvass takes place it is much more resource intensive than the annual canvass in the rest of the UK. Because of the very unique set of circumstances facing electoral staff in Northern Ireland, the Coronavirus Act delayed the canvass in Northern Ireland.

The noble Lord, Lord Kennedy, was kind to refer to my service in local government. I said in my opening remarks that one should at every opportunity express the profoundest thanks to the EROs and others engaged in this operation. They are the oil that makes democracy work.

The noble Lord, Lord Rennard, asked some questions about making people co-operate and the co-operation requirement. I agree that that is an important point. It is currently a legal requirement to include reference to a civil penalty on the ITR form and on the canvass form, but I think that the noble Lord was saying that that could be made more prominent. I will certainly take away that point. I accept that it should be on the form. I understand that it is in the form because co-operation is important.

We welcome the Select Committee report referred to by the noble Lord and my noble friend Lord Hayward. We will respond in due course.

I touched on canvass reform, which improves the way that EROs can canvass properties such as student accommodation and care homes. That has been welcomed by all across the electoral community. Officials are working to help facilitate relationships between EROs and care homes and student accommodation, which might include items such as better guidance. It is certainly extremely important that people in care homes

should have the right to vote. I used to enjoy canvassing the care home at the bottom of my road because I rarely went away without a piece of cake. I thought that this was the reverse of treating, until I was told that the other slice was being saved for the Lib Dem candidate. I noticed that it was slightly bigger than the one given to me. Everybody of every age must have access to the vote.

My noble friend Lord Patten referred to algorithms. I will not follow on that. I come from the age when we learned logarithms at school. It is a dangerous area to go into, but I assure him that security is very important. We do not wish for more electoral delay. Indeed, the boundary review will be made against the pre-Covid March 2020 register to avoid further delay.

I hate disappointing the noble Lord, Lord Tyler. He is such an agreeable Member of your Lordships' House and he constantly tells me that I disappoint him. I fear I might disappoint him again. He referred to the Electoral Commission. The Committee on Standards in Public Life is holding a review into the Electoral Commission. It is quite reasonable that political parties give their views on the topic. I do not think that it is an outrage. I am sure that Liberal Democrat Members will equally make comments and contributions to that review.

My noble friend Lord Hayward asked about flexibility. The purpose of this is very much flexibility. The Government do not expect everybody to now wait until 1 February 2021 if this can be done in the normal timescale, as it should. Some of that flexibility is to take account of the local lockdowns that the noble Lord, Lord Mann, referred to in his very interesting and informed remarks.

I hope that I have referred to most of the points that have been raised. If I have failed to do so I apologise to your Lordships here in person and I will repeat those apologies in the letter I will send to pick up any points that I failed to pick up in the debate.

I reiterate my thanks to all those involved in the election process. I certainly commit the Government to the position that we want the maximum number of people to exercise their vote in this country and to have the access to do it. My goodness, the sacrifices and battles that people made across the generations to secure the right to vote for every citizen mean that it is vital that it should be enjoyed. I hope that this modest measure to improve the canvass will assist in that objective. I look forward to further and perhaps longer discussions—I hope not too long—shortly on the Parliamentary Constituencies Bill. Indeed, as I have said to the House before, the Government are considering many aspects of the electoral system. Over this Session we will have many opportunities to engage on these important issues. I leave informed and improved by the many contributions today. I have not agreed with all of them, but I have agreed with very many of them. I am extremely grateful to those noble Lords who took part.

Motion agreed.

4.37 pm

Sitting suspended.

Arrangement of Business

Announcement

5 pm

The Deputy Speaker (Baroness Henig) (Lab): My Lords, the Hybrid Sitting of the House will now resume. Some Members are here in the Chamber, respecting social distancing, and others are participating virtually, but all Members are treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

We now come to the Motion in the name of the noble Lord, Lord Greenhalgh. The time limit is one hour.

Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020

Motion to Approve

5.01 pm

Moved by ***Lord Greenhalgh***

That the draft Regulations laid before the House on 8 July be approved.

Relevant document: 23rd Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): The regulations were laid before this House on 8 July 2020. Their purpose is to prohibit the use of land as a residential mobile home site unless the local authority is satisfied that the owner, or manager, of the site is a fit and proper person to do so.

I begin with the background to these important regulations. The Government are committed to ensuring that everyone, including park home residents, has a safe, secure and affordable place to live. Park home sites make a valuable contribution to the housing sector. The majority of site owners in England provide a professional service to their residents, most of whom are elderly and many are among the most vulnerable people in our society. Sadly, their good work can be overshadowed by the minority of unscrupulous operators within the sector.

To address ongoing problems caused by such unscrupulous operators, the Government introduced the Mobile Homes Act 2013, which implemented a new local authority site licensing regime in England. In 2017, the Government carried out a review of the park homes legislation. The evidence indicated that the measures introduced under the 2013 Act had brought significant improvements to the sector. For example, site owners blocking residents from selling their homes had been eliminated and the pitch fee review process had become more open and transparent. However, the review demonstrated that some site owners continued to exploit financially and harass vulnerable residents. In some cases, residents were asked to pay £40,000 for a new long-term agreement to stay on a site, something that should have been given to them for free in the first place. In others, the use of variable

[Lord Greenhalgh]
service charges led to increases in pitch fees of about £1,000 a year. These practices are unacceptable. Unscrupulous site owners must not be allowed to extract ever more cash from those who may already be on fixed or low incomes, or to harass or intimidate them without any fear of being sanctioned. The case for change is compelling.

These regulations will level the playing field for the majority of good site owners and help drive up standards of management and conduct across the park homes sector. Site owners who manage their sites professionally need not be concerned about meeting the required standards, but the minority who continue to abuse and exploit residents will have to improve or make way for more professional people to manage the site.

The regulations will prohibit the use of land as a residential mobile home site unless the local authority is satisfied that the owner or manager of the site is a fit and proper person to do so. The site owner will be required to provide mandatory information, such as whether they have committed certain offences or breached certain legislation, to enable the local authority to assess the applicant's suitability to manage the site.

A range of other factors, such as the conduct of the applicant, may also affect an applicant's suitability. That is why these regulations give local authorities the discretion that they need to make informed and holistic decisions. The regulations will also require local authorities to establish and maintain an online register of people who they are satisfied are fit and proper to manage a site in their area. This will mean that existing residents, prospective purchasers and other local authorities will know who is managing each site and whether any conditions are attached to their entry on the register. Should any site owner fail to maintain high standards of conduct and management after they have been placed on the register, a local authority will be able to review their entry and either remove them, attach new conditions or vary an existing condition attached to that entry. If the local authority rejects an application or removes a person from the register, and the site owner is unable to find an alternative fit and proper manager, the local authority will be able to appoint a new manager, with consent from the site owner.

In recognition of the severity of abuses within the sector which these regulations will tackle, there will be serious penalties for site owners who do not comply. Conviction under any offences under these regulations could result in an unlimited fine. The regulations will also enable a local authority to revoke a site licence in certain circumstances.

Our local authorities are working hard to enforce standards in the park homes sector, so we are mindful of the risks of putting new burdens on them; that is why we have given them the power to charge application and annual fees to cover the cost of their work. The test will also be implemented in two stages. The first stage will run from when the regulations are made until 1 July 2021 to allow local authorities to prepare to receive and assess applications. The second stage will run from 1 July 2021 until 1 October 2021, by which time all existing site operators must have submitted an application to the local authority. In addition, we will publish detailed guidance to assist local authorities and site operators to understand their responsibilities under the new legislation.

These vital regulations form part of the comprehensive programme of work that we announced in 2018 to improve the sector and the lives of park home residents. They are necessary to drive up standards of management and conduct across the park homes sector and to ensure residents' rights are respected. I commend them to the House.

5.07 pm

Lord Berkeley (Lab) [V]: My Lords, I am very grateful to be able to take part in this debate. It is the first time I have spoken in a debate with the Minister and I congratulate him. These are very strong and tough regulations, which are clearly necessary. I commend the noble Lords, Lord Best and Lord Kirkhope, on the work that they have put in over the years in bringing all this to the Government's attention, and I commend the Government on bringing these regulations before the House.

From the Explanatory Memorandum, it is clear that there is a great deal of work for local authorities to do—and rightly so. It starts off with considering applications, in paragraph 7.8, and goes on to maintaining a register, in paragraph 7.10, and the monitoring that goes with it. Paragraph 7.13 talks about the ability to reject applications and, of course, requesting further information. I can see that local authorities will have a lot of work to do to get the information from the kind of people who may be covered by this regulation.

Of course, lots more information is needed. There is the ability to appeal to a First-tier Tribunal and there are three criminal offences. This is really good and important, but can the Minister give any idea of how much each application might cost if opposed? He said that local authorities would be able to charge to cover their costs, but is there going to be a limit to how much they can charge? I am really concerned about local authorities' ability to deal with this along with all the other work that they have been given at the moment. How much extra money, if any, has been given to them for this? I am sure that the Minister will say that the Government have given enormous amounts of funds to local authorities this year, but they have also given them a lot of extra work to do.

Finally, can the Minister give me some indication as to how many applications around the country are likely to be received in the first year or two and try to give us as much comfort as possible that local authorities will have the ability and resources to deal with them? These are important regulations, and I look forward to listening to some of the comments from the experts who are following me.

5.10 pm

Lord German (LD): My Lords, I strongly support these regulations, which are very important for the protection of vulnerable people living on mobile home sites. The need for these regulations, which ensure the safety of those living on mobile home sites, is illustrated by one of the most despicable cases in recent years: the 2013 discovery on a mobile home site in south Wales of two persons who had been enslaved for 13 years.

In September 2013, following a tip-off, police raided a site outside Newport and discovered human slavery at its worst. One of those rescued, Darrell Simester, who was originally from Kidderminster, published a book some three years later describing the 13 years of hell that he had endured as a slave. Darrell, who has autism, was first forced to work for 15 hours a day, without pay, in appalling conditions. He worked on a farm for two meals a day, and for 11 of the 13 years had to wash himself in a horse trough. For the final few years, he lived in a caravan in terrible conditions, wearing filthy clothes and losing some of his teeth. Thankfully, Darrell now lives independently with support, and the perpetrators have received long prison sentences.

This site was, however, listed by the local authority—certainly for most of the time Darrell was incarcerated there. That is why this legislation is so urgently needed: to give protection to vulnerable people like Darrell and to support those harassed by unscrupulous owners of sites.

I have some questions that I hope the Minister can answer. First, what reassurance does this legislation provide for close collaboration between the police and local authorities? In the case I referred to it was the police who received a tip-off and initiated action. This legislation places the responsibility on much-stretched local authorities. How will this important relationship between local authorities and the police be managed? I understand that some of it will be covered by DBS certificates.

My second, and not unrelated, question, is about the nature of "a fit and proper person". Schedule 3 lists the criteria for judging whether the site manager is fit and proper to do the job. Most importantly, the criteria on harassment need to be clarified, because they refer to whether the relevant person

"has harassed any person in, or in connection with, the carrying on of any business".

Does that mean a conviction for harassment, or would a recorded complaint of harassment be sufficient for the police?

In supporting these regulations, therefore, I hope that the Minister can answer those two questions.

5.13 pm

Lord Best (CB) [V]: My Lords, I had the privilege of taking the Mobile Homes Act 2013 through the House. It came to us as a Private Member's Bill from the other place, where it had been brilliantly championed and piloted through its legislative stages by my colleague Peter Aldous MP.

Then and subsequently, I visited a number of these residential park home sites and met the usually retired and sometimes vulnerable residents, the owners of these static caravans. In some cases, a happy community has become established and the management of the site is perfectly satisfactory. It has, however, been shocking to learn of the exploitation, harassment and intimidation at the hands of site owners—some with criminal records—who have acquired sites expressly to extract hefty pitch fees from the residents with threats of cutting off electricity and gas supplies, or, worse, to bully elderly residents into leaving so the site owner could make big profits when the mobile homes were sold.

At the time of the 2013 Act, we debated the issue of requiring managers of park home sites to be "fit and proper persons". Although the Act provided for such a requirement, it was hoped that the other measures in the legislation would be so successful in ending the bad behaviour of a minority of dreadful operators that this extra step would be unnecessary. The Act did indeed outlaw some dreadful abuses and has made a very real difference to the lives of many of the 180,000 people who occupy these homes. But sadly, as predicted at the time, appalling behaviour by a few site owners has persisted and the measure before us today—albeit a little slow in emerging, with its implementation coming eight years after the Act—is very necessary, as is agreed by the reputable site owners' trade body, the British Holiday & Park Homes Association.

The question in my mind is: will the fit and proper person test be adequately enforced? Will local authorities have the resources, skills and motivation to make this new requirement a reality? Will MHCLG accompany the new obligation before us today with the funds and central government support that can make it meaningful? Fees charged to the site owners seem likely to be no more than £250 to £500 for a five-year certification of fit and proper status. This is equivalent to £50 to £100 per site per annum, so a council with 10 park home sites —not untypical—could only count on £500 to £1,000 a year to ensure its officers were trained and equipped to apply and enforce the fit and proper person test, sometimes having to pursue some pretty slippery customers. So, in strongly supporting the regulation, I ask the noble Lord the Minister for some reassurance that local authorities will be funded and assisted to implement it.

5.17 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, it is a great pleasure to follow the noble Lord, Lord Best, who has unparalleled knowledge and experience in this area; we all owe him a massive debt for his work in this area. I thank my noble friend the Minister for setting out so lucidly this measure on mobile homes, which I very much welcome.

We know that there are many very effective site managers who provide a valuable service but, alas, there is a small minority who disregard the law and harass and exploit residents, as we have heard from the noble Lord, Lord Best, and indeed the noble Lord, Lord German, who gave a particularly graphic and appalling example. The Explanatory Memorandum published for these regulations confirms that failure to introduce this measure would result in many vulnerable and elderly residents

"continuing to suffer from poor and unprofessional behaviour".

I agree with that assessment, and I am very pleased that we are acting.

I have several questions for my noble friend the Minister, which I am sure he will be able to answer but, if he is not able to on this occasion, I am happy to receive a letter. The first relates to the "fit and proper person" and the local register. I am concerned that this register—indeed, not just the register but the background to it—should be something that can be shared with other local authorities and with other bodies and communities, such as the Gypsy and Traveller community.

[Lord Bourne of Aberystwyth]
In parentheses, I am very pleased to see that MHCLG has been engaging with the Gypsy and Traveller community, and I thank it for doing so.

It is important that we have communication and collaboration between different local authorities so that experience can be shared. I know from the Public Services Committee, on which I serve and which is looking at the aftermath of Covid, how important the ability to share data is. I know that, sometimes, there are bars to this and I wonder if the Minister can say anything about how we can cut through the general data protection regulation if it is providing an unnecessary impediment to collaboration. I also hope that the devolved Administrations are able to play a part and share their experience. All the devolved Administrations have separate laws, though parallel and similar in some respects, but it would be good to know that they can collaborate and communicate.

I also ask about Schedules 2 and 3 of the regulations, in so far as the impact on other bodies that are able to serve as managers—I think particularly of companies. I would welcome reassurance from the Minister that we are ensuring that those serving on the companies—directors and shadow directors—are not disqualified and not insolvent and that that information can be shared more widely too.

With that, I very much welcome this measure and thank the Minister for bringing it forward.

5.20 pm

Lord Campbell-Savours (Lab) [V]: My Lords, having been in dispute with the powers that be over the peremptory truncation of this debate, I shall simply place on record the comments of Ros Pritchard, who heads the British Holiday & Home Parks Association, the lead trade body. She wrote:

"We are concerned that the fit-and-proper scheme as proposed will not meet its objective as a deterrent to the worst site owners. We feel that the bureaucratic system will give official fit-and-proper endorsement to park owners already denounced as rogues. We provided evidence to the Government about fit-and-proper regimes introduced in Wales which led to not one application being refused under a tick-box approach. Sadly, this system has given an endorsement to some of the very park owners already denounced as rogues. We also provided evidence showing how powers provided to local authorities under the Mobile Homes Act 2013 were simply not used or used ineffectively. Councils have neither resources nor expertise to implement these essential powers. Their legal departments feel forced to adopt a cautious approach to mobile homes regulations. When faced with applications by rogue park owners with expert legal teams, they feel obliged to grant fit-and-proper endorsement to avoid expensive legal challenge. Where one authority approves, others who refuse will become more vulnerable to the legal challenges, thereby discouraging even more authorities from effective action. These regulations only require the manager to meet criteria about background. With the legal structure of the business easily arranged by rogue operators, many councils will lack both resources and expertise to question business practices. He who pays the piper will call the tune, despite the fit-and-proper status of appointed managers. Finally, why impose on local authorities a regime which unnecessarily only replicates the role of individual officers? Sadly, the only people that benefit on this system will be lawyers dealing with appeals following inconsistent decisions and not vulnerable homeowners who deserve the protection of effective licensing systems. We need government to ensure consistency, resource and expertise in tackling rogue park operators. These regs are not enough."

That note from Ros, edited by me, deserves a full response from Ministers: if not today, then I hope they will put it in writing.

5.23 pm

Lord Bhatia (Non-Afl) [V]: My Lords, these regulations are an important milestone of the Mobile Homes Act. The Government have carried out considerable consultation in two stages. It is right that proper scrutiny is carried out on the site owner and the site manager about their integrity and ability to operate the site professionally. They give the powers to local authorities to make a proper assessment of both the owner and the site manager so that there cannot be any criminals among the owners or the site managers before issuing a licence for a site.

The regulations also provide an appeal provision for the site owner and the site manager if their application is rejected by the local authority. If the owner or the manager breaches the conditions of the lease, there is an unlimited fine that can be imposed. A repeat of the offence could enable the local authority to withdraw or remove the manager or the owner. The most important aspect of these regulations is that they will protect residents who are elderly and vulnerable. Whatever government regulations are made must protect the residents.

There appears to be no provision for the residents who are unable to pay their rents. The site owners run these sites as a business and are entitled to receive the monthly rents. If the rents are not paid, the owners are entitled to evict the tenants. This will create a problem for the local authorities, which will have to find accommodation to avoid homelessness. According to a report from Shelter and other agencies, the Government's decision to allow landlords to evict tenants is going to make more than 100,000 people, including single mothers with children, homeless. A balance must be found between the rights of the landlord and those of the tenants in this Covid era.

5.25 pm

Lord Kirkhope of Harrogate (Con) [V]: My Lords, I am pleased to support these regulations and I particularly congratulate the Government and the noble Lord, Lord Best, on pursuing them so strongly. All of us who have ever been elected representatives know that the issue of mobile homes has been a regular part of our post box, especially in regard to the treatment of those who choose this way of life by those who control sites.

Many people for various reasons want the option of acquiring a fixed or static home on the numerous and ever-growing number of sites around the country. Some are mobile homes that can be moved easily and are on sites where permanent residence is not permitted, but others are park homes where the licence permits permanent residence. It is the latter where the new protections afforded by this measure are most needed.

My noble friend knows that, unlike a normal house, such a home on a site does not have the same advantages. For instance, mortgages are not normally possible. Unlike other property, there can be no expectation of increased values. There are uncertain and sometimes

excessive maintenance costs. Often a commission is charged by a site owner on sales. Energy bills are often under the sole control of the site owner. The site normally remains in the possession of the site owner, whose title may be tenuous. The rent or occupation agreement may be short and renewal is not always guaranteed. The occupancy itself may be subject to onerous site rules. Of course, there are inheritance issues on the death of an occupant. I have heard of many cases of dispute where the behaviour of site owners or their corporate representatives has been either threatening or discriminatory or where rules have been used as a way of spoiling the peaceful enjoyment and tenure of the site for individuals.

These regulations are a positive step, but can I press my noble friend on the following quick points? How will the definition of fit and proper person be made and how will it be regularised? Will the date for stage 1—July 2021—be rigidly adhered to by local authorities in their preparations? How will local authorities appoint a fit and proper person to control a site if the owners cannot themselves provide one? Under the regulations, the register of fit and proper persons will stand for up to five years. Will monitoring take place on a regular basis to maintain standards and will complaints about conduct be promptly investigated and registration removed in appropriate cases without undue bureaucracy and pressure on residents? Finally, in the case of companies or corporate management, how will the fit and proper designation be assessed? I am sure these regulations, although overdue, will be widely welcomed and the protection afforded should give some comfort at least to all those who choose a park home life.

5.28 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I declare my interest as a member of the All-Party Parliamentary Group for Gypsies, Travellers and Roma. This debate is about the regulation of park homes, but we are in a context where we have a broader problem with the insecurity of private tenants in a wide range of circumstances and under a wide range of tenures, some of whom arrive in park homes after terrible experiences in other accommodation. We have a long way to go to provide everyone with a secure, genuinely affordable, comfortable, appropriately sized place to live.

This is a very small step towards tackling one area of this problem and I welcome these regulations, which reflect those that have existed in Wales since 2014. But I associate myself with the questions asked by the noble Lord, Lord Berkeley, about the costs to local authorities and how they are going to meet them and find the technical resources and skills. I thank the noble Lord, Lord Best, for setting out the scale of the challenge.

I also note the comments from the noble Lord, Lord Campbell-Savours. Many of us will know from the experience of planning how local authorities can feel underpowered legally and underfinanced when trying to act in the interests of residents in their communities.

I have a couple of direct questions for the Minister that I hope he may be able to answer. I raised this issue with the Association of Green Councillors, and it came back to me with concern about a company controlling several sites and this being a source of problems and distance. Who would be the fit and proper person who oversees a number of sites, or would there have to be a person nominated on each site? How will we be able to ensure that they operate in an independent manner?

When the owner is also the manager—particularly in the case that the Minister noted in his introduction—can the local authority, if there is a not a fit and proper person, appoint a new manager with consent from the site owner? It is easy to imagine a problem where a site owner has been declared not a fit and proper person and then becomes obstructive and difficult to handle.

If a licence is revoked, what will happen to the residents? A number of noble Lords have referred to the many problems that residents encounter. I have seen sites where residents have had to buy gas bottles at grossly inflated prices, and where a large number of trees have been felled without consultation or prior advice, with a real impact on the amenity of the residents. There is clearly a problem. This is a step towards tackling it, but our debate today has revealed that a lot of work will have to be done to turn this into an effective mechanism to protect some of the often vulnerable residents of park homes.

5.32 pm

Lord Naseby (Con) [V]: My Lords, I also welcome the broad thrust of these proposals. I pay great tribute to the noble Lord, Lord Best, for persevering with his Private Member's Bill. I note that the first review took place in 2017; it seems important that there be another review in another three years at an absolute maximum.

I do not want to repeat what the noble Lords, Lord Kirkhope, Lord Best and Lord Campbell-Savours, have said, but they made very valid comments. I shall just say that I was a leader of a local authority for a number of years, and we always had problems with the Gypsy community. That is going back quite a few years; nevertheless there are still challenges in that area, and I wonder how the local authorities will be able to deal with those challenges. It is not too far-fetched to think that they will still be wrestling with the results of Covid-19 in the early part of 2021. If that is the situation—and we debated earlier today the roles of local authorities, which are very extensive in relation to Covid-19—I just wonder whether those local authorities are going to have the resources and, more importantly, the skill to do the job. My noble friend on the Front Bench may well remember that in the early days of health and safety regulations, the key problem was the lack of skilled manpower at a local authority level to carry out the relevant objectives.

Finally, I used to own a mobile home in France, although my daughter owns it now. The French had a similar problem to ours, not to the extent of the Traveller community but in general terms. They produced a special tax, a sort of extra rate, called the taxe d'habitation, to finance qualified people to do proper inspections of these sites. With that, I will support what is proposed this afternoon.

5.34 pm

Lord Teverson (LD) [V]: My Lords, we very much welcome this secondary legislation, but all Governments have always been rather behind the curve on this issue

[Lord Teverson]
which, when many of us were elected representatives, appeared on our desks all too often. Although I very much welcome it personally, many residents who have suffered previously from the actions of site owners feel as cynical as the noble Lord, Lord Campbell-Savours, described. They feel very strongly that these organisations —the managers and companies that are the rogues—often find their way around these regulations. Having said that, I shall come on to enforcement later.

We have to remember that this is not just a minority interest: there are some 85,000 households in park homes on more than 2,000 sites and, as the Minister has rightly said, they are older, less well-off, more vulnerable people. The problem is that the power in this area is very asymmetric, not least, often, when satisfied residents find that the ownership of their site has been transferred and there is a whole regime change, not just in the legal landlord but in the tone and the way that those sites are managed. The key issue is that of circumvention, either by having different site managers come in, or indeed by changing the ownership of the company that legally owns the sites. These are methods that have been used in the past to get around similar regulations.

As I understand it, having read the regulations, it is either/or—either the site manager or the owner has to be approved in this way, not both. It seems to me very important that, never mind the site manager, the owning company or person also needs to be approved: it needs to be a dual process and I understand that that is not the case at the moment. As the noble Lords, Lord Best and Lord Berkeley, said only too well, the key issue here is one of enforcement: many residents on rogue sites at the moment feel that local authorities have just not had the resources or perhaps even the wish to get heavily involved with these companies and actually implement the legislation. I welcome very much the Minister restating that fines will be unlimited in this area, but they have to be imposed. Until they are and those fines stop being part of the cost of operating these sites, the abuses will continue.

I have a number of other questions. I am pleased that so-called grandfather rights do not apply here and that all existing site owners have to be registered; I welcome that very much. Are the Government looking further at the 10% commission fee on the sale of mobile homes or park homes on these sites, which is still highly contentious? Will the Government liaise closely with local authorities on implementation of these regulations? I think it is important that we share information, as the noble Lord, Lord Bourne, said very strongly and correctly. There is ample scope here for one authority approving an owner while others do not, and a risk that that will discourage councils from not approving particular individuals.

As for fines, this again leads into the judicial process, but it is very important that they are at a level that actually deter once enforcement takes place. Lastly, some site owners are foreign companies and I presume—I would be interested to hear from the Minister—that they will have to comply equally. What legal measures can be taken against them if they do not comply? That is important.

We very much welcome these regulations but the key thing, as all Members have said, is that they need to be enforced. The fines need to be substantial, not just operating costs on business. We need this to be a turning point for some 85,000 households, with all of them feeling secure in their form of living and their residences.

5.40 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I refer the House to my relevant registered interest as a vice-president of the Local Government Association.

I fully support the regulations before the House today. I have a few comments and observations, but I do not intend to delay the House for very long. We have had a good debate and many of the points that I was going to raise have been raised. There is no point repeating those questions. We have heard that the regulations' purpose is to prohibit the use of land as a protected caravan site, unless the local authority is satisfied that the owner or manager is a fit and proper person to run that site.

I concur with the noble Lord, Lord Greenhalgh, that it is important that everybody can live in a safe and secure home. That right is just as important for people living on caravan sites and in park homes, so for that reason I support these regulations. But giving this power to local authorities enables them to have the discretion to ensure that sites are properly run, and that residents of park homes are protected. My noble friend Lord Berkeley rightly highlighted that ensuring that these regulations are effective will require considerable work from local authorities. We have to ensure that these regulations are effective; many noble Lords mentioned that point.

I was here in the Chamber for an earlier debate, where regulations again put further obligations on local authorities. But of course, with obligations come costs; we have to ensure that the authorities have the funds to do this. I look forward to a detailed response from the Minister about the level of fees that can be charged. Having these costs fully covered is essential and it is important that we ensure that that happens. As the noble Lord, Lord Best, pointed out, this needs to be adequately resourced because it will take some time. I want at this point to pay tribute to his work in getting such legislation on the statute book.

I think I agreed with all the remarks of the noble Lord, Lord Bourne of Aberystwyth, particularly those about how important it is to share information and ensure that it is available. With that in mind, may I make a plea to the Minister? If in the next few weeks we are to have some emergency legislation with respect to the private rented sector, can we look at the whole question of the rogue landlords database? When that database was created, the Government decided that they did not want to make it public. We won votes here in the Lords but the Government would not listen. Then, six months later, the Government changed their minds and said that they wanted to make it public. Then they said, "We haven't got time to get it on the statute book." If we are to look at legislation for private renters, will the Government please ensure that they make that database public? The Government want that, we want it and I think the tenants want it as well.

Finally, the comments of the noble Lord, Lord Teverson, were important because the issue is about enforcement. As I have said, it is great putting regulations in place, but if they are not enforced they will have little effect. In a small minority of cases, we are clearly dealing with some very difficult people who do not respect the law and treat people appallingly. We need to ensure that the local authorities have all the powers they need. They need to be properly resourced to make this effective. With that, I look forward to the response from the Minister to the points raised in the debate.

5.45 pm

Lord Greenhalgh (Con): My Lords, we have had a fascinating and wide-ranging debate on the regulations before us today, and I thank noble Lords on all sides of the House for their contributions. I take this opportunity to provide responses to the questions asked of me and the points raised.

The noble Lords, Lord Kennedy, Lord Berkeley and Lord Campbell-Savours, and the noble Baroness, Lady Bennett, raised the issue of local authority resources. We are mindful of the risks of putting new burdens on local authorities—we have the new burdens doctrine—and that is why we have given them the power to charge application and annual fees to cover the cost of the work needed to drive up standards. As required by the Provision of Services Regulations 2009, fees charged by local authorities must be reasonable and cover their costs only. The noble Lord, Lord Berkeley, wanted to know the number of applications likely to be received. There are 2,000 sites in England, so that means 2,000 applications.

The noble Lords, Lord German and Lord Teverson, addressed the importance of consumer protection. The terrible case in which criminality was involved, raised by the noble Lord, Lord German, was very striking. These regulations introduce three criminal offences. If a site owner is convicted of any one of these, they face a penalty up to an unlimited fine. If convicted twice for operating a site in contravention of the regulations, the local authority may apply to the magistrates' court or the First-tier Tribunal for an order to revoke the site licence. We expect local authorities to use this power as a last resort only, as it could lead to the closure of the site and put residents at risk of homelessness. To avoid this happening, the Government will explore giving local authorities powers, as part of the forthcoming primary legislation, to apply to the First-tier Tribunal to install an interim site manager to take over management of a site where a site licence may need to be revoked.

I take the point about the need to interact with the police. As a local authority leader, it is very much part of local authorities' DNA to have strong connections with the local police force. That also answers the point from the noble Lord, Lord Teverson, that, for a fine to be effective, it needs to be implemented. Intelligence needs to be shared between the local authority and the police, and between local authorities.

A number of noble Lords raised the effectiveness of regulations. My noble friend Lord Kirkhope and the noble Lord, Lord Kennedy, should be aware that the local authority will keep all the people placed on the register under review. Complaints from residents can precipitate removal from the register. I recognise the concerns raised about unscrupulous site owners hiding behind an organisation or putting another individual forward for the test to avoid scrutiny themselves. These regulations address this by ensuring that the test focuses on the actual person managing the site. They do this by requiring the provision of certain information and a criminal record certificate, in some cases, about responsible persons and company officers who are involved in the management of the site or have responsibilities for its day-to-day management.

Local authorities may also request any additional information they consider relevant to an application and may have regard to the conduct of any person associated, or formerly associated, with the relevant person, whether on a personal, work or other basis. My noble friend Lord Bourne asked whether the test is structured to avoid loopholes, as some may have complex arrangements. I assure noble Lords that all the loopholes have been covered and, where the site owner is a company, details of all the relevant officers of the organisation will be required. Local authorities can also ask for relevant information. This applies to companies whether they are located in the UK or abroad. On sharing information, local authorities have to make this register public and are encouraged to share information from it. I note the point from the noble Lord, Lord Kennedy, about the need to publicise data from the rogue landlords database. I will take that matter away and look into it.

The noble Baroness, Lady Bennett, and my noble friend Lord Kirkhope, raised the issue of how the fit and proper test would work. It will apply to the site licence holder or the person appointed by the site licence holder to manage a "relevant protected site", which is one for which a site licence is required and on which year-round residential occupation is allowed. The test will also apply to a prospective site licence holder who has applied to the local authority for a site licence.

Relevant protected sites are predominantly park home sites. However, that definition also includes owner-occupied sites, which are those occupied by a single family and not operated commercially—for example, those with planning permission for use by Gypsy and Traveller communities. We have exempted those owner-occupied sites from the requirements, as the regulations would place a disproportionate burden on those single families.

The noble Lord, Lord Teverson, raised the issue of the 10% commission on the sale of a home. Under the Mobile Homes Act 1983, a site owner is entitled to a commission of up to 10% of the price of a mobile home upon sale. The Government recognise that the payment of a commission has divided opinion over the years, continues to raise concerns and creates uncertainty with residents and site owners. From previous reviews that have looked at this issue, it is clear that there are likely impacts on residents and site owners if changes are made to the rate of commission that is payable. Therefore, it is important that any ongoing debates or discussions about changing the commission rate are based on data, facts and an accurate assessment of the impacts on

[Lord Greenhalgh]
the sector. There is currently no data available to accurately measure any of those impacts, which is why the Government have committed to undertake research to gather the relevant data. We have undertaken some initial scoping work to identify gaps in the existing evidence base to ensure that the research is thorough and comprehensive.

I recognise that a number of points about implementation and the guidance available were raised by my noble friend Lord Naseby and the noble Lords, Lord Kirkhope and Lord Teverson. In the interests of time, I will write to them on those matters. I pay tribute to the noble Lords, Lord Best and Lord Kirkhope, for their work on the Mobile Homes Act 2013. This statutory instrument is testament to their work holding the Government's feet to the fire. This is not the end of the road; we are looking at primary legislation, when parliamentary time allows, to pick up many of the points raised during this debate.

I reiterate that the majority of site owners are responsible and compliant, make a valuable contribution to the housing market and provide well-maintained and safe sites for their residents. However, a minority knowingly flout their responsibilities and exploit their residents, most of whom are elderly, vulnerable and on low incomes. These regulations are necessary to protect and improve the lives, health and well-being of park home residents.

In conclusion, park home residents are all too often exploited and suffer poor treatment. They deserve our protection and support. We have made good progress in recent years, but there is more to be done. These regulations will ensure that all site owners, not just the good ones, meet the required standards of management and conduct. Unscrupulous site owners will have to change their behaviour or find a more competent person to manage the site. Once again, I am very grateful for noble Lords' time and contributions, and I commend the regulations to the House.

Motion agreed.

5.53 pm

Sitting suspended.

Arrangement of Business

Announcement

6.10 pm

The Deputy Speaker (Lord Bates) (Con): My Lords, proceedings will now commence. Some Members are here in the Chamber while others are participating virtually, but all Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House. Please ensure that questions and answers are short.

Channel Crossings in Small Boats

Commons Urgent Question

The following Answer to an Urgent Question was given on Wednesday 2 September in the House of Commons.

"In recent months, the UK has seen a completely unacceptable increase in illegal migration through small-boat crossings from France to the UK. This Government and the Home Secretary are working relentlessly to stop these crossings. Illegal migration is not a new phenomenon. Every Government over the last 20 years and more have experienced migrants—often economic migrants—attempting to reach the UK through illegal means. The majority of these crossings are facilitated by ruthless criminal gangs that make money from exploiting migrants who are desperate to come here.

We are working with the National Crime Agency to go after those who profit from such misery. Already this year, 24 people have been convicted and jailed for facilitating illegal immigration. In July, I joined a dawn raid on addresses across London, which saw a further 11 people arrested for facilitating illegal immigration, and £150,000 in cash and some luxury cars were seized. Just this morning, we arrested a man under Section 25 of the Immigration Act 1971 who had yesterday illegally piloted a boat into this country. Further such arrests are expected.

These crossings are highly dangerous. Tragically, last month a 28-year-old Sudanese man, Abdulfatah Hamdallah, died in the water near Calais attempting this crossing. This morning, the Royal National Lifeboat Institution has been out in the English Channel and has had to rescue at least 34 people, and possibly more, who were attempting this dangerous journey.

These criminally facilitated journeys are not just dangerous; they are unnecessary as well. France, where these boats are launched, and other EU countries through which these migrants have travelled on their way to the channel, are manifestly safe countries with fully functioning asylum systems. Genuine refugees seeking only safety can and should claim asylum in the first safe country they reach. There is no excuse to refuse to do so and instead travel illegally and dangerously to the UK. Those fleeing persecution have had many opportunities to claim asylum in the European countries they have passed through long before attempting this crossing.

We are working closely with our French colleagues to prevent these crossings. That includes patrols of the beaches by French officers, some of whom we fund, surveillance and intelligence sharing. Over 3,000 crossing attempts were stopped this year alone by the French authorities, and approaching 50% of all crossing attempts are stopped on or near French beaches. This morning alone, French authorities prevented at least 84 people from attempting this crossing, thanks in significant part to the daily intelligence briefings provided by the National Crime Agency here in the United Kingdom.

It serves both French and UK interests to work together to cut this route. If this route is completely ended, migrants wishing to come to the UK will no longer need to travel to northern France in the first place. We are therefore urgently discussing with the French Government how our current plans can be strengthened and made truly comprehensive. We have already in the last two months established a joint intelligence cell to ensure that intelligence about crossings is rapidly acted upon, and this morning's interceptions on French soil are evidence of the success of that approach.

It is also essential to return people who make the crossings where we can, and we are currently working to return nearly 1,000 cases where migrants had previously

claimed asylum in European countries and, under the regulations, legally should be returned there. Last month, my right honourable friend the Home Secretary announced the appointment of former Royal Marine Dan O'Mahoney as clandestine channel threat commander. He will collaborate closely with the French to build on the joint work already under way, urgently exploring tougher action in France.

Let me conclude by saying that these crossings are dangerous, illegal and unnecessary. They should simply not be happening, and this Government will not rest until we have taken the necessary steps to completely end these crossings."

6.11 pm

Lord Rosser (Lab) [V]: I express our condolences to the family of Abdulfatah Hamdallah, who died in the English Channel. A government Minister went to France on 11 August and announced a joint action plan. The government response to the UQ said:

"We are … urgently discussing with the French Government how our current plans can be strengthened and made truly comprehensive"

and that the clandestine channel threat commander

"will collaborate closely with the French to build on the joint work already under way, urgently exploring tougher action in France, including—".—[*Official Report*, Commons, 2/9/20; col. 168.]

The Minister in the Commons was then stopped by the Speaker for overrunning his time. Can the noble Baroness finish her ministerial colleague's sentence and tell us what "including" covers? So that we can judge whether the Government are seeking compassionate, competent and life-saving solutions to the issue of migration and asylum, can she also tell us what is in the joint action plan announced by her ministerial colleague on 11 August?

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I would never wish to finish someone else's sentence, but what I can say about the clandestine channel threat commander, Dan O'Mahoney, is that he has been appointed, as the noble Lord says, and has overall operational and policy responsibility for this rather serious problem. Since there is a multiagency responsibility here which requires working with the French authorities and UKVI, we felt that it needed a single person empowered and accountable to seize control of that situation and get it fixed. What I assume will be in the joint action plan is an explanation of how the multiagency response will work. Of course, these things work best in a multiagency way.

Lord Paddick (LD): My Lords, does the Minister not agree that the best way to stop the criminal exploitation of those desperate to seek sanctuary in the UK and to ensure that they do not risk their lives crossing the channel is to enable refugees to claim asylum without being physically in the UK and to provide safe and legal routes into the UK?

Baroness Williams of Trafford (Con): I am glad that the noble Lord recognises the need for legal routes. Of course, we have a number of those. Under Dublin, someone can claim asylum in the first safe country that they arrive in, which is of course all the states of the EU. We have our national resettlement scheme, under which we have resettled more people than any state in the EU, and 46,000 children have received our refuge since 2010. We also have family reunification visas, of which we have issued 29,000 in the past couple of years. That is not to say that what is happening is right; it absolutely has to be tackled. With what has been happening with small boats, the only people who benefit are people traffickers and criminals.

Lord Balfe (Con): Setting aside the attractions of the UK because of language and relatively lax employment rules, I was on the Operation Sophia committee of this House, which looked at the EU's system for dealing with migration. We concluded that the only way to deal with it was to break the business model. Will the Minister, first, consider, in talks in the Home Office, the need to destroy the boats and all the equipment that people arrive in, and, secondly, look at a system whereby they do not land in the United Kingdom but are put on a boat and taken somewhere else so that the attraction disappears? At the moment, if you land in the UK you have a 95% chance of staying. We have to break that if we are to deal with this problem.

Baroness Williams of Trafford (Con): My noble friend outlines some of the complexities of this. It is not in our purview to go and destroy boats that are not on our soil. They quite often come from France, as my noble friend said. On not landing in the UK, it is an internationally accepted arrangement that the first job of any maritime force, whether Border Force or whoever it is, to save lives at sea. That is a really important thing here. I will repeat what I said in the first instance: on taking someone somewhere else, when people are taken safely on to our soil we are obliged to hear and deal with their asylum claim. This is a problem for every state in the EU: we need to work, together with our partners, to deal with some of the problems of upstream criminality. The reason why people get on to these boats and take perilous journeys is that criminality, unfortunately, is at the heart of it.

Lord Dubs (Lab) [V]: My Lords, I think we would all agree that these are desperate people, many of them children. They are often the victims of war and persecution. The best way forward is to reach some sort of agreement with the French authorities. I suggest that the Minister should say to the French, among other things, that we will take all the children in northern France who have family members in this country or other close links with this country. We should say that we will do this quickly and expeditiously, in return for which we expect the French to redouble their efforts to catch the traffickers.

Baroness Williams of Trafford (Con): My Lords, that sounds really lovely in theory. In practice, it would just create another incentive for people traffickers to get people to France. Do not forget that France is a free, democratic and safe country. On arrangements with France, the noble Lord will know, because I spoke to him about it, that we have laid a legal text that talks about our obligations in taking asylum seekers who require our protection and, in turn, returning

[Baroness Williams of Trafford]
people who do not. Unfortunately, that has not progressed, but we continue to try to make progress with it because, as I have said all along, through the process of Brexit we want to help people who need our protection.

The Lord Bishop of Bristol: My Lords, the Minister referred to the refugee resettlement scheme. However, as far as we can tell, refugee resettlement remains paused since March. Can she tell me what plans the Government have to launch the new global resettlement scheme and why they have continued deportations and not inward refugee resettlement?

Baroness Williams of Trafford (Con): The right reverend Prelate is absolutely right that it has been difficult since March. We took 52 people from Greece back in March but it has been incredibly difficult because of the lack of flights coming here. Of course, that has led, in some sense, to people reverting to trying to get here in small boats, and that is not at all the situation we want because they are simply being exploited. What was the right reverend Prelate's second point?

The Lord Bishop of Bristol: The global resettlement scheme.

Baroness Williams of Trafford (Con): Obviously we will restart it as soon as it is practical and safe to do so.

Lord Randall of Uxbridge (Con) [V]: My Lords, I declare my interest as a vice-chairman of the Human Trafficking Foundation. Our law enforcement agencies should be congratulated on some recent successes in apprehending some of the evil people who are smuggling people. What does my noble friend think the impact will be of leaving Europol and Eurojust on our efforts to fight this heinous crime?

Baroness Williams of Trafford (Con): My noble friend points to the real necessity of ensuring that some of those data flows in terms of law enforcement are maintained and are rigorous as we exit the EU and that we do everything we can to ensure the robustness of some of the instruments that will be replaced or indeed lost as we go forward.

The Deputy Speaker (Lord Bates): I am afraid that the time allowed for this Urgent Question has now elapsed, with apologies to the three Members who I was not able to call. We will now have a short break for a few moments to allow the Front-Bench teams to change places safely.

Arrangement of Business

Announcement

6.21 pm

The Deputy Speaker (Lord Bates) (Con): My Lords, proceedings will now commence. Some Members are here in the Chamber, while others are participating virtually, but all Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House. Please ensure that questions and answers are short.

Foreign, Commonwealth and Development Office

Commons Urgent Question

The following Answer to an Urgent Question was given on Wednesday 2 September in the House of Commons.

"The creation of the new Foreign, Commonwealth and Development Office today is a key moment: a key moment for our vision of a truly global Britain, and a key moment for our integration of our international efforts in order to maximise their impact abroad. With this innovation, we are drawing on the example of many of our allies, such as Australia and Canada and, indeed, the vast majority of OECD countries, by putting our world-class aid programme at the beating heart of our wider foreign policy decision-making, and doing it in a way that works best for the United Kingdom.

We are integrating and aligning the UK's expertise as a development superpower with the reach and clout of our diplomatic network in order to ensure that their impact internationally is bigger than the sum of their parts. We have paved the way for this approach during Covid, bringing together all the relevant strands of our international activity. For example, we joined our research efforts to find a vaccine at home with our international leadership in raising the funding to ensure equitable access for the most vulnerable countries, culminating in the Prime Minister hosting the Gavi summit and smashing the target by raising $8.8 billion in global vaccine funding. That amply demonstrates how our moral and national interests are inextricably intertwined.

We continue to bolster health systems in the most vulnerable countries, not just out of a sense of moral responsibility—although there is that—but to safeguard the people of this country from a second wave of this deadly virus. It is in that spirit, as the new FCDO comes into operation today, that I can announce that the UK will commit a further £119 million to tackle the combined threat of coronavirus and famine, so that we can do our bit to alleviate extreme hunger for over 6 million people from Yemen through to Sudan. In tandem with that, to leverage the impact of our national contribution, I have also today appointed Nick Dyer as the UK's special envoy for famine prevention and humanitarian affairs, again as we combine our aid impact with our diplomatic leadership to focus the world's attention and rally international support to help tackle this looming disaster and threat.

The new department reflects the drive towards a more effective and more joined-up foreign policy, and I pay tribute to the brilliant work of my right honourable friend the Member for Berwick-upon-Tweed (Anne-Marie Trevelyan) and all her support directly in driving this merger forward. My team of Ministers has already been holding joint Department for International Development and Foreign and Commonwealth Office portfolios for some time now, so we will have continuity as we bed in the organisation of the new department. Sir Philip Barton—the brilliant diplomat who co-ordinated the United Kingdom's response to the Salisbury nerve agent attack back in 2018—becomes the new Permanent Under-Secretary at FCDO. We have also broadened

the senior departmental leadership to achieve a more diverse range of expertise and experience at the top. So, as well as FCO and DfID experience, the board of directors-general brings together those with wider experience from the Department for Business, Energy and Industrial Strategy, Her Majesty's Treasury and the Cabinet Office, not to mention from the private sector and the voluntary sector.

Abroad, we will operate with one voice and one line of reporting, so that all civil servants operating abroad, including our trade commissioners, will work to the relevant ambassador or high commissioner in post. Training the cadre of the new department will be essential too, so the new International Academy launched today will train and improve the skills of all our dedicated civil servants across government who are working internationally. To boost this excellent team, I believe it is important to bring in additional insights from outside government. Therefore, I have also appointed Stefan Dercon, professor of economic policy at Oxford University, as my senior adviser on aid and development policy.

With the support of my tireless ministerial team, we continue to consult outside government to test our thinking and glean new ideas for the successful operation of FCDO. I am grateful for the input we have received over the summer from honourable and right honourable Members across the House. In particular, my thanks go to the chairs of the Foreign Affairs, International Development, and Defence Committees. I am also grateful for the advice I have had from non-governmental organisations, foundations and international organisations —from Bill Gates to David Malpass, the president of the World Bank, with whom I discussed matters yesterday.

We will reinforce that external scrutiny not just by maintaining ICAI—the Independent Commission for Aid Impact—but by strengthening its focus on the impact of our aid and the value added to our policy agenda, and by broadening its mandate to provide policy recommendations alongside its critical analysis. I am particularly grateful to my right honourable friend the Member for Sutton Coldfield (Mr Mitchell) for all his advice on this matter.

In this way, and informed in due course by the integrated review, the new Foreign, Commonwealth and Development Office will deliver on this Government's mission to forge a truly global Britain to defend all aspects of the British national interest and to project this country as an even stronger force for good in the world."

6.22 pm

Lord Tunnicliffe (Lab) [V]: From its formation in 1997, the Department for International Development supported the world's poorest and most vulnerable, and built Britain's reputation as a world leader in aid and development. It is clear already that these principles are an afterthought for the new FCDO, with recent reports that the Government will abolish the 0.7% target in an attempt to blur the lines over what constitutes aid. Can the Minister commit today that there will be no revocation of the provisions of the International Development Act 2002, which guarantees that all aid spending must combat poverty?

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, I regret that I totally disagree with the noble Lord. The coming together of the two departments as a merger will strengthen the global reach of our development capacity and capabilities. Yes, I can confirm our continued commitment to the 0.7% target. It was a Conservative-led coalition Government who brought that into law.

Lord Bruce of Bennachie (LD) [V]: I urge the Government to make an early statement of coherent development policy objectives for the new department. I am glad that the Minister has reaffirmed the 0.7% but the Government have given conflicting messages on this issue, implying that the already slashed budget may be diverted elsewhere. The Secretary of State gave an evasive answer to my colleague Layla Moran yesterday, so I am glad that the Minister here has given a straight answer today. The workload of monitoring development and working with ICAI is surely beyond the effective capacity of one committee, so will the Government recognise that we need a dedicated committee to deal with this, which happened when the ODA was within the Foreign and Commonwealth Office in the time of the noble Baroness, Lady Chalker?

Lord Ahmad of Wimbledon (Con): Parliamentary committees are very much a much a matter for Parliament, but certainly my right honourable friend the Prime Minister's view is that they should reflect departments. The noble Lord mentioned ICAI and that will continue, although this provides an opportunity to review its governance and ensure that it is fully aligned with the new department.

Lord Jay of Ewelme (CB) [V]: My Lords, there is a lot in the Statement about global Britain. Does the Minister agree that in the eyes of both the developed and the developing worlds, the success of global Britain will depend on the maintenance of a high-quality global aid programme? Will he once again scotch rumours of a raid on the 0.7% target by other departments?

Lord Ahmad of Wimbledon (Con): My Lords, I reassure the noble Lord, a former PUS to what was the Foreign Office, that I have already given a commitment to the 0.7% target. Yes, global Britain is about our development leadership and our diplomacy, and the FCDO brings the two together.

The Deputy Speaker (Lord Bates) (Con): I call the noble Baroness, Lady Hooper. She is not there, so I call the noble Lord, Lord Boateng.

Lord Boateng (Lab): My Lords, poverty and hunger are fuelled by instability and conflict. Will the Minister give the House the assurance that the new department will work closely with the Ministry of Defence in addressing those issues, that there will be adequate funding—indeed, an increase in funding—for that, and that it will be subject to scrutiny by this House and the other place to ensure aid effectiveness?

Lord Ahmad of Wimbledon (Con): One of the great and obvious advantages of our parliamentary system is the scrutiny that the noble Lord alludes to, and I am sure that that will continue through Statements, Questions, Urgent Questions and so on. However, I assure him that, not just through the creation of the new department but through the integrated review, our international capabilities will be very much aligned through the FCDO and the Ministry of Defence.

Lord Harries of Pentregarth (CB) [V]: On 16 June, the Prime Minister said that the guiding principle of the new department would be promoting the UK's national interest overseas. Does the Minister agree that, at least in theory, there could be the possibility of a clash between promoting that national interest—for example, by supporting a prestigious project which has been much wanted by the beneficiary Government—and supporting the most vulnerable communities in that country? If there is the possibility of this clash, what monitoring process will be in place to really ensure that those most vulnerable communities are not pushed aside?

Lord Ahmad of Wimbledon (Con): My Lords, the noble and right reverend Lord has talked to two sides of the same coin. I think that our national interest reflects the importance of investing in the interests of the most vulnerable communities, of looking at responding to humanitarian challenges as we see them, and of alleviating poverty and famine. Those will very much remain priorities for this new department.

Baroness Armstrong of Hill Top (Lab) [V]: Do the Government recognise that one reason that this country has done well internationally is precisely that DfID has been outside the FCO? Four out of five of the fastest-growing economies last year were in Africa, and many of those countries really appreciated that we had moved from the department that they associated with colonialism to one that was focused on their needs and on working in partnership with them. What criteria for success will the Government have for development in the new department?

Lord Ahmad of Wimbledon (Con): My Lords, in advance of the announcement of the new merged department but also during the current pandemic, this Government have repeatedly outlined, and put money behind, their priority of standing up for the most vulnerable. The Gavi summit, led by my right honourable friend the Prime Minister, was a very good example of that. I assure the noble Baroness that the work that DfID has done over many years is recognised, and we are now leveraging the full potential and strength of our development leadership alongside the strength of our diplomatic network.

Baroness Helic (Con) [V]: My Lords, the Preventing Sexual Violence in Conflict Initiative was given an amber/red score in the latest review by the Independent Commission for Aid Impact, which raised concerns about the lack of funding, strategic planning and long-term programming. Will the Government ensure that the Preventing Sexual Violence Initiative is put at the heart of the work of the new department and that the initiative receives all necessary support so that the United Kingdom meets the commitments that we made at the 2014 global summit?

Lord Ahmad of Wimbledon (Con): My Lords, as the Prime Minister's Special Representative on Preventing Sexual Violence in Conflict, I assure my noble friend that this remains very much at the heart of our work. As I have mentioned to her previously, I am keen to ensure that there is a long-term, three-year rolling strategy that ensures that we build on what we have achieved on this important agenda.

Baroness Uddin (Non-Afl) [V]: My Lords, I echo the words of the noble Baronesses, Lady Armstrong and Lady Helic; I agree with them entirely. The Minister will be aware that Bangladesh is struggling in dealing with the Rohingya refugees. I hope that commitment from the new department will continue. Is he also aware of the work of University College Hospital? Its CPAP campaign is working with Bangladesh, preparing to provide, immediately, very cost-effective ventilators, which Bangladesh very much needs. Would the Minister consider meeting with me and the team at UCL to discuss this and find a way to support this programme?

Lord Ahmad of Wimbledon (Con): My Lords, let me assure the noble Baroness that I would be happy to meet with her and the team. Let me add to this the reassurance that during the current pandemic, as the Minister responsible for south Asia, I have been working very proactively with both the Government of Bangladesh, as well as other Governments across south Asia—as my colleagues have in other parts of the world—to ensure that our response to the Covid pandemic does reflect the needs the most vulnerable around the world. I look forward to meeting with the noble Baroness in due course, and I have received her correspondence in this respect.

Lord Polak (Con): My Lords, I declare my interests as stated in the register.

The Statement concludes that the new FCDO will project the UK as an ever-stronger force for good in the world. "Good" would mean supporting our US allies in extending the arms embargo on the terror-sponsoring Iranian regime. "Good" would mean not only wholeheartedly and unconditionally welcoming the UAE-Israel agreement but also helping to build on it. "Good" would also mean consistently voting in the right camp at the United Nations, and ensuring that our generous aid to the Palestinians is rechannelled directly to the Palestinian people, because we know that so much of it is being misused and misappropriated. Can I therefore ask the Minister whether the new department will acknowledge where mistakes have been made and correct them? Then, we can indeed project the UK as an even stronger force for good in the world.

Lord Ahmad of Wimbledon (Con): My Lords, I agree with my noble friend, that it is important that we talk about our role as a force for good. As Minister for Human Rights, I believe that the merger of the Foreign Commonwealth Office with the Department of International Development allows us to directly align

our values agenda with the important support we give to the most vulnerable communities around the world. The noble Lord mentioned, in particular, the recent agreement reached between the UAE and Israel. He knows that I welcome that, and I know the UK Government have welcomed that, as forward progress in reaching out and ensuring that we see lasting peace in the Middle East. It is an important step forward. On the issue of the UN and the United Kingdom's consistency of statements, as he will be aware, we have, for example, strengthened our position on the Human Rights Council. I agree with my noble friend: not only the Palestinian people but any recipient of aid, anywhere in the world, must be the direct beneficiary. Where there are shortcomings, and things need to improve, we will do just that.

House adjourned at 6.33 pm.

Grand Committee

Thursday 3 September 2020

Arrangement of Business

Announcement

2.30 pm

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): My Lords, the Hybrid Grand Committee will now begin. Some Members are here in person, respecting social distancing, while others are participating remotely, but all Members will be treated equally. I must ask Members in the room to wear a face covering, except when seated at their desk, to speak sitting down and to wipe down their desk, chair and any other touch points before and after use. If the capacity of the Committee Room is exceeded, or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes. The time limit for the debate on the Electricity and Gas etc. (Amendment) (EU Exit) Regulations 2020 is one hour.

Electricity and Gas etc. (Amendment) (EU Exit) Regulations 2020

Considered in Grand Committee

2.31 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Electricity and Gas etc. (Amendment) (EU Exit) Regulations 2020.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, when the transition period ends, direct EU legislation and EU-derived domestic legislation that forms part of the legal framework governing our energy markets will be incorporated into domestic law by the withdrawal Act. My department is working to ensure that the UK's energy legislation continues to function smoothly and supports a well-functioning, competitive and resilient energy system for consumers after the end of the transition period. This draft instrument is part of the wider legislative programme preparing for the eventuality that the UK does not reach a further agreement with the EU by the end of the transition period, or if any reached agreement does not cover the relevant policy area.

I now turn to what this statutory instrument does. Prior to the UK's departure from the EU on 31 January, my department laid several statutory instruments in preparation for the eventuality that the UK left the EU without a withdrawal agreement. Since then, the terms of the withdrawal Act mean that EU legislation, including new EU legislation brought in during the transition period, will continue to apply in the UK.

This includes three pieces of legislation. The first is Regulation (EU) 2019/943 of the European Parliament and the Council of 5 June 2019, on the internal market for electricity, which I will refer to as the electricity regulation (recast). The second is Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019, establishing a European Union Agency for the Cooperation of Energy Regulators, which I will refer to as the agency regulation (recast). The third is Directive (EU) 2019/692 of the European Parliament and of the Council of 17 April 2019, amending Directive 2009/73/EC concerning common rules for the internal market in natural gas.

The Electricity and Gas etc. (Amendment) (EU Exit) Regulations 2020 amends six previously laid SIs, which I will refer to as the principal SIs. These principal SIs prepared the UK to leave the EU without a withdrawal agreement. These changes take account of the three new pieces of EU legislation since those principal SIs were made. The electricity regulation (recast) and the ACER regulation (recast) form part of a programme of legislation known as the clean energy package, created to further integrate markets across the EU. All of the clean energy package will have entered into force by the end of the transition period, hence the need for these regulations.

The electricity regulation (recast) sets out the high-level principles and structures for the operation of EU electricity markets and defines relationships between EU bodies with a role in this area. The agency regulation (recast) sets out the role of the Agency for the Cooperation of Energy Regulators—or ACER—to co-ordinate energy regulator implementation of the clean energy package and to resolve disputes between member state regulators.

The principal SIs were made between December 2018 and March 2019 and fixed deficiencies in domestic law and direct EU law, which would become retained EU law at the end of the transition period. These amendments included provisions relating to the original electricity regulation and the original agency regulation. These original electricity and agency regulations have now been repealed, as a result of the recast regulations entering into force on 1 January 2020 and 4 July 2019 respectively.

The principal SIs are now out of date, as they pertain to the original electricity and ACER regulations, which no longer exist because they have been recast by the European Union. This draft instrument fixes those deficiencies by changing references from the original regulations to the recast regulations, omitting now redundant provisions and making changes consequential on the amending gas directive.

The draft instrument also obviously amends references to "exit day" in the principal SIs to instead reflect the reality of the transition period. The draft instrument takes account of changes made to UK domestic law required to implement the new electricity regulation. Finally, it removes provisions relating to Northern Ireland wholesale electricity markets in the previous SIs to avoid any conflict with the Northern Ireland protocol, which requires EU law governing wholesale electricity markets to continue to apply in Northern Ireland after the end of the transition period.

The draft instrument aims to maintain existing rules domestically while amending or removing provisions that will no longer be functioning after the end of the transition period. As a result, this draft instrument will help to maintain the operability and integrity of the UK's energy legislation and to maximise business continuity for market participants.

[Lord Callanan]

In conclusion, these regulations are an appropriate use of the powers of the withdrawal Act, which will maximise continuity in our energy regulation and business continuity for UK market operators and ensure that there is no uncertainty in the role and functions of UK and EU bodies in the market and requirements on market participants as we leave the European Union. I commend the regulations to the House.

2.37 pm

Lord Oates (LD): My Lords, I am grateful to the Minister for introducing the regulations with his customary clarity, on what is a series of technical amendments. In truth, two things are going on in the regulations. On one hand, they perform the fairly benign process of tidying up existing statutory instruments, so that they make sense in terms of the withdrawal agreement and implementation period. On the other hand, they expose some profound issues about what our effective exit from the EU will mean for the UK and, in particular, for Northern Ireland.

Before I turn to those issues, I ask the Minister to provide some clarity on a number of issues of detail. First, how were the devolved Administrations consulted and what responses were received from them? The Explanatory Memorandum states that SIs made under the withdrawal agreement "do not require consultation", but I assume that there is some mechanism for consulting the devolved Governments and I would be grateful if the Minister could explain how that takes place. We have an indication from the Explanatory Memorandum that the Northern Ireland Minister for the Economy made representations requesting changes, but can the Minister tell us if the views of the Welsh and Scottish Governments were sought and whether they made any comments?

The Explanatory Memorandum tells us that the Northern Ireland Minister requested that changes with respect to Northern Ireland were included as part of this instrument. Can the Minister confirm that these changes have been made? It was a little ambiguous to me in the Explanatory Memorandum. Specifically, in addition to the changes relating to the implementation period and the Northern Ireland protocol in the withdrawal agreement, the Northern Ireland Minister for the Economy requested changes to the gas legislation as a consequence of the gas directive. Could the Minister explain what those changes were and what impact they will have?

Underlying this is how GB and Northern Ireland energy markets will work in conjunction with EU energy markets after the actual exit from the EU at the end of the implementation period. Paragraph 2.13 of the Explanatory Memorandum states that without the amendments contained in this SI there would be

"uncertainty and inefficiency in the operation of GB and NI's market regulation, the role and functions of UK and EU bodies in the markets, and requirements on market participants."

I notice particularly that the plural of "market" was used:

"the role and function of EU bodies in the markets".

Does this refer not just to the NI market but to the GB market as well? If so, can the Minister clarify what the role and function of EU bodies would be in respect of the GB market after the end of the implementation period? The Explanatory Memorandum goes on to state that without these changes the uncertainty caused

"could result in increased wholesale prices".

Can the Minister explain how this would occur?

The heart of the matter relates to the impact on Northern Ireland. It is spelled out in paragraph 2.11 of the Explanatory Memorandum, which explains that EU law will continue to apply directly in Northern Ireland in so far as it applies to the electricity market. However, as we know, EU law will apply directly in respect of many other things beyond the electricity market, but that is not a matter for this regulation.

It is worth reminding ourselves that as a result of the withdrawal agreement, for the first time in our history an overseas entity in which the United Kingdom has neither representation nor legislative authority will be applying law upon the territory of the United Kingdom. We need to remind ourselves of that astonishing fact at every opportunity because it underscores the extent to which the people of Northern Ireland were let down by this Government in the Brexit negotiations.

We also need to remind ourselves of it because it underlines how integrally involved we have been, we are and we will continue to be with the European Union, whether in energy markets—as we are discussing today—or across the whole economic landscape. The real difference is that we will be doing so as bystanders rather than contributors. Even now, the Government seem to be indulging in a fantasy that we can be part of a European electricity trading market without being willing to sign up to its rules. As Michel Barnier noted in an address to the Institute of International and European Affairs in Dublin yesterday:

"In the area of energy, the UK is asking to facilitate electricity trade without committing its producers to equivalent carbon pricing and state aid controls."

I would be grateful if the Minister could confirm whether this is actually our negotiating position and, if it is, why we have adopted such a patently ludicrous and unrealistic position.

The tragedy is that, today, we face an unparalleled threat as a result of the climate emergency, and at that very point we are removing ourselves from a position of influence in an energy market on our doorstep with hundreds of millions of people. British influence could have operated in that market to continue to drive action on the climate emergency and to clean up energy production, not just in the UK but across the European continent. Instead, we spend our effort and our energy in preparing to mitigate the impact of leaving the European Union, and doing so while surrendering the sovereignty of one part of our United Kingdom and imperilling the economic well-being of the others.

Behind these rather arcane regulations—and indeed all the EU exit regulations that come before us—lies a much bigger issue and a much bigger tragedy. It is a failure of ambition and a loss of confidence in our country's ability to play a leading role for good within an international organisation such as the European Union, and, sadly, as a result, means a diminished role for Britain in the world.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): I call the next speaker, the noble Baroness, Lady McIntosh of Pickering. Lady Pickering, are you there? I think I will move on to the next speaker and we will try to connect to the noble Baroness, Lady McIntosh, later. I call the noble Baroness, Lady Burt of Solihull. Are you there, Lady Burt?

2.44 pm

Baroness Burt of Solihull (LD) [V]: I am indeed.

My Lords, this is the latest in a depressingly long line of SIs we have had to cover to prepare for the increasingly likely eventuality of a no-deal Brexit. Today, we are amending six statutory instruments which themselves amended a range of primary and secondary legislation under the withdrawal Act. On the face of it, it all seems pretty straightforward—amending definitions and removing cross-references to EU regulations and copious replacements of "exit day" with "implementation period day". To me, it does not matter which term is used: we will be gone, and in my view we will be the poorer for it.

There has been no consultation on this legislation: the withdrawal Act does not require consultation, so why bother asking anyone for their views? It rankles with the Liberal Democrats—and, I expect, with Members of other parties—that the withdrawal agreement seems to have the power to ride roughshod over the views of anyone affected. Take Northern Ireland, for example. Can the Minister clear up some ambiguity about what is happening there? This has already been referred to by my noble friend Lord Oates. Did the Northern Ireland Minister for the Economy request amendments to this SI in respect of Northern Ireland? If so, what were they and did she get them, or will they be encapsulated within legislation to come, perhaps under the Northern Ireland protocol?

The Northern Ireland situation looks complex because of the single electricity market on the island of Ireland. This, clearly, is what happens when you try to cut the threads of a complex relationship. In the words of the Explanatory Memorandum:

> "This uncertainty could result in increased wholesale prices and threaten the continued efficient functioning of the Single Electricity Market".

It is a mess, and a mess of our own making.

Finally, no impact assessment has been done because the effects identified are considered negligible. In the context of small tweaks to minor legislation, they probably are, but in the wider context of the effects of operating the energy sector inside or outside the EU, I strongly disagree. Without a crystal ball, no one can really say what untold damage our exit will do to the sector and to the consumer.

I hope that the points argued in paragraph 12.4 of the guidance will come into force. It is assumed that if a free trade agreement and a Northern Ireland protocol come into force,

> "this SI will not enter into force in its current form and will have no material impact."

Amen to that—anything is better than the spectre of a no-deal Brexit.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): We shall see whether we can get the noble Baroness, Lady McIntosh of Pickering. She is here; excellent.

2.49 pm

Baroness McIntosh of Pickering (Con) [V]: I am delighted to speak to the regulations before us this afternoon and I thank the Minister for making such a clear introduction. My questions are not dissimilar to earlier contributions, so I will be very specific. My main concern is the legal position of Northern Ireland under the protocol on 1 January 2021 and the single electricity market on the island of Ireland.

Clearly, the regulations before us are welcome as they will retain in UK law the EU provisions as they currently stand. Can my noble friend the Minister clarify specifically what the position will be on the electricity supply and the wholesale cost of supply for households as well as businesses in the event of a no-deal Brexit being reached by 31 December 2020? Although these regulations are welcome, as I understand it, they cover the legal situation as is. I hope that my noble friend will put my mind at rest and that there will not be a legal vacuum on 1 January 2021 in the event of no deal.

As my concerns are similar to those raised by other colleagues, I will limit my contribution to that specific question.

2.51 pm

Lord Fox (LD): My Lords, I congratulate the previous speakers on their speeches and the Minister on his comprehensive description, particularly of the tidying-up part of this statutory instrument. He was less forthcoming—indeed, less fulsome—on the Northern Ireland part, which was probably reflected by the previous speakers. I will not repeat their questions but I will repeat the eloquent point made by my noble friend Lord Oates.

Far from taking back control, energy consumers, including electricity consumers, in the Northern Ireland part of the island of Ireland are ceding control of their market to a foreign power in which they have no representation at all. If the Government indeed sought to take back power, they have not only failed but failed hugely in this regard—and this is just one of the many things we will see. We will see further statutory instruments that extract Northern Ireland from the United Kingdom and create a separate part of the United Kingdom internal market. Clearly, there will be two parts of the United Kingdom internal market—a very serious issue when you think about the union and the integrity of the United Kingdom. We should be under no illusions that although the Minister spoke little about this matter, it is extremely serious and disappointing.

We get little chance to talk about electricity. I know that the Minister is always keen to tell us about BEIS's plans and the future of electricity strategy. Bearing in mind the thoroughness of my colleagues, who asked most of the questions required of this statutory instrument, I will add a few. I understand that the Minister may not be thoroughly prepared to answer them; I would be happy to receive a letter if he is prepared to write one in response.

[Lord Fox]

The purpose of this statutory instrument is to deliver an orderly market, but of course there is no market if we do not have sufficient supply and adequate and efficient transmission of that supply across the country. I have a couple of questions specifically on those points. First, on the 2030 target for the growth in offshore wind energy, the offshore wind sector deal settled on 30 gigawatts by 2030. The Minister's party's manifesto talks of 40 gigawatts by 2030 and, as I understand it, plans are afoot in the industry to deliver 30 gigawatts, not 40. Perhaps the Minister can say which of these plans is actually the target for 2030 and communicate to the rest of the industry that it is indeed the plan. As the Minister knows, the climate change committee said that there should be 70 gigawatts by 2050. We need to know what the critical path to getting to that total is.

On transmission, it is clear that to deliver green, carbon-free energy across the country there needs to be significant change to the transmission grid across the United Kingdom. As it happens, tomorrow is the closing date for Ofgem's response deadline for its five-year price control plans. As I understand it—I am informed by members of the industry—the industry is saying that if the current nature of the Ofgem pricing plan remains, investment in the grid over the next five years will be reduced by 40%; I am not sure whether the Minister picked that up. For those 30 extra gigawatts of energy in 2030 to be transmitted across the country, we do not need less investment in the national grid—we need more.

So, what is the Minister's response to the Ofgem consultation, which takes very literally its economic and efficiency responsibilities to mean the lowest possible price now? The Minister knows that paying a low price now can mean paying a high price a lot later. We do not want to be playing catch-up with the grid in five years' time to deliver the energy we so desperately need to meet our climate change requirements. Can the Minister undertake to answer these questions, because this statutory instrument will be entirely theoretical if we do not have the energy we need in the places we need it and on time?

2.56 pm

Lord Grantchester (Lab): I thank the Minister for his explanation of the regulations. As has been said, they are essentially technical amendments to six EU exit orders that have already gone through both Houses and which were also mainly technical in nature. As has also been said, the regulations do not make any policy changes, whereby the annexes confirm the statements necessary under the 2018 withdrawal Act and that consultations and impact assessments are not required—and that the time when issues over this procedure can be taken up has probably passed as well. As was commented on earlier, the devolved Administrations appear to have given their approval. However, it would be good to get the Minister's confirmation.

The Explanatory Memorandum provides an excellent appraisal of the background regulations that became known as the third energy package 2009, which, together with the 2019 updates and the directives, became the clean energy package. The EM states that these amending instruments amend primary as well as secondary legislation. Usually, any secondary legislation that amends primary legislation is taken very seriously by your Lordships' Secondary Legislation Scrutiny Committee. That the committee has made no mention of this is probably because these regulations only amend other regulations, as in the Explanatory Memorandum, and not any primary legislation that was the subject of previous orders that have already been dealt with. Can the Minister confirm this position and state which items of primary legislation are ultimately part of this jigsaw?

It looks like these regulations include crossover with the order scheduled for next week dealing with the internal markets and network codes, yet it is not clear whether the orders mentioned in paragraph 6.2 of the Explanatory Memorandum—S.I. 2019/531, S.I. 2019/532 and S.I. 2019/533—have a relationship with both these regulations and next week's order other than superficial technicalities. If there is anything material to add to our understanding, it would be most helpful to hear it from the Minister.

I note that the regulations and the order due next week will keep the UK in line with the EU and in close association with the internal energy market, which must be of benefit to both the UK and the EU in maintaining flexibility of supply, reducing costs for the wholesale market and keeping prices for the consumer at a minimum. Can the Minister confirm that this remains a priority for the Government and a key objective of the discussions with the EU to bring a successful outcome to the end of the implementation period? Judging from the intervention of the Northern Ireland Minister, the devolved Administrations wish to see the internal energy markets, including the island of Ireland energy market and the EU and the UK energy markets, aligned.

3 pm

Lord Callanan (Con): My Lords, I thank all noble Lords for their valuable contributions to the debate. The Government are committed to achieving a smooth end to the transition period for our energy system. As such, a programme of legislation is required to ensure that retained EU law is workable and free from deficiencies by the end of the transition period. This draft instrument falls within this category of legislation. Failure to address in full the deficiencies in retained EU legislation, or to ensure that the relevant aspects of the Northern Ireland protocol are able to work properly, will create uncertainty and inefficiency in the operation of both Great Britain and Northern Ireland's market regulation, the role and functions of domestic and EU bodies in the markets, and requirements on market participants. This uncertainty could result in an increase in wholesale prices.

I must stress that this draft instrument, and the UK's departure from the EU as a whole, does not and will not alter the fact that our energy system is resilient and secure. This resilience is built on our diversity of supply. The UK has one of the most secure energy systems in the world and the industry has well-practised contingency plans to keep energy flowing and to ensure that our energy supplies are safe.

In Great Britain, the Government have been working closely with the electricity system operator, the national grid, and with the regulatory body, Ofgem, to ensure that measures are in place to deliver continuity of supply and confidence in the regulatory framework in all scenarios. The Government are therefore confident that the UK's electricity system is able to respond to any changes safely, securely and efficiently, whether these changes are a result of leaving the EU or other challenges facing the UK today, such as the coronavirus pandemic. Our energy system will still be physically linked to the EU after the end of the transition period through interconnectors, which bring significant benefits, including lower consumer bills, as well as security of energy supply.

In response to the questions from the noble Lords, Lord Oates and Lord Grantchester, it is indeed the case that our future energy relationship with the EU is being discussed as part of the ongoing negotiations. As set out in the UK's approach to the negotiations, we are open to an agreement in this area that provides for efficient electricity trade. Noble Lords will understand that I am unable to go into any further details of our negotiating position at this stage because the negotiations are confidential. However, should we not have reached any further agreement with the EU by the end of the transition period, or if any agreement does not cover the relevant policy area, there will continue to be significant value in increased interconnection and trade of electricity and gas with our neighbours.

This instrument will help maintain the stable functioning of the domestic energy market by fixing deficiencies across retained EU and domestic legislation, while retaining the regulatory functions required to keep the market working effectively.

I will move on to the specific questions I was asked, all of which were of a similar nature. The noble Lords, Lord Oates and Lord Grantchester, and the noble Baronesses, Lady Burt and Lady McIntosh, asked whether the devolved Administrations have been engaged. It remains the case that devolved Administration ministerial consent is not required for these SIs because energy is not a devolved matter for either Scotland or Wales. However, BEIS regularly engages on EU exit and energy matters, and both Governments were informed about the SIs before they were laid in draft.

The situation with Northern Ireland is slightly more complicated. In preparing the electricity and gas amendment regulations, BEIS consulted and worked closely with the Northern Ireland Department for the Economy to get its views on the changes required, and Northern Ireland ministerial consent for the SI was provided. BEIS also engaged with the Utility Regulator on the content of the SI. I cannot remember who asked the question, but the specific request from Northern Ireland was to remove the provisions contradicting the protocol as described above.

The noble Lords, Lord Oates and Lord Fox, and the noble Baronesses, Lady Burt and Lady McIntosh, referred to the single electricity market and Northern Ireland. I can confirm that it is the UK Government's long-standing position that by far the best outcome for electricity in Northern Ireland is to maintain the single electricity market across the island of Ireland. This has consistently been supported by both the Irish Government and the EU Commission. Continuation of the single electricity market has been achieved through the Ireland/Northern Ireland protocol to the withdrawal agreement, and nothing in this legislation affects that. As to what would happen to the single electricity market if we do not reach any further agreement with the EU, the provisions for the market were established under the Ireland/Northern Ireland protocol to the original withdrawal agreement and that provides the basis for the single electricity market.

The noble Baroness, Lady McIntosh, asked about the impact on prices. Many factors impact energy prices, including fuel prices, exchange rates and energy mix. As I said earlier, we will continue to be physically linked to the EU post exit through a number of electricity and gas interconnectors. We expect that any change in electricity prices in Great Britain as a result of changes to interconnector trading arrangements would fall within the range of normal market volatility. Therefore, we do not expect any significant impact on prices.

Again, with regard to gas markets, the mechanisms for cross-border trade are not expected to fundamentally change after exit. The UK gas market is one of the world's most developed and provides security through supply diversity, most of which comes through LNG tankers, and is therefore not dependent on the EU.

The UK Government have taken steps to enable electricity and gas trade to continue and to maintain the effectiveness of domestic regulation, providing legal clarity for industry on the future operation of Great Britain and Northern Ireland's energy markets.

To go into a bit more detail for the benefit of the noble Lord, Lord Oates, and the noble Baroness, Lady Burt, the SI will help support the continued operation of the single electricity market by removing the provisions relating to electricity in Northern Ireland, so that they do not come into force at the end of the transition period and therefore contradict the Northern Ireland protocol. The Northern Ireland protocol provides for a limited set of EU law provisions relating to wholesale electricity markets, carbon pricing and industrial emissions to apply to Northern Ireland at the end of the transition period to ensure the continued operation of the single electricity market. The Northern Ireland Executive are responsible for implementing the Northern Ireland protocol in relation to the single electricity market, as energy is a transferred matter, with my department—BEIS—continuing to provide support where appropriate.

The noble Lord, Lord Grantchester, asked about the difference between the two SIs. They both make technical changes to ensure that retained EU law will work in a domestic context, minimising impact on businesses and consumers should the UK reach no further agreement with the EU or if any agreement does not cover the relevant policy area after the end of the transition period. Most of the changes are minor—for instance, removing references to member states or EU bodies, which will of course be no longer appropriate in the circumstances.

The noble Lord, Lord Fox, in his typically genius way, used the word "electricity" in the title of the instrument to ask a whole series of unrelated questions on targets

[Lord Callanan]
for offshore wind capacity. I am very happy to write to him with a proper answer to those questions and on the details of the Ofgem consultation, which are, as I am sure he will understand and realise, unrelated to these regulations. As always, however, I commend him on his ingenuity.

In conclusion, this draft instrument is required to ensure continuity for our energy system and certainty for both market participants and consumers. In doing so, it will support the implementation of an effective legislative framework needed for reliable, affordable and clean energy. It is my pleasure to commend the draft regulations to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): I remind Members to sanitise their desks and chairs before leaving the room.

3.10 pm

Sitting suspended.

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): My Lords, Hybrid Grand Committee will now resume. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally. I must ask Members in the room to wear a face covering, except when seated at their desk, to speak sitting down and to wipe down their desk, chair and any other touch points before and after use. If the capacity of the Committee Room is exceeded, or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2019

Considered in Grand Committee

3.46 pm

Moved by ***Baroness Stedman-Scott***

That the Grand Committee do consider the Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2019.

Relevant document: 1st Report from the Joint Committee on Human Rights

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): My Lords, this instrument was laid before Parliament on 5 September 2019 and has been discussed and approved in the other place. Today, I am grateful to move this forward through your Lordships' House.

In 2013, my department passed the Jobseekers (Back to Work Schemes) Act. The Act validated sanctions and notifications issued to claimants who failed to take part in employment programmes designed to help them into work. The Court of Appeal found the Act to be an effective and valid way of achieving this but also recognised that, in a small number of very specific circumstances, some individuals had lost their right to a fair hearing under the Act.

This draft remedial order amends the Jobseekers (Back to Work schemes) Act 2013 to resolve this issue and allows the tribunals to find in favour of the claimants whose appeals were affected, where it is right to do so. It also gives my department the ability to reconsider relevant sanction decisions in these cases and to pay any affected individuals anything that they are then due. It is of fundamental importance to me that those who had appealed a sanction decision but were prevented from having a fair hearing because of the Act should have this right restored. Only a specific group of people—some 5,000 individuals—have been affected by the Act in this way. As the remedial order applies only in very particular circumstances, not all cases will lead to a payment.

My department aims to resolve these cases and make any necessary payments to these individuals as soon as it can. We anticipate that the whole process may take up to 12 months, for us to identify and pay any affected individuals. We aim to commence work on these claims in the autumn and begin reconsidering the decisions and payments. This is not just resolving this matter for the small number of claimants affected; we must also ensure that we learn the important lessons around communicating with claimants and do not create similar instances in future.

Noble Lords may be acutely aware that, in the summer, the Chancellor announced an unprecedented package of measures not only to protect jobs but to ensure that we get individuals who may have lost jobs as a result of the Covid-19 emergency back into work. I have real confidence that the digital nature of UC and its improved means of communication with our claimants via the online journal means a future Government will not find themselves in a similar situation.

The draft remedial order was laid for 60 sitting days on 28 June 2018 and then again for another 60 days last year. This was done to enable representations from Members of both Houses and the Joint Committee on Human Rights. By using a non-urgent remedial order, Parliament has been given time and the opportunity to scrutinise and consult on the order's contents. I have considered the views of the tribunals, and this draft of the remedial order has been amended accordingly. The Joint Committee on Human Rights approved the draft remedial order earlier this year, in March, and recommended it to Parliament.

Currently, no other Bills are planned that could accommodate this specific legal objective and resolve the incompatibility. This is a way of achieving that end without repealing the Act itself, which still holds for the majority of claimants.

Although it has been a long and complex process, we have comprehensively assessed the issue and carefully considered any representations that we have received. I am keen to resolve the appeal cases for these individuals as soon as we can and to take the learnings forward as we look to support people back into work. I hope that noble Lords will support this order during its final passage through Parliament.

I am satisfied that the draft remedial order is compatible with the European Convention on Human Rights and I commend it to the House.

3.51 pm

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, I thank the Minister for introducing this order. I have read all that there is to read on this statutory instrument and I have no objection to its content or the fact that the Government are using a remedial order rather than primary legislation. This matter has dragged on for a long time and it is right that it be settled; I do not know what has taken the Government so long to start the remedial process in the first place. Nevertheless, I want to say a few things about the circumstances surrounding the issue and about sanctions more generally.

The order puts right the previous denial of a fair trial for those who had started an appeal that is still extant; it establishes that an appeal would have been won and includes a mechanism by which the Secretary of State will revise decisions so that appeals will not have to run their course, thus not wasting any more time and money. I am presuming that benefits withheld under sanctions will be repaid several years after the event, but will there be any other compensation for the harm that may have arisen as a result of benefit sanctions? This could of course include the cost of getting into debt and the consequences of harm to mental health. These are recurring themes when it comes to benefits and about which I will say a little more later.

I am not expecting an answer in the affirmative to my latter questions as this whole exercise, from the Government side, whoever it has been, seems to have been focused on cost savings and leaves the unsatisfactory situation that the law will have been applied differently simply because one party had appealed and another had not. That leaves me with a continuing distaste for retrospective law which leads to disadvantage or, in my view, legitimises the improper, for that appears essentially to be what has been achieved by the 2013 Act.

I feel particularly strongly on this issue because the sanctions imposed could have meant withholding jobseeker benefits for a considerable period of time, up to six months. I want to use some of my time to speak about benefit sanctions more generally and draw attention to a recent report of the House of Lords Economic Affairs Committee on universal credit that was published on 14 July. I am a member of that committee and I note that the chairman, the noble Lord, Lord Forsyth, is listed to speak next; he may have had a similar thought. If so, there is so much in the report that there will plenty left after I have spoken. I also wish to take this opportunity to commend the noble Lord on his leadership and willingness to tackle this and other hard subjects.

I found the evidence sessions on universal credit both harrowing and humbling. I still get choked up thinking about it. I wonder if I would have been able to navigate and withstand the difficulties experienced by many claimants, and I have enormous respect for the way that several of our witnesses not only overcame their own difficulties but took on roles helping others.

Our report found that the original objectives of universal credit are broadly correct, but that there are problems in its design and implementation that do not reflect real-life circumstances and create unpredictable incomes that are hard to manage, especially for people who do not have any savings to buffer them. If nothing else, the five-week wait makes sure that that vulnerability exists.

Although not part of the original design and in fact running contrary to their stated purpose, cuts in funding have, frankly, made the regime cruel and the cause of harm, notably in terms of child poverty and mental health. This is further exaggerated when it comes to conditionality and sanctions which, according to evidence, can end up biting in unjustified circumstances that I will paraphrase as "no real fault" of the claimant. What I found surprising was the cumulative level of sanctions that could be taken from an already inadequate income—far greater than a court would be able to apply when seeking an attachment order to a bank account, for example, and seemingly with no account being taken of what other deductions, repayment of advances or other debts had to be serviced, including those to the DWP itself. This is still going on, even though since 2017 there has been some reduction in use of sanctions and their duration. Cutbacks and sanctions have pushed people into extreme poverty, indebtedness and reliance on foodbanks. This inevitably undermines any opportunity to look for and secure work and gives rise to mental health problems, which in turn must surely rebound on society and become a drag on the public purse in other ways.

An evaluation promised by the DWP in 2013 of the impact of conditionality and sanctions on claimants' mental health and well-being has not yet appeared, though heaven knows, the evidence is out there already from many sources. Even without sanctions, the pandemic and a more jobless environment will require new resources, so my plea to the Minister is for the department and the Government to take a more holistic view of the costs and societal effects, and of protecting mental health.

3.57 pm

Lord Forsyth of Drumlean (Con): My Lords, I agree with every word just uttered by the noble Baroness, Lady Bowles of Berkhamsted. She is a formidable member of the committee and has referred to our unanimous report entitled, *Universal Credit isn't working: proposals for reform*.

This order is concerned with the sanctions applied to JSA claimants who lodged appeals before the 2013 Act came into force. I must say that I share the concern of the noble Baroness, Lady Bowles, about the time it has taken to deal with this matter, but that is water under the bridge and I am grateful to the Government for bringing forward this order. However, to my mind it says something about the culture that operates in the DWP in respect of sanctions. The report of the committee, which was published just as the House went into the Summer Recess, is highly critical of the DWP regarding its use of sanctions for relatively minor breaches of rules. It makes several recommendations on the use of sanctions and reforms, and we are all looking forward to the Minister's response to those in due course.

[Lord Forsyth of Drumlean]

In my view, the Government have placed far too much emphasis on enforcing strict obligations on claimants through the threat of sanctions. The evidence seen by the committee shows that this is counterproductive and, as the noble Baroness, Lady Bowles, has pointed out, has severe implications for people's mental health and well-being. Surely, we should try to operate a system that provides more help in coaching and training claimants to find jobs or to progress in their current roles.

We were amazed to find that the United Kingdom has some of the most punitive sanctions in the world, and the evidence on their efficacy is, to say the least, mixed and unconvincing. Harsh sanctions are being applied to claimants who are already subject to high deductions to pay back advances and historic debt. The committee heard evidence that, over recent decades, there has been increased severity of sanctions accompanied by reduced safeguards. As the noble Baroness, Lady Bowles, pointed out, the penalties which can be imposed by the department are far more severe than anything that would be allowed by the courts. I am sure the Committee would agree that no reasonable system should impose fines which result in extreme poverty for minor offences. The system should take account of the effect on individuals, and the department should have some kind of hardship assessment before sanctions are applied.

I very much welcome the reduction in the maximum length of sanctions from six months to three months, which again the noble Baroness, Lady Bowles, referred to. However, we should remember that we are talking about removing the main source of support from people, which results in them having to go to food banks, being dependent on loan sharks and being cast into extreme poverty. I therefore ask my noble friend the Minister, who I know is indefatigable and very sensitive and who has a long and distinguished record in helping some of the most vulnerable in our society, what progress has been made on introducing a written warning system before sanctions are applied.

On 2 June, giving evidence to our committee, Neil Couling said that the DWP was committed to publishing an evaluation of the effectiveness of sanctions and that it was coming

"as soon as we can."

What does that mean? I note that my noble friend used that phrase in the context of complying with the order, where "as soon as we can" represented 12 months. It is disappointing that this was not published before the department reversed its decision on the suspension of sanctions as a result of Covid. It is very regrettable that the DWP has resumed the monitoring of conditionality requirements and will resume sanctions, when every day we have more announcements of catastrophic reductions in job numbers.

I say to my noble friend that, with the prospect of several million more unemployed, to threaten claimants with long and severe sanctions at this stage seems unfair and counterproductive. I ask her to think again about the decision to bring back the sanctions regime, given that the impact of Covid will, if anything, be worse and more difficult in the months ahead.

4.03 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I thank the Minister for her introduction to this order, and I offer my thanks to all the members of staff who have made this Committee possible with all their hard work.

Today, we are addressing an order that rights a legal wrong, and an illegality, that was committed twice by the Government. The Joint Committee on Human Rights tells us that, finally, the illegal government acts started under the Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 are righted by this order, almost a decade after the issue arose. On the narrow point of today's debate, I can only be guided by the committee's expertise, and I thank it for its comprehensive report. I therefore support the order.

That it has taken a decade to provide full remedy for an illegality in a regulation is, I suggest, something we might reflect on in other work around the House, from the Agriculture Bill and the Medicines and Medical Devices Bill to the immigration Bill next week, in all of which cases the Government seek to provide only a skeletal framework of their intentions, promising to fill them in later with regulation. I fear there will be decades of work in cleaning up the results.

The Minister said that she expected it would take 12 months to identify and recompense the affected individuals. I can only hope that that is delivered, given that what is happening with the Windrush scheme is not encouraging. Can she say what progress reports the House can expect over that 12 months? It would be good to have progress reports to see how this is going forward.

Today's Committee provides a chance also to reflect on some of the broader issues, as noble Lords already have. I associate myself with the strong concerns about universal credit and sanctions expressed by both the noble Baroness, Lady Bowles of Berkhamsted, and the noble Lord, Lord Forsyth of Drumlean, in particular the five-week wait, the impact on child poverty and mental health, and the huge damage done to lives by sanctions.

It is also worth taking this opportunity to reflect on the importance of human rights legislation as a balancing force for an individual against the overweening and potentially overwhelming power of the state. Some 5,000 individuals are affected in this case, on the account of the Minister. Anyone might need to use human rights legislation; I doubt that either the young graduate or the HGV driver with whom this whole saga started ever expected to make personal use of human rights legislation, yet, in choosing to bravely stand up, this mechanism was available to them to ensure that the state was not allowed to force them into illegal temporary slavery—for workfare applied illegally can be described only as that.

Secondly, in the context of Covid-19 and the potential economic situation we face in the coming years, it is important to reflect on the damage done by forced work being imposed on people. Let us not forget that a Department for Work and Pensions analysis in 2013 found:

"There is little evidence that workfare increases the likelihood of finding work. It can even reduce employment chances by limiting the time available for job search and by failing to provide the skills and experience valued by employers."

Over the past decade, we have seen many such schemes and heard horror stories such as the mandatory work activity and community work placement, and various localised trailblazer schemes for young people. They have been withdrawn. There was of course significant community backlash against companies participating in many of these schemes, but campaigners suggest that a more disguised, less visible form of workfare continues. Can the Minister inform the Committee, either now or perhaps by letter, how many people are now in work placements arranged by the Government? I do not include the word "voluntary" in that question, for we all know that there are wide degrees of voluntariness. I also ask the Minister to report to us on the use of "skills conditionality"—claimants being forced to attend a skills training provider, further education college or other adviser with potential benefit sanctions for non-participation.

These are issues that are close to my heart, because over the years I have seen so much damage done by such forced activities. In Ashton-under-Lyne, outside a jobcentre that was then known as being particularly harsh, I met a young woman who had been sanctioned for failing to complete an unpaid work placement. She suffered from agoraphobia, and would have had to take a long bus journey to the placement: she simply could not do that. She also suffered from acute uncontrolled diabetes, and she was reliant on feeding herself from a food bank. I dread to think where that young woman might be now. I think of a woman I met at a WASPI demonstration in support of women born in the 1950s affected by the increase in the pension age for women. She had been an office manager for decades, and was insulted and deeply disturbed by being forced by this system to go on a one-day course on how to write a CV.

We had companies that benefited significantly financially from these placements, and communities where large numbers of these placements meant that the income into the community from what should have been waged work was significantly reduced. As we face the potential significant rise in unemployment, it is important that we do not forget what damage was done by blaming individuals for the state of society, that we do not see any return to the disastrous and utterly appalling "strivers versus skivers" rhetoric that caused so much social division and heartache. We also need to focus on how this "job or activity at any cost" approach causes broader damage. There is lots of focus on all sides of politics on our productivity problem. I would question what we mean by productivity, particularly in the service and care sectors: when it comes to people-to-people contact, what constitutes productivity? There is also the question of people ending up in the right job, the optimum job for them and for society. Forcing people quickly into a new job that is a bad fit, with sanctions and the threat of starvation or having to seek the charity of a food bank, is in no one's interest, yet that is the entire way our system is slanted.

That is where we come to trust: trusting individuals to know what is best for them, giving them the space, time and resources to develop their human potential, grow their experiences and find the way they can best contribute to society. It will not surprise the Minister to learn that I will briefly mention universal basic income. As a society and community, we should be helping people to find their way in the world, providing support through advice on study, careers guidance and practical support in making choices. But the best person to find the way forward, to identify the skills and experience they need, is the individual concerned. Giving them the space, time and security to do that through an unconditional payment that meets their basic needs is, I suggest, the way forward.

Removing compulsion to the dictates of the state and bureaucracy, and providing instead individual freedom and choice, is something that might find significant support even on the Government Benches.

4.12 pm

Baroness Janke (LD) [V]: My Lords, I thank the Minister for her introduction, and I support and welcome the order. The question that has not been fully answered is why it has taken so long for the relevant legislation to be amended in line with the court's decision. Is this, as it appears, because over this period, DWP Ministers have strenuously resisted such action? Given her remarks about learning the lessons of communicating with claimants, does she recognise that senior politicians' failure to listen to claimants has prevented effective evaluation of whether policies are achieving their objectives? Universal credit sanctions have caused such distress to the least well-off and most vulnerable people. The Government's action in suspending sanctions until 30 June was welcome.

The report of the Select Committee, which has been referred to by colleagues in this debate, stresses that it regrets that the suspension was lifted so soon, and that threatening claimants with long and severe sanctions at this stage, so far from a labour market recovery, is unfair and counterproductive. What evidence supported the Government's decision to reintroduce sanctions from 30 June? As others have said, there is ample evidence that sanctions disproportionately affect people with mental illness and that, at best, evidence on the effectiveness of sanctions is mixed. At worst, it shows them to be counterproductive.

Do the Government share the view of the Select Committee that the UK has some of the most punitive sanctions in the world? Removing people's main source of support for extended periods risks pushing them further into poverty, indebtedness and reliance on food banks. The National Audit Office observed that the UK's unusually severe sanctions regime compared to other countries is not grounded on a strong evidence base, nor has the department attempted to fully analyse the data it has at its disposal.

As to the impact of sanctions, 80% of sanctions challenged are overturned on appeal. Does the Minister agree with the Select Committee that the report into the efficacy of sanctions should have been made public before the decision to reintroduce them was announced, as the noble Lord, Lord Forsyth, the chair of the committee, has said? What evidence in the review supported the decision to reintroduce sanctions and why it was not made public? Will she also say when the review will be made public, in line with the recommendations of the Select Committee, along with a statement on what action the Government propose to address the failings of the current policy?

4.15 pm

Baroness Sherlock (Lab) [V]: My Lords, I thank the Minister for her introduction to the order and all noble Lords who have spoken. With apologies for length, I shall read into the record the events that brought us here today, because we have to learn from them.

In 2009, the Labour Government launched the Future Jobs Fund, which created subsidised jobs for 18 to 24 year-olds on benefits to help them avoid the risk of long-term unemployment. Official government evaluation later found this to be a highly effective programme, with participants significantly more likely to get jobs than those who did not get involved.

Sadly, the coalition Government abolished it in 2010 to save money. They also abolished Labour's New Deal programmes and created the Work Programme. Research later found that the Work Programme was actually less effective than doing nothing, so it was itself abolished in 2015. Part of that programme was a requirement for some claimants to do unpaid work in return for their benefits. Caitlin Reilly, a graduate who had already done a paid work placement at a museum and was volunteering there to boost her chances of getting a permanent job, was told to leave that and undertake a work placement, which turned out to be working without pay in Poundland for five hours a day sweeping floors and stacking shelves. Work experience schemes have their place, but not workfare, whereby claimants are forced to act as free labour, displacing proper jobs. Reilly launched a legal challenge and the case eventually reached the Court of Appeal, which quashed the 2011 regulations on which the scheme depended, a view upheld by the Supreme Court.

Rather than reimburse those who had been unlawfully sanctioned, the Government then repealed the 2011 regulations and introduced the Jobseekers (Back to Work Schemes) Act 2013, which retrospectively made their sanctions legal. It also validated the parallel 2011 regulations. I remember that very well. I remember the 2013 Act being rushed through Parliament—I have been in my job for ever and ever—at breakneck speed, to huge protests from the Constitution Committee and from the House. I remember the Second Reading debate, when the then Minister, the noble Lord, Lord Freud, faced an onslaught of criticism, including from the noble Lord, Lord Pannick, who pointed out that the Bill

"breaches the fundamental constitutional principle that penalties should not be imposed on persons by reason of conduct that was lawful at the time of their action".—[*Official Report*, 21/3/13; col. 739.]

Occasionally, all of us in politics need to reflect that when we legislate in haste, we may repent at leisure. Reilly and others went back to court and, in a case that went right up to the Court of Appeal, the 2013 Act was in turn ruled unlawful because it had interfered with ongoing legal proceedings challenging benefits sanctions by retrospectively validating those sanctions.

In 2018, the Government laid a remedial order to fix things. Third time lucky? Alas not. As we have heard, following an intervention by a tribunal judge, that order was itself deemed to be at risk of challenge as it did not cover both sets of 2011 regulations. It was withdrawn, and last September this revised remedial order was laid.

Fourth time lucky, the Government have finally landed in the right place. We welcome this remedial order, which will restore the right to a fair hearing for all affected claimants, but there are some really important questions the Minister needs to answer. I recognise that she was not in post at the time, but the Government need somehow to explain to Parliament what they have learned from this mess.

First, can she remind us what will happen to the individuals affected by the order and how many of them there are? In the Commons, the Minister mentioned 5,000 people. I was not clear whether that is 5,000 people whose benefits were sanctioned and had appealed, and what stage that had got to. How many of those are likely to be recompensed and will DWP proactively try to locate them all?

Secondly, in the seven years it has taken to get this far, what have we learned? The Minister mentioned in her introduction a need to learn lessons about communicating better, but can she tell us whether a full lessons-learned exercise has been done on this case? Have Ministers asked what could have been done to avoid these various breaches of the law happening in the first place? What actions could have resolved it sooner? Have they reviewed whether it was right to spend so much time and public money appealing the decisions all the way, or should they have acknowledged and fixed the mistake earlier? Have they asked what drove the later errors? Was it money? Was it political intransigence or determination?

How does this play in the light of the worrying noises from the top of this Government threatening the whole principle of judicial review, misleadingly presenting it as the courts interfering with Parliament, rather than what it is—the courts upholding the requirement that the Government conduct themselves in accordance with the laws passed by Parliament?

Rather than just digging in and fighting citizens in the courts—including, in this case, by taking away the rights of others to appeal—could DWP better learn what systemic change might be needed to improve the system? What have the Government learned about how they use sanctions and their impact on claimants? I heard the very moving comments from the noble Lord, Lord Forsyth, and the noble Baroness, Lady Bowles, and others. I am very grateful to them and others on the committee for the work they are doing in this area.

We knew the problems back in 2013. At a Second Reading debate, my late and much missed friend Lady Hollis reminded the Minister that the DWP's own research showed that between half and two-thirds of those sanctioned did not know that it could happen, and when it did, they did not know why. In some cases, because they had other deductions from benefits, they did not even realise that they were being sanctioned, so it obviously had no impact on their jobseeking behaviour. I will not say any more on this, as others have covered it, but I will be very interested in the Minister's response to that.

That takes me to my final question: what lessons have the Government learned for employment support policy? Do they now value enablement and encouragement over punishment? Will they learn from the past?

Perhaps ironically, we are debating this order the day after the Kickstart Scheme opens to bids—a scheme offering six-month work placements to unemployed 18 to 24 year-olds on benefits. However, the Future Jobs Fund was so successful because the Labour Government got the culture right from the start and because it was collaborative. Will the Government learn lessons from the Future Jobs Fund, and from all the events we have debated today, to ensure both that Kickstart works well and that the DWP is focused less on enforcing conditionality—especially in the middle of a pandemic with enormous fallout for unemployment—and more on supporting people into long-lasting employment? I hope that is a goal we can all share. I look forward to the Minister's reply.

4.22 pm

Baroness Stedman-Scott (Con): I thank noble Lords for their contributions today. Getting people back into work and giving them the support that they need is of the utmost importance, especially at this time. My department is dedicated to doing all that we can for these individuals.

My department is constantly learning and evolving. As the Secretary of State told the House of Commons on 29 June, claimant commitments must now reflect our "new normal", acknowledging the reality of a person's local jobs market and personal circumstances to prepare them for getting back into work. We are managing this with a phased approach to ensure that our work coaches can deliver an effective service in a reasonable, measured and safe way, taking into account any Covid-19 restrictions.

I will move on to the many observations made about sanctions—an issue which all noble Lords have raised. We use sanctions as a consequence of people not meeting the agreed commitments that a claimant accepts to be entitled to benefits. We always apply reasonable judgment before any actions, and take into account the current circumstances of the individual. My department's work coaches use their judgment of what are reasonable steps. Claimant commitments must be reasonable, and in this unprecedented time they will be. Sanctions are used only if a claimant does not do what they have committed to do without good reason.

Before the start of the pandemic, sanctions were used in only a small percentage of cases, and the rate of sanctions has fallen over the last year. However, we are never complacent in our ongoing commitment to ensure that our policies are fit for purpose. That is why, in November 2019, we reduced the maximum length of high-level sanction from three years to six months, as my noble friend Lord Forsyth referred to. Data from March 2020, before suspending conditionality, shows that 2.12% of UC claimants subject to conditionality at the point where the sanctions applied had a reduction taken from their UC award. This is near the lowest on record. The latest data available following the suspension of conditionality shows that 0.73% of UC claimants subject to conditionality at the point where the sanction was applied had a reduction taken from their award.

As many noble Lords have said, the department has committed to doing an evaluation of the effectiveness of universal credit sanctions in supporting claimants to search for work in response to the Work and Pensions Select Committee report on benefits sanctions. The department will look to publish in autumn.

Noble Lords asked what "as soon as we can" means. I appreciate that we want this as quickly as possible, but the department has faced unprecedented demand on services. With an increase in claimant count of nearly 600%, we are doubling our work coaches and recruiting more and more so that we can support more people. We are having to increase the DWP estate so that we can look after people safely, with social distancing, and we have turned over every stone to increase the relationships that we are making with employers to ensure that, where vacancies exist, we can get them and put people forward for them. These are tough times and we are working very hard to support the people we are in business to support.

The noble Baroness, Lady Bennett, asked about progress reports. I need to take this question back to the department; I will get an answer to her and make sure that all noble Lords are apprised of it. She also talked about a person in Ashton-under-Lyne and gave some very alarming details about the case. If she could please let me have the details, I will ensure that that case is investigated. If other noble Lords have details of where things have apparently not worked out for people, I ask them to let me know; I give my word that it will be looked into.

Another point raised was about the unfairness of mandating people to go on employment programmes. We aim to provide individuals with the help they need to find work, stay in work and get better work, so I strongly refute that requiring people to attend programmes to help them into work is unfair. The Court of Appeal ruled in our favour on this point: attendance on these work programmes is not a breach of human rights.

I acknowledge that all noble Lords have raised points about sanctions and their impacts on people, and the noble Baroness, Lady Bennett, and my noble friend Lord Forsyth raised the point about sanctions leading to poverty and destitution and the use of food banks. We do not sanction people lightly. It is applied only where there is good reason. If people find themselves in hardship, hardship payments are available to eligible claimants to help them meet their essential needs.

The noble Baroness, Lady Bennett, raised a point about the commitment of the department and the Government to helping people back into work. I have never known a time in my working environment when I have seen such commitment in action through our Jobcentre Plus network, our partners and, in particular, our work coaches. I must say that I take the point about forcing someone into any job, but over my life I have learned that when you have a job, it is easier to get the next one. With the work we are doing on in-work progression, I can honestly say that this is the best course of action.

[Baroness Stedman-Scott]

The noble Baroness, Lady Janke, raised a point about sanctions for not attending unpaid work placements. We do not sanction people for not attending work experience placements. If we can have more details, I will investigate that.

On who falls in the scope of the remedial order, we estimate there to be under 5,000 individuals who may be affected by this. The remedial order affects a very specific group, and we will use the appeal records to identify those people.

The 2013 Act was introduced because of the department's defective notifications. I was asked whether we have reviewed the notifications and letters since. We have, and we are constantly revising and improving processes on sanctions.

Another question was whether the 2013 Act was unconstitutional. The Act was not only constitutional but it was necessary. It was introduced in people's best interest and was an effective means of achieving its policy effect.

As to when people will be paid, as I have said, during this difficult time resources have had to be elsewhere, but we will begin resolving the cases impacted by the order and paying people any amounts that they are due this year.

I am sorry, but in the time available I am never going to be able to answer all the questions. After this order is dealt with, I will go back to the department with my officials and make sure that people get answers to the questions they have raised.

I recognise the importance of resolving this incompatibility as quickly as possible. It has taken time to consider and develop the best course of action. I believe that the proposed remedial order is a reasonable and lawful approach to resolving an otherwise complex issue, and I am grateful to the Joint Committee on Human Rights for its scrutiny of the matter. The remedial order process is very rarely used, but it is an effective way of correcting incompatibilities.

Finally, the Economic Affairs Committee's report on universal credit has been published. We thank the committee for its work. We are considering the content and recommendations, and we will report back in due course. If any noble Lord wishes to discuss that report with me, they should feel free; I am very happy to meet them.

There are no arguments now to justify delaying the process. It has already been approved in the other place. I hope that the Committee will support the remedial order during its final passage through Parliament. I commend the order to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): I remind Members to sanitise their desks and chairs before leaving the room.

4.33 pm

Sitting suspended.

Arrangement of Business

Announcement

5 pm

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, the Hybrid Grand Committee will now resume. Some Members are here in person, respecting social distancing, while others are participating remotely, but all Members will be treated equally. I must ask Members in the room to wear a face covering, except when seated at their desk, to speak sitting down and to wipe down their desk, chair and other touch points before and after use. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes. The time limit for this debate is one hour.

Fatal Accidents Act 1976 (Remedial) Order 2020

Considered in Grand Committee

5.01 pm

Moved by ***Baroness Scott of Bybrook***

That the Grand Committee do consider the Fatal Accidents Act 1976 (Remedial) Order 2020.

Relevant document: 4th Report from the Joint Committee on Human Rights

Baroness Scott of Bybrook (Con): My Lords, I am afraid that the noble and learned Lord, Lord Keen of Elie, is unable to be here so I am taking this order through on his behalf.

This draft order seeks to rectify an incompatibility with the European Convention on Human Rights identified by the Court of Appeal in the 2017 case of Jacqueline Smith v Lancashire Teaching Hospitals NHS Trust and others. This relates to limits on the categories of person eligible to receive an award of bereavement damages under Section 1A of the Fatal Accidents Act 1976, which excludes a person who has cohabited with the deceased person for a period of at least two years immediately prior to the death.

The draft order was laid in Parliament on 12 February 2020 and was approved by the House of Commons on 15 June, so this debate represents the final stage in the parliamentary process, after which it will become law. As noble Lords will be aware, the terms of the Human Rights Act 1998 in relation to remedial orders require the order to be strictly focused on rectifying the incompatibility that has been identified; it cannot extend to addressing wider issues.

The bereavement damages award is set by the Lord Chancellor and is a fixed payment in acknowledgment of the grief caused by a wrongful death. The level of the award is currently £15,120, having recently been increased in line with inflation. The award is currently available to a limited number of people, including the wife, husband or civil partner of the deceased person.

Unlike civil damages generally, which are intended to compensate fully for the loss suffered, the bereavement damages award is, and was only ever intended to be, a token award payable to a limited category of people.

When the award was first introduced in the Administration of Justice Act 1982, it was acknowledged by Parliament that it is impossible to quantify or provide adequate financial compensation for the grief felt at the loss of a loved one. Similarly, the limits on the categories of people able to claim are not intended to imply that people outside those groups would not be severely emotionally affected by the death in question.

The draft remedial order provides that a claimant who cohabited with the deceased person for a period of at least two years immediately prior to the death will be eligible to receive the bereavement damages award. In view of the fact that this is a fixed, token award, it is desirable for the system governing it to be as simple and straightforward as possible to avoid unnecessary complexity that would add to the cost of litigation and the potential for disputes.

In that context, we consider that it is reasonable to set a limit that objectively evidences a relationship of permanence and commitment and avoids the need for intrusive inquiries into the quality and durability of the relationship in individual cases. We believe that two years is an appropriate qualifying period. This period is already applied under Section 1 of the 1976 Act in relation to claims by cohabitants for dependency damages, and unnecessary complexity would arise in a claim involving both types of damages if different definitions were used.

In the very rare instances in which both a qualifying cohabitant and a spouse will be eligible—that is, in circumstances where the deceased was still married and not yet divorced or separated but had been in a cohabiting relationship for at least two years—the draft order provides for the award to be divided equally between the two eligible claimants. We consider that this is the fairest approach to adopt, given that it is desirable to avoid the potential for intrusive inquiries into the quality and durability of an eligible relationship or, in this particular situation, into the respective merits of the two claimants.

I am grateful to the Joint Committee on Human Rights for its scrutiny of this draft order. A remedial order is seldom used to correct incompatibilities in primary legislation with the European Convention on Human Rights. It is therefore right that each order be scrutinised carefully both to ensure compliance with the procedure laid down in the Human Rights Act 1998 and to ensure that the incompatibilities found by the courts are addressed.

The Government welcome the committee's recommendation that Parliament approves the order and I hope that my comments have addressed the main points on which it has expressed concern in relation to the contents of the draft order. It remains our position that some of the issues raised by the committee go beyond the Court of Appeal's ruling on incompatibility and are therefore beyond the scope of the order. I beg to move.

5.06 pm

Lord Hain (Lab) [V]: My Lords, I thank the Minister for her succinct explanation. I wish to make three brief points about this order, which I trust she might respond to. First, the order makes no provision for couples who may have been together—what their friends call "an item"—although not actually living together under one roof for completely understandable and legitimate reasons. For instance, they may have clashing work commitments or obligations as carers for relatives which rule out sharing a home in the conventional sense.

Secondly, the order excludes cohabitees who have lived together for less than two years. It treats such people like employees who qualify for protection against unfair dismissal only after two years' service. The claim in paragraph 7.2 of the Explanatory Memorandum that two years together

"objectively evidences a relationship of permanence and commitment"

beggars belief. Where, I wonder, is this evidence, and what world are Ministers living in? Setting such a two-year test for a bereavement award is arbitrary. Let us not add insult to injury by pretending otherwise.

Finally, there is the question of the value of a lost life. The order applies to England and Wales and provides for the award of bereavement damages now of £15,120 for cases relating to deaths on or after 1 May 2020. In Scotland there is no statutory limit and figures of up to £140,000 have been awarded. We are back in the postcode-lottery game, but the Government rejected the recommendation of the House of Commons Human Rights Committee in May 2020 for a review of the bereavement damages scheme. I would be grateful if the Minister addressed these three specific issues.

5.09 pm

Lord Thomas of Gresford (LD) [V]: My Lords, I suppose I started off my professional career as a solicitor in the era of Lord Campbell's Act of 1846 which contained no element in awards of damages equivalent to the Scottish solatium. The Scottish approach always recognised the grief that a death causes, exacerbated by the negligent act of an institution or an individual.

When the Fatal Accidents Act 1976 came into force, I was involved in personal injury litigation for both sides—that is, individual claimants and insurance companies. I certainly thought at the time that a lump sum by way of a bereavement award could never be an adequate or just measurement of grief. I have always been attracted to the Scottish system whereby this aspect of compensation is considered on a case-by-case basis. It is a question of principle. Indeed, in the field of criminal injuries compensation, the move from common law damages to a tariff system, effectively awarding lump sums for injuries regardless of individual circumstances, caused me to resign from the Criminal Injuries Compensation Board in the early 1990s.

It is in that context, therefore, that I must regard this remedial order as a small step in the right direction but no more. I concur completely with the Joint Committee on Human Rights' excellent report that many other issues need further consideration. Since this particular case was concerned with the status of the claimant, the award of a lump sum for bereavement was not in issue and the court did not decide that a lump sum was incompatible with the convention. To change the system would therefore require primary legislation, as the Joint Committee and the noble Baroness in her introduction recognised.

[Lord Thomas of Gresford]

In assessing pain and suffering as an element in an award for personal injury, the court is concerned with many factors, for example the extent and duration of the pain, the time taken for recovery, any permanent effect, previous state of health, age and domestic circumstances —a plethora of issues. All these are variable and are considered by a judge against guidelines that judges as a body have laid down and published. However, grief is a form of suffering and will vary from individual to individual. For example, the grief of a spouse in a happy and long-lasting marriage must surely be more intense than for a spouse where a marriage of short duration is on the brink of a divorce. It is not beyond the wit of a judge to recognise these differences.

The consequences of the lump sum approach to a bereavement award may be dramatic. For example, suppose two people are involved in an accident caused by the negligence of a third party, and one is killed and the other injured. The spouse of the deceased would receive a lump sum bereavement award regardless of circumstances while the injured person would receive as compensation for pain and suffering a sum carefully calculated with reference to the personal circumstances of that injured individual. The present lump sum system surely raises in the mind of the widow that the state values the life of her husband at a derisory sum. If she cannot substantiate a dependency award, so that is all she receives from the negligent defendant or his insurance company, that will seem all the more unjust.

While this issue is beyond the scope of this remedial order, it does raise the question of equal division of the lump sum between a spouse and a cohabitee, as the noble Baroness pointed out. The Government say in their Explanatory Memorandum that they wish to avoid "intrusive inquiries" into

"the respective merits of two eligible claimants."

I cannot imagine a more likely source of conflict and bitterness on both sides than an equal division between a wife of many years standing and a cohabitee of just two years. Would such a conflict really be in the public interest?

APIL—the Association of Personal Injury Lawyers—has produced a useful briefing on this issue, referring to its Scottish experience where, as I have already said, the system is different. I certainly go along with the proposals that it makes. There is a need for a wider debate on awards in fatal accidents cases and I hope that it will take place.

5.15 pm

Baroness Jones of Moulsecoomb (GP): My Lords, I have to declare a personal interest because I have cohabited with somebody for more than 20 years, but I hope never to be eligible to claim this award. I do my best in this House to say "Well done" to the Government when I think they have got something right. It does not happen very often, but when I see something is improving legislation, then I say "Congratulations", but this statutory instrument is tiny, the bare minimum to address the human rights breach which was identified by the Court of Appeal in the case of Smith. Worse still is the fact that it has taken the Government three whole years to bring these changes to Parliament. That is a three-year gap in which bereaved couples facing a discriminatory system have been left without compensation following the death of their loved ones.

The simple truth is that the Fatal Accidents Act is not fit for the 21st century. It became law more than 40 years ago in 1976, which was a different era of relationships and family values. Today's remedial order is nothing but a sticking plaster to cover one issue raised by the courts. The Act still refers to and makes a distinction between legitimate and "illegitimate" children. Such wording was probably all right in the 1970s, but even the most senior politicians might be so-called illegitimate children. Nobody mentions that anymore because it is just not relevant. It is the same with the issue we are dealing with today. Statutes should not enforce archaic and, frankly, offensive language and the Government have to amend this. It is true that it needs primary legislation. When we have a quiet spell next year, I hope the Government will bring something back to fix this messy situation.

While I am talking about that, the word "accidents" is no longer valid when we talk about car crashes or traffic incidents. The Metropolitan Police does not use the word "accident" anymore. The whole road safety world abhors it because "accident" presupposes the cause of a collision. It presupposes that it was, "Oops! I shouldn't have done than", but there is almost always a real cause, whether it is drugs, drink or inattention. There is a cause, so the word "accident" has to go.

Other issues persist. Why do there have to be two years of cohabitation? What happens if somebody has lived with another person for 729 days, one day short of the two years? A relationship in which people have lived separately for 20 years is just as valuable, and more so, than a relationship in which people have lived together for two years. The Government are saying that a 20-year relationship lived apart is worth £0 on death. As other noble Lords have said, financial compensation is always going to be a crude measure for bereavement and will never come anywhere close to solving the hurt and healing the wounds. This order will ensure that a great many deserving people will get absolutely nothing.

The noble Lords, Lord Hain and Lord Thomas, have suggested that we go forward with the idea recommended by the Joint Committee on Human Rights and supported by the Association of Personal Injury Lawyers: the Government could open a public consultation on how to reform this clunky and flawed area of law. They could consult on whether something like the Scottish system of allowing courts the discretion to determine who should receive how much would work. Will the Minister take this away and raise it with her department?

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, the next speaker would have been the noble Lord, Lord Marks of Henley-on-Thames, but he has not been able to join the debate, so I call the noble and learned Lord, Lord Falconer of Thoroton.

5.19 pm

Lord Falconer of Thoroton (Lab): I thank the Minister for introducing this with such clarity and skill. I welcome the change that the remedial order makes,

which means that non-married and non-civil partnership couples benefit from the entitlement to bereavement damages if one of them is tragically killed. I also very much echo the need for full-scale reform of the Fatal Accidents Act 1976 which, for the reasons given by earlier speakers, is an archaic piece of legislation and can be very hurtful.

I wish to focus on this particular remedial order. I suggest that there are three things that it could have covered, so I wish to ask the Minister why it does not cover those things and if she can make inquiries to see whether an additional remedial order could be introduced to cover these matters.

The first matter was mentioned by earlier speakers and concerns the two-year period. When somebody enters into a civil partnership or a marriage, they become entitled immediately to the damages that the Fatal Accidents Act 1976 gives, yet if you co-habit with somebody, you do not get that entitlement. I see the issues that might arise in relation to proof, but why was it not possible to say that after two years it is automatic and prior to two years the position has to be proved to the satisfaction of the defendant or, if they do not agree, to a court? The Joint Committee on Human Rights referred to the example of Amelia, who had lived with her partner Jordan for 18 months when he was killed in a car crash. She was 29 weeks pregnant at the time of his death; she was not entitled to bereavement damages and would not be under this change. Can this not be changed? What is the basis for it?

The second matter concerns shared damages. There could be the most acrimonious divorce of all time going on when a partner who has been in another relationship for a long time—as well as the person with whom he or she is engaged in that divorce—is killed, and yet the bereavement damages are shared. The purpose of bereavement damages is to compensate people for the grief that they suffer. Why have the Government chosen this route rather than a different one? Again, that could have been dealt with by this order.

The third issue is the inequity of a father who loses a child and is not married to their mother not being entitled to any bereavement damages. That is not good. It could have been remedied in the light of the Smith decision, because it is precisely this sort of inequity that the court identified in the course of the judgment.

Can the Minister indicate why those three things have not been covered and can she give us some indication that she might take them back to the Ministry of Justice? Perhaps an additional remedial order could be advanced because I think that everybody in the room, and probably in the country, would strongly support those three changes.

5.23 pm

Baroness Scott of Bybrook (Con): My Lords, I am grateful for this informed and constructive debate. A number of important points were made, which I would like to respond to. If I miss anything, I am more than happy to answer in writing; I will certainly check *Hansard* for that tomorrow.

First, the noble Lord, Lord Hain, spoke about the provision for couples that may be together but not sharing a home. We can go into lots of complexity on this. We have tried to make this as simple as possible for a number of reasons, mainly because complexity at the time of grief does not help.

A number of noble Lords, including the noble and learned Lord, Lord Falconer, mentioned that no provision is made for couples who have lived together for less than two years. The period of two years already applies in other cases; certainly, under Section 1(3)(b) of the 1976 Act, the Court of Appeal did not question the validity of the two-year period. Again, if there are different definitions of eligibility at the time, unnecessary complexities can arise in a claim that involves both types of damages. We are trying to keep this as simple as possible because this money is a way of trying to help people through a very difficult period; it is not like other damages that would come through the courts.

Several noble Lords brought up the fact that the law is not the same in England as in Scotland. The civil and legal systems in Scotland and Northern Ireland are separate from those in England and Wales, so it is inevitable that the law has evolved differently in many respects. There is no inherent reason for the same approach to be taken in the different jurisdictions. The level of bereavement awards available in Scotland would lead to greater costs for not only insurance purposes but the NHS; again, it would also bring complexity into the proceedings for those people who are eligible to receive this money.

In England, there is a fixed-level award with clear eligibility criteria that avoids the need for detailed consideration of the evidence relating to degrees of grief and the potential for disputes which, I would argue, people do not need at such a point in their lives. Bereavement damages are, and always were only ever intended to be, a fixed token payment to a limited group of people. When the award was introduced into law, it was generally acknowledged that it is impossible to quantify or provide adequate financial compensation for the grief felt at the loss of a loved one. An award should not be regarded in any sense as a measure of the worth of the life that has been lost.

The noble Lord, Lord Hain, also asked why this measure is not in primary legislation. I must admit that the current pressure on the legislative timetable means that there is little prospect of using primary legislation to make such a change. Moreover, we consider that the nature of the incompatibility contributes to where there are compelling reasons as required under Section 10(2) of the Human Rights Act 1998 for making the necessary legislative changes quickly and promptly, and this was the way to do that. However, it does of course mean that the order is narrow in scope.

We have talked about the Scottish system and primary legislation, which was brought up by the noble Lord, Lord Thomas of Gresford.

The noble and learned Lord, Lord Falconer, wanted to raise three issues. I have talked about the two-year period, but obviously I will take it back to the department and we will talk more about the interesting view that marriages and civil partnerships get the award from day one while there is a two-year period for cohabitees.

[Baroness Scott of Bybrook]
Another point I will take back is the issue about a father and the loss of a child. I am not a lawyer but I do not think that that is covered within this remedial order.

That brings me to my final point. There has been a lot of talk from noble Lords about the Act itself, including how old it is and the fact that some of it uses inappropriate language, as we heard from the noble Baroness, Lady Jones of Moulsecoomb. I will take that back and make sure that I reflect noble Lords' views in the department. As we well know, plenty of legislation is going through so I do not know what sort of response I will get, but I will make sure that noble Lords get an answer on that point. If I have not answered anything specifically, I will look in *Hansard* tomorrow.

In conclusion, I believe that this order accurately and effectively addresses the incompatibilities identified by the Court of Appeal, and I think noble Lords have agreed with that, particularly in relation to eligibility for bereavement damages. Subject to the Committee's approval, it will be brought into effect as swiftly as possible following this debate. I welcome the support for the order from the Joint Committee on Human Rights and from noble Lords generally. I commend the draft order to the Committee.

Motion agreed.

5.32 pm

Sitting suspended.

Arrangement of Business

Announcement

6.15 pm

The Deputy Speaker (Lord Faulkner of Worcester): My Lords, Hybrid Grand Committee will now resume. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally. I must ask Members in the room to wear a face covering, except when seated at their desk, to speak sitting down and to wipe down their desk, chair and any other touch points before and after use. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

Human Rights Act 1998 (Remedial) Order 2019

Considered in Grand Committee

6.15 pm

Moved by ***Baroness Scott of Bybrook***

That the Grand Committee do consider the Human Rights Act 1998 (Remedial) Order 2019.

Relevant document: 2nd Report from the Joint Committee on Human Rights

Baroness Scott of Bybrook (Con): My Lords, this draft remedial order was laid before both Houses on 15 October 2019 in the last Session of Parliament. It was laid to implement the decision of the European Court of Human Rights in the case of Hammerton v the United Kingdom. The draft order amends Section 9(3) of the Human Rights Act 1998 to enable damages to be awarded under the Human Rights Act in respect of a judicial act done in good faith that is incompatible with Article 6—the right to a fair trial—of the European Convention on Human Rights. It provides the power to award damages where a person is detained and would not have been detained for so long, or at all, were it not for the incompatibility.

The Government consider this limited amendment to be an appropriate balance that implements the judgment of the European Court of Human Rights and takes into account the views of the Joint Committee on Human Rights, while also respecting the important constitutional principle of judicial immunity and the constraints provided by Section 9(3) of the Human Rights Act.

The particulars of the case are that in 2005, Mr Hammerton was committed to prison for three months for contempt of court after breaching an injunction and undertaking during child contact proceedings. However, he was not legally represented at the committal proceedings due to procedural errors. The Court of Appeal quashed the finding of contempt and the sentence, finding that he had spent extra time in prison as a result of procedural errors during his committal proceedings, which were such that his rights under Article 6—the right to a fair trial—were breached.

In 2009, Mr Hammerton lodged a claim for damages in respect of his detention. The High Court held that the lack of legal representation had led to Mr Hammerton spending around an extra four weeks in prison. However, he was unable to obtain damages to compensate for the breach of Article 6 in the domestic courts, because Section 9(3) of the Human Rights Act does not allow damages to be awarded in proceedings under the Act in respect of a judicial act done in good faith, except to compensate a person to the extent required by Article 5(5) of the convention—that is, where someone has been the victim of arrest or detention in contravention of the right to liberty and security.

In 2016, the European Court of Human Rights considered this case and found a breach of Article 6. The court also found that the applicant's inability to receive damages in the domestic courts in the particular circumstances of his case led to a violation of Article 13—the right to an effective remedy—and awarded a sum in damages, which has been paid. We are obliged, as a matter of international law, to implement the judgment of the European Court of Human Rights which, in this case, means taking steps in respect of the violation of Article 13 to ensure that similar violations will not arise in the future.

To set the draft order in context, the Human Rights Act gives individuals the ability to bring proceedings to enforce their convention rights or to rely on those rights in other proceedings, and gives courts and tribunals the ability to grant any relief or remedy within their powers as they consider just and appropriate.

The award of damages is often not necessary to afford just satisfaction for breaches of convention rights. In the majority of cases in which a judicial act done in good faith leads to a violation of an individual's

convention rights, it can readily be remedied by an appeal and other forms of relief, such as release from custody. Therefore, it would be only on rare occasions that the existing statutory bar in Section 9(3) of the Act would constitute a barrier to a victim receiving an effective remedy as required by Article 13 of the convention.

The bar on paying damages in cases such as this one is in primary legislation. To implement the judgment, it is necessary to amend the relevant primary legislation —in this case, the Human Rights Act 1998, which sets out the procedure for making remedial orders such as the ones we are discussing today.

In 2018, the Government laid a proposal for a draft remedial order to make a narrow amendment to Section 9 of the Human Rights Act. That amendment provided for damages to be payable in respect of a judicial act done in good faith where, in proceedings for contempt of court, a person does not have legal representation in breach of Article 6, that person is committed to prison and the breach of Article 6 results in the person being detained for longer than he or she would have been otherwise. The Government considered that that addressed the specific findings of the court, while at the same time taking into account the need to preserve the important principle of judicial immunity—a constitutional principle that should rightly be preserved.

In November 2018, the Joint Committee on Human Rights reported on the draft remedial order and was of the view that that proposed amendment was too narrow and did not fully remove the incompatibility of Section 9(3) of the Human Rights Act with Article 13. It recommended that we consider redrafting the order to make damages available for any breach of human rights caused by a judicial act where otherwise there would be a breach of Article 13, whether or not that leads to a deprivation of liberty. In other words, the committee said that we were not extending it enough and should go broader than the specific facts of the case.

In response, the Government accepted that other situations could arise outside proceedings for contempt of court where a judicial act done in good faith could potentially amount to a breach of Article 6, where that breach could result in the victim spending time in detention or longer in detention than they would otherwise have done, and where damages would be unavailable, contrary to Article 13. The order before the Committee today is therefore slightly wider in scope than the 2018 draft order, taking into account the need to balance addressing the incompatibility identified by the European Court of Human Rights with the need to protect the principle of judicial immunity.

I am grateful to the Joint Committee on Human Rights for its scrutiny of the proposal for a draft order and its careful consideration of the more recent draft order that has been laid. We welcome the Joint Committee's recommendation that Parliament approve the order.

Noble Lords will have heard me mention just now the need to protect the principle of judicial immunity. Judicial independence and the principle of judicial immunity must be protected; any intrusion needs to be stringently justified. That is why we engaged with the judiciary to ensure that it was fully sighted on the judgment and our plans for the remedial order.

Finally, given that the Human Rights Act 1998 applies to the whole of the United Kingdom, this order would apply UK-wide. Our officials have worked closely with the devolved Administrations during this process.

The order ensures that, in certain limited additional circumstances, where our domestic courts find that a judicial act done in good faith has breached an individual's Article 6 right to a fair trial and led to them spending longer in detention than they should, the courts are able to determine and properly consider whether an award of damages should be made for any such breach.

I beg to move.

6.24 pm

Lord Blunkett (Lab): I am very grateful to the noble Baroness for spelling out so clearly and concisely the purpose of the remedial order. I am as much here on a Thursday evening to learn, as I often am in the House of Lords, as to contribute, but I think that we have to be much clearer about what we are doing.

I am in favour of the reinterpretation of Article 5(5) —that is what the remedial order does—and the ability to provide redress when mistakes are made in the form of the kind of award we are discussing tonight. However, we should not be under any illusion that we are maintaining judicial immunity. There will undoubtedly be drift in how this remedial order is subsequently interpreted regarding the extension of the Human Rights Act. It raises also the issue of the incorporation of the ECHR into the Human Rights Act back in 1998 and what was anticipated at the time.

In addition, although I am not concerned about Henry VIII powers in this particular instance, it raises the question of whether this should have been part of primary legislation rather than an adjustment through a remedial order to the primary legislation. While it is perfectly reasonable to provide compensation in the individual case that was taken through the European court, other interpretations of mistakes made—inadvertently and therefore not deliberately—will undoubtedly arise. I am not entirely clear how judicial immunity is maintained in those circumstances, not least because anyone who has spent any time reviewing how judicial oversight of the court system itself works will note that very often it does not work well. Failure to provide counsel in this particular instance is just one of many mistakes that inadvertently might lead to an injustice.

Tonight, therefore, in approving the remedial order, I think that we should be much more open to understanding the likely implications down the line.

6.27 pm

Lord Thomas of Gresford (LD) [V]: My Lords, I welcome this order with some reservations and queries. It is important that where the European Court of Human Rights has found that UK legislation is incompatible with the European convention, that incompatibility should be removed. The fact that parliamentary proceedings are required to do that should satisfy anyone who groans under the yoke of the European Court of Human

[Lord Thomas of Gresford]
Rights, and its judgments are not effective without the approval of the UK Parliament. However, I would like to raise three queries.

The first is the use of the Schedule 2 procedure in this instance. Section 10(2) of the Human Rights Act provides that a remedial order may be made to amend legislation to remove the incompatibility which has been found if the Minister of the Crown considers there are "compelling reasons" for proceeding under that section. Since the procedure can be used not only to amend primary legislation but to amend it retrospectively, as in this case, it is obvious that Parliament wishes to place some restriction on the Minister's powers.

In this instance, paragraph 7.3 of the Explanatory Memorandum gives as the "compelling reason" that

"current pressure on the legislative timetable means there is little prospect of using primary legislation."

That is the main reason given. It also states that

"the nature of the incompatibility contributes to there being compelling reasons for making the necessary legislative change swiftly."

I rather doubt that. This order is retrospective, so I cannot see what need there is for speed.

Can the Minister confirm that there are a number of outstanding cases where claims for damages have been brought against courts or tribunals which would previously have been caught by Section 9(3) of the Act but which will be acceptable under this new remedial order? If there is not such a queue, how can the Minister justify the use of the word "swiftly"? There has not been a moment in the years I have been contributing in this House when the Government could not raise the excuse of "current pressure" on the legislative timetable.

My second query relates to the identity of the defendant in a case such as this, and that raises the question of judicial immunity. Mr Hammerton's complaint was against the county court judge who failed to inquire about, let alone to grant him, legal representation in the proceedings in which he imprisoned him for contempt of court. Having succeeded on appeal in quashing that order of imprisonment, and having served his period of imprisonment, Mr Hammerton brought proceedings for damages in the High Court. He also had to apply for leave to bring proceedings out of time. The report does not make it clear whether the judge personally was the defendant or whether the proceedings were brought against the county court in which the judge sat. Section 6(1) of the Human Rights Act states:

"It is unlawful for a public authority to act in a way which is incompatible with a Convention right."

Subsection (3) defines a public authority as including,

"a court or tribunal, and … any person certain of whose functions are functions of a public nature."

Of course that could include a judge.

For the purpose of clarity, and considering the question of judicial immunity, can the judge be sued personally for a breach of convention rights, such as here, and is he personally liable for damages? I assume that the policy behind Section 9(3), as it stood, was to protect the judge personally, provided he acted in good faith. It is conceivable that a judge—perhaps it was more likely in the past than it is today—might act so outrageously as to lose any claim to be acting in good faith.

Finally, having regard to the findings of the Court of Appeal in the Hammerton case, are civil judges routinely instructed on their powers of imprisonment or of punishment in contempt of court cases? Certainly judges and magistrates in the criminal courts are made fully aware, time and again, in lectures and communications, of their powers and their responsibilities where any question of imprisonment arises. A magistrate would have immediately appreciated the problem had he been present. It was a very basic error for the judge to use his power to imprison without even inquiring whether Mr Hammerton had legal advice and assistance.

Lord Parkinson of Whitley Bay (Con): My Lords, I am sorry to interrupt the noble Lord, but we are quite tight on time and we are close to time already.

Lord Mackay of Clashfern (Con) [V]: My Lords, this is an important application and I think it is right that I should refer to a very interesting paper by Professor Richard Ekins, who is professor of law and constitutional government at the University of Oxford. He argues that this order is ultra vires and unconstitutional. On the first point, he argues that the provisions of Section 10 of the Human Rights Act are of a type that should be construed strictly, and so construed do not allow amendment of the Human Rights Act. On the second point, his argument is that this order amending the Human Rights Act is an unusual and unexpected use of the Section 10 power, and accordingly it is inappropriate.

It will be seen that these two arguments are closely linked. While I see how the argument has been skilfully deployed, I think it construes the power of Section 10 too strictly, since the Human Rights Act is primary legislation and makes no exception of itself. Indeed, the power is contained in the Human Rights Act perhaps because that Act is so closely related to the convention that some incompatibility within it was foreseeable. This incompatibility is the source of the trouble that appeared here.

In my view the situation is such that Section 10 applies. I agree that the constitutional position of judges must be carefully taken into account, but it is fair to say that the Court of Human Rights really depended on the nature of the procedure, which had resulted in the then accused being sentenced for contempt of court to imprisonment. It was—I hope—a very exceptional case, but one which could arise in the circumstances, creating an incompatibility between the right to damages on the one hand and the failure to give the right of damages on the other, except in a case to which the section exempting the judicial honesty from such a result may apply. It was thought, correctly I think, that the amendment proposed here kept in place that judicial immunity while at the same time compensating the accused person—the applicant—for what was construed as a procedural error.

It is quite a tricky position. When the original application was put in, I am told that the then Lord Chancellor considered the matter with the judiciary

and concluded that it was right to apply for the order. I support that judgment now and would support the grant of the order in the circumstances.

6.37 pm

Baroness Massey of Darwen (Lab) [V]: My Lords, it is a great pleasure to follow the previous distinguished speakers, who have made many interesting points already. I am not a lawyer, but a member of the very active Joint Committee on Human Rights and will speak wearing that hat. The JCHR has reported on each of these remedial orders this Session, including the one under discussion now. I and all the committee are most grateful to the JCHR secretariat for its detailed work in supporting this committee.

As has been set out, this order concerns the ability of a person whose rights have been violated by a judicial act done in good faith to have an effective remedy for the wrong suffered. The risk has been that the person may be deprived of an effective remedy as required by Article 13 of the ECHR because the Human Rights Act 1998 prevents courts awarding damages in such cases.

I will not go into the history of this, as others are more capable of doing so, but will move on to the role of the JCHR and its conclusions. Our Standing Orders require the committee to report to each House on two things: whether the special attention of each House should be drawn to the draft order and with a recommendation whether the draft order should be approved.

There has been some difficulty over timing to allow proper parliamentary scrutiny of remedial orders, which can be used to amend primary legislation. The Joint Committee has drawn attention to this in relation to the dissolution period we have gone through in particular.

The committee has sought further information since its first report, such as whether Article 13 of the ECHR is given sufficient effect in UK law. There was no clear response to this from the Secretary of State for Justice or in the government response to the report. The committee therefore wrote to the Under-Secretary of State for Justice regarding the Human Rights Act and Article 13 of the ECHR in October 2019 to seek further clarity, and we received responses. The Government set out their position on Article 13 with regard to UK law and clarified the situation.

However, the Government are, of course, currently contesting a case before the ECHR involving Article 13 in relation to a breach of Article 8 on the right to family and private life. The JCHR has asked to be kept up to date on this case. The committee is content that the Government have revised the draft order and considered possible incompatibilities relevant to issues arising from Article 13. The committee welcomes the Government's acceptance of its recommendations in its first report and the amendments it has made to the draft order. The committee considers that the procedural requirements of the HRA 1998 on the use of remedial powers have been met and considers that the draft order takes care of the incompatibility identified by the courts. The JCHR considers that there are no reasons why the order should not be agreed by both Houses of Parliament, and we recommend that the draft order should be agreed to today. I look forward to the rest of the debate and its outcome.

6.41 pm

Baroness Ludford (LD): I am pleased to see the Government taking action to be compliant with the convention and the Strasbourg court judgment, since they have sometimes not been flavour of the month. I also welcome the observation in the response last year to the JCHR report that,

"the HRA performs a special role in ensuring that an effective remedy is available domestically for a human rights breach without needing recourse to"

the European Court of Human Rights. That is also a welcome endorsement of the Human Rights Act, which is also sometimes questioned in certain political circles.

When I listened to Mr Tony Abbott, the former Prime Minister of Australia, yesterday before the Foreign Affairs Committee in the other place, if I heard him right, he seemed to say that from next year the UK Government would not have to pay any money to the Council of Europe. I think that must have been a confusion with the EU Council of Ministers because, after all, the Council of Europe is not an EU body. I did a double take, because he is apparently about to become trade adviser to the Trade Secretary so does he know something that I do not? Are the Government going to pull out of the Council of Europe? I think it must have been a slip of the tongue.

The noble Lord, Lord Blunkett, and my noble friend Lord Thomas of Gresford understandably questioned whether a remedial order rather than primary legislation is absolutely justified in this case. After all, the Hamilton case was in 2016 and the Government's first draft of this order was in 2018, so to say that this has been done swiftly is a bit of a stretch.

The Government's original draft was criticised by the JCHR as a very narrow technical fix, and it wanted a wider application so that the order would remedy incompatibilities with Article 13 fully, namely by providing for damages to be payable for the breach of the convention right arising from a judicial act done in good faith. Where there is no other remedy available, that would be effective for the purposes of Article 13 where a judge considers that it is just and appropriate to award damages. It seemed to me—but perhaps the noble Baroness, Lady Massey, is better informed—that the Government have only partially accepted the advice of the JCHR and redrafted the order to, in the words of the Minister, "slightly widen" the scope of its original draft to cover any circumstances in which a judicial act done in good faith has breached Article 6 and has led to imprisonment or other detention. So they have gone wider than the constraint of "only in the context of contempt proceedings where the person is deprived of legal representation and sent to prison", but only to some extent where the Article 6 breach has resulted in unjustified detention.

Can the Minister therefore explain precisely why the remedial order cannot be widened further in scope to cover an award of damages in case of any violation of a convention right where there is no other effective remedy? The Ministry of Justice has in its submission stressed the importance of judicial immunity and

[Baroness Ludford]
independence, which is very welcome given the mud slung at judges in the past few years. We remember the slowness of the then Lord Chancellor in speaking up against the disgraceful "Enemies of the People" headlines over the Article 50 litigation. There were also very bad headlines over the prorogation judgment.

I am pleased to see the Government's confirmation, in their response, that

"an independent and impartial judiciary is one of the cornerstones of a democracy"

and that, in a letter that a then Minister at the MoJ sent to the Joint Committee on Human rights, it was noted that

"proceedings may be brought"

under the HRA

"for breach of a convention right by way of an appeal or an application or petition for judicial review."

Given that, in a Written Statement yesterday, the Justice Secretary elaborated on the Government's review of administrative law, which is intended to advise on "reform of judicial review", complacency about the availability of judicial review in the future would be out of place.

Lastly, I look forward to the Minister's reply on why this measure cannot be somewhat wider so that there is redress where a judge has made sufficient errors to violate human rights. It is a step forward but it is still incomplete.

6.46 pm

Baroness Warsi (Con): My Lords, I support the remedial order and welcome the Government's changed position. The draft order originally laid was too narrow. I will make three short points.

First, I believe and hope that this process has not cast doubt on the importance of judicial immunity, a vital bedrock of our system. Judicial independence is a principle that has universal support but, in an area as fundamental as a violation of a person's right to liberty under Article 5 or to a fair trial under Article 6, as a result of a judicial act, even when done in good faith, it is only right that damages follow in those extremely rare cases where no other remedy is possible, as was the case in Hammerton v UK.

As has already been said, an independent and impartial judiciary is one of the cornerstones of a democracy. However, as was said in the other place, depriving judges of the power to award damages against the state does not strengthen independence. The order that now allows damages to be awarded to judicial acts done in all proceedings and in relation to all breaches of Article 6 that have led to a person spending time in prison or being detained is an important position, both in principle and symbolically.

Secondly, I pay tribute to the Joint Committee on Human Rights—particularly the noble Baronesses, Lady Ludford and Lady Massey of Darwen, who are taking part in today's proceedings—for assisting the Government in reaching the right place. It was right to ensure that we maintain a spirit of generosity in embracing the human rights framework.

Finally, Professor Richard Ekins of Oxford University presented an alternative view in a paper published by Policy Exchange and referred to today by my noble and learned friend Lord Mackay of Clashfern. He made a case for the proposition that the Human Rights Act does not authorise its own amendment in the way that is proposed in this order. It is comforting, however, to hear that the Government continue to remain committed to ensuring that legislation takes effect only in so far as it is in compliance with the convention. It was, after all, the purpose behind the Act to ensure that we were, and continue to remain, convention compatible. It would be an odd outcome of the process designed to ensure compatibility existed with regard to all other legislation that it was cited to prevent the same in relation to the Act itself.

With those comments, I support the order as now drafted.

Lord Marks of Henley-on-Thames (LD) [V]: My Lords—[*Inaudible.*]

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): I am afraid that we cannot hear you, Lord Marks. The sound quality is terrible. Can you get nearer to the microphone, perhaps?

Lord Marks of Henley-on-Thames (LD) [V]: I hope so. Is that any better?

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): Slightly. Let us hope that the Minister can hear you.

Lord Marks of Henley-on-Thames (LD) [V]: I will start again. The principal substantive point that I wish to make is that the decision in Hammerton and this remedial order highlight the importance of Article 13, which provides

"an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The article enshrines the principle that breaches of the convention must give rise to an effective remedy.

Furthermore, for all that the language may be dry, it is that article that ensures that the convention does not stop at declaring citizens' human rights, to which this country is bound by international obligation, but also guarantees a remedy for the violation of those rights. Crucially, such a remedy must be available where the violation is a result of action by the state.

In the Hammerton case, the violation was of Mr Hammerton's Article 6 right to a fair trial, including his right to legal representation when his liberty was at stake. This required a remedy to be available, which it was not pursuant to Section 9(3) of the Human Rights Act as unamended.

This is why the convention is such a powerful protection for individual citizens, because Governments may well find it undesirable and inconvenient to ensure that citizens' rights against the state are consistently respected and enforced. As the Explanatory Memorandum puts it:

"The courts found that the applicant … had spent extra time in prison as a result of procedural errors during his committal proceedings, which were such that his rights under Article 6 … were breached. However, he was unable to obtain damages in the domestic courts … The ECtHR found that the applicant's inability to receive damages … had led to a violation of Article 13."

I believe that this remedial order illustrates the intelligent way in which Section 10 of the Human Rights Act operates in respecting the sovereignty of Parliament. That is achieved by its providing for the Government to give effect to decisions of the ECHR to the effect that UK legislation is incompatible with the convention, while leaving it to Parliament to make the necessary amendments to that legislation. This is a textbook example of that process in action. I do not believe that this is in any way a misuse of Section 10, and I agree with the conclusion of the noble and learned Lord, Lord Mackay, that the remedial order is appropriate. I see the point about swiftness in this case, but it seems to me that this order is nevertheless the right way to proceed.

The thoroughness and care of the Joint Committee on Human Rights was reflected in its report. First, it found that the remedial order originally proposed was too narrow, as was pointed out by the noble Baroness, Lady Warsi, and by my noble friend Lady Ludford. In paragraphs 23 and 24 of its second report, it considered how far judicial acts done in good faith may lead to a violation of other convention rights. It concluded, as the noble Baroness, Lady Massey, said, that

"such situations are difficult to foresee …and therefore do not fall within the remedial Order requirement of being 'necessary to remove the incompatibility'."

I stress again how important it is that the recommendations of the Joint Committee on Human Rights are given full weight by the Government, as they were in this case. I firmly believe that, in the interests of human rights, all the recommendations of that committee should be implemented unless there are extremely powerful reasons why they should not be followed.

6.53 pm

Lord Falconer of Thoroton (Lab): I strongly agree with the noble Lord, Lord Marks, that this a very clear example of it being for the UK legislature to decide, where there is an incompatibility, whether to change the law. It is not something that comes because of the European Court of Human Rights reaching that conclusion; it is because Parliament decides. I strongly endorse what he said in relation to that.

I strongly agree with the noble and learned Lord, Lord Mackay of Clashfern, the noble Lord, Lord Marks of Henley-on-Thames, and the Government that Section 10(1)(b) and Section 10(2) of the Human Rights Act, which refers to legislation that is incompatible, do not contain any reservation for the Human Rights Act itself and therefore, as a matter of construction of Section 10, it is possible to use the Section 10(2) power in order to amend the Human Rights Act itself. I too have read Professor Ekins's suggestion that that is wrong. Honestly, I do not think there was anything at all in the points he was making, and I agree with everybody else's point in relation to that.

I have two concerns. I was very glad to hear the noble Baroness say that the Government were very concerned about judicial immunity. If you are a judge and think that you might be sued because of a decision you make in good faith—we are dealing here only with decisions made in good faith—that might inhibit the decision you reach. The noble Lord, Lord Thomas of Gresford, made it pretty clear that a judge could, himself or herself—or themselves, if it is the Court of Appeal or the Supreme Court—be sued in relation to this. I would be very grateful to hear what reassurance the noble Baroness can give. She said that judges would be "properly protected" and so it would be very difficult to sue them in their own names, and that there would be no question but that—assuming that they had acted in good faith, because that is the only circumstance in which this applies—they would be indemnified if they were sued in person. Any reassurance the noble Baroness can give in that respect is very important.

The second issue I would like to raise is this. My understanding is that the reason judgment was found against the United Kingdom in Hammerton v United Kingdom is that the consequence of the judge not according Mr Hammerton legal representation was, as the High Court of England and Wales found, that he spent more time in jail for contempt than he otherwise would have. No appeal putting it right can compensate someone for spending time in jail when they should not have.

The one area where I would be interested to know what the Government say is what happens when a court order leads to the disclosure of information that might be in breach of Article 8—where information that should be kept private as a matter of Article 8 is then made public as a result of a court order, but, if we assume that the court order is then reversed in the Court of Appeal, the information has been made public as the result of a judicial act. What do the Government say is the position in relation to that? Assuming that the judge of the court has acted in good faith in the circumstances I posit, is that something in respect of which there would be no remedy at the moment? Is that something the Government are looking at, or is there some effective remedy under Article 13, and therefore one would not need to worry about it?

Baroness Scott of Bybrook (Con): My Lords, I am very grateful to noble Lords for their contributions to this debate. I will try to answer as many questions as I can and if I have missed anything, we will look through *Hansard* tomorrow and make sure that noble Lords get a written response, a copy of which I will put in the Library.

A number of themes came out of this debate, the first of which was using primary legislation rather than a remedial order. A number of noble Lords, including the noble and learned Lord, Lord Falconer, and the noble Lord, Lord Marks, said that this is exactly the type of situation that the Section 10 power was created for: where very narrow and targeted amendments are being made to address incompatibilities that have been identified by the courts. I would also say that the JCHR has scrutinised the draft SI and agrees that it is an appropriate use of the power to make a remedial order. It is for Parliament, of course, to decide whether or not to approve it. While I am talking about this, I thank the noble Baroness, Lady Massey, and others who were on the JCHR and who had to look at these orders twice: the Government appreciate their work and we thank them for their recommendations.

[Baroness Scott of Bybrook]

The second theme that came up, and related to that, was the power of the Secretary of State. My noble and learned friend Lord Mackay brought up the Secretary of State having vires to amend the HRA itself via remedial order. The Government have considered this question very carefully and are confident that this is an appropriate use of the remedial order-making powers.

The power is unusual in that it requires a court decision and it is intended for, and limited to, removing an incompatibility identified either by a domestic court or by a Minister having regard to a finding of the European Court of Human Rights. I hope that helps my noble and learned friend Lord Mackay of Clashfern to understand that, as I am sure he does.

The scope of the remedial order came up a number of times. The noble Baronesses, Lady Ludford and Lady Massey, asked whether it was too narrow. The JCHR's first report recommended the Government consider redrafting the order to make the damages available for any breach of human rights caused by a judicial act where otherwise there would be a breach of Article 13, whether or not that leads to detention. This is why the Government redrafted the remedial order with a slightly wider scope; we accepted that other situations could arise outside the committal proceedings, where a judicial act made in good faith could amount to a breach of Article 6, where that breach could result in the victim spending longer in detention than they should have done, and where damages would be unavailable, contrary to Article 13.

Any widening of those circumstances in which a remedy in damages is available in respect of a judicial act done in good faith should, we consider, be approached with caution because of the risk of the erosion of the principle of judicial immunity, which the noble and learned Lord, Lord Falconer, and the noble Lord, Lord Marks, brought up very strongly, as did my noble and learned friend Lord Mackay of Clashfern.

In the report on the redrafting of the remedial order, the committee welcomed our acceptance of its recommendations and it has recommended that it should go through Parliament. This was very welcome.

The noble Lord, Lord Thomas, had a question on the violation of convention rights by judges and hoped that this would not happen again, as in Hammerton v United Kingdom. I assure the noble Lord that training and guidance are available to the judiciary; the Judicial College has published an *Equal Treatment Bench Book*, which builds on judges' understanding of fair treatment. That should put the noble Lord's mind at rest that we are doing something.

The noble Lord, Lord Blunkett, brought up again the question of whether this should be in primary legislation or an approved remedial order. I hope noble Lords will accept that this is exactly the type of situation that the Section 10 power was created for: making an order to address incompatibilities.

There was quite a lot of debate about judicial independence and immunity, particularly, and understandably, from the noble and learned Lord, Lord Falconer of Thoroton. Judicial immunity is a key aspect of our judicial independence. He is quite right: an independent and impartial judiciary is one of the cornerstones of our—or any—democracy. One of the practical ways in which this is given effect is by giving judges immunity from prosecution or civil proceedings for any acts they carry out in performance of their judicial function. If he would like me to, I am very happy to write from the department about exactly what effect this will have and to put his mind at rest. We can do that after this Committee.

I think that is all that I had to specifically respond to. I reiterate that this order is the right way to implement the judgment; it reflects a pragmatic approach. I think that the noble and learned Lords, Lord Falconer of Thoroton and Lord Mackay of Clashfern, and the noble Lord, Lord Marks of Henley-on-Thames, and others, agreed that this reflects a pragmatic approach and ensures that we meet our international legal obligations—which we have to do—while still upholding the principle of judicial immunity. I therefore commend the order to the Grand Committee.

Motion agreed.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): My Lords, that completes the business before the Grand Committee this afternoon. I remind Members to sanitise their desks and chairs before leaving the room.

Committee adjourned at 7.06 pm.