Vol. 805
No. 105

Thursday
10 September 2020

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2020-09-10

In Hybrid sittings, [V] after a Member's name indicates that they contributed by video call.

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

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind 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 10 September 2020

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of St Albans.

Introduction: Lord Vaizey of Didcot

12.08 pm

The right honourable Edward Henry Butler Vaizey, having been created Baron Vaizey of Didcot, of Wantage in the County of Oxfordshire, was introduced and took the oath, supported by Baroness Fall and Baroness Bloomfield of Hinton Waldrist, and signed an undertaking to abide by the Code of Conduct.

Introduction: Lord Wharton of Yarm

12.15 pm

James Stephen Wharton, having been created Baron Wharton of Yarm, of Yarm in the County of North Yorkshire, was introduced and took the oath, supported by Baroness Pidding and Lord Callanan, and signed an undertaking to abide by the Code of Conduct.

Arrangement of Business

Announcement

12.17 pm

The Lord Speaker (Lord Fowler): 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. Oral Questions will now commence. Please can those asking supplementary questions keep them short and confined to two points. I ask that Ministers' answers are also brief.

Covid-19: Military Operations and Support

Question

12.18 pm

Asked by ***Baroness Anelay of St Johns***

To ask Her Majesty's Government what steps they are taking to ensure the continuity of military operations and support during the COVID-19 pandemic.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, the Ministry of Defence has continued to deliver its essential outputs throughout the Covid-19 pandemic. While non-critical outputs were scaled back at the early stages of lockdown, these are now being restored. Social distancing and other safety measures, in line with Public Health England guidance, have also been implemented to further reduce the risk to the health of defence personnel.

Baroness Anelay of St Johns (Con) [V]: My Lords, events such as the diagnosis of Covid-19 among the crew of HMS "Queen Elizabeth" hit the headlines. Can my noble friend reassure me that care is also taken to ensure continuity in service of less well-known craft such as auxiliary landing ship dock RFA "Mounts Bay" and HMS "Tyne", the latter performing a valuable service protecting our fishing fleet?

Baroness Goldie (Con): I can reassure my noble friend that the safety and welfare of our people are paramount. Measures are in place to safeguard them and to reduce the risk to both them and their families. While workplaces have been adjusted to meet Covid-19 guidance, all personnel who have been eligible for testing if displaying symptoms have been tested, and we have followed public health guidance throughout. I can reassure my noble friend about the continuance of operations. There has been a steady drumbeat of activity on land, sea and air.

Lord McConnell of Glenscorrodale (Lab): My Lords, have the Government, through the Ministry of Defence or the National Security Council, conducted any analysis of the impact of the Covid-19 pandemic on conflict and tension in the most important conflict spots around the world? Will that analysis, if it exists, be included in the integrated review on security, defence, development and foreign policy that the Government are due to publish in October?

Baroness Goldie (Con): Because of Covid-19, now more than ever we must be mindful of the long-term consequences of the decisions we take and of how the crisis could shift the context in which we operate domestically and internationally. The review will still be radical in its reassessment of the nation's place in the world, and that will include accounting for the implications of Covid-19.

Baroness Smith of Newnham (LD) [V]: My Lords, at the height of the pandemic, the Armed Forces had 20,000 people at readiness to deal with Covid and up to 4,000 people deployed at any one time. If we are assuming a second peak and activity going through next winter, are the Armed Forces manned to deal with the crisis on an ongoing basis?

Baroness Goldie (Con): I reassure the noble Baroness that we are preparing for whatever scenarios unfold as we approach winter. We will use the Cabinet Office-endorsed reasonable worst-case scenario, produced by SAGE, to inform departmental planning activities for the winter months.

Baroness Warsi (Con) [V]: Will my noble friend join me in paying tribute to the pivotal role our Armed Forces have played domestically and internationally in responding to the pandemic? Is my noble friend familiar with and supportive of the recommendations in the

[Baroness Warsi]
Policy Exchange report *Operation Covid-19*, which encourages learning from our Armed Forces about analysis, planning and delivering in such crises?

Baroness Goldie (Con): I thank my noble friend for her tribute to the Armed Forces; it enables me to put on the record my absolutely unbounded admiration for all they have done in the most extraordinary circumstances, displaying the very best of our defence professionalism. We all owe them a huge vote of thanks. They displayed throughout the United Kingdom —not just in England but in the devolved nations—their skills of logistical planning and strategic advice. I am very grateful to my noble friend for bringing attention to the report to which she referred.

Lord Craig of Radley (CB) [V]: My Lords, in order to observe social distancing, were service personnel required to vacate their accommodation and expected to sleep elsewhere? What steps were taken to cancel accommodation costs and refund inevitable transport costs for those so instructed?

Baroness Goldie (Con): I will have to undertake to write to the noble and gallant Lord with a more specific response. I can say that, in general, arrangements were made for isolation and that these arrangements were flexible depending on what was best for the individual involved. Obviously, we adhered to the rules in the same way as we would for any other UK citizen, with appropriate modification to take account of the atypical accommodation often found in defence. I shall write to the noble and gallant Lord with further detail.

Lord Touhig (Lab) [V]: My Lords, our troops have rightly continued their duties overseas for the duration of this pandemic, keeping our citizens safe and helping to maintain international peace. Can the Minister say how many personnel are currently absent from operations due to testing positive for Covid or being in quarantine? How often personnel are tested when they are serving in high-risk parts of the world?

Baroness Goldie (Con): I am unable to give the noble Lord a specific answer on the number who are absent. I have data for the number of people who are tested and the proportion of these who prove positive, but we do not have centrally held data on the more detailed pattern of Covid-related absences.

Lord Campbell of Pittenweem (LD): My Lords, how will the United Kingdom continue to support operations and the NATO policy of deterrence by conventional means if we are to abandon land-based capabilities, such as tanks and armoured fighting vehicles, as is now widely reported?

Baroness Goldie (Con): I know the noble Lord is anxious to draw me on some specifics, but he will not be surprised to learn that I am not going there. The integrated review is under way, and it is a significant and important review. As I explained earlier to the noble Lord, Lord McConnell of Glenscorrodale, we are taking account of all changing circumstances. The objective is to be in a situation with the capability, robust and tested, to meet the challenges of the new age. We are living in a very different age to even 10 years ago with new threats and technologies. The integrated review will take all that into account.

Lord Bhatia (Non-Afl) [V]: My Lords, the Army said that it is ready to serve during the Covid-19 pandemic, and it could also support the NHS. Some 4,000 military personnel have been seconded to civil authorities. Can the Minister say whether the Navy or Air Force have also provided any support?

Baroness Goldie (Con): I am going to undertake to write to the noble Lord with more detail. I do not have sufficient information before me to respond to his question.

Lord Robathan (Con): My Lords, I have been informed that at Army training establishments, such as Catterick and Sandhurst, all the trainees—who are young people, in least danger of catching or suffering from this virus—are confined to barracks for the entire period of training, not just the normal part of the course. However, the staff are, quite rightly, allowed to return to their families and the community. Can my noble friend confirm whether this is the case? If so, is it not contrary to a basic rule of leadership, namely leading by example? Should we not consider the morale and mental well-being of keen young volunteers joining the Army confined to barracks against all logic?

Baroness Goldie (Con): I say to my noble friend that what the Armed Forces have been doing has rightly drawn admiration, as has already been indicated in the Chamber. These activities require training, and it requires a level of training to continue, and to ensure that this happened, ongoing training has taken place. Stringent protective measures are in place after specific planning processes and full risk assessments have been conducted, all in accordance with government and health guidance. At the end of the day, the safety and welfare of our men and women is paramount.

Lord Ramsbotham (CB) [V]: My Lords, following that question, training is vital for sustaining the continuity of military operations. Can the Minister inform the House whether the pandemic has had any influence on operational training?

Baroness Goldie (Con): Obviously, at specific times certain personnel have been affected, depending on their health situation. We have taken steps to enable safe training, including social distancing during roll calls and physical training, isolating at the beginning of courses and reconfiguring communal spaces such as canteens, sleeping quarters and classrooms. Therefore, a consistent pattern of training has continued.

Lord Browne of Ladyton (Lab) [V]: My Lords, NATO has already felt the effects of the pandemic: Norway called off Cold Response 2020, Exercise Defender-Europe 20 was restructured and trimmed and Covid-19 entered the Latvian-based NATO battlegroup. Meanwhile, the

US European Command has cancelled or postponed a lot of planned exercises. Against this background, what steps is NATO taking to ensure that it will be able to perform core tasks and missions, in the short term and in the longer term, in the absence of these exercises?

Baroness Goldie (Con): The noble Lord is quite correct that decisions were taken to pause certain exercises, and that was the correct decision with regard to the safety and well-being of those who otherwise would have participated. NATO and all member states are anxious to resume activity when circumstances permit that to happen. We must take account of situations in host countries, not just their health situation but what their particular requirements and restrictions may be. I am confident there is a resolve on the part of NATO and the member states to do whatever we can to continue activity, but we must always have at the forefront of that the health, well-being and safety of the personnel of all member states.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked. We now move to the second Oral Question.

Gambling Legislation

Question

12.30 pm

Asked by ***Lord Foster of Bath***

To ask Her Majesty's Government what plans they have, if any, to review gambling legislation.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, the Government have committed to review the Gambling Act 2005 to make sure that it is fit for the digital age. We will announce further details in due course. However, we and the Gambling Commission are not waiting for the review to make gambling safer. Already this year, we have banned credit card gambling, tightened protections for online gambling in lockdown and consulted on further safeguards on product design.

Lord Foster of Bath (LD): I thank the Minister for that reply. However, given that we have a third of a million problem gamblers, including 55,000 children, and one gambling-related suicide every day, action is urgently needed. I am delighted that the Minister acknowledges that some action can be taken without needing to wait for a review, and, in fact, without needing primary legislation. For example, we have a fairly tough regime for games that take place in physical premises—a regime that includes limits on stakes and prizes—but, bizarrely, no such one for online gambling. As the online gambling companies cash in on the pandemic, make more profit and put more lives at risk, will the Government now take urgent action to address this particular problem, as recommended by your Lordships' Gambling Industry Committee?

Baroness Barran (Con): I thank the noble Lord and his colleagues on that committee for its excellent report, which we are considering. The noble Lord is right to point out that online gambling has a much higher risk of harm than land-based gambling, but I do not agree that we are being slow off the mark to move on this. Operators are already required to monitor the way that their customers play and to take action. As I mentioned, we have already banned the use of credit cards for gambling, and we have been monitoring very closely during Covid-19 and beyond the trends in online gambling.

The Lord Bishop of St Albans (V): My Lords, with the significant increase in gambling harms during lockdown, are Her Majesty's Government satisfied that the Gambling Commission has adequate resources to do its work? Is the Minister content with the commission reducing its staffing to make savings at the very point when it needs to take additional action to regulate online gambling?

Baroness Barran (Con): I thank the right reverend Prelate for his questions. Actually, there were fewer people using online slots and casinos in June than in March, so there are some counterintuitive trends in the gambling market. With regard to the Gambling Commission and its powers and resources, we are considering proposals for an uplift in the fees that it collects from industry. In relation to recent stories about redundancies at the commission, it is always reviewing ways to become more agile and responsive.

Lord Moynihan (Con): My Lords, the DCMS in its sport integrity review called for legislative action on the issue of match fixing. Will the Minister look to amend Section 42 on cheating in the now very much outdated Gambling Act 2005, so as to bring the UK in line with international best practice by introducing specific match-fixing legislation?

Baroness Barran (Con): I know that my noble friend has worked very hard on this important issue. I cannot comment on the specifics, but I can reassure him that we are absolutely committed to ensuring that the review of the Act results in making it fit for purpose in a digital age.

Lord Butler of Brockwell (CB) (V): My Lords, the Minister has said that the intention of the Government is to review the 2005 Act to see if it is up to date for dealing with the digital age. It is perfectly clear that it is not. Will the Government treat as a matter of urgency completing their review of this Act and introduce new legislation in the coming year?

Baroness Barran (Con): I hope I can reassure the noble Lord when I say, genuinely, that this is being actively worked on at the moment.

Lord Brooke of Alverthorpe (Lab) (V): My Lords, I want to raise the point that the noble Lord, Lord Foster of Bath, introduced. We have the worrying situation of 55,000 10 to16 year-olds now gambling

[Lord Brooke of Alverthorpe]
online. Action can be taken quickly on this; it could be taken in the context of the online harms Bill. Will the Minister say whether she is prepared to have something in that Bill that will bring this to an end and that the Government will place a duty of care on the gambling industry? If not, why not?

Baroness Barran (Con): I can only repeat what I have said already: we are going to conduct the review very thoroughly. We found your Lordships' report most helpful. We also consulted last year on whether to raise the minimum age for playing the lottery to 18, and we will publish our response to that consultation in due course.

Lord McNally (LD): My Lords, will the Government make it clear to the FA, the Premiership, the Football League and the National League that the direction of travel is inevitably to ban gambling advertising on shirts and that they should prepare now for that reality?

Baroness Barran (Con): Both gambling advertising and gambling sponsorship are subject to extremely strict rules, and must never target children or vulnerable people. The whistle-to-whistle ban has actually resulted in a reduction in the number of advertisements that children are seeing.

Lord Smith of Hindhead (Con): My Lords, I refer to my interests as set out in the register. There is evidence to link loot box spending and problem gambling among young adolescents. Does my noble friend the Minister agree with me that a relatively simple change in legislation could bring loot boxes into the classification of gambling and, as a result, they would become properly regulated and available only for those aged 18 years and older?

Baroness Barran (Con): My noble friend will be aware that we committed in our manifesto to tackle issues around loot boxes. We have announced that we are launching a call for evidence to inform the next steps on this.

Lord Stevenson of Balmacara (Lab) (V): My Lords, is not one of the great problems the lack of statutory control of advertising, which largely lies in the hands of the industry? I am delighted to hear that the long-delayed DCMS review of gambling legislation is to be restarted. Can the Minister confirm that it will cover this important lacuna?

Baroness Barran (Con): I cannot be specific on the scope of the review, but the evidence is not clear about the link between advertising and problem gambling, particularly among young people. The evidence points rather to the behaviour of parents and peers in influencing them.

Lord Thurlow (CB) (V): I remain deeply concerned that the Government continue to postpone primary legislation to deal with the gambling crisis: there are growing levels of addiction and an acceleration of domestic violence and family break-ups. They are standing by when thousands of young people slide into avoidable habits; there is poverty, misery and daily suicides. Will the Minister give a clearer indication as to a date when we may expect legislation?

Baroness Barran (Con): Just to be clear, the data shows that problem gambling remains at around 1% and has not changed over a long period of time. We are keen to get this review of the legislation right and we will bring the consultation forward as soon as possible.

Lord Kirkhope of Harrogate (Con) [V]: Does my noble friend agree that the new phenomenon of gambling companies using TV and radio advertising to apparently promote some restraint in gambling is actually having the reverse effect of further encouraging gambling, as well their own particular brands?

Baroness Barran (Con): I am sorry to disagree with my noble friend, but I am not aware of any evidence that supports that.

Baroness Walmsley (LD) [V]: My Lords, when the Government banned tobacco advertising on television, at that point they were convinced of the efficacy of advertising in persuading people to undertake certain activities. Eighty per cent of gambling marketing spend is now online. In 2017, about £1.2 billion was spent, and it is probably more now. Given the harm that gambling can cause to health, as well as society, will the Government ban online gambling advertising in the same way as they so successfully banned tobacco advertising on television?

Baroness Barran (Con): Advertising, as long as it is done responsibly, is an important advantage that licensed operators have over the black market, so the noble Baroness's suggestion is not without risk.

The Lord Speaker (Lord Fowler): My Lords, all the supplementary questions have been asked. Does the Chief Whip want to come in at this point? No? In that case, we will move to the third Oral Question.

Music Industry

Question

12.41 pm

Asked by ***Baroness Kennedy of Cradley***

To ask Her Majesty's Government what steps they are taking to support the music industry, particularly the self-employed and sole traders, for the remainder of 2020 and into 2021.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, the Government recognise the crucial role that the self-employed play in the music industry and that the pandemic presents a significant challenge to individuals in the sector. The Secretary of State announced a £1.57 billion support package for cultural

organisations, providing targeted support for sectors including music. This fund will help preserve venues and festivals, which will ensure that musicians have a stage to perform on. We are committed to supporting the sector through this very challenging time.

Baroness Kennedy of Cradley (Non-Afl): My Lords, UK Music estimates that 72% of those who work in the music industry are self-employed. This means that thousands of people have not earned a penny since the lockdown began, and now thousands more are fearful about how they will pay their bills in the gap between the furlough scheme ending and the full reopening of venues. Will the Government finally accept that sector-specific support and extensions to the furlough scheme are needed for struggling industries, such as the music industry, to save them and the people who work in them from total collapse?

Baroness Barran (Con): The Government absolutely recognise some of the issues that the noble Baroness raises. We do not have the data specifically for music, but across the cultural sector, about 75,000 people have already benefited from the Self-employment Income Support Scheme. We have aimed to structure the cultural recovery fund in a way that maximises employment opportunities for those working in this sector, but obviously we are keeping it under review and are in close conversation with sector bodies.

Lord Whitty (Lab) [V]: In normal times, many musicians and music enterprises make part of their money from live appearances and touring, particularly across Europe. I have yet to have a reply to my question to the noble Lord, Lord True, last week as to what post-Brexit provisions for free movement of musicians and free passage of their equipment, and that of support teams, the Government are looking for in this week's negotiations. I ask the Minister here today: what are the expectations of her department in that regard?

Baroness Barran (Con): Obviously, my department is working very closely with those involved in the negotiations, and we aim to negotiate reciprocal arrangements which will facilitate businesses, including musicians and groups of musicians, to deliver their services within the EU.

Viscount Trenchard (Con) [V]: I declare my interest as a director of Standon Calling Ltd, a music festival business. I understand that the funding available through the cultural recovery fund has separate allocations for small loans of between £50,000 and £250,000 and larger loans from £250,000 up to £3 million. Can my noble friend tell the House to what extent the smaller loans category has been subscribed? If it has been oversubscribed, will the Government direct funding from the larger loans allocation to the smaller loans category, where it is of greatest assistance to freelance artists and the self-employed, who have not been able to benefit from the furlough scheme?

Baroness Barran (Con): Unfortunately, the data my noble friend seeks has not yet been published. We are expecting Arts Council England to provide that data shortly, and it will obviously be shared publicly. In terms of reallocation, an enormous amount of work went into deciding the proportions within the fund, and those reflect where we think funds are needed.

Lord Clement-Jones (LD): My Lords, at a minimum, the furlough and the SEIS scheme should be extended, but we need to go further. The Prime Minister in his Statement yesterday outlined plans to pilot mass testing in Salford for indoor venues. Will the Minister ensure that music venues in the local area are part of these pilots, and will the Government look into underwriting insurance to event promoters in the event of short-notice cancellation in any pilots?

Baroness Barran (Con): I can certainly confirm to the noble Lord that the Government really value the contribution of the arts, including music, are ambitious in trying to get venues open as quickly as it is safe to do so, and are considering all options to do that.

Baroness Neville-Rolfe (Con): Our cathedral choirs are one of the glories of our country, and they have been very badly affected by Covid restrictions, in that they could not perform, although some are just beginning to sing again. Cathedrals are large, airy spaces and rarely packed with people. I hope this will justify interpreting the Covid restrictions in a flexible way. Will my noble friend urge this on the churches, her colleagues and local authorities?

Baroness Barran (Con): My noble friend makes a very persuasive case for cathedral choirs, and the Government share her enthusiasm and recognition of their important contribution. From 15 August, we reached stage 4 of our road map on the safe reopening of venues, which has allowed choirs, including cathedral choirs, to put on live indoor performances in front of a socially distanced audience. I am pleased to say that yesterday's announcement about groups of six makes no change to that.

The Earl of Clancarty (CB): My Lords, newly self-employed musicians who started self-employment in the tax year 2019-20 have no financial support under the current measures. This is the younger generation, whom we need to nurture. Can the self-employed scheme be extended to include them?

Baroness Barran (Con): There are no current plans that I am aware of to extend the self-employed scheme to that group, but the £95 million fund announced by Arts Council England is trying to maximise employment opportunities, including for those early in their careers.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, while the total funding made available by Her Majesty's Government is welcome, the Minister will be aware—we have raised this with her before—of the problem facing freelancers who operate under a limited company and take dividends as a source of income. They are unable

[Lord Stevenson of Balmacara]
to claim through the current SEISS. This issue also affects high-tech start-up entrepreneurs. It is clearly a problem that has not been properly addressed. Can the Minister take this up with the Treasury and press for support to be extended to this group?

Baroness Barran (Con): I am happy to raise this issue as the noble Lord suggests, but one issue that we have struggled with is separating out and identifying dividend income in the kind of examples that he has given us for those getting dividend income from their investments.

Baroness Burt of Solihull (LD) [V]: Since the end of the Self-employment Income Support Scheme, many people in the live arts industry are surviving off money that they set aside for tax. May I ask the Government to consider being flexible about the tax payment deadline on 31 January, so that people can pay their tax when they are able to earn money again?

Baroness Barran (Con): I think that is more a question for my colleagues in the Treasury, but I am happy to pass it on.

Baroness Bull (CB): My Lords, grass-roots music venues are a vital launch pad for emerging artists, and 93% of them are commercially owned. Emergency stop-gap funding to prevent imminent evictions is welcome, but does the Minister agree that a longer-term solution, such as a property management fund, is required so that this valuable network of venues is not lost?

Baroness Barran (Con): The noble Baroness, as ever, makes a good point. Of course those venues are critical. We are trying to learn as we go along, and look forward to hearing about the impact of the cultural renewal fund, which aims to retain employment and allow some venues to reopen and others to partially open. We will keep the situation under close review.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, the Minister mentioned stage 4 of the road map. Is there still an intention to move to stage 5 this autumn? Is she considering a scheme, like the Chancellor's for restaurants, of giving a financial incentive to the public to come out to such events, in a socially distanced way, and give a real fillip to those performing centres?

Baroness Barran (Con): It was a little difficult to hear the second part of the noble Lord's question, but I got the impression that it was something along the lines of "Sing out to help out". In answer to the first part of his question, the Government still aim to reach stage 5—indoor and outdoor events with fuller audiences—as soon as it is safe to do so. We continue to work with the industry towards achieving that goal.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked, and we now move to the fourth Oral Question.

Electric Vehicles

Question

12.52 pm

Asked by ***Baroness Hayman***

To ask Her Majesty's Government what steps they are taking to encourage the uptake of electric vehicles.

Baroness Hayman (CB) [V]: My Lords, I beg leave to ask the Question standing in my name on the Order Paper, and declare my interests as set out in the register.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the Government are investing £2.5 billion to support the market for electric vehicles. As part of our consultation on bringing forward the end of the sale of new petrol and diesel cars and vans, we are considering what further measures are required to support the uptake of zero-emission vehicles.

Baroness Hayman (CB) [V]: I am grateful to the Minister. The environmental benefits of transition to electric vehicles are well understood, but I wonder whether she has seen the recent report of the Local Government Association, *Decarbonising Transport - Accelerating the Uptake of Electric Vehicles*, which powerfully sets out the benefits, in terms of economic recovery and job creation across the country, of investment in the infrastructure necessary for that transition. Can she assure me that substantial investment in the infrastructure needed to support the uptake of electric vehicles, and bringing forward the date for ending the sale of petrol and diesel cars, will be an urgent priority for the Government?

Baroness Vere of Norbiton (Con): I thank the noble Baroness for pointing me in the direction of that report; I had not seen it. I certainly have now, but I shall study it in more detail. She is right that one of the key action areas that comes out of that report is charging infrastructure. I think that all noble Lords will recognise that as absolutely critical. The Government and industry have already supported the installation of more than 18,000 public chargers, including 3,200 rapid devices. The Government have also made available £20 million to local authorities under the on-street residential charge point scheme. So far, 60 local authorities have taken advantage of that, and 2,000 chargers have been put in place. I recognise that there is more to be done: we need to get more chargers on the streets, and that is what we intend to do.

Lord Leigh of Hurley (Con): My Lords, I declare an interest in that I own a Tesla all-electric motor car, and I support the request of the noble Baroness, Lady Hayman, to encourage the Government to do more for owners of electric vehicles. The Minister mentioned 18,000 charge points. Does she not agree that we should be leading by example? I have written twice to the House authorities to ask them to put charge points

for electric vehicles in the House of Lords car park, and have twice been rejected. Would she be so kind as to join my mini-campaign to show the country how we are leading by example? As I am allowed to make two points, may I also, on behalf of all vehicle drivers trying to carry out their business in London, ask the Minister to contact the Mayor of London to reduce the lane reductions that he has put in place—for example, on Park Lane northbound and Euston Road underpass eastbound—which are bringing London literally to a standstill?

Baroness Vere of Norbiton (Con): I am grateful to my noble friend for raising two important issues, over both of which I have very limited power. Obviously, London roads come under the remit of TfL and the Mayor of London. However, as my noble friend will know, we are in deep discussions with TfL and the Mayor of London, given their financial situation at the moment, and I am sure the conversation will at some stage turn to roads and their closure. As for my noble friend's first point, about installing a charging point in the House of Lords car park, I will indeed join his mini-campaign.

Baroness Deech (CB) [V]: My Lords, I too have an electric car and have been unable to park in the House of Lords because of bureaucracy and expense that we need to sweep away. In general, as you travel around the country and you need to recharge, that requires uniformity. Everywhere one goes, there are different credit card-type of memberships. Imagine if every time you went to a petrol station you found different sized pumps and that different memberships of organisation were required. We need uniformity all over the country. Will the Minister encourage that?

Baroness Vere of Norbiton (Con): The noble Baroness, Lady Deech, has raised an important issue. It is a fact that some cars cannot use certain chargers. However, the Government also recognise that a huge amount of innovation is taking place in this field at the moment. We are very clear that all charge points should accept debit and credit cards and be freely available to people. We want the data, on whether charge points are up and running and where they are, to be freely available. We will consult on the powers we have through the Automated and Electric Vehicles Act 2018 to mandate minimum standards for charge points which will include things like contactless provision, transparency in pricing and, as I have said, access to information.

Baroness Blackstone (Ind Lab): My Lords, the Government's record on providing funding for green transport and clean transport does not match up to that of France and Germany. The German Government have doubled subsidies for electric vehicles to €8 billion. Will the Government commit to similar support in the run-up to COP 26?

Baroness Vere of Norbiton (Con): The noble Baroness will know that a spending review is forthcoming. However, I do not think that it is quite right to compare one country directly with another because the type and scale of our interventions are many and varied. We are looking at many different ways because it is not just about throwing money at the problem, although that is often the solution which comes from the other side of this House. What we can look at is encouraging people in the right way to enter the electric vehicle world, as many noble Lords have done. I will give a small example. The green number plates that are to be introduced later this year will help local authorities to design and put in place new policies that will specifically address electric vehicles.

Lord Bradshaw (LD) [V]: My Lords, if the EU is not a dirty word to mention, the EU has brought about a great deal of standardisation in the field of mobile phones. Generally speaking, you can charge them up anywhere in Europe. Will the Government use every possible means in their power to make sure that we get standardisation of charging points so that people do not have to wander from place to place looking for a charging point which they can use?

Baroness Vere of Norbiton (Con): My Lords, we work closely with the industry on charging points. While standardisation will be a good thing to achieve eventually, we must not stifle innovation.

Lord Rosser (Lab) [V]: Perhaps I may come back to that last point. I fully support what the noble Lord, Lord Bradshaw, has just said about complete compatibility in charging points, but I am getting the impression that there is a lack of enthusiasm on the part of the Government to do anything on this, certainly in the short term. How long are the Government going to continue not seeking to insist on complete compatibility of charging points so that they can be used by all vehicles, and indeed also address the issue of greater compatibility in speed of charging? These are two issues which are off-putting to some potential owners of electric vehicles.

Baroness Vere of Norbiton (Con): Of course we want greater compatibility in charging points, but what we are not going to do is set out in regulations right at this moment in time to define exactly what a charging point needs to look like. We need to let the market work together because, after all, it is in the interests of those supplying the charging points that the highest number of people can use them. We are working in a collaborative fashion in order to achieve the sort of compatibility that we want to see in the future.

Lord Carrington of Fulham (Con): My Lords, I refer the House to my interests as set out in the register. Does my noble friend agree that one of the principal reasons that people are hesitating to buy electric cars is because they have doubts about the performance of batteries? What are Her Majesty's Government doing to encourage research into battery performance and to ensure that the technology and production of batteries is within the UK, not concentrated in China?

Baroness Vere of Norbiton (Con): My noble friend is right that range anxiety is one of the key reasons cited by potential purchasers of electric vehicles and why they are not doing it. Between 2017 and 2021, the Government will have invested £274 million in the Faraday battery challenge which is looking at how to make batteries more safe, sustainable, high performance, low cost and long life. It is really important that people are doing that so that we can have better quality batteries in our vehicles. Another point to make is that at the end of a battery's life, they usually have 70% of their storage left over which can be used in second-life applications. It is important that those are investigated as well.

Lord Loomba (CB) [V]: My Lords, as the use of electric vehicles increases, and with more charging points drawing from the national grid, what preparations have been made to ensure that there are no outages of supply, as happened in August 2019? That resulted in chaos on the road and rail networks as well as affecting supplies to many homes and businesses.

Baroness Vere of Norbiton (Con): The Government are very aware of the impact of electric vehicles on both overall and peak demand for electricity. We are looking at increasing the amount of smart charging in off-peak periods. For example, we have consulted on ensuring that all new private charge points have smart charging in order to help in flattening demand from peak periods. We will have legislation on that next year. I would also like to reassure the noble Lord that we have invested £30 million in looking at vehicle-to-grid technology, which is another way of using the battery in the car as an electricity storage mechanism. I thank the noble Lord for his question and assure him that energy generation is top of mind.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for the Question has elapsed, and that brings Question Time to an end.

1.04 pm

Sitting suspended.

Arrangement of Business

Announcement

1.09 pm

The Lord Speaker (Lord Fowler): 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 am afraid that I will immediately have to adjourn the House.

Lord Ashton of Hyde (Con): My Lords, before we start, I remind noble Lords that this is a Private Notice Question. I urge noble Lords to keep their questions short in order to allow everyone to get in; they should not make speeches.

Rule of Law

Private Notice Question

1.10 pm

Asked by ***Lord Falconer of Thoroton***

To ask Her Majesty's Government, further to the remarks made by the Secretary of State for Northern Ireland on 8 September confirming that certain provisions of the United Kingdom Internal Market Bill relating to the Northern Ireland Protocol would "break international law" (HC Deb, col 509), whether they are committed to the rule of law.

The Advocate-General for Scotland (Lord Keen of Elie) (Con) [V]: My Lords, the Government have not proposed any breach of UK law. On occasions, tensions can arise between our domestic obligations and our international commitments and we will always seek to resolve these, as we have in the past. The freedoms and protections that we all enjoy rely on the rule of law; it is an important constitutional principle and, as a responsible Government, we remain committed to it.

Lord Falconer of Thoroton (Lab): I am grateful to the noble and learned Lord, the Advocate-General, for that Answer. Brandon Lewis's acceptance that this Government are deliberately breaking international law will be thrown in the UK's face for years. Expect dictators to justify murderous breaches of international law by relying on the Lewis mantra: "specific and limited".

Demanding compliance with anti-Covid measures, yesterday the Prime Minister said:

"We expect everybody … to obey the law."—[*Official Report*, Commons, 9/9/20; col. 608.]

The Home Secretary condemned Extinction Rebellion for law-breaking. The rule of law is not pick and mix, with acceptable laws chosen by the Home Secretary or an adviser in No. 10. This stinking hypocrisy chokes our country's reputation and destroys our Government's ability to lead at home and make agreements abroad.

In June 2018, the noble and learned Minister, a law officer, whom I am surprised to see in his place, lectured on the importance of law, describing the law officers as

"champions of the … law within government",

and said that their

"duty … is to ensure that the Government acts lawfully at all times".

Jonathan Jones agreed and left. Law officers and the Lord Chancellor must stand by their self-proclaimed duty or leave. Otherwise, they will be dismissed as long on self-importance and short on the backbone that their great offices require.

I have two questions. First, how is the admitted breach of international law consistent with the UK's commitment to the rule of law? Secondly, on what basis does he, as a law officer, remain part of the Government?

Lord Keen of Elie (Con) [V]: My Lords, I think the noble and learned Lord broke up slightly when he was asking his second question, but I certainly understood the drift of his remarks.

Lord Falconer of Thoroton (Lab): Secondly, on what basis does he, as a law officer, remain part of the Government?

Lord Keen of Elie (Con) [V]: I thank the noble and learned Lord.

My Lords, from time to time, as I indicated, tensions occur between our domestic legal obligations and our position with regard to international law. Indeed, in 1998, the then Labour Government passed the Human Rights Act, including Section 19 that required statements of compatibility to be made when Ministers introduced legislation. Interestingly enough, Section 19(1)(b) had an alternative statement, which required the Minister to say that

"he is unable to make a statement of compatibility"

with our international obligation but that

"the government nevertheless wishes the House to proceed with the Bill."

In 2002, the Labour Government introduced the Communications Bill with just such a certificate, because it was perceived that Clause 309 of that Bill could be considered to violate our international obligations under Article 10 of the convention. From time to time, we face these tensions.

Here, there is a very real tension between the direct effect of EU law pursuant to Article 4 and what would occur if we had no agreement at the end of the transition period and there was no determination by the Joint Committee as to the way forward under the Northern Ireland protocol. That is because there are other provisions apart from Article 4. There is Article 4 of the protocol itself, which determines that Northern Ireland is part of the UK's customs area. There is Article 16 that deals with societal and economic pressures that could lead to us being in breach of the Belfast agreement. All these have to be considered.

Against that contingency, Ministers considered it appropriate to provide, or ask Parliament to provide, a means of addressing these issues. At the end of the day, it will be for the sovereign Parliament to determine whether Ministers should be able to deal with such a contingency. Indeed, it will be for this House to determine whether it considers it appropriate for Ministers to be able to deal with such a contingency.

In these circumstances, I continue in post and continue to advise, encourage and stipulate adherence to the rule of law—understanding that, from time to time, very real tensions can emerge between our position in domestic law and our position in international law. It is not unprecedented for legislation passed by this Parliament to cut across obligations taken at the level of international law. In those circumstances, domestic legislation prevails.

The Lord Speaker (Lord Fowler): My Lords, I remind the House that this is not a debate; we are asking questions. If the next contributors could keep their questions short, and Ministers could keep their answers short as well, it would be to the benefit of everybody.

Lord Thomas of Gresford (LD) [V]: Has a certificate such as the noble and learned Lord referred to a moment ago been given in relation to this Bill, suggesting that it does not comply with international obligations?

The Prime Minister persuaded the Queen to prorogue Parliament unlawfully a year ago, his chief adviser Cummings unlawfully broke the law on his Barnard Castle jaunt, and now the Prime Minister will ask the Queen to give her Royal Assent to what is effectively an unlawful Bill that quite deliberately breaks international law. The Tory shadow Counsel General in Wales, the highly respected David Melding, resigned yesterday, and the head of the Government's legal service resigned two days ago. Having regard to the oaths of office to uphold the rule of law, why are the Lord Chancellor and the Attorney-General still in office, even if the noble and learned Lord himself clings to it?

Lord Keen of Elie (Con) [V]: My Lords, first of all, the Minister presenting this Bill has given a certificate of compatibility pursuant to the Human Rights Act; that has been done.

As regards the further issues raised, it will be for Parliament to determine whether, at the end of the day, it decides to pass this legislation. That is a matter for Parliament, and the Ministers have presented the Bill to Parliament for those purposes.

Lord Judge (CB) [V]: My Lords, given that, by the Executive's own assertion, they propose to break the law in a specific and limited way, are they to be exempted from the basic principle that the rule of law, which includes adherence to international treaty obligations, binds all of us? If so, where will this violation of constitutional principle end?

Lord Keen of Elie (Con) [V]: As I previously indicated, my Lords, there are exceptional circumstances that arise, from time to time, when we find ourselves with a tension between our domestic legal regime and our obligations at the level of international law. There are also occasions when we find some conflict between different international law obligations. We adhere to the rule of law, but we understand the need to try to resolve tensions that may emerge if, at the end of the day, we do not have a post-transition agreement and determinations from the Joint Committee.

Lord Howard of Lympne (Con): My Lords, does my noble and learned friend simply not understand the damage done to our reputation for probity and respect for the rule of law by those five words uttered by his ministerial colleague, in another place, on Tuesday—words that I never thought I would hear from a British Minister, far less a Conservative Minister? How can we reproach Russia, China or Iran when their conduct falls below internationally accepted standards, when we are showing such scant regard for our treaty obligations?

Lord Keen of Elie (Con) [V]: My Lords, we are not showing scant regard for our treaty obligations. We are endeavouring to allow for a contingency that may arise very soon, which will require us to ensure that we

[Lord Keen of Elie]
can discharge our obligations to Northern Ireland. That creates difficulties, so far as the direct effect of EU law is concerned, if there is no post-transition agreement and no determinations by the Joint Committee.

Lord Blunkett (Lab): As a non-lawyer, I ask a simple question. Alongside the breach of our international obligations, is this not a breach of respect for Parliament and democracy, given that the Prime Minister signed up to this agreement, forced it through as part of the Act and knows perfectly well that it is nothing to do with the negotiations towards the end of this year, but an admission of complete failure to understand what he was putting through Parliament?

Lord Keen of Elie (Con) [V]: I do not accept that. This is not a case of the Executive or Ministers seeking to act contrary to the will of Parliament. This is a case in which Ministers have brought legislation and laid it before Parliament for Parliament to determine whether provision should be made for the contingencies to which I have referred. This shows complete respect for Parliament and if, at the end of the day, Parliament and this House do not wish to confer the ability to deal with these contingencies on Ministers, they will not. It is a matter for Parliament.

Lord Marks of Henley-on-Thames (LD): My Lords, the Government have used terms such as "clarification" and "safety net" in describing the Bill. It is nothing of the sort; it is a direct abrogation of the withdrawal agreement. This is an issue about national integrity and the rule of law, as Sir Jonathan Jones recognised in resigning as Treasury Solicitor. I ask the noble and learned Lord how he would describe a barrister with whom he had negotiated a detailed written settlement agreement, who then explicitly reneged on that agreement by announcing an intention to act in direct contravention of both the agreement and the law.

Lord Keen of Elie (Con) [V]: The situation outlined by the noble Lord does not reflect that which exists in the context of a potential tension between our domestic legal obligations to Northern Ireland and the terms of the withdrawal agreement, in the event that we do not achieve the goals that all parties intended, including the ability to ensure the maintenance of the Belfast agreement.

Baroness D'Souza (CB) [V]: My Lords, tanks on the lawn will not, in the UK at least, herald the end of democracy or of adherence to the rule of law. It is shocking that the following clause is set out in government-proposed legislation:

"Certain provisions to have effect notwithstanding inconsistency or incompatibility with international or other domestic law".

Will the Government either withdraw this derogation or provide compelling justification for its inclusion?

Lord Keen of Elie (Con) [V]: My Lords, the Government will seek to provide compelling justification for its inclusion. Ultimately it is for this Parliament to determine whether that case has been made.

Lord Hunt of Wirral (Con): While declaring my interests set out in the register and as chair of the Society of Conservative Lawyers, I ask my noble and learned friend the Minister whether we are rewriting or amending the withdrawal agreement or the Northern Ireland protocol.

Lord Keen of Elie (Con) [V]: My Lords, we absolutely are not. It would not be possible for us to unilaterally rewrite either the withdrawal agreement or the terms of the Northern Ireland protocol. We understand that. It is why my right honourable friend the Secretary of State for Northern Ireland was so candid in his remarks in the other place.

Lord Empey (UUP) [V]: At the beginning of July, the Government allocated £25 million to help businesses in Northern Ireland manage the regulatory and customs consequences arising from the Northern Ireland protocol. By 29 August, this sum had risen to a staggering £355 million. Can my noble and learned friend explain how a unionist Government are allocating hundreds of millions of pounds to police a border, within the United Kingdom, which they claim does not exist legally?

Lord Keen of Elie (Con) [V]: I am not familiar with the precise sums that have been expended, as explained by the noble Lord. On paragraph 4 of the Northern Ireland protocol, it is expressly agreed by everyone that Northern Ireland will remain a part of the United Kingdom customs area. We as a Government are determined to ensure that that remains the case after the transition period.

Baroness Crawley (Lab) [V]: My Lords, government spokesmen have said all this week that we need to disapply aspects of the withdrawal agreement, which we signed, in case of no deal. However, does the Minister agree with his Irish counterpart Simon Coveney, who said in his address to the Dáil last night that the Irish

"protocol agreed as part of the withdrawal agreement is designed and empowered to operate in all circumstances, including in the absence of an agreement on the future relationship between the EU and the UK"?

If the Minister agrees, why are the Government risking their international reputation by setting aside the upholding of international law?

Lord Keen of Elie (Con) [V]: My Lords, that is because we will require consideration of not only the absence of a post-transition agreement, but the absence of clear determinations by the Joint Committee, which would render the Northern Ireland protocol potentially unworkable.

The Lord Speaker (Lord Fowler): The time allowed for this Private Notice Question has elapsed. I apologise to those noble Lords who have not been able to get in, but it brings the PNQ to an end.

Covid-19 Update

Statement

The following Statement was made in the House of Commons on Tuesday 8 September.

"With permission, Mr Deputy Speaker, I would like to make a Statement on coronavirus. As a country, we have made huge strides in our fight against this invisible killer. Today's Office for National Statistics figures show that weekly coronavirus deaths have dropped to the lowest number since mid-March, and the latest daily number of recorded deaths is three. However, we have seen a concerning rise in the number of positive cases, particularly among younger people. These figures serve as a salutary reminder that this virus is still very much with us and remains a threat, so it is critical that we maintain our collective commitment to controlling this disease.

Social distancing is the first line of defence. While young people are less likely to die from this disease, be in no doubt that they are still at risk. The long-term effects can be terrible, and of course they can infect others. Six months on, many people are still suffering chronic fatigue, muscle pain and breathing difficulties. Previously fit and healthy people have been reduced to barely being able to function. A King's College survey published today shows that 300,000 people in the UK have reported symptoms lasting for more than a month and that 60,000 people have been ill for more than three months.

I also want to address the point, which is of course good news, that the number of people who are sadly dying from coronavirus in this country is currently low. We have seen all across the world how a rise in cases, initially among younger people, then spreads, leading to hospitalisations and fatalities. In Spain, where the rise in cases started around two months ago, hospitalisations have risen 15 times since mid-July. The number of daily deaths there has reached 184. In France, hospitalisations have more than tripled in the same period.

This must be a moment of clarity for us all. This is not over. Just because we have come through one peak, it does not mean we cannot see another one coming towards our shores. But together we can tackle it, so long as we remember that, in a pandemic, our actions today have consequences tomorrow for the people we love, for our communities, and for our country. Each and every citizen has a responsibility to follow social distancing and help to stop a second peak.

After social distancing, the next line of defence is test and trace. Over the past six months we have built the biggest testing system of any major European country, and one of the biggest testing systems in the world. Today, I can tell the House that we have met our target to provide testing kits to all the care homes for older people and people with dementia that have registered to get tests.

But I will not rest. We are working flat out to expand our testing capacity even further. Using existing technology, we are expanding our capacity right now, and we are investing in new testing technology too. Last week, I was able to announce £500 million for next-generation tests such as saliva tests and rapid turnaround tests that can deliver results in just 20 minutes. The ability to get rapid, on-the-spot results will significantly increase the weapons in our armoury, in our fight both against coronavirus and for economic recovery. We are rolling out these tests right now, and plan to use them to relieve capacity constraints, to expand asymptomatic testing to find the virus and to give people the confidence that a negative test result brings.

Where it is necessary, we will not shy away from taking targeted local action. In June, I established the joint biosecurity centre, to provide the best possible data analytics, using information from all possible sources. Our local action is driven by the data. We now publish daily local data on cases, so that everyone can see the data on which these decisions are taken, and this shows that our approach is working. For instance, in both Leicester and Luton, the weekly case rate more than halved during August. I want to thank the people of Leicester, including the honourable Member for Leicester South (Jonathan Ashworth), of Luton and of the other areas where we have taken local action, who have followed social distancing and helped to bring the virus under control.

Sometimes local action requires us to act fast and respond to changing circumstances. Unfortunately, after improving for several weeks, we have seen a very significant rise in cases in Bolton. Bolton is now up to 120 cases per 100,000 population—the highest case rate in the country—and I am publishing the data behind the decisions that we have taken. I must therefore tell the House that, working with the local council, we are taking further local action. The rise in cases in Bolton is partly due to socialising by people in their 20s and 30s; we know that from contact tracing. Through our contact tracing system, we have identified a number of pubs at which the virus has spread significantly. We are therefore taking the following action in Bolton, starting immediately. We will restrict all hospitality to takeaway only, and we will introduce a late-night restriction of operating hours, which will mean that all venues will be required to close from 10 pm to 5 am. We will urgently introduce further measures that put the current guidance—that people cannot socialise outside their household—into law.

I want us to learn the lesson from Spain, America and France, not to have to learn the lesson all over again ourselves through more hospitalisations and more deaths, and take this local action in Bolton. Crucially, we all have a part to play. Young people do not just spread the virus to each other. They spread the virus to their parents and their grandparents. They spread it to those they come into contact with and others who they love. I know that social distancing can be hard and that it will be extra tough for students who are starting university, but I ask them please to stick with it and to play their part in getting this virus under control.

We are also putting in place extra measures, including visitor restrictions, to restrict the spread of the virus into care homes and hospitals in Bolton. I want to thank the leadership of Bolton Council, who are doing an outstanding job in very difficult circumstances, and colleagues who represent Bolton in this House,

[Lord Fowler]
with whom I have discussed these measures. I want to say this directly to everyone living in Bolton: I know how anxious you will be, and I know the impact that these measures will have. We are asking you to take a step back, at a time when we all just want to get on with our lives and what we love and get back to normal, but we need to take this crucial step to keep the virus at bay, because as we have seen elsewhere, if we act early and control the virus, we can save lives.

As well as controlling the virus using the tools we have now, we will do everything in our power to bring to bear the technologies of the future. Over the past few months, we have seen the pivotal role that technology has played in our response, such as next-generation rapid testing, machine-learning tools to help the NHS predict where vital resources might be needed, and the discovery here in the UK of the only two treatments known to save lives from coronavirus. We want to keep that momentum going, so today, we are allocating £50 million from our artificial intelligence in health and care award. That fund aims to speed up the testing and evaluation of some of the most promising technologies, because through bringing new technologies to the front line, we can transform how we deliver critical care and services across the country.

Finally, the best way out of this coronavirus pandemic remains a vaccine. We have already announced that we will roll out the most comprehensive flu vaccination programme in history this winter. We now have agreements with six separate vaccine developers for early access to 340 million doses of coronavirus vaccines, and we will use every method at our disposal to get as many people protected as possible.

This virus feeds on complacency, and although time has passed since the peak in the spring, the threat posed by the virus has not gone away. Now, with winter on the horizon, we must all redouble our efforts and get this virus on the back foot. I commend this Statement to the House."

1.30 pm

Baroness Thornton (Lab): First, I place on record our thanks to the teachers, head teachers, school staff, university and FE college staff and others making it possible for our children and young people to return to their education. I hope this will remain a top priority for the Government as we move through and, we hope, out of this pandemic. It has been wonderful to see my great-nieces and nephews and granddaughter joyfully going back to school in the last week. As a non-executive director of one London's hospitals, which is in my record, I can testify to the huge amount of work going on preparing for the winter stresses.

But here we go again. We need to start by reflecting on why we do not have before us the incredibly important new Covid restrictions announced yesterday by the Secretary of State and the Prime Minister, which aim to deal with the new surge in coronavirus infections. In fact, the Statement has been made in the Commons in the last hour or so, and I suspect we will see it in due course at the beginning of next week. I accept that the hybrid nature of the House means that we will not be able to take it today, which might have helped us all enormously. It is not the Minister's fault; it is just one of the casualties of the situation we find ourselves in. Perhaps, the noble Lord could confirm when the new regulations will be laid.

Yesterday, Mr Speaker said quite rightly in the Commons:

> "It is really not good enough for the Government to make decisions of this kind in a way that shows insufficient regard to the importance of major policy announcements being made first to this House and to Members of this House wherever possible."—[*Official Report*, Commons, 9/9/20; col. 619.]

The Secretary of State made a Statement about current Covid-19 issues on Tuesday and failed to mention major policy proposals of which he must have had prior knowledge and which were already being discussed on social media. Thus, he did not allow a discussion of the current proposals, which the Prime Minister then announced in a Downing Street press conference and a letter which noble Lords will have received overnight. This suggests that the omission was deliberate and reveals yet again the disregard with which the Minister and his colleagues hold their duty to be accountable to Parliament, which is undermining our democracy. If Mr Speaker follows through on his threat to allow Covid-19 UQs at the beginning of every day to ensure that the Secretary of State can and will report new policy and be accountable to Parliament, I assure the House I will be arguing to take every single one in this House every day, so that the Minister can do his bit for accountability, too.

We have a Statement before us, press announcements made and a new law of six, but I need to return to the question I asked yesterday about what has gone wrong with the testing system. I would be grateful if the noble Lord would engage with what look like widespread problems some people are having accessing tests, rather than repeating the mantra about the high proportion of successful tests close to home, which is accurate, I am sure, but not the way to solve a clearly growing number of problems. I know the Minister will not shout at me, as his right honourable friend did to Keir Starmer yesterday, or accuse me of undermining the whole test and trace system when legitimate, evidenced problems are being articulated by many Members of Parliament and reasonable questions are being asked. The Minister needs to address the problem of the availability of tests.

Yesterday, I mentioned schools, where inevitably children will become ill. Parents are advised to keep them at home and get a test, and some are finding this impossible. Unsurprisingly, parents turn to teachers and head teachers for advice, placing even greater stress on our schools, which are working so hard to keep our children safe and educated. A reliable, rapid testing regime is vital, as we have said from the outset.

As for moonshot, which the Prime Minister mentioned in his letter, with his fondness for hyperbole, if the Government cannot even deliver testing for those ill with symptoms, how on earth are they going to deliver 10 million tests a day? I want to correct a statement the Secretary of State made in the Commons an hour or so ago, when he said to my honourable friend Jonathan Ashworth that the Labour Party was opposed to mass testing. That is absolutely not true. What we

are against is incompetence. We are saying: how on earth will moonshots be delivered if basic testing is not working well?

The new regulations are meant to make it easier for people to understand. But does the noble Lord agree part of the confusion stems from the fact that some of these rules may be inconsistent with government messaging that people should return to work. Does he accept that, even where employers are taking necessary steps to facilitate social distancing, busy commuter trains, tubes and buses are not Covid-secure? On these Benches, we have said from the outset that one of the biggest barriers to self-quarantining would not be Covid fatigue but personal finances. Does the Minister accept that the Government need to go much further in helping people who need financial and housing support to self-isolate? Otherwise, how will we get on top of infections in areas characterised by low pay, child poverty and overcrowded housing?

Finally, to contact tracing: in Bolton, contacts were reached in only 57% of non-complex cases; in Oldham, 50%; in Blackburn 47%; and in Bradford, only 43%. Nationally, only 69.4% of contacts are reached and asked to self-isolate. These are Government's latest statistics, and they make me wonder whether "world-beating" is yet another piece of hyperbole. On the effectiveness of testing, my colleague, the shadow Health Secretary, highlighted that only 69% of contacts were identified by the test and trace system, and I am afraid the noble Lord's colleague Matt Hancock said he was wrong. He was right. I yet again have to ask the noble Lord—privately, if he wishes—to correct his boss's record. More importantly, how can we improve on that record of testing and tracing?

Baroness Barker (LD): My Lords, this is a Statement made two days ago in the other place, but it has been largely overshadowed by yesterday's deluge of hyperbole and hokum. The Prime Minister said yesterday:

"We know, thanks to NHS Test and Trace, in granular detail, in a way that we did not earlier this year, about what is happening with this pandemic. We know the groups that are suffering, the extent of the infection rates, and we have been able, thanks to NHS Test and Trace, to do the local lockdowns that have been working."—[*Official Report*, Commons, 9/9/20; col. 609.]

If that is true—and given the record of the Prime Minister and Health Secretary, one is always entitled to ask whether it is—how come local authorities and directors of public health are given only limited access to the test and trace case management system and not given full access to the contact system? Why are the Government sitting on data or passing it to companies run by their mates, instead of passing it to local authorities, which, for weeks, have been trying to predict and manage the inevitable spike in infections that follows people starting to travel and going to school and university. Why are they not getting that data in a timely manner?

From the start of this pandemic, experts advised the Secretary of State to invest in public health teams and NHS labs that are numerous and easily reached by many communities, including in rural areas. Instead, he gave the money to outsourcing firms such as Serco and G4S, which have no expertise and have not had to compete for the contracts. He could have invested in local public services; instead he has built a system on a foundation not fit for purpose. On Tuesday, in the Statement, the Secretary of State for Health said of care homes that

"we have met our target to provide testing kits to all the care homes for older people and people with dementia that have registered to get tests."—[*Official Report*, Commons, 8/9/20; col. 517.]

But on Monday, the Government were forced to apologise for continuing delays to Covid-19 testing for care home bosses and GPs, who are threatening that these will lead to more infections among vulnerable people.

The Secretary of State's own department, the Department of Health, admitted to breaking its promise to provide test outcomes within 72 hours. Care managers have described the Government's centralised testing service as "chaotic" and "not coping", amid reports that whole batches of tests are coming back not only late but also void. Testing officials told care homes by email on Monday morning that

"immediate action has been taken at the highest levels of the programme to bring results times back"

within 24 hours.

"We apologise unreservedly to … you … and your staff."

The ring of steel that the Secretary of State claimed to have put around care homes never was. With upwards of 40,000 deaths, when will the Government sit down with care home providers, local authorities and CCGs to develop a comprehensive system of testing and supply of PPE? It does not have to be world beating; it just has to work.

The Prime Minister's Statement yesterday would have been risible were the consequences not so serious. Most ludicrous of all was the announcement of a team of Covid-secure marshals to enforce the new laws on public gatherings. The Government could have done any number of things. They could have announced resources to enable the rehiring of retired public and environmental health professionals, since there is a shortage. They could have given funding to local community and voluntary groups to communicate ongoing health risks and the law to communities. They could have given additional funding for trained police officers to work with health officials and businesses to improve adherence to infection control. But, no, instead we got another vacuous attempt to steal the headlines. Maybe these marshals, with no training, no resources, no local management and no authority could join up with the 750,000 volunteers for the NHS and the trackers, and like them they could sit and twiddle their thumbs, waiting for the phone to ring.

One thing we can be sure of is that this is another stunt which will be an utter waste of time, money and resources. Local authorities, police forces, health authorities and schools are using their professional expertise and local knowledge to plan effective public health interventions. They are not only following the science but also using it to actively protect people in their authorities. In stark contrast, this Government ignore advice, misrepresent the science and carry on winging it, but the data on infections and the lack of reliable testing are evidence that the Prime Minister's bumbling bombast and the Health Secretary's growing litany of half-truths are indicators of world-beating incompetence and, sadly, people in black and minority

[Baroness Barker]
ethnic communities and poor communities will suffer the consequences. It is time for the Government to change.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, I am enormously grateful for the thoughtful and informed questions from the Front Bench, and I echo the comments about teachers made by the noble Baroness, Lady Thornton. The return to school is a fundamental priority of the Government. It is a massive challenge for those involved, for governors, teachers, parents and school kids. I endorse the thanks the noble Baroness gave to teachers, who are performing incredibly well. The high return rates—percentages in the mid to high 90s—is remarkable and shows enormous confidence in the system among schoolchildren and their parents.

I also echo the noble Baroness's thanks to NHS and social care staff who are preparing for winter. Enormous amounts of preparation are going into that. In response to the point made by the noble Baroness, Lady Barker, I reassure the Chamber that engagement with social care, local charities and local councils is incredibly intense and we are working extremely hard with local partners in all areas.

The noble Baroness, Lady Thornton, asked when the new regulations will be delivered. I am afraid that I cannot confirm the precise date, but I can reassure her that this Government are committed to being accountable to Parliament for those regulations and I look forward to that debate.

The noble Baroness also asked about the sequence of announcements. I reassure her that the Prime Minister brought his Statement to Parliament in good faith to update Parliament first. We cannot prevent leaks from happening, and leaks that get on to social media and then into the papers are something that we did not design or deliberately create. They are something that we regret. It would have been massively our preference for the Prime Minister to put Parliament first in his announcement.

The noble Baroness also asked about the testing system. The capacity of the testing system has never been higher: it has increased by 10,000 per day for the last two weeks and continues to increase dramatically. But demand has never been higher either, and there are good, laudable reasons why that demand is going up. The number of tests for supporting the vaccine programme has gone up. The number of tests to support our therapeutics programme has gone up. The surveillance of local prevalence has gone up, and the marketing around the use of tests by those who show symptoms has proved to be much more effective and the take-up among those who have Covid-19 symptoms has gone up. For those reasons we are extremely pleased by that effect.

However, there has also been a significant rise in the use of tests by asymptomatic individuals, largely tied to children returning to school. That is why we have been clarifying the guidance on the use of tests—that they should be used by those who have symptoms and not by those who are asymptomatic. One day, when the capacity is there and the system can bear it, I hope that we will move towards a system where anyone can have a test whenever they like, however they feel, but right now we must live within the system that we have. We are doing hundreds of thousands of tests per day and clarifying with teachers and parents that tests should be used by those who show symptoms and not by those who are seeking some other form of guidance.

Regarding the questions asked by the noble Baroness about the moonshot, I am a little confused. "If we cannot do millions of tests today, how can we expect to be able to do millions of tests tomorrow?" seems to be the question. I will answer it very clearly. The innovation around testing has moved much quicker than anyone could have expected in terms of scale, cost, accuracy and speed. The industry and the professionals in the NHS, academia and private business have come together in a triple helix to collaborate in a massive revolution in testing, which has changed considerably in this country from the days when we were struggling to do 2,000 or 3,000 tests per day to when we had the capacity to do 200,000 or 300,000 tests per day.

We have a clear view of how we can dramatically increase the tests. That clear view has two components: those tests that use existing technology that is purchasable in today's world, and a clear idea of where innovation will take us in the very near future. This Government are committed to grabbing the opportunity of that innovation in order to dramatically increase the number of tests. There will be nay-sayers who will question whether that innovation will deliver, and undoubtedly there will be set-backs. Not everything will deliver as promised. However, I am extremely optimistic that we will be able to harness the power of science and innovation to invest in the backbone of our data and our delivery mechanisms, and to engage with the British public to deliver a testing system that enables us to return to the life that we love.

The noble Baroness, Lady Thornton, questioned whether the testing system could be relied on to deliver results. Let me explain: the people of Luton and Leicester have used testing and contact tracing, and infection rates are dramatically lower—less than half what they were in late July. Those are two excellent case studies of how our system of testing and contact tracing has turned around difficult situations and pushed back the spread of Covid by breaking the chain of infection. The noble Baroness also asked what we will do to improve the system as it stands. There are three areas of improvement: first, technology; secondly, infrastructure, by which I mean the data and the presence on the ground; and thirdly, engagement with the public so that they understand how to engage and we understand better how to interact with the public.

The noble Baroness, Lady Barker, asked about the contact system and gave some statistics. I reassure her that since 28 May we have rung 272,000 people who have been reached by the test and trace system. Where communication details have been provided, the service has reached 88.6% of close contacts, and 78.4% of people who have tested positive have been reached. Within the bounds of epidemiological effectiveness, these are extremely impressive statistics. Compared with those from other countries, they range among some of the highest. It is an incredibly impressive set of results for

a system that was stood up in relatively recent history. Local public systems are complementing the central contact tracing hub, and I pay thanks to all those local authorities that either work with their full-time employees, or, as is often the case, have employed local businesses, to support it.

We have hit our target on care homes—the noble Baroness, Lady Barker, might like to take a moment to celebrate that. We are also trying to work with a degree of transparency in our operations. I do not regret for a moment the fact that the operational senior leadership in the track and trace team has been on the level about the present supply constraints, with social care and the general public. I reassure the noble Baroness, Lady Barker, that care homes absolutely remain top of our priorities. Many of the frustrations the public face, such as longer distances to travel, are exactly because we have put care homes first and have therefore had to dial down some of the availability of tests to the public. We sit down with care homes to discuss winter preparations. An indication of that is the 31 billion items of PPE that we have contracted to buy for this winter—an astonishing figure. That pays great tribute to the work of the noble Lord, Lord Deighton, and the PPE team, who have built up a fantastic stock.

Finally, I would like to express a small amount of confusion about the remarks from the noble Baroness, Lady Barker. On the one hand, she attacked the involvement of major private companies and central control of our track and trace system, but on the other hand, she attacked civic engagement, the volunteering of members of the public to support our track and trace system, and local initiatives whereby NHS trusts have brought back retired staff. The combination of these two themes is the heart of our success, and I celebrate both.

The Deputy Speaker (Lord Rogan) (UUP): We now come to the 30 minutes allocated for Back-Bench questions. I ask that questions and answers be brief, so that I can maximise the number of speakers.

1.54 pm

Lord Lansley (Con) [V]: My Lords, the consistency of messaging over time is immensely important to secure public support and adherence. Over the last six months, we have consistently explained that indoor and outdoor gatherings are significantly different, and that the scientific evidence has clearly shown much greater risk for indoor gatherings. Can my noble friend the Minister explain to the House why the Government appear to have abandoned this important distinction in their current guidance?

Lord Bethell (Con): My noble friend is right to point out this important change. The truth is this: from the feedback we had from the public, and from our own analysis of the facts, we see that our guidance was growing increasingly complicated and was confusing the public. While the science may suggest all sorts of clever differences between one situation and another, and between inside and outside, the guidance is effective only if it is clear, understood and obeyed. At the end of the day, what we have done is to clarify some of the more complex areas of our guidance to make it more effective.

Baroness Meacher (CB) [V]: My Lords, sadly, Professor Spiegelhalter has seriously questioned the Prime Minister's rather splendid Moonshot mass testing proposal. I understand his concerns. Nevertheless, can the Minister assure the House that he will press for a significant investment in saliva home-testing kits, to enable families with a parent in the former shielded group and with children at school to live a reasonably normal life? Children need to be at school, but the lives of these parents are now in grave danger—I am sure the Minister appreciates this—with the R number above one and, as yet, no daily testing capacity. Can the Minister say when daily testing will be available for these families and other top-priority groups in the country?

Lord Bethell (Con): I reassure the noble Baroness, Lady Meacher, that saliva testing is a massive priority for the Government. I reassure her and Professor Spiegelhalter that the positive error rate in the saliva test trials in Southampton has been incredibly low—virtually zero. From that, we take great reassurance that this will be an effective vector for testing.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, will the Minister accept that the reason for scepticism about the Moonshot gimmick is that the Government have a consistent record of overpromising and underdelivering? The Minister will know that the latest test and trace stats are not good: they show that 69.2% of close contacts of people who have tested positive with Covid-19 in England were reached—that is the lowest percentage since the scheme was launched. What would he say to Bridget Phillipson, the MP for Houghton and Sunderland South? Because Sunderland has a rising number of cases, she checked online this morning the availability of tests: no home tests were available and no drive-through tests could be found. Later in the morning, the only test offered was a two-hour drive away in Scotland. Why should anyone believe the ideas that the Government float from week to week?

Lord Bethell (Con): My Lords, I completely and utterly reject the noble Lord's suggestions. I remember well the nay-sayers, the sofa epidemiologists and the sceptics who, when we had testing at the level of 5,000, poured cold water on the idea we would get to 100,000. We hit that target. We have made amazing progress since and we will continue to push for more testing.

Baroness Walmsley (LD) [V]: My Lords, the Secretary of State has blamed the recent failure of laboratories to process tests in a timely way on members of the public who are not eligible—as he calls it—seeking to take a test. Is this not another example of Ministers blaming someone else for their failures? How do people know if they are not eligible? If they are concerned about something, what system is in place to enable testing centres to know who is eligible, so that they can refuse to test those who are not?

Lord Bethell (Con): The noble Baroness is right, but it is sometimes difficult to know whether you have the symptoms of Covid, the flu or something else. That is why it is a complicated matter. What we have seen through our engagement with the public in the last few

[Lord Bethell]
weeks is people who show no symptoms of anything but who seek a test to provide themselves with reassurance. It is not a question of blame, but rather of clarification: we simply do not have the national resources to support that kind of activity.

Baroness Noakes (Con) [V]: My Lords, as a Conservative, it grieves me that the Government are pursuing policies, such as the rule of six and Covid-secure marshals, which belong in a police state. The Government have chosen a highly risk-averse approach, driven by guesstimates of hospitalisation and mortality rates, and doubtless derived from mutant algorithms. In the meantime, the economy is tanking. Can the Minister say what evaluation the Government have made of the economic and societal impacts of different responses to the small spike we have seen in infection rates? Will they publish that evaluation?

Lord Bethell (Con): My Lords, it is not a mutant algorithm that is sending people to hospital in France, Spain, Belgium and other countries up and down Europe, and it is not a desire to introduce a police state that is seeing prevalence leading to hospitalisation and death in many countries in Europe. It is our fear that Britain is going that way that leads us, regretfully, to put these measures in place; it is not any desire to exert state influence.

Lord Patel (CB) [V]: My Lords, I am sorry that the Minister keeps having a hard time, but that is partly because he is having to defend the indefensible. I had a completely different question to ask, but I have changed my mind and, instead, will follow on from the question asked by the noble Lord, Lord Lansley, and the Minister's response to it. In terms of transmission of the disease indoors as opposed to outdoors, which bit of science is confusing?

Lord Bethell (Con): I answered the question as clearly as I possibly could. This is about communication and clarity and making sure that people understand the instructions; it is not about science. If that is not effective then the guidelines are pointless.

Baroness Andrews (Lab): My Lords, perhaps I may take the Minister back to the question asked by the noble Baroness, Lady Walmsley. I was sorry to hear him say rather dismissively that people are clogging up the system because they seek some sort of reassurance, although they do not have symptoms. That seems to me a perfectly natural and human reaction. Can he confirm that basically government policy now is actively to discourage anybody without any symptoms in any situation seeking a test? If that is the case, what is his answer to the letter that he received from the directors of public health in the south-east, who are deeply worried that an area of low infection could easily become an area of high infection? What will he say to the universities that have introduced testing for all students, asymptomatic or not, because they want to protect their local communities, given what we know from America—from Chapel Hill, for example—about the absolutely devastating effect that university populations can have?

Lord Bethell (Con): My Lords, it is not a question of blaming anyone or of in any way condemning people's natural curiosity. However, the bottom line is that we have only so many resources, and people know full well whether they are showing symptoms of some sort. It is not appropriate that someone who shows no symptoms whatever uses valuable, scarce resources that could and should be used for more important priorities. We could not be more clear about that. Universities are using private testing facilities, and we applaud and support them on that. It is my sincere hope that one day we will have sufficient testing facilities to be able to offer everyone a test whenever they like. However, we do not live in that world today, and that is why I deliver the message that I do.

Lord Taylor of Goss Moor (LD) [V]: The Minister has just said that a significant plank of the policy is not the science but communications. I fear that the Moonshot programme falls into exactly that category. I do not believe that it can be delivered at the scale that the Prime Minister has talked of, but, if it could, it would throw up false results that would overwhelm track and testing and mislead people, throwing both education and the economy into further chaos. Is not the right policy to target the groups that we know are vulnerable to this disease with the protections that they need, starting with care homes, and to allow the rest of us, and the economy and education, to move forward?

Lord Bethell (Con): The noble Lord is right to be concerned about false positive results. However, our experience, our piloting and the emerging technologies suggest that that will be the case in a relatively small proportion of the tests and is entirely manageable within a mass population testing system. With regard to the idea that we can somehow identify vulnerable groups and target them pre-emptively, I wish that that were true, but this disease constantly confounds expectations and turns up in places where we least expect it. If we could tell people that they were going to get the disease, we would not have this problem in the first place.

Baroness Blackwood of North Oxford (Con) [V]: I thank the Minister for his answer, but those who were formerly shielding, those whom we had identified as being most at risk, will be watching the rise in cases and some of this debate with anxiety. There were a number of problems with the rollout of the shielding programme the first time round, and we have new evidence about who is most at risk from Covid. Has there been a reassessment of the criteria for those who might need to shield this winter? If so, what is the Minister doing to ensure that this is communicated early and much more clearly to both those who will not need to shield this winter and those who might need to, so that we can reduce anxiety among those groups and protect the most vulnerable?

Lord Bethell (Con): I completely recognise the problem identified by my noble friend. I reassure her that the expert sub-group NERVTAG is developing a predictive risk model to enable a more sophisticated approach to clinical risk and to identify more clearly those who

need to shield. The model incorporates known relevant risk factors, such as age, sex, BMI and ethnicity. We are working at pace and will continue to engage patients, those on the shielding list, healthcare professionals and the voluntary sector as we embed this important insight into what we do.

Baroness Campbell of Surbiton (CB) [V]: My Lords, the Minister will be aware of the difficulties faced by disabled and older people during the first major lockdown, such as insufficient social care support services. Will the government guidance to this group now change to address those difficulties, especially if the R rate keeps rising over the coming months? Will he now consider switching off the social care coronavirus easement powers, which were meant to be only a temporary measure, especially as local authorities are now telling us that they no longer use them? These easement powers are a major cause of anxiety among older and disabled people, and it would be an easy thing to do—just switch them off. They are no longer needed, yet they cause untold anxiety.

Lord Bethell (Con): My Lords, I am not sure that I have a precise answer to the noble Baroness's question on easement powers. It was my impression that they had not been used in the vast majority of areas—only in a few areas—and that, where they had been applied, their use had been of a mainly administrative rather than practical nature. However, I am happy to look into the question that she asks and to reply to her by letter.

Lord Harris of Haringey (Lab): My Lords, the noble Lord has responded rather testily to a number of your Lordships in providing answers. In particular, he failed to answer the substantive question from my noble friend Lord Hunt of Kings Heath about why people were being sent, or being told to go, such extraordinary distances when they wanted and needed a test. He says that he does not want to have the blame game, but that is blamed on people who did not need a test going for one. First, can he tell us what those figures are and, secondly, can he reassure us that the messages he is now giving out will not lead to people who should be tested feeling that they should not bother the system? That would be just as big a danger.

Lord Bethell (Con): I shall be extremely careful about how I reply to that question because I would not want to come across as testy. The noble Lord is right: it is a challenge to strike the right balance between guiding towards testing those who truly need tests because they have symptoms and trying to get those with less of a priority away from testing. I reassure him that, even under current circumstances, 90% of those who apply for a test get one within 20 miles and the average distance to travel is six and a half miles. Therefore, even though some of the anecdotes about being recommended to travel long distances might seem extraordinary, the lived reality of most people who go for tests is that they are quick, near, accurate and effective.

Lord Truscott (Ind Lab): My Lords, will the Minister confirm that Her Majesty's Government will not let people die for ideological reasons? Are the Government prepared to buy a vaccine from any country, provided that it is safe and it works?

Lord Bethell (Con): My Lords, this country has been absolutely on the front foot on vaccines. We have negotiated agreements with six different vaccine providers for 340 million courses of vaccine. We are completely open to anything that is effective, and we have championed the cause of fair vaccine distribution on a global basis.

Lord Robathan (Con): My Lords, I regret to say that this Government's policy on Covid is contradictory, confusing, hugely damaging to the country and, frankly, nonsensical. Should I have the opportunity, I will vote against it. We were exhorted, from the very beginning of this public health crisis, to save lives. As noble Lords know, some 11,000 people die on average every week in the UK under normal circumstances, so can the Minister tell us how many people under the age of 65 have died of coronavirus in the last 26 weeks? Of those, how many did not have some serious underlying health condition such as diabetes, obesity, respiratory problems or the like? If he does not have those figures to hand, perhaps he might write to me and put them in the public domain by putting them in the Library.

Lord Bethell (Con): My Lords, I entirely welcome the challenge from my noble friend but, respectfully, I completely disagree with his approach. I want to flag two issues. The first is the enormous public support for the Government's response to Covid and their adherence to the measures we have introduced. The second is the recent King's College survey, published today, showing that on top of the deaths, 300,000 people in the UK have reported symptoms that last more than a month and 60,000 have been ill for more than three months. The effects of this disease go far beyond the "simply recover the next day" effects of flu; it is a profound illness that we are right to try to suppress.

Baroness Masham of Ilton (CB) [V]: My Lords, how is new technology being brought to the front line to deliver critical care and services across the country? Is the Minister aware of the desperate shortage of doctors and nurses working on the front line of infections, and that they are exhausted? What can be done to solve this problem?

Lord Bethell (Con): The noble Baroness absolutely speaks my language when she talks about the technology that is being brought into the front line. My sincere hope is that Covid will bring a benefit to the healthcare system by being an inflection point whereby we introduce new technologies in a whole host of fields to bring in much greater community-based treatment for people, digital technology and the more effective sharing of data, among a wide range of technical advances. Regarding the workforce, I completely sympathise with the noble Baroness's comments. I pay tribute to those who work hard on the front line and am aware of the challenges and difficulties they face. This Government have committed to recruiting 50,000 more nurses. We are more than half way there already, and we will continue to recruit to ensure that we have the human resources needed to meet our commitments.

Lord Dubs (Lab) [V]: My Lords, what is the policy regarding the testing of domiciliary social care workers? What is being done to ensure that these people—who

[Lord Dubs]
are at risk themselves and meet and support the very vulnerable, travelling around to different people every day—have full protective equipment and that they use it?

Lord Bethell (Con): The noble Lord is entirely right to emphasise the challenge of itinerant domiciliary care. Such workers were always a vector for potential disease and are putting their own lives on the line. That is why we have radically changed the guidelines. We have put more resources in place to ensure greater support for domiciliary care, PPE is stocked for them to use and there is regular individual testing

Lord Dobbs (Con) [V]: My Lords, the new guidelines require political protests to be "organised in compliance with" government rules and
"subject to strict risk assessments".
Who will undertake these assessments, when and how will they be undertaken—I presume they will have to be undertaken before any protest is mounted—and does this mean that the type of protest we saw the other day by Extinction Rebellion will by definition be unlawful?

Lord Bethell (Con): My Lords, my understanding is that the risk assessment is done by the local police force in conjunction with Public Health England, but I am happy to check that and write to my noble friend. With regard to Extinction Rebellion, I found the protest last week particularly tedious but I am not sure if it will be outlawed quite yet.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, the Minister has taken great pains today to stress the need to ensure that our limited number of tests are well used. I want to revisit the issue I have raised with him before: the list of symptoms as a result of which people are encouraged to take a test. I am sure he is aware of the University of Belfast study of paediatric infection rates, which showed that among children with antibodies a cough was no more common than among those without, while gastrointestinal symptoms such as diarrhoea, vomiting and abdominal cramps were significantly associated with coronavirus infection. Given that many other countries, including the United States, and the World Health Organization list a greater range of symptoms, will the Government consider communicating clearly with the public when the tests are needed, based on the scientific evidence?

Lord Bethell (Con): The noble Baroness raises a very difficult subject. A huge amount of work has gone on in this country and others to define the most effective possible list of symptoms. The honest truth is that this disease manifests itself in different people in a great many different ways, and we have done a huge amount to try to understand the list of symptoms to be described in a way that will capture the greatest number of people in the clearest way possible. We keep that under review, but the work that has gone into it could not have been more thorough.

Lord Bilimoria (CB) [V]: My Lords, a programme of nationwide mass testing is exactly the ambition we will need to build confidence in the public and businesses before a vaccine becomes available. Professor Devi Sridhar of Edinburgh University says that the only safe way is mass testing. I agree with the Minister: look at where we were in March, with 2,000 tests a day, and now we have the capacity for well over 300,000 tests. Given that, why can we not get on with instant mass testing? The Abbott BinaxNOW test laboratory in America is producing antigen tests—10 million this month and 50 million next month—that give results within 20 minutes, and they are already FDA-approved. Why can we not do that at such speed? Can we get this into the market quickly? Likewise, Germany started testing at airports in June, and France did so in August. Why can we not start testing at airports quickly? Jobs, the economy and lives are at stake.

Lord Bethell (Con): My Lords, we could not be moving more quickly to engage with the producers of tests in order to sign up the resources we need to put in mass testing. That cannot be switched on overnight, but we could not be moving more quickly. On airport testing, the CMO has been crystal clear: he is deeply concerned about day-zero testing and about any but the most thorough airport testing measures. We were caught out on this at the beginning of the epidemic and we remain extremely cautious.

Lord Berkeley (Lab): My Lords, I want to follow up on the Minister's answer to the noble Lord, Lord Bilimoria, about airport testing. Apparently, we have this world-beating system and many millions of tests that we can do, but now we have limited resources. The number of people who have had to cancel their travel arrangements, lost money and not come back—for whatever reason—is enormous and it is affecting the air industry as well. If our testing system is so good, surely it can be done at airports, plus track and trace, which has worked quite well, even for one plane that came from Greece. I hope the Minister will take this away and try to move it forward a bit more quickly.

Lord Bethell (Con): The noble Lord, Lord Berkeley, is entirely right that the impact of this on our economy is profound, affecting the tourism economy, business and the professions. It is not something that we undertake lightly. However, it is the science-based belief of the CMO that the challenge presented by global travel is so profound that this is a step we have to take. When there is a surfeit of testing—when there is a vast amount of it—we may be able to put in place much more extensive measures, but, even so, the CMO remains extremely cautious on this point. However, we are working with Heathrow, the airlines and the airports to keep the matter under review. We take into consideration pilots and are working closely with them to try to resolve the issue.

Baroness Neville-Rolfe (Con): I do not want to add to my noble friend's difficulties, but I have received some worrying reports that pregnant women are prevented having the father of the baby with them right through labour or when undergoing related treatments, such as scans. This can be devastating, especially if there is bad news, such as a miscarriage. Can my noble friend the Minister do his best to get the rules changed across the country, so that parents can support each other at this vital time?

Lord Bethell (Con): I completely understand the point that my noble friend is making. The issue of scans is compounded by the problem that many scanning machines are in small, airless rooms, where the risk of contagion is high. None the less, I completely recognise the point she makes about the pastoral and psychological effect of splitting people up at this incredibly sensitive time in their lives. We are reviewing it and we very much hope to make some progress.

Baroness Blower (Lab) [V]: My Lords, can the Minister say whether the Government will publish the science behind the decision not to test teachers and education staff—I congratulate them on being back at work—routinely and regularly, bearing in mind that there have already been school closures due to outbreaks? Is it a matter of science or of testing capacity?

Lord Bethell (Con): My Lords, the regulations are not in place at the moment to test the millions of teachers and other important workers who are returning to the workplace on a regular basis. We have neither the science nor the capacity to do so, but we are reviewing this and looking at ways of using testing to restore confidence and enable a return to workplaces or other situations where social distancing is more challenging.

Lord Lucas (Con) [V]: My Lords, I encourage the Government to be completely open with the data and research regarding this epidemic and to put it all on the GOV.UK website. When we opened up the data on BSE, the problem was solved within two weeks by researchers who were outside of government. When Ofqual refused to open up on its algorithm, it resulted in our recent troubles and disasters. Being open with data results in much more criticism, but that criticism is much better directed. And it makes it much easier for people like me to accurately defend government policy.

Lord Bethell (Con): I completely agree with the sentiments shared by my noble friend. Transparency has the effect of sunlight, putting a spotlight on information. It helps those who wish to contribute to make their efforts felt. We have embraced transparency: I cite the example of SAGE, where the minutes of its meetings and the data it works on are routinely published. I completely endorse my noble friend's comments.

Baroness Wheatcroft (Non-Afl) [V]: My Lords, given that there have been hardly any tests available to Londoners for at least the last four days, and probably much longer, can the Minister say what belief we should have in the statistics for the prevalence of the virus in the country, and in particular in London? Furthermore, the Health Secretary—when he was not blaming the public for the shortage of available tests—did admit that there were problems with a couple of contracts. Could the Minister explain what those problems are and why, according to the Health Secretary, it will take a couple of weeks to sort them out?

Lord Bethell (Con): My Lords, the statistics on prevalence are provided by the ONS. They were published yesterday and today—both the ONS and REACT figures. I would be happy to share links to those publications with my noble friend. Regarding the troubled contracts, I do not know the quotation to which she alludes but if she would like to correspond with me, I would be glad to try to figure it out.

2.25 pm

Sitting suspended.

Arrangement of Business

Announcement

2.30 pm

The Deputy Speaker (Lord Palmer of Childs Hill) (LD): My Lords, the hybrid proceeding 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.

Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020

Motion to Take Note

2.30 pm

Moved by ***Lord German***

That this House takes note of the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 (SI 2020/632).

Special attention drawn to the instrument by the Secondary Legislation Scrutiny Committee, 21st Report.

Lord German (LD): My Lords, I move this Motion because these regulations contain important policy matters that make significant changes in planning law, as outlined in the report from the Secondary Legislation Scrutiny Committee, of which I am a member. These would otherwise not be discussed by this House. Admittedly, we had a debate under the affirmative procedure on the fees regime for these planning law changes, but as Members who participated will know, it was the substance of these regulations that was the principal concern of the House. Before addressing the policy changes themselves, I shall spend a few moments examining the parliamentary process which has led to this debate.

First, these regulations are being brought in under the "Coronavirus" heading: two completely separate matters are addressed by these regulations and only one is related to the coronavirus pandemic. The part of the legislation covering the building of additional storeys is both permanent and totally unrelated to the present pandemic, so it is quite legitimate to ask the Minister to explain why this planning law change is misrepresented as a response to the coronavirus health issue. Secondly, as our previous debate on the fees issue demonstrated, significant policy changes are being proposed through the weakest form of parliamentary scrutiny that exists. This is a perfect example of a

[Lord German]
major policy change being side-slipped through Parliament, first, under the cover of a response to the coronavirus crisis and, secondly, by the use of the negative procedure.

There are further changes coming down the line in the form of a suite of negative procedure regulations that also make big policy changes to planning law. I find this all the more surprising when the Government are proposing new primary legislation on planning law, which would be the ideal and wholly appropriate vehicle for consideration of these changes and would have had the value of full parliamentary scrutiny, undoubtedly leading to better legislation. As it is, the Government are giving the public a set of hand-me-downs one piece at a time, with no possibility of developing a cohesive policy. Why are the Government doing it this way? I look forward to a full explanation from the Minister.

I turn to the policy intent itself. The permanent change to planning law allows up to two additional storeys to be constructed on existing, purpose-built blocks of flats of three storeys or more built between 1 July 1948 and 5 March 2018, up to a total height of 30 metres. When the Government consulted on these proposals, the majority of responses were opposed. The opposition fell into a number of areas but, broadly, they were the lack of local accountability, the quality of the homes in the new storeys, access issues and the impact on residents and neighbours. Of course, upward development should be possible, but only with the essential proper protections for the existing community. These regulations introduce a new and permanent permitted development right that removes much of the protection for those communities.

The process of consultation proposed is a shadow of what currently exists. The expedited approval process may be suitable for considering home extensions, but the building upwards of new floors on domestic buildings are major schemes with large community impact. While prior approval notice is to be served on owners and tenants, within a very tight timetable, all comments received are to be considered only if they relate to the dual issues of amenity and external appearance. For example, will the council be able to consider the means of egress from the building? Is the lift core of sufficient size for the increased number of residents? What about negative effects on the service charges levied on owners? Then, of course, there is the quality of build issue—the materials to be used and the match to the existing homes. It seems to me that the number of new homes delivered by this mechanism will not be great, and certainly not the 800 a year anticipated by the legislation.

A three-storey property extended up to five would require a lift. If one is not present in the existing building, it would mean the construction of one external to the building. An existing lift in a building with five floors may not be a suitable lift for seven floors. Consider the protection provided for existing residents in these blocks. The developer will be required to produce a report on how they intend to minimise disruption; a report not subject to any checks will be produced by the developer. Anyone who knows this business will know that significant disruption is inevitable. The roof covering will need to be removed and the remaining roof area made temporarily waterproof before any construction can take place. It is difficult to see how this can be done without erecting scaffolding around the whole building for a considerable period, during which existing residents will suffer a major loss of amenity as a result.

Residents will turn to their council and their councillors to express their concerns, and they will find them powerless. Our planning system is constructed on a system of checks and balances, on local people and their councils providing the fair play our communities need. I would be very surprised if developers using this legislation did not meet substantial local opposition, meaning much more work for the local authority but without the power to provide any solutions. The light-touch planning requirements in these regulations offer very little succour to residents and neighbours, who will now find their ability to voice their interests and concerns severely limited.

These proposals indicate a Government making a dramatic shift away from strong and caring communities, with local councils as their facilitators, towards the aspirations of developers and a distant Government. It is through local councils' transparent process of planning and regulations that the public can make their concerns heard. It is only through this process that elected councillors can make recommendations and insert conditions that ensure the protection of those affected and pay respect to the principle of community cohesion.

The Minister, in responding to the previous debate, called these regulations "gentle densification". Well, the Government have got it wrong—they are anything but gentle. With the opportunity of the new planning regulations and the new planning law which the Government are providing, it would be wholly appropriate for the Government to take these regulations away, give them a comprehensive rethink and bring suggestions for any changes back in the primary legislation, where they could be properly debated.

2.38 pm

Baroness Wilcox of Newport (Lab): My Lords, I have a Motion to Regret the Motion of the noble Lord, Lord German. The regulations before the House today are indicative of the Government's approach to planning; indeed, they are indicative of the Government themselves. They are another example of incompetence after a summer littered with U-turns. I begin by reminding the House of when these proposals first emerged. It was Thursday 12 March, and the impending crisis of Covid-19 was unfolding. It was on that day that the Chief Medical Officer first raised the risk from "moderate" to "high". Public Health England announced that it would stop performing contact tracing, as it could not cope with the number of infections. As a result, the FTSE 100 plunged by more than 10%, the biggest drop since 1987.

It was on that day, at a key point—coincidentally, I am sure—during the unfolding crisis that the Communities Secretary informed the Speaker that he would make a Statement in the Commons. Perhaps he would be updating the House on the important role of local government in what had now been declared a pandemic.

Perhaps the ministry would support the most vulnerable, who would soon be subject to self-isolation. No, on both counts.

On that day, the Communities Secretary announced that blocks of flats could add an additional two storeys without planning permission. Fast-forward six months, and while the Government should have spent the summer preparing for autumn and winter, they have spent it lurching from crisis to crisis, with not a government resignation in sight. The Secretary of State's pet project —to transform the skylines of suburbia—is still being pushed through. All the while, the High Court awaits a hearing for claim of judicial review to block the move and local communities and local councils across the country are livid at the prospect. Yet for reasons unknown, this House is today still being asked to consider the implementation of these regulations.

I need not go through every issue with allowing developers to build upwards without consent, as this House has already well illustrated the flaws. I am sure that grass-roots campaigners behind the legal challenge will also do so. However, I firmly believe that, at the very least, we should make two preconditions for all residential developments: first, they should afford the resident a fit and proper place to call home; and, secondly, they should respect both the natural and human environments that exist around them. It is abundantly clear that new upward developments will not ensure either of these.

We have already heard concerns that these new homes will be cramped, undersized and at times poorly built. Surely many, if not most, will be unaffordable, since there will be no screening of the new spaces and no requirement for homes to meet Section 106 duties. Both the Minister and I are former council leaders, and I am sure he will agree with me that Section 106 funding plays a vital role in providing important community facilities that councils could not otherwise afford—particularly after a decade of austerity and underfunding of local government. There can be no doubt that new developments will impact the quality of nearby homes and communities, either by poor design or by the blocking of light.

Of course, there is more to these regulations than a new right to build additional storeys. As a result of this instrument, permitted development rights are also extended to allow for markets and motorsport events to take place more frequently without permission. I have no qualms with the Government supporting outdoor events, and they are right to explore ways of doing so. However, will the Minister explain why this measure has been lumped into this instrument, rather than including it in the Business and Planning Act? Surely that would have been a more appropriate setting for the House to consider the merits of this provision. There are also further provisions which make minor changes to compensation liability, as well as to the length of time for which land can be used temporarily. I would be grateful for clarification as to if, and how, the Government worked with local authorities on the drafting of these provisions.

I hope I have made it clear that the provisions of these regulations in relation to upward developments and the omission of Section 106 contributions do not have the support of our party. We will not vote against them today but will instead await their consideration by the Commons and the judgment of the High Court. I urge the Government to look for ways of restraining developers' profits, so that opportunist developers have less ability to make life worse for our communities. If we have learned anything from the past six months, surely those of us in public service should be striving to make things better for the people of the United Kingdom.

2.44 pm

Baroness Redfern (Con) [V]: My Lords, I support the instrument to create two new PDRs, which will help businesses reopen following the lifting of certain coronavirus restrictions.

As a former leader of a local authority with a busy planning department, I know how important it is for decisions to be made as quickly and transparently as possible in order to aid a vibrant commercial sector, to create new business opportunities, to deliver those much needed jobs, and to reduce bureaucracy and cost in the planning system.

In the context of the Government's post-coronavirus economic renewal package, I welcome that the regulations will enable local authorities and developers to speed up agreements for functions to be held either on behalf of local authorities or developers for an unlimited number of days to allow development. The regulations are time limited until March 2021 and sit alongside measures to support businesses reopening quickly following the relaxation of previous restrictions. Permitted development rights also have an important role to play. They can provide developers with a greater level of certainty, within specific planning controls and limitation measures, which will incentivise and speed up housing delivery.

As we have heard, the permitted development rights allow for existing purpose-built detached blocks of flats of three storeys or more to extend upwards to create new two-storey self-contained homes, while respecting the nature of the area. In some instances, creating new homes from derelict properties in urban centres can bring multiple benefits. They can help kick-start affordable homes, breathe new life into those areas and enhance the reform of our high streets.

It is important to note that the right requires prior approval in respect of the provision of natural light in all habitable rooms. Local authorities can refuse prior approval applications where there is inadequate natural light.

It is critical that we build faster, making use of available brownfield sites and supporting all our communities—both urban and rural—across the UK. I support the instrument.

2.46 pm

Lord Thurlow (CB) [V]: My Lords, I thank the noble Lord, Lord German, for initiating this debate. I am grateful to the Minister for his time on Monday, together with the noble Baroness, Lady Andrews. I declare my property interests, as set out in the register.

[Lord Thurlow]

As we have already heard, PDR is a complex subject which is not easily understood. It was conceived to bring back into use otherwise redundant office buildings, thereby reducing blight and increasing the housing stock. To do so quickly, it bypassed the planning process. As with many short cuts, it came at a price—a price which planning officers and their departments could do nothing about.

Reports written over the past two years or so by the RICS, by architects Levitt Bernstein, and by Shelter have illustrated a lot of the problems. In short, the provision of some of the worst housing seen in Britain for decades came through PDR mark 1—if that is the right way to describe it: crushingly small flats lacking adequate daylight, with windows out of position for suitable residential use, designed to squeeze the maximum number of bed-sits into a given floor area, cramming in as many rent payers as possible with little regard for the quality of life, mental health or general well-being of the people there. The image of a modern Rachman comes to mind. Let us avoid these well-documented mistakes; it is never too late. As we have heard, the forthcoming business and planning legislation is certainly the right place to deal with this.

The rights of leaseholders have also been touched on. I am not going to dwell on these, though I think others will. However, with additional floors added to occupied properties, there will be nuisance, breach of quiet enjoyment, issues of adequacy of lifts and services, and future service charge issues. Many landlords will negotiate with their tenants—they are the responsible ones. Others will not. It is likely to become a minefield of legislation and only a small percentage of tenants will be able to afford it. There is no regulation of landlords, no minimum standards and no best practice of building management. The noble Baroness, Lady Wilcox, mentioned Section 106 agreements. Local authorities do not even get those, though they do have a greater involvement than with PDR mark 1. There is no contribution from developers, notwithstanding the super profits handed to them by government through this arrangement.

Finally, this PDR will lead to further abuses, if not checked now. It is important to learn the lessons from PDR mark 1. This proposal may add a few flats to the housing stock, but potentially at a great social cost.

2.50 pm

Lord Greaves (LD) [V]: My Lords, I very much support the two eloquent opening speeches from my noble friend Lord German and the noble Baroness, Lady Wilcox of Newport, which set out why this proposal is what, in my vernacular way, I would call silly nonsense.

First, it will not have a major impact on the number of houses built or kick-start the economy; it will simply cause a lot of difficulty and nuisance in a few places. I declare my interest as a member of Pendle Borough Council and of a planning committee. I cannot think of a single property in the whole borough of Pendle to which this would apply, so I am not talking about problems in our area.

The Government do not understand just how much pressure local authorities and planning departments are under at the moment. Covid and the cuts in local government spending have reduced many planning departments to a skeleton of what they used to be. Frankly, the new complicated proposals being introduced, such as this, will in practice not be very different from an ordinary planning application.

The Government say that this is a quick way and will be quicker, but the actual work required to deal with one of these applications will require consultation with residents and with statutory bodies—notably, in the case of districts, the highways authority, which will be the county council—and consideration of design and amenity. Highways design and amenity are just about the most important things people get worked up about when there are medium and relatively small developments of this nature being proposed. That it will somehow be much easier and simpler for planning departments is simply not the case.

The other problem is that it is yet another example of the Government micromanaging planning at a national level when planning is really about local communities and places. It is different everywhere. The idea that you can simply impose national rules like this without consideration of the importance they will have in a particular locality is quite wrong.

2.53 pm

Baroness Andrews (Lab): My Lords, I am very grateful to the noble Lord, Lord German, for introducing this debate—and for the way he introduced it—and to the Minister for the time he gave some of us on Monday to express our concerns. He will therefore anticipate much of what I will say.

The Minister made it clear in that meeting that the purpose of this instrument is essentially to help the Government meet their housing targets. I completely appreciate that but, as he will know, I do not think this is the way to do it. In fact, I do not think it will help very much; it will make a marginal difference, as we have heard—possibly 800 homes a year, but probably far less. Of course, none of them will be affordable because it is permitted development.

This SI will guarantee uncontrolled profits for developers who are looking around at the scale of building in the centre of London, for example, thinking "I want some of the action" and taking opportunities to do just that. It will also damage the prospects and well-being of residents of existing residential blocks of flats who in different ways will be put at serious risk by this.

The impact statement reflects the imbalance in interests expressed. It reveals the scale of profit potential for developers, which has been estimated by the Leasehold Knowledge Partnership—which is very authoritative—to be between £20 billion and £40 billion. However, it is silent on the costs to the well-being and safety of residents, tenants and leaseholders from these massive interventions to existing buildings. It is also silent on the prospect of huge increases in the cost of enfranchisement, which will follow from the uplift in the value of a freehold. In this case, this policy absolutely cuts against what the Ministry of Justice wants, which is essentially a much simpler, more accessible and cheaper form of enfranchisement.

When launching the policy, the Secretary of State was, like other Ministers, silent on this point too. All he referred to was the opportunity for individual families and homes to add a storey. Yes, the policy is presented as one of gentle densification; there is nothing gentle about the impact on residents. I must declare an interest as a resident of a block of flats in London which is already threatened with such an upward extension. We have not been consulted; we do not want it; it is unpredictable and problematic in terms of buildability, safety and loss of amenity. We may well be faced with a choice between living in a building site—ceilings coming down and holes in the walls—or evacuating, and there is no compensation for the loss of peaceful enjoyment.

There will be resort to law, but only for people who can afford it. The Government knew from the start that this was an unpopular policy, as the noble Lord, Lord German, explained, and many of the issues raised were completely ignored. I suspect the Minister is discomforted by what he has inherited here; will he consider whether anything more can be done to protect residents by way of the planning Bill coming down the track, or can he commit to an early review of the policy rather than waiting the normal five years? Will he also seize the opportunity presented by the Law Commission to accelerate the reforms in leaseholding and look for ways to restrain the colossal prospects of developers? It is an unfair, unbalanced and inefficient policy, but we have a chance to do something about it.

2.56 pm

Baroness Altmann (Con): My Lords, I declare my interests as set out in the register. I have enormous sympathy with the comments made so excellently by the noble Lord, Lord German, and others. However, I also have sympathy with the Government's position on this SI. It is a mixture of temporary and permanent measures, which is a shame if it is badged as a coronavirus measure, which should not cover the permanent angle. Affordable housing should be introduced and increased across the country, but that can be addressed separately.

I share some of the concerns expressed by the Delegated Powers Committee on how neighbourhood concerns will be taken into account, but I am reassured that this must be subject to successful prior approval applications. Those applications must have adequate provision for natural light; they will check to make sure that they are not on hazardous sites and that there is no extra flooding risk; it must be built within three years; it will pay the community infrastructure levy. There are controls on this via that route.

I understand that there is significant concern, but, like my noble friend Lady Redfern, I think the Government have a point here, particularly on the issue of developers. Big profits for developers are principally stoked by actions of monetary policy, which have deliberately inflated asset prices across the economy as a policy objective for economic growth. Without additional development, how can we address the housing shortage? Of course affordable housing is required, but that will be necessary in addition to any of this. I do not believe it is possible to build the scale of housing that we need to redress the shortfall between supply and demand without some disruption somewhere.

Therefore, I think that these measures deserve our support overall. However, I have one question for my noble friend. If the existing building has a prior planning condition limit on, for example, the number of units or how far it can be extended, could the owner of that building now make a new application to override that historic limitation for permission to extend it under this new SI?

2.59 pm

Baroness Thornhill (LD) [V]: I also thank the Minister for giving his time generously this week in the meeting that has already been mentioned. I certainly appreciated it. I give my wholehearted support to the two opening speeches, which said it all.

The ability to add two storeys to a block of flats is already happening. It is happening in urban centres, it is certainly possible, and it is certainly lucrative, as the noble Baroness, Lady Andrews, outlined. Planning guidance issued over recent years has promoted greater densities, and developers have certainly not missed that trick. The Government believe this might yield 800 new homes a year—a very small contribution to the housing total for such an unpopular policy.

If this is already happening under a full planning permission, what is the Government's rationale for bringing it into the permitted development regime at all? It is a serious question because under this updated PDR, most of the responsibilities for the local authority remain the same, including site notices and the length of the consultation period. Planners must also take into account certain aspects set down by government. To residents and the untrained eye, this looks, feels and acts like a planning application, yet it is not. Residents will not appreciate the difference.

What are the differences and why have the Government made them so? There is a lower planning fee, there are no internal space standards and no contribution to affordable housing. However, the most significant difference is that for a prior approval, what councils can and cannot consider is very tightly defined in statute. Government decides it knows best. That is in contrast to planning applications, where councillors and communities have their input about their place, in that full planning applications are determined in accordance with the council's own development plan and with its locally adopted policies.

In short, under this PDR, the council has the same responsibilities but cannot apply policies that take into account the specifics of its place. It is the difference between building beautiful and having little choice but to approve whatever developers think they can get away with—and, regrettably, that happens. From the developer's point of view, they are being relieved of having to match the space standards of the flats below—that is, creating substandard housing—they do not need to contribute to much-needed affordable housing, they pay a lower fee, and face much less council "interference" in the shape of local policies.

When such schemes are already being permitted while ensuring that standards are maintained and community benefit captured, can the Minister say why and for what developers are now being let off the hook and residents short-changed?

3.03 pm

Lord Naseby (Con): My Lords, ever since I entered public life when I was chairman of the housing committee of the London Borough of Islington and its leader, I have taken a specialist interest in housing. I sat for a new town, Northampton, for 23 and a half years, which was a good experience for the wide spectrum of housing, whether affordable, council housing or unoccupied, and since I lost my seat in 1997, I have been a non-executive director of Mansell, which builds extensively in London and is now part of Balfour Beatty. I therefore claim a little of experience here.

My noble friend on the Front Bench should be proud of what the Government have achieved, particularly in 2019. You have to go beyond the Blair period to see the scale of change that has happened. It is all very well for noble Members opposite to talk about council housing, and so on—just look at the figures achieved under the Blair and Brown Governments, and even under the coalition Government. I therefore say to my noble friend on the Front Bench: keep going. This is a useful addition. It is not that revolutionary; it is not hugely incremental, with a target of 800 per annum. But it helps. It may not be achieved, certainly in the first few years, but I suspect that when we look back on it, 8,000 in 10 years probably will be achieved, and that will be a useful addition to the housing market.

Of course there are concerns, and I share some of them. The construction has to be appropriate and has to be safe, particularly from fire. We know why—we know what has happened in not so recent times. I am not sure there is a definition of adequate natural light, but that is clearly an important dimension, as are detailed floor plans. I am also not sure why this excludes the pre-war blocks, because if you look at London and some of our other major cities and towns, some developments were of a lower scale and could easily take a couple more storeys.

I am reassured. I believe there has been good consultation—I read the whole document right the way through—and I say to my noble friend on the Front Bench, even if the official review is in five years, it would be helpful to the House and to those who take a particular interest in this market to have a review after three.

Finally, it is all very well for the Opposition to state that seemingly all property developers are rogues. They are not—they do a good job. I look forward to seeing this thing on the statute book so that we can get the contractors and developers cracking.

3.06 pm

Lord Rooker (Lab) [V]: My Lords, sitting in an office in London dreaming up flexibility to the planning laws to encourage more housing sounds a good use of time. I know; I have done it myself as Planning Minister. I just want to give a cautionary tale. It comes from my former constituency and concerns the Westminster Road area of west Handsworth in Birmingham.

Some 20 years ago, when I left the Commons, the private rented sector in Birmingham accounted for some 10% of households. By 2018, it was 33% and growing. An area that was saved in the 1970s and 1980s by the urban renewal programme of half a dozen streets in Handsworth, half a mile from the Commonwealth Games village has gone backwards to the 1960s, according to residents. The successor to the specially formed housing association in the 1970s, which did much to enhance and improve the housing, is pulling out. Midland Heart housing association has no heart in Handsworth. The door has been opened up for a new breed of landlords to buy up the larger properties, either for HMO use or the more lucrative supported housing.

Recently, a for sale notice by agents Bairstow Eves stated, "For sale: potential 17 bedrooms"—a clear signal for exploitation. Across the area, landlords are converting garages, outhouses and even sheds into what are cynically called bungalows. For example, signs appear on the front walls of houses stating "Bungalow 6A and 6B at rear". At 61 Westminster Road, a house converted into an HMO some years ago, providing 11 units, the landlord recently converted four garages in the back yard into living accommodation, with a secure fence to hide what had happened. There is evidence that residents of these dwellings are told to dump their rubbish in black bags on the opposite side of the road.

No. 229 Church Hill Road was a large family house. Used as business premises, it is now applying to be an HMO by claiming it was a "hostel". No. 22 Livingstone Road, a former family home, has been converted in three social rented flats. Midland Heart cleared the tenants out and sold it at auction in Liverpool for £260,000 on the basis that it would generate an income of £18,000 a year. The new owner maintains that it is still flats, but locals see it run as an HMO, and just two of the tenants are generating over £27,000 per annum.

The HMO Action Group in Handsworth describes it as a "community under siege". This is a cautionary tale. It ought to be taken note of.

The Deputy Speaker (Lord Russell of Liverpool) (CB): Since the noble Baroness, Lady Bennett, was unable to join us at the beginning of this debate, I call the next speaker, the noble Lord, Lord Randall of Uxbridge.

3.09 pm

Lord Randall of Uxbridge (Con) [V]: My Lords, I draw the attention of the House to my property interests, as in the register. I understand the laudable reasoning behind the first of the regulations. The permitted development right to hold a market and temporary use of land seem eminently sensible, given that it is recognised that events held outside are less likely, if properly supervised, to allow spread of the virus. I also understand that this is time limited, which seems appropriate. I would welcome clarification that that is indeed the case.

However, I have some concerns about the permanent permitted development right to allow additional storeys to be constructed on existing blocks of flats to create new homes. Many of these have been expressed in earlier speeches. Of course, anything that can be done to increase the number of new homes available, especially affordable ones, is welcome—but not at any cost. There must, as has been mentioned, be appropriate safeguards. I ask the Minister whether there is going to

be any control of the design and visual impact of those potential new storeys. Perhaps even more importantly, what control will there be to ensure proper safety and access?

Presumably there will be issues for any existing occupiers of flats where storeys are being added. I understand that there will be no opportunity for their comments to be taken into consideration, although I hope that I am incorrect on that point. I wonder whether there will be any assessment after a period—for example two years, rather than five—to judge whether this has been a success, and whether further tweaking of the regulations, or, indeed, their removal, will be required.

Having made these few comments, I hope that I will receive some comfort from my noble friend that my fears are unfounded. But I am sad to say that I have a bad feeling that this is all going to end in tears. I hope that I am wrong.

3.11 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I am delighted to take part in this debate, and I welcome the opening speeches by the noble Lord, Lord German, and the noble Baroness, Lady Wilcox of Newport. For me, this statutory instrument represents an infringement of the rights of communities to their natural environmental space. It is a major change in planning policy, which really belongs in primary legislation. In that respect, I have several questions for the Minister.

The noble Lord, Lord German, has already elaborated on his committee's report. What consideration did the Government, and the Minister, give to the requirement for possible financial assistance for the provision of affordable housing, and the whole area of developer contributions? I recognise the need to uplift the economy, but why is there a need to underpin developers at the expense of communities and their housing needs? Why allow relaxed planning regulations in the guise of permitted development rights?

What consideration was given to other environmental matters, including landscape issues, and to the resilience of existing buildings in accommodating such top-floor extensions? How will the technical resilience of buildings be assessed and measured, particularly if the existing buildings are in low-lying areas? What consideration was given to the impact on the local environmental amenity and the needs of existing dwellers? Sometimes existing dwellers do not like this densification, or gentrification, as it is sometimes called. What consideration was given to prevailing public planning policy on development matters? Having had a cursory look at the measures, I would say, very little. I regret that the Government have not given that greater emphasis. Given the history of the Grenfell Tower fire in 2017, was any consideration given to the need to impose the requirement that materials in such extensions should put safety first, and be resistant to fire damage?

Finally, can the Minister outline why the Government have deviated, or want to deviate, from the developer contribution that has been central to affordable and social housing public policy for many years? As a former Minister for housing in Northern Ireland, I encouraged it, because it provided much-needed affordable housing and, as the noble Baroness, Lady Wilcox, said, much-needed community development in local areas.

3.15 pm

Lord Taylor of Warwick (Non-Afl): My Lords, there is an old saying, "Always plan ahead. It wasn't raining when Noah built the ark. A good plan today is better than a perfect plan tomorrow". Housing has always been a barometer of a nation's well-being. It is a practical sign of whether people are at the centre of a Government's policies. Clearly, we need to stimulate regeneration of our towns and cities. The economy has to start moving again after months of lockdown in response to Covid. Furthermore, additional homes need to be provided more easily and with less delay.

I recall, when I was a barrister and district councillor, being involved in planning applications which were too often frustrated by red tape. Ironically, the original symbolic meaning of red ribbon and red tape in the Bible was that of faith and hope. In modern times we have turned that symbol on its head, to signify the opposite.

I have some practical questions about the PDR for the Minister. Would any utilities—for example electricity meters and water tanks—located at the top of buildings need to be moved? If so, how will this be achieved? How will complex building works be carried out with individuals remaining in residence on the lower floors? What evidence would need to be submitted to the local authority as part of the prior approval process? Is this likely to result in higher fees being levied for applications for prior approval?

The Government have admitted that more than half of respondents did not support that proposal. There were four main concerns. First, there was the lack of public consultation, then there was the potential poor quality of the homes. There were also problems with access and safety, and the potential negative impact on others nearby. In response, the Government have promised that they will

"continue to engage with interested parties on the technical details".

What does that mean in practical terms?

In September last year there were 216,000 long-term empty homes in England, which is more than 72% of the Government's annual new homes target. Meanwhile there are more than 1 million families stuck on local authority waiting lists for social housing. In January this year there were almost 25,000 houses in London alone left unoccupied, the highest number since 2012. I am not against PDR in principle, but what are the Government doing to address the wasted resource of thousands of empty flats and houses, which could provide accommodation for homeless families?

The initials PDR also stand for the management term "performance and development review". That is an annual review of how well a project is doing. I hope that in one year's time the initials PDR will also mean positive dynamic results.

3.18 pm

Lord Bhatia (Non-Afl) [V]: My Lords, this instrument was laid before Parliament on 24 June 2020. It is already in force. It is subject to the negative procedure

[LORD BHATIA]
and will remain in law unless either House rejects it within 14 days, allowing for recess days, of its being laid. It is part of the Government's economic renewal package in response to the coronavirus outbreak.

The regulations apply to England only and have two purposes, one of which is a permanent PDR to allow two additional storeys to be constructed on existing blocks of flats, to create new homes. I spoke on this subject in this House on 29 July, and I reiterate that although the instrument is for building two additional storeys on existing blocks of flats, it must provide housing for low-income and first-time buyers.

Another issue has come to the forefront recently: the increasing number of homeless people—families who have been made homeless because of their inability to pay their rent. Can the Minister confirm that the instrument will give priority to homeless people and/or young first-time buyers?

3.20 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, it is always a pleasure to follow the noble Lord, Lord Bhatia. I congratulate the noble Lord, Lord German, on moving his Motion and the noble Baroness, Lady Wilcox, on speaking to hers. It has been an extremely important debate.

The Minister is to be congratulated on the department doing much to ensure that housing is being brought forward. We have heard this week about £12 billion being brought forward for affordable housing, and that public land is being made available for more housing. This is a genuine need, and I do not want to stand in the way of necessary housing.

However, there is a process point here, which the noble Lord, Lord German, outlined: why is this legislation coupled with legislation relating to coronavirus measures? I certainly approve, as other noble Lords have indicated that they do, of the action on markets and outdoor events. That is quite appropriate; they relate to coronavirus. It is hard to see how this permanent measure—and it is permanent—relates to coronavirus. I look forward to hearing about that.

If, as I suspect, this should not have been coupled with coronavirus measures, the points made by the noble Baroness, Lady Andrews, become very relevant. Should we look at an early review of this legislation or additional rights, for example, for leaseholders being brought forward in fresh legislation? I believe fresh legislation will be brought forward shortly. I look forward to hearing about that possibility, and I am sure the Minister will want to be constructive about what can be done there.

I wish to highlight some concerns, which I have mentioned before, about the rights of leaseholders and enfranchisement. There is a danger that they are being short-changed; they are not really considered in this legislation as they should be. This point was raised in the other place by the honourable Member Sir Peter Bottomley as well.

Moving from the rights of leaseholders to the housing itself, concerns have been raised about space standards and cramped space. This is particularly relevant post Covid. I also raise, in parenthesis, whether there will be a general move away from housing in flats to housing with gardens—there is already evidence of this happening—and away from and out of the large cities. The Minister may want to say something on this in general terms.

So I have some concerns. I am certainly not against permitted development rights, but I wonder: why this legislation? I think there are ways that these regulations could be ameliorated. I look forward to hearing from the Minister on those points.

3.23 pm

Baroness Gardner of Parkes (Con) [V]: My Lords, I had a great involvement with housing in London, particularly as a member of the Greater London Council. More recently, I spoke in favour of converting unused offices for residential use to reduce homelessness, particularly in London. Since then, assessments have indicated that some of these converted offices are too small to provide ideal accommodation because, although toilet facilities are usually available, there is often not enough space for a full bath or shower room. In view of the acute housing needs, can more suitable use be made of these potential home spaces? Will the Minister ensure that it should be a legal recommendation that any conversions or extensions under the regulations will meet, or exceed, appropriate living standards for the 21st century?

It is good that the Government are working on so many new assessments and improvements, and the quality of new homes, as stressed by the noble Lord, Lord German, is of importance, without any doubt. I support the continuing attendance to this question as one of the many that face us today.

3.24 pm

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

I thank both my noble friend Lord German and the noble Baroness, Lady Wilcox, for raising these issues today, and for making such powerful cases for this permitted development right to be withdrawn—though I am not holding my breath. They were not alone; their view has been supported by several noble Lords and this matter is the subject of a judicial review.

As a councillor, I know that issues about changes to the built environment are very much a concern of local residents. The current, locally based planning system enables residents and councillors to voice the immediate impacts and consequences of alterations to buildings. Of course, small additions or alterations that comply with current standards do not have to be considered publicly. The issue, and the subject of this debate, is where to draw that line.

I contend that extending permitted development rights permanently, via this back-door process, to allow two further storeys on blocks of flats that are already of three storeys or more, breaks that balance of development rights and resident and neighbourhood rights. This is what is at stake, with the gradual erosion, by this Government, of the rights of local people to have their voice heard.

One of the drivers for the original Town and Country Planning Act was to provide a process whereby standards for individual buildings and design that benefited whole neighbourhoods could be agreed and set. One of the purposes was to ensure decent, habitable standards in new houses following slum clearances. What is absolutely shocking to read in this SI are the regulations to ensure that new properties have

"adequate natural light in all habitable rooms".

That should have been a given, and this demonstrates the need for planning oversight of new builds and conversions.

Many significant criticisms have been raised today. The noble Lord, Lord Thurlow, made a strong case against what he called "PDR mark 1", for constructing very poor-quality flats from office conversions, and hoped that PDR 2 would not replicate the failings. We need answers from the Minister: how are existing residents to be protected during construction? There is also the crucial challenge of learning lessons from the Grenfell tragedy—of the need to provide safe exits in case of fire or other major incidents. How will the recommendations from phase 1 of the inquiry be put into practice so that safety really does come first?

The impact assessment published with the SI states that the Government aim to make better use of land by building upwards—this is not an issue in itself. The only reason given for this permitted development right is that planning permission

"includes costs and can take time."

Actually, so it should. Raising a block of flats by two storeys may have a very significant impact on residents and communities; they should be subject to proper, transparent and public decision-making. Unfortunately, some noble Lords believe that bypassing the planning process ensures more housebuilding. This is simply not the case. The LGA estimates that nearly 1 million homes have planning consent but have not been built.

As my noble friend Lord Greaves rightly said, this is an example of the Government trying to micromanage planning while ignoring local people—and all this to achieve perhaps 800 new properties a year. My noble friend Lady Thornhill pointed out that this PDR now looks just like a planning application, with the exception that space standards can be ignored, to the detriment of the residents. As the noble Baroness, Lady Andrews, has said, there are major issues to consider about freehold and leasehold that have not been addressed.

An early review has been proposed, and I hope the Minister will agree to this: none of us wants to be associated with creating new slum dwellings. What this all points to is the Government making lucrative gestures to their developer friends, and not to the needs of those in desperate need of housing. That is no way to build better.

3.30 pm

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): My Lords, we have had an interesting, in-depth and wide-ranging debate on the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020. I thank noble Lords on all sides of the House for their contributions. I particularly thank the noble Lord, Lord German, and the noble Baroness, Lady Wilcox, for tabling the Motions and the Secondary Legislation Scrutiny Committee for its report drawing the regulations to the House's attention. I would like to take the opportunity to provide some further detail on the points raised by noble Lords in this debate.

The noble Baroness, Lady Wilcox, raised consultation with local authorities. We undertook public consultation on building upwards, which included local authorities. Other temporary measures were brought forward at pace to give flexibility to local authorities to hold outdoor events. The noble Baroness, Lady Redfern, the noble Lord, Lord German, and my noble friend Lord Bourne asked why these planning measures were grouped with other coronavirus measures to kick-start the economy. This is to keep both sets of measures in one instrument; it is important to make the most efficient use of the instrument. It is possible to use an instrument to amend more than one order, which is why the compensation regulations were also amended. The noble Lord, Lord German, also queried the vehicle's use in respect of permitted development orders. Negative procedure orders are the only way to amend the general permitted development order, as I understand it.

A number of noble Lords, including the noble Lord, Lord German, and the noble Baroness, Lady Pinnock, raised the issue of community engagement being affected by this approach to planning. The permitted development right for building upwards on existing blocks of flats is subject to prior approval by the local planning authority. This allows the consideration of key planning matters. Among other matters, they can consider the external appearance of the building and the development's impact on the amenities of the existing building and neighbouring premises, which includes overlooking privacy and the loss of light. There is no deemed consent and these planning issues can be raised. The local authority is required to consult with adjoining owners or occupiers of the land adjoining the site.

The noble Lord, Lord German, and my noble friend Lord Randall both raised the issue of egress. New permitted development rights to extend existing buildings upwards allow engineering operations to construct the additional stories and safe access to, and egress from, the new homes. Both the noble Lord, Lord German, and the noble Baroness, Lady Pinnock, raised the issue of disruption to occupiers and neighbours. We are aware that development can have an impact on both occupiers and neighbours, and that might occur during the construction of additional homes by building upwards. To ensure that this is considered before work commences, a developer has to prepare a report setting out the proposed hours of operation and how they intend to minimise any adverse impact of noise, dust, vibration and traffic movements during the building works on occupiers of the building and neighbouring premises.

The noble Lord, Lord Bhatia, and my noble friend Lady Gardner both made the point that this does not address the problem of homelessness. A number of noble Lords—including the noble Baronesses, Lady Ritchie and Lady Wilcox—mentioned that this does not specifically contribute to the provision of affordable housing. It is true that the permitted developments do

[Lord Greenhalgh]
not require affordable housing provision and do not tackle homelessness. However, I point out that where additional floor space is created through the right, and the local authority has a charging schedule in place, a community infrastructure levy might be payable. In addition, registered providers or local authorities can use the right to extend their blocks to provide more affordable and social housing.

The quality of homes was raised by the noble Baronesses, Lady Wilcox and Lady Redfern, and the noble Lord, Lord Thurlow. All homes built under permitted development rights are required to meet building regulations. In addition, such developments must conform with any conditions required by the prior approval. We have introduced a new requirement that homes delivered under this and other permitted development rights must have adequate natural lighting in all habitable rooms. This issue was raised by a number of noble Lords in the debate. We expect that the developers will want to bring forward homes that are of good quality and marketable.

My noble friend Lord Bourne raised the issue of space standards. It is a government priority to see new homes brought forward, and we think that developers are best placed to assess the type and size of homes best suited to the local market. We know that some well-designed new homes delivered through both planning applications and permitted development rights are smaller than the voluntary space standards. We do not wish to place stricter requirements on homes delivered through permitted development than through planning applications. I should also point out that smaller properties can be less expensive to buy, opening up home ownership to more people.

The noble Lord, Lord Rooker, raised the issue of HMOs. Homes delivered under these rights cannot be used as houses in multiple occupation. Local authorities have the power of enforcement if there is a breach of planning laws.

My noble friend Lord Bourne, the noble Lord, Lord Thurlow, and the noble Baroness, Lady Wilcox, all mentioned the impact on leaseholders, potentially adding to enfranchisement costs. Freeholders will have to comply with the terms of any lease in taking forward proposals to extend the building upwards. The Law Commission's report on enfranchisement valuation, recently published, includes an option for leaseholders to elect to take a restriction on future development of the property. This would have the effect of reducing the price otherwise payable when a leaseholder or group of leaseholders purchase the freehold. We are considering the detail of the Law Commission's proposals and will make an announcement in due course.

My noble friend Lady Altmann raised the issue of prior limits on total units. You can apply to vary the conditions of a planning application. National permitted development rights do not remove existing conditions placed on a granted planning permission. My noble friend Lord Taylor raised the issue of utilities, among other issues. The right allows for the moving of existing plant—for example, the water tank or air conditioning units on the roofs of buildings.

The noble Baroness, Lady Pinnock, raised the very important issue of building safety. As the building safety Minister, this is obviously something I consider to be of the utmost importance. Ensuring that buildings are safe remains a priority for this Government. Whether homes are brought forward through a planning application or through a permitted development right, they are required to meet fire and other building safety requirements. The new permitted development right to extend existing buildings upwards allows the engineering operations to construct the additional storeys and the safe access to, and egress from, the new homes. In the interests of time, I will write to my noble friend Lord Randall on some of the issues he raised, such as the time limitation and local authority markets.

The purpose of the regulations is to enable businesses to continue to operate safely during the coronavirus outbreak and to support housing delivery and economic recovery. Together with further statutory instruments laid in July, they form a package of measures to speed up and simplify the planning process to create new homes on existing blocks of flats and help businesses to continue to operate safely and to respond quickly to changes in how communities use their high streets.

The regulations we have considered today introduce a new permitted development right which allows the upward extension of detached purpose-built blocks of flats for the construction of new dwelling houses. This builds on national planning policy to boost density without the need to build on greenfield sites. Permitted development rights make an important contribution to housing delivery, helping us to meet our plans for 300,000 new homes per year. These rights have brought forward schemes that might not otherwise have come forward.

In conclusion, delivering new homes is a key priority for this Government. These regulations are an important tool to help drive up delivery by simplifying and speeding up the planning system. They also form part of our response to help businesses operate during the coronavirus outbreak. Having introduced a new category of permitted development right to construct new dwelling houses, we are keen to ensure that the rights are operating effectively, so I can assure the noble Baroness, Lady Andrews, that we will be keeping their implementation under review and monitoring the impact. In the words of my noble friend Lord Naseby, this is a useful addition.

These permitted development rights make effective use of existing residential buildings and gently boost density. They avoid the need for sprawling greenfield development by focusing on existing residential locations and areas more likely to have access to public transport. The rights respect the appearance of the existing streetscape while ensuring that the amenity of neighbours is considered through prior approval considerations.

Lord German (LD): My Lords, I am grateful for a moment to reply to the Minister. I note that the issue of the way in which these regulations and those which are to follow, which are all in the sphere of planning regulations, was not answered in the debate. It is a matter of concern for us all that we will be faced with other regulations which will address the same issues.

While we have not had the answers, I have no fear that we will have an opportunity to do so again in future weeks before us and before this House.

Motion agreed.

Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020

Motion to Regret

3.43 pm

Tabled by ***Baroness Wilcox of Newport:***

That this House regrets that the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 (SI 2020/632) restrict local communities' ability to agree to substantial construction developments, risk causing disruption to existing occupiers and their neighbours, and may lead to the construction of undersized, poor-quality homes and a reduction in the supply of affordable housing.

Special attention drawn to the instrument by the Secondary Legislation Scrutiny Committee, 21st Report.

Baroness Wilcox of Newport (Lab): My Lords, many noble Lords have spoken eloquently on the problems surrounding this issue, and I thank them for the detailed and thoughtful way they have approached this most contentious of matters. As my noble friend Lady Andrews succinctly and powerfully noted in her contribution today, the Government should consider whether there is anything that can be done to put some sort of expectation on developers and local authorities for meaningful consultation with residents and, in conjunction with the opportunity provided by the review of leasehold reform, to look for ways to restrain developers' profits so that opportunist developers—they exist; I dealt with them a great deal while leader of the council—are less able to make life worse for our communities. I reiterate what I said: we should be striving to make things better for the people of the UK.

Motion not moved.

3.43 pm

Sitting suspended.

Arrangement of Business

Announcement

3.48 pm

The Deputy Speaker (Lord Russell of Liverpool) (CB): My Lords, the hybrid proceeding 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.

There are two Motions in the name of Lord Keen of Elie. The time limit is one hour. Motion to approve the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2020 and one other motion—Lord Keen of Elie.

Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2020

Motion to Approve

3.49 pm

Moved by ***Lord Keen of Elie***

That the draft Order laid before the House on 9 July be approved.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I beg to move that the House considers the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2020 and the Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2020, which were laid in Parliament on 9 July.

These two orders relate to the process by which an individual may be required to self-disclose criminal records when applying for roles eligible for standard and enhanced criminal records certificates or have criminal convictions and cautions disclosed on a standard or enhanced criminal record certificate issued by the Disclosure and Barring Service.

As noble Lords are aware, the criminal records disclosure regime is designed to protect the public, in particular children and vulnerable adults. We want to ensure that criminal records disclosure is proportionate, balancing safeguarding with supporting people who have offended in the past into employment. Criminal records checks provided by the Disclosure and Barring Service form an important part of an employer's broader approach to safeguarding. They support employers to make informed decisions about an individual's suitability when they recruit for sensitive roles dealing with children and vulnerable adults.

As noble Lords are aware, the Supreme Court handed down its judgment on the case of P, G and W on 30 January 2019. That judgment determined that certain aspects of the current disclosure rules are incompatible with Article 8 of the European Convention on Human Rights, which is the right to a private life. The court found a rules-based disclosure regime for criminal records certificates is justifiable and in accordance with the law, but it found two areas of concern. First, the rule where all convictions are disclosed because an individual has more than one conviction, known as the multiple conviction rule, was found to be an unnecessary and disproportionate means of indicating a propensity to offend.

Secondly, the automatic disclosure of out-of-court disposals and youth reprimands and warnings administered to young offenders was found to be an error of principle given the instructive purpose of these disposals. The Supreme Court held that

"a warning or reprimand given to a young offender whose moral bearings are still in the course of formation, requires no consent and does not involve the determination of a criminal charge. Its purpose is wholly instructive, and its use as an alternative to prosecution is designed to avoid any deleterious effect on his subsequent life."

These two orders are necessary to ensure that the disclosure of criminal records on standard and enhanced certificates is proportionate and fully complies with

[Lord Keen of Elie]
Article 8 of the convention. The two orders, read together, will have the effect that youth cautions and multiple convictions, unless affected by the other rules, no longer have to be disclosed when a person is asked about them and will no longer be subject to automatic disclosure on standard and enhanced criminal records certificates.

The Rehabilitation of Offenders Act 1974 affords offenders protection from having to disclose convictions and cautions once those convictions and cautions have become spent under the Act—the point at which the offender has become rehabilitated. The exceptions order lists activities or categories of jobs, where those protections are lifted. For these listed activities or jobs, applicants must, if asked, disclose their otherwise spent cautions and convictions, unless the exceptions order provides that they are protected. The primary rationale behind the exceptions order is that there are certain jobs, such as positions involving a high level of public trust—for example, unsupervised work with children—where more complete or relevant disclosure of an individual's criminal record may be appropriate to mitigate risks to public safety.

Section 113A of the Police Act 1997 defines relevant matters which must be disclosed by the Disclosure and Barring Service in response to an application for a standard or an enhanced criminal record certificate. The two orders before us today work together to amend the criminal records disclosure system. First, the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2020 draft instrument amends Article 2(2) and (4) of the exceptions order to change the definition of a protected caution, being a spent caution not requiring self-disclosure, to include all those given where a person was under 18 at the time. It also amends Article 2(5) and (6) to change the definition of a protected conviction by removing the multiple conviction rule exemption from the scope of the definition. The effect of this order is that an individual with a youth reprimand, warning or caution, or those with more than one conviction, will no longer have to self-disclose their criminal record when applying for a role eligible for a standard or enhanced DBS check, unless one of the other disclosure rules is engaged. This amendment is necessary, as I say, to ensure that all aspects of the criminal records disclosure system are proportionate and compatible with the convention.

The Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2020 amends the definition of "relevant matter" by excluding the multiple conviction rule and youth cautions, including reprimands and warnings, from the scope of the definition of "relevant matter". A relevant matter is a matter which must be disclosed by the Disclosure and Barring Service in response to an application for a standard or enhanced criminal record certificate.

The effect of this order is that youth reprimands, warnings and cautions and multiple convictions, where not affected by any other rule, will no longer be subject to automatic disclosure in criminal records certificates issued by the Disclosure and Barring Service. As criminal records disclosure is a devolved matter, these orders apply to England and Wales only.

Those with more than one conviction will no longer have to disclose them unless one of the other disclosure rules applies. Convictions and adult cautions will still be disclosed on certificates if they are recent, if they were received for a specified violent or sexual offence or if a custodial sentence was imposed. Youth reprimands, warnings and cautions will no longer be automatically disclosed through these rules.

Where an offence has been committed, we have a responsibility to ensure that the public are adequately safeguarded and that employers can make informed recruitment decisions through the disclosure of appropriate and relevant information, particularly for roles which involve close contact with children and vulnerable adults or a high level of public trust, but the rehabilitation of offenders is vital to enable long-term desistance for those who have offended in the past. By changing the disclosure rules, we are supporting those with childhood criminal records and those with old and minor convictions to move on with their lives, to be reintegrated into society and to take up employment and training opportunities. We are committed to increasing the employment rates of people who have offended in the past. The importance of employment in enabling those who have offended in the past to move forward with their lives cannot be overstated. We have an obligation to do what we can to make sure that people with convictions do not offend again, and employment is one of the most effective ways to do that.

These amendments to the exceptions order and the Police Act protect the privacy of an individual and represent a proportionate means of retaining the vital protections of relevant disclosure to employers, when they need them to make recruitment decisions for sensitive roles. I seek to reassure those who may be concerned that ceasing automatic disclosure of some criminal records presents a safeguarding risk. Other disclosure rules ensure that recent, sexual or serious violent convictions, adult cautions and any convictions that resulted in a custodial sentence will continue to be automatically disclosed on standard and enhanced DBS certificates. Furthermore, the statutory regime enables chief police officers to disclose any information they consider to be relevant to the purpose of a certificate and which, in the chief officer's opinion, ought to be included in the certificate.

We intend to update the associated Home Office statutory guidance for the police alongside this legislative change to make it clear that information about convictions and cautions not automatically disclosed under the rules can, in principle, be included in a certificate in the same way as other police information reasonably believed to be relevant to the purpose for which the certificate is being sought.

In conclusion, we welcome the Supreme Court's recognition of the important public interest in disclosing criminal records to protect children and vulnerable adults from harm, and we also acknowledge their judgment that two aspects of the regime are disproportionate. We are confident that these changes will still enable employers to make informed recruitment decisions to

support safeguarding, but in a way that enables those who committed minor offences and who offended long ago to move away from their past. This will have particular benefit to those with childhood cautions. I invite noble Lords to support these two orders and I beg to move.

3.59 pm

Lord Marks of Henley-on-Thames (LD): My Lords, we welcome these orders and the comprehensive way in which the noble and learned Lord has opened this debate. As we have heard, the order under the Police Act changes the arrangements for disclosure by the Disclosure and Barring Service.

The first change removes youth cautions and reprimands and warnings given to persons under 18 from the disclosure requirement. This is obviously sensible and necessary. The whole point of youth cautions has been to enable the police to deal with children and young people informally, without criminal prosecution. The disclosure requirement is therefore an anomaly. Secondly, the removal of the multiple conviction rule eliminates another anomaly. The effect of a second conviction, of whatever nature, has hitherto been to open up disclosure of all previous convictions, again of whatever nature.

The order under the Rehabilitation of Offenders Act achieves the same two effects in respect of disclosure by applicants for employment to potential employers—again, obviously sensible and desirable. But these two orders are laid not because the Government suddenly realised that the existing provisions were unwise, unfair and unlawful but because of the Supreme Court's decision last year in the four cases of P and others, as the noble and learned Lord acknowledged. The unfairness of the existing law is illustrated by the facts of those cases, which I hope I will be forgiven for summarising.

In 1996 Mrs G was fined £35 in all for seat-belt offences, then in 1998 a further £80 for similar offences. She has no other convictions. In 2014, 16 years later, now a qualified care worker, she applied for a job at a day centre for adults with learning disabilities, but her disclosure of her historical convictions was incomplete and her job offer was withdrawn after the enhanced criminal record certificate disclosed all her previous convictions.

In 1999 P was cautioned for stealing a sandwich from a shop and conditionally discharged for stealing a book worth 99p and failing to surrender to bail. She was then 28, homeless and suffering from mental illness. She has committed no further offences. Now a qualified teaching assistant, she has not been able to find employment, she believes as a result of her disclosure obligations.

In 1982 W, aged 16, received a conditional discharge for an assault during a fight with other boys. In 2013, aged 47, he began a course in teaching English to adults. He believed his chances of obtaining teaching employment would be prejudiced by the need to obtain a criminal record certificate.

Finally, in 2006 G, aged 13, was arrested for two trivial offences of sexual assault on two younger boys. The police accepted that the offences were consensual and in the form of dares. He was reprimanded by police and has not offended since. In 2011 he was required to apply for an enhanced criminal record check because his work as a library assistant involved contact with children. As a result, he withdrew the application and lost his job.

The Supreme Court judges decided unanimously, though their reasons differed slightly, that the existing provisions infringed the applicants' Article 8 rights to privacy. This case has powerful support for two pillars of our liberty. The first is the European Convention on Human Rights, which in recent years has been frequently under attack. The second is the right of citizens to apply for judicial review in respect of claims that their human rights have been breached. That right too remains under attack.

The Government and their supporters are often heard to complain of judicial activism and lawyers whom some would describe as activist lawyers overruling the supremacy of Parliament, but we should not forget that the Police Act and the Rehabilitation of Offenders Act and the orders made under them were passed by our sovereign Parliament. Nor should we forget that these judicial review cases were pursued by the Government, opposing the applicants all the way through the courts to the Supreme Court of the United Kingdom, notwithstanding a decisive finding at a lower level that the existing provisions were incompatible with the applicants' Article 8 rights.

In the context of discussions on legal aid, we should also note that P did not have a solicitor and was represented by Liberty; nor did G, who was represented by a non-profit organisation called Just for Kids Law.

This debate reminds us of the need for judicial and extraterritorial checks on parliamentary sovereignty and the importance of constant vigilance.

4.05 pm

Lord McCrea of Magherafelt and Cookstown (DUP) [V]: My Lords, I thank the Minister for his remarks introducing these orders. I accept that they are for England and Wales; however, I will make a few remarks.

I am absolutely certain that the draft orders before us are necessary in light of the Supreme Court decision, which held that the disclosure of multiple offences and the disclosure of youth cautions, warnings and reprimands were incompatible with Article 8 of the European Convention on Human Rights. These orders therefore bring legislation into line with that ruling.

These draft orders are understandably sensitive, and it is vital that we continue to strike the right balance between rehabilitation of offenders and protecting the community. Coming from Northern Ireland, where many young people have had their lives ruined by involvement in paramilitary organisations, I recognise the need to ensure that young people who have been engaged in minor criminality have the opportunity to reintegrate into society after serving their punishment and demonstrating commitment to right the wrongs of their crimes.

I am also absolutely certain that lives can be turned around and that every opportunity should be taken to assist those who in the past were involved in criminality yet now want to lead lives that are meaningful and profitable to society. In my years of public life, I have witnessed that failure does not always have to be final.

[Lord McCrea of Magherafelt and Cookstown]

However, I firmly believe that automatic disclosures must continue without exception for convictions that are relevant to prevent unsuitable persons working with vulnerable groups, including children, the elderly and those with disabilities. This includes violent and sexual offences. I believe maximum caution should be applied when protecting the interests of the most vulnerable.

There are also questions to be posed about the practical impact of these changes between the structures used to do background checks on job applications in different parts of the United Kingdom. Employers should be regularly kept abreast of what these changes mean for them and how they affect their rights as recruiters. It is vital that no one falls between the cracks. It would be helpful to have a statutory review period to assess the ongoing impact of these changes on employers, offenders and those who have suffered from criminal activity.

4.08 pm

Baroness Sater (Con) [V]: My Lords, I am grateful to be able to speak in this short debate. I welcome these orders, which would amend the filtering rules that govern what is automatically disclosed through the standard and enhanced criminal record certificates issued by the DBS. Removing the automatic disclosure of youth cautions, reprimands and warnings, as well as the multiple conviction rule, will help to strike the right balance between rehabilitating offenders and protecting the public.

I have been a keen advocate of reform around childhood criminal records, and here today we see real progress towards greater support for improving outcomes of those with minor criminal records and their future in society. Making errors of judgment in childhood should not prevent those who are trying to turn their lives around leading a fulfilling and rewarding life and contributing positively to their community.

My time as a youth magistrate and a member of the Youth Justice Board gave me a real insight into the debilitating effects of minor criminal records that hung over young people who were trying to put the past behind them and get on with their lives. Too often, the current disclosure system acts as a barrier to employment, as well as to other things, such as housing, education and insurance, which in turn minimises the chances of rehabilitation.

We know that employers use DBS certificates as part of their recruitment process to help them consider a person's suitability for certain roles, particularly those requiring a high degree of public trust. We also know that securing a good job can notably increase the possibility of desistance. It is therefore very welcome that these changes will particularly benefit those with childhood cautions and those with minor offences who have moved on from their past. Too often, you hear from young people who seem resigned to the fact that because they have a criminal record, they have zero chance of securing a job and getting on with their lives.

It is right, however, that convictions and adult cautions for offences specified on a list of serious offences, and which received a custodial sentence, are recent or unspent, will continue to be disclosed. Additionally, enhanced criminal record certificates may also include any information that a chief officer of police reasonably believes to be relevant and, in their opinion, ought to be included.

I am grateful to the safeguarding Minister in the other place, Victoria Atkins, for bringing this new legislation forward. I agree with her that making these changes will help to ensure that vulnerable people are protected from dangerous offenders, while at the same time ensuring that those who have turned their lives around or live with the stigma of past convictions from their childhood are not held back. These changes build on the Government's commitment to increase employment for ex-offenders and are a very welcome step. I believe that a wider review of criminal records would highlight further improvements that could be made to deliver better outcomes, but that is not for now.

4.11 pm

Lord Thomas of Gresford (LD) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady Sater, who has drawn upon her extensive experience in the juvenile courts to speak up for those who have turned their lives around. I fully support these two orders, but I cannot give the Government any credit for bringing them forward. My noble friend Lord Marks of Henley-on-Thames has pointed out that the Government are simply responding to the decision of the Supreme Court in the case of P, made nearly two years ago. It was a case that was fully contested by the Home Office all the way up to the Supreme Court. What it revealed was the rigidity of decision-making, the lack of discretion and the straitjacket within which these decisions were made.

My noble friend was also right to emphasise the importance of the human rights convention and judicial review as a remedy. This is the way in which these matters can be brought before the court. I remember the old days of writs of the Crown—certiorari, mandamus and so on. Judicial review has developed well from that and must be protected from all the voices that are now speaking against it.

I will not rehearse the facts of the particular case and the four people concerned in it because that has already been done. The outstanding matter for me is the triviality of the offences involved: the stealing of a sandwich, a fight between boys and so on. It is quite striking that the convictions were so trivial but that many years later the effects of the legislation could have such an overwhelming impact on the people concerned. The Supreme Court held that the multiple conviction rule was disproportionate and a breach of Article 8 of the European Convention on Human Rights, which protects the right to respect for private and family life. The same finding was made in respect of the disclosure of police reprimands given to young children. I can remember from my own youth being told off by a policeman for the way I was riding a bicycle—if I had thought that it was going to be brought up against me at some future time, I would have been very much more concerned than I was.

It should be appreciated that in the past five years alone, over 1 million youth criminal records have been disclosed on standard or enhanced criminal record checks relating to offences from more than 30 years

ago—more than a million. While it is right that certain offences should be disclosed to employers, a fair system should not blight the lives of people who are trying to get on in life by disclosing warnings and reprimands or trivial convictions.

While I welcome these orders, consideration should be given to creating a distinct system for the disclosure of criminal records acquired in childhood. It is wrong that they should be carried forward indiscriminately into adulthood. I have two questions. I want to ask the Minister what filtering system exists that allows the consideration of applications for disclosure on a case-by-case basis. There have been calls from the Law Commission, the Justice Select Committee and others for a full review of the wider regime in order to determine whether the Rehabilitation of Offenders Act 1974 is fit for purpose. Will the Minister take steps to set up such a review and to deal with the disquiet that so many of us feel?

4.16 pm

Lord Singh of Wimbledon (CB) [V]: My Lords, as director of the Sikh chaplaincy service for prisons, I welcome this order. It is fair and will help offenders to move to a crime-free life. The criminal records disclosure regime rightly provides information through DBS certificates to employers about an individual's criminal record to help them consider a person's suitability for certain roles, principally those working closely with children and vulnerable adults, or roles requiring a high degree of public trust. However, it is important that irrelevant criminal records should not be used to limit an individual's life chances in other work.

The order follows on from an eminently sensible Supreme Court ruling that the multiple conviction rule and the disclosure of reprimands and warnings administered to young offenders can be disproportionate and incompatible with Article 8 of the European Convention on Human Rights. While protecting the safety of the vulnerable, we should do all we can to protect an individual's employment chances and minimise reoffending—a prime aim of the Sikh Prison Chaplaincy Service and other chaplaincy services working in prisons.

4.17 pm

Lord Paddick (LD): My Lords, as the Minister has set out, these statutory instruments are the result of a judicial review heard ultimately in the Supreme Court on 30 January 2019, where it was ruled that the existing rules for criminal record disclosure are incompatible with the European Convention on Human Rights. Claiming victory in the face of defeat, the Government said:

> "By making these adjustments we will ensure that vulnerable people are protected from dangerous offenders, while those who've turned their lives around or live with the stigma of convictions from their youth are not held back."

In fact, as my noble friends Lord Marks of Henley-on-Thames and Lord Thomas of Gresford have said, the Government fought this case all the way to the Supreme Court. These changes, which the Government now herald as necessary, reinforce how important the Human Rights Act, judicial review and the independent judiciary are in upholding UK citizens' rights—all three of which the Government have threatened to undermine.

Of even more concern is that it has taken a judicial review, fought at every stage, to implement changes similar to those first suggested by the Home Office in 2002 and again six years ago by the Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court, chaired by the noble Lord, Lord Carlile of Berriew, of which the noble Lord, Lord Ponsonby, was a member.

We all make mistakes, particularly when we are young. As the noble Baroness, Lady Sater, said, it is essential that minor criminal matters do not ruin young people's chances to get on in life. We support these orders, but we will oppose any attempt to restrict judicial review or to tie the hands of the judiciary.

4.20 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, I welcome the introduction of these two amendments to existing pieces of legislation. The Minister fully set out the reasoning behind the amendments and their effects. Two Acts are being amended by the orders. The first is the Rehabilitation of Offenders Act 1974, which will be amended in two respects: by removing the multiple convictions rule in certain circumstances and also by removing the requirement, in certain circumstances, that the sections order apply to any spent youth cautions. The second is the Police Act 1997, to which the second order makes various amendments, which the Minister fully explained.

I have a few questions for the Minister which arise out of his introduction. I was pleased to see that the Chartered Institute of Personnel and Development welcomed the changes, particularly on youth convictions, but it warned that, too often, employers routinely carry out DBS checks, even when they are unnecessary for the job that is to be undertaken. Does the Minister share this concern? Also, with unemployment rising and the difficult situation we are currently facing, what else are the Government doing to help offenders? They find it very difficult to get work.

When the Minister was explaining this, he referred to cautions but he did not explicitly refer to conditional cautions. Can I assume that all the provisions he has referred to apply to both youth cautions and youth conditional cautions? He made it clear the provisions apply to both the regular certificates and the enhanced certificates, but when judges or magistrates are sitting in court and looking at the police national computer, will that have a full list of cautions, conditional cautions, warnings and all the other out of court settlements? Will that still be recorded in the PNC, which is seen by magistrates and judges when they are sentencing?

The noble Lord, Lord Paddick, noted that I was a member of the independent parliamentarians' inquiry chaired by the noble Lord, Lord Carlile, but more significantly Robert Buckland was on that commission, and as far as I remember, he agreed with everything that commission said, and that commission went far further than today's amendments. Therefore, I look forward to the Lord Chancellor's continued support for the work of the commission of the noble Lord, Lord Carlile.

The noble Lords, Lord McCrea and Lord Thomas of Gresford, and the noble Baroness, Lady Sater, talked about a wider review of how criminal records

[Lord Ponsonby of Shulbrede]
and orders are dealt with. I was particularly pleased to hear the contribution of the noble Baroness, Lady Sater, to today's debate. I sat as a youth magistrate with the noble Baroness for many years, and I know she talks with huge experience from her work as a youth magistrate and on the Youth Justice Board, and I agree with the sentiments she expressed.

I will close with a personal observation. Last night, my son, who is a part-time cricket coach, was filling in the form for his DBS check. I have to say that I find it odd that, when filling in that form, the onus was on him to diclose any convictions or cautions, rather than on the system to have the data available. There was no problem in his case, but it seems to me that is a strange system. Nevertheless, I support these amendments and am happy to do so.

4.26 pm

Lord Keen of Elie (Con): My Lords, I am grateful for the contributions to this debate. I will touch briefly on a few points.

First, regarding the points made by the noble Lord, Lord Ponsonby, he is quite right to assume these matters will refer to both conditional cautions and cautions. I understand his point about having to address unemployment amongst those leaving imprisonment, and we are concerned to develop through-the-gate services.

More generally, we are not proposing a wider review at the time, but I believe that this legislation addresses the Supreme Court ruling in full. We are confident that the regime will help employers make informed recruitment decisions, particularly for roles involving children and vulnerable adults.

Touching on another point from the noble Lord, Lord Ponsonby, we feel it is for employers to make a subjective judgment as to the circumstances in which they feel they should make a DBS check. Clearly, we want to enable people affected by this legislation to move away from their past, particularly those who have been subject to childhood cautions. It is in these circumstances that I commend these draft instruments to the House.

Motion agreed.

Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2020

Motion to Approve

4.27 pm

Moved by ***Lord Keen of Elie***

That the draft Order laid before the House on 9 July be approved.

Motion agreed.

4.27 pm

Sitting suspended.

Arrangement of Business

Announcement

4.45 pm

The Deputy Speaker (Lord Palmer of Childs Hill) (LD): My Lords, the hybrid proceedings of the House will now resume. Some Members are here in the Chamber, respecting social distancing, while others are participating virtually, but all Members are treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

Electricity and Gas (Internal Markets and Network Codes) (Amendment etc.) (EU Exit) Regulations 2020

Motion to Approve

4.45 pm

Moved by ***Lord Callanan***

That the draft Regulations laid before the House on 6 July be approved.

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, a subject with which the House is very familiar. 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 these relevant policy areas.

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. Of course, since these SIs were made, the UK has left the EU under the terms of the withdrawal agreement and, since then, new EU legislation has come into effect. This includes 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), as well as 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 Electricity and Gas (Internal Markets and Network Codes) (Amendment etc.) (EU Exit) Regulations make amendments, including some revocations, to the following new pieces of EU legislation: the electricity regulation (recast) and three of the EU electricity network codes. These amendments are required to fix deficiencies that would arise when this legislation becomes retained EU law at the end of the transition period under the terms of the withdrawal Act. It also revokes

the agency regulation (recast), which will, of course, no longer be applicable after the end of the transition period.

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. 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—ACER—to co-ordinate energy regulator implementation of the clean energy package and to resolve disputes between member state regulators.

The predecessor to the clean energy package was the third energy package, under which the EU electricity network codes were adopted. The codes introduce common technical rules to promote harmonised operation of energy markets across the EU, and this SI amends three of these codes: first, the High Voltage Direct Current Connections—HVDC—Code; secondly, the Demand Connection Code, or DCC; and thirdly, the Requirement for Generators, or RfG, Code.

This draft instrument makes corrections to deficiencies in the electricity regulation (recast) and three of the EU electricity network codes. The amendments are needed to make the legislation workable in a domestic context after the end of the transition period. These deficiencies include references to EU entity functions, such as the role of member states, and to EU institutions, such as the European Network of Transmission System Operators for Electricity. The deficiencies are removed or replaced with references to entities in Great Britain or other appropriate terms. For example, the term "Member State" is replaced with references to "the Secretary of State". The draft instrument also revokes the agency regulation (recast) in full on the grounds that it includes obligations that would be inappropriate after the end of the transition period, with of course GB regulators no longer being members of ACER.

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

In conclusion, the regulations are an appropriate use of the powers of the withdrawal Act. They will maximise continuity in our energy regulation and business continuity for Great Britain's market operators. They will also ensure that there is no uncertainty about the role and functions of Great Britain and EU bodies in the market or about the requirements on market participants as we leave the EU. With that, I commend the regulations to the House.

4.51 pm

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, I thank the Minister for his introduction of this statutory instrument. I am venturing into new subject territory and will take this opportunity to try to understand a little more about what is happening in this important sector.

This instrument follows the normal format of "Brexifying" that we have seen many times in various sectors, whereby although the legislation will continue to apply—in this instance, through the technical network codes—going forward the UK will have its own unilateral regulators making decisions and will be cut off from the EU bodies. That is the theory, although I am not sure how it will work in practice.

What will happen in the future if the EU makes changes? Will the EU-located interconnectors automatically follow the changes, so that any changes that the EU makes will effectively be imposed on the UK companies via licensing? Will the licences to UK industry have expiry terms that will automatically bring that about?

Somewhat interestingly, paragraph 7.2 of the Explanatory Memorandum says that the most significant amendments are updating definitions to work in a non-EU context—for example, replacing euros with sterling in the definition of "small enterprise". I am sure that noble Lords can all agree that that is not earth-shaking as a most significant amendment. But then the Explanatory Memorandum goes on to refer to

> "revoking articles relating to the cross-European coordination body … and removing obligations in the Connection Codes for GB bodies to provide information to EU institutions or to take account of their recommendations."

That latter part leaves me wondering again. We might not provide information or have to follow recommendations, but will not changes creep into interconnection licences over time?

For example, we have withdrawn from the EU bodies that establish the capacity allocation codes, but as we have interconnectors with various EU member states—Ireland, the Netherlands and Belgium—will not EU changes to capacity codes be used for dealing with the UK, or rather, in this context, merely GB? What is the effect of data not being given to the EU bodies about the UK when changes are made? Will we be left following rules made absent any information about the UK side of things? Do we care about that or is it inconsequential, or is it up to commercial organisations to work it out?

Returning to the present rather than future changes, on the BEIS website is a very helpful list of all the things that companies need to do. As guidance for stakeholders, it is meant for businesses, but these matters will greatly affect the public if they go wrong, and we are only a few months away from the end of the implementation period.

Therefore, can the Minister advise us of the level of fulfilment of these requirements by industry? Is a smooth transition already ensured, and what are the risks if things are not completed? It is not much comfort being informed that deficiencies in our law have been fixed; I expect that the public will be a lot more concerned about deficiencies in gas and electricity provision not being fixed. For example, how are the arrangements progressing for how operators engage with relevant EU operators to ensure that their transmission system operator certifications remain valid? How are the

[Baroness Bowles of Berkhamsted]
registrations under REMIT progressing? How are the parties importing or exporting gas to or from the UK proceeding with ensuring that they understand the customs procedures that are in place in both jurisdictions? And how are disputes to be resolved, as the rules on those have also been removed?

I realise that I have asked a lot of questions, but I have done so to make the point that the Explanatory Memorandums explain nothing in terms of comprehension of the practical consequences that the public, and indeed noble Lords, might wish to know. After all, the purpose of EMs is to make legislation, including its effects, clear for the public. I hope that my questions give the Minister an opportunity to provide more information on both commercial progress and the legislative consequences.

4.56 pm

Baroness McIntosh of Pickering (Con) [V]: My Lords, I thank my noble friend and congratulate him on introducing what appear to be largely technical regulations. I have a couple of questions.

My understanding is that the regulations specifically do not apply to Northern Ireland and that it has been excluded. I wondered what the reasoning was for that. As we know, Northern Ireland is back in the news again because of the implications of the Northern Ireland protocol, but, given that an all-Ireland energy market will be in place anyway, what are the implications of Northern Ireland being specifically excluded from these regulations? I understand that the Explanatory Memorandum tells us that this might currently be useful for the Northern Ireland Executive but that they might seek to refer to the statutory instrument and apply it in their domestic legislation in the future. To me, that is particularly unfortunate. It would be helpful to know what the status of Northern Ireland, whose grid system and internal energy market are wholly integrated with those of the Republic of Ireland, will be. In my view, it would be better if all in the UK worked on the same basis from day one. Therefore, my first question is this: what are the implications for the UK's internal market of Northern Ireland remaining in the all-Ireland energy market?

Secondly, under this statutory instrument, what is the legal position from 1 January for new interconnectors? For example, I understand that there is to be an interconnector bringing energy—presumably electricity and gas—from Denmark. What legal regime will apply? Will that be covered by the regulations before us today or will it be considered at a later date?

The rest of these regulations seem straightforward. I am grateful for the opportunity to comment on them and would be grateful to receive a reply to my questions.

4.59 pm

Lord Redesdale (LD): My Lords, I plan to be brief at this point on a Thursday night because electricity markets are often seen as dry and boring. Considering the recent moves on Northern Ireland, it seems the Government are moving headlong to a no deal. This was counted as an outside possibility until now. If it does happen—and the legislation is preparing for it—the tariffs on electricity will go back to World Trade Organization, I believe. Can the Minister say which body will be responsible for the management of those tariffs and how they will be charged? With the French and Dutch interconnectors, we are looking at between 6% and 10% of our base load capacity coming from France especially, with the nuclear power stations there. Is it going to be National Grid, will it be Elexon? It does not seem clear in the Government's memorandum, which gives the impression it is business as usual. Can the Minister say what calculations have taken place? Who calculates the tariff? Can the Minister give an indication of what the tariff will be? Obviously, he will have that information to hand. I see the Minister laughs, but I do not see why considering we are talking about only a few months ago and it is integral to the price of electricity in the country. Consumers will have to bear the burden of this tariff. Why has that not been worked out and understood? Surely, BEIS has undertaken that work.

Second, looking at the paperwork and working with some of the organisations, such as Elexon, it appears that most of the forward planning on electricity marketplaces is based on business as usual and that we will just slot in quite happily with the European marketplace. Under a tariff system, I am not sure that is feasible because there will be a price differential between member states and the UK. Therefore, we will not be able to take part in these organisations. Will the Minister give an indication of the future in a no deal situation for such initiatives as project air, which is looking at an integrated European marketplace?

5.02 pm

Lord Oates (LD): My Lords, I welcome the customary clarity with which the Minister introduced the regulations and the contributions of all speakers to the debate so far. It is a rare pleasure to spend two consecutive Thursdays discussing electricity and gas regulations in the company of the Minster, the opposition spokesperson and the noble Baroness, Lady McIntosh. Great though that pleasure is, I am told you can get too much of a good thing, so I hope we will not put that adage to the test. There is a serious point because last week the noble Lord, Lord Grantchester, raised the issue of the interrelationship between the regulations we were discussing then and the regulations we are discussing now. They are different in many respects, but all relate to EU exit. I wonder whether it is worth taking some of these together in future. It might save the Minister time and allow us to consider the cumulative impact of these exit regulations. My noble friend Lady Bowles raised important questions relating to the impact that changes the EU makes in future may have on our supply companies, particularly in respect of the interconnectors. My noble friend Lord Redesdale made a critical point about if we find ourselves in a no-deal situation, which the Government seem to be rushing headlong into. It is critical that the Minister is able to answer us on the impact of tariffs and the impact on consumers. The Explanatory Memorandum states that these regulations are necessary because the uncertainty that would be caused without them could result in an increase in wholesale prices. Given the volume of electricity through the interconnectors, it would be good to know what the position would be if we are forced onto WTO tariffs. I hope the Minister will address those issues.

I find it somewhat depressing to read the Explanatory Memorandum's description of what the relevant EU laws did before exit because it summarises them in terms of liberalising energy markets, encouraging co-operation and establishing EU level frameworks. We will lose all that whether we exit in an orderly way after the implementation period or in the disorderly and potentially illegal way which the Government seem set on. Whatever happens, we will also be losing the opportunity for the UK to play a leadership role in shaping energy markets across Europe, particularly to serve our climate goals, and that is a very sad eventuality.

I want to take this opportunity to raise one issue relating to grid connections. I accept that this is not directly related to the regulations, so I will understand if the Minister cannot answer it, but I have had concerns raised with me about the difficulty of getting grid connections for renewable projects in rural areas, particularly agricultural land using solar and solar from rural schools. Can the Minister tell us something about this?

Finally, I asked the Minister last week whether it is the case, as Michel Barnier said in his speech to the Institute of International and European Affairs in Dublin, that 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. In what I can only imagine was an oversight, he failed to answer that question, so can he do so now?

5.07 pm

Lord Grantchester (Lab) [V]: My Lords, I thank the Minister for his introduction to the regulations before the House today and appreciate the amendments needed to the clean energy package in the changed circumstances if no agreement is reached with the EU.

On the face of it, the regulations appear straightforward and essentially technical, correcting deficiencies that would occur should there be no appropriate terms covering this matter between the UK and the EU. However, this is not entirely the situation, as the regulations apply to Great Britain only and not to the United Kingdom. This brings up the situation regarding Northern Ireland. All noble Lords who have spoken have been mystified about the effect on the internal market and the integrated energy market with the EU through interconnectors in general, with implications for Northern Ireland specifically.

I will not bring up the Northern Ireland protocol, which is already subject to continuous controversy, but merely the implications for this statutory instrument. Scotland has its own Parliament and Wales its Assembly. Northern Ireland now also has an operating Executive. Does the exclusion of Northern Ireland from these regulations signify some disagreement about them? Before the Minister replies, I appreciate that Northern Ireland has an integrated energy market with the Republic and is part of the island of Ireland's energy market. How far are these network code formulations being revoked by these regulations imperative to the grid system and the smooth operation of the internal Great Britain market through interconnectors to the island? As the Minister knows, there are two interconnectors for Britain, one to the north and one between Wales and the Republic. Would operability be maintained with Great Britain should these codes not be revoked?

Will the Northern Ireland Government respond in some way with their own order before the end of the implementation period? I would have thought, from the island-of-Ireland perspective, that the harmonisation of its internal systems from day one would be essential, and that it would wish to implement merely the technical corrections of the regulations, should the future relationship between the EU and the UK not be concluded satisfactorily on the matter. I would be grateful if the Minister set the House at ease that the connection codes are to the relevant extent interoperable, since paragraph 2.6 of the Explanatory Memorandum states:

"The Codes introduce common technical rules aimed at further integrating energy markets across the EU".

I am presuming that the revocation of obligations on Great Britain institutions and businesses to share information with EU institutions on the connection codes will not in any way lead to future problems in the Northern Ireland energy market. However, what tariff is likely to apply in the event of no deal? What will its effect be on consumer pricing?

It would be helpful if the Minister could clarify the situation and further explain how the island of Ireland, the larger part of which will remain in the EU, will operate in conjunction with the GB internal energy market in the event that negotiations between the UK and the EU are unsuccessful. What is being planned now that this Government propose unilaterally to disregard elements of the withdrawal Act? Quite naturally, there is now heightened anxiety over the situation.

5.11 pm

Lord Callanan (Con): I thank the doughty band of noble Lords who have turned up for yet another of these technical regulations for their valuable contributions. I totally take on board the valid point of the noble Lord, Lord Oates: it would have made more sense to combine our Thursday afternoons into one extended Thursday afternoon and debate some of these regulations together. I am not sure why that did not happen—I think there was some sort of miscommunication between my department and the Whips' Office—but he is right on this one. This is the last time I will ever agree with a point made by the Liberal Democrats; no such thing will ever happen again.

The Government have of course 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 of deficiencies by the end of the transition period, and this draft instrument falls within that category of legislation. A failure to address in full deficiencies in the retained EU legislation would create uncertainty and inefficiency in the operation of Great Britain's market regulation, the role and function of domestic and EU bodies in the markets and the requirements on market participants. Such uncertainty could result in an increase in wholesale prices, which no one wants to see.

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, robust and secure. That resilience is built on our

[Lord Callanan]
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 of course been working closely with the electricity system operator, National Grid ESO, and the regulatory body, the Office of Gas and Electricity Markets, to ensure that measures are in place to deliver continuity of supply and confidence in the regulatory framework in all scenarios. To answer one of the questions from the noble Lord, Lord Redesdale, Ofgem is responsible for regulations in this area, as the independent regulator, and it of course controls network operators and pricing in this space.

The Government are therefore confident that the UK's electricity system will be 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 of course still be physically linked to the EU after the end of the transition period, through interconnectors, which bring significant benefits including lower consumer bills and security of energy supply.

Of course, our future energy relationship with the EU is currently 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 with the EU in this area that provides for efficient electricity trade. 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 areas, there will continue to be significant value in increased interconnection and trade in 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 regulatory functions required to keep the market working effectively.

Let me answer some queries. I will write to the noble Lord, Lord Oates, on his point about grid connections for renewables and give him further information. On the ETS, I have to say that I think Michel Barnier was being somewhat disingenuous with his comments in Dublin, because of course the UK has higher carbon pricing and a more efficient carbon trading market than the EU—if anything, we disadvantage ourselves with our higher carbon costs.

The noble Lord, Lord Redesdale, asked about pricing. We recognise, of course, the importance to businesses and households of having access to an affordable, secure and sustainable system of energy, and the UK's exit from the EU will not alter this. Many factors impact energy prices, including fuel prices, exchange rates and generation mix. Great Britain will remain physically linked, as I said earlier, through interconnectors, and we expect any change in electricity prices as a result of changes to interconnector trading arrangements would fall within the normal range of market volatility.

The noble Baroness, Lady Bowles, and my noble friend Lady McIntosh also asked about interconnectors. The mechanisms for cross-border trade are not expected to fundamentally change after exit. The EU gas market is one of the world's most developed and provides security through supply diversity, most of which, of course, is not dependent on the EU. The 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 operations of Great Britain and Northern Ireland's energy markets.

The noble Baroness, Lady Bowles, asked about UK TSOs maintaining a relationship with European TSOs. The UK Government understand the importance of co-operation between system; discussions around the appropriate fora for this co-operation are ongoing and form part of the negotiations.

The noble Baroness, Lady Bowles, asked what happens when and if the EU changes the codes and regulations. I am afraid I will also give her the reply that this is subject to ongoing negotiations and I cannot comment further on it at the moment. However, we have amended REMIT in our first set of statutory instruments.

The noble Baroness, Lady McIntosh, correctly stated that this SI just affects Great Britain; it does not affect Northern Ireland or modify EU energy law as it applies to Northern Ireland. It will therefore have no implications for electricity trading through the single electricity market. The electricity trading technical notice makes it clear that trade on interconnectors will become less efficient if a free trade agreement is not agreed with the EU. With less efficient trade, there is of course the risk of increased costs.

Finally, I will write to the noble Lord, Lord Redesdale, with more information on the future of tariffs.

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

Motion agreed.

House adjourned at 5.19 pm.

Grand Committee

Thursday 10 September 2020

The Grand Committee met in a hybrid proceeding.

Parliamentary Constituencies Bill

Committee (2nd Day)

2.30 pm

Relevant document: 13th Report from the Constitution Committee

The Deputy Chairman of Committees (Baroness Henig) (Lab): My Lords, the Hybrid Grand Committee will now begin. 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.

A list of participants for today's proceedings has been published by the Government Whips Office, as have lists of Members who have put their names to the amendments, or expressed an interest in speaking, on each group. I will call Members to speak in the order listed. Members are not permitted to intervene spontaneously; the Chair calls each speaker. Interventions during speeches or "before the noble Lord sits down" are not permitted. During the debate on each group I will invite Members, including Members in the Grand Committee Room, to email the clerk if they wish to speak after the Minister, using the Grand Committee address. I will call Members to speak in order of request and will call the Minister to reply each time. The groupings are binding and it will not be possible to de-group an amendment for separate debate. A Member intending to move formally an amendment already debated should have given notice in the debate.

Leave should be given to withdraw amendments. When putting the Question, I will collect voices in the Grand Committee Room only. I remind Members that Divisions cannot take place in Grand Committee. It takes unanimity to amend the Bill, so if a single voice says "Not Content", an amendment is negatived, and if a single voice says "Content", a clause stands part. If a Member taking part remotely intends to oppose an amendment expected to be agreed to, they should make this clear when speaking on the group. We will now begin.

It is currently intended that we will take a break at 5 pm for 15 minutes. There has been some suggestion that not all Members are happy with this. I suggest, therefore, that the three Whips get together at some point to decide whether they wish to have this break. It being a Thursday, I can understand that people might have different feelings about it.

Amendment 12

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

12: After Clause 4, insert the following new Clause—

"The Boundary Commissions: constitution

(1) Schedule 1 to the 1986 Act (the Boundary Commissions) is amended as follows.

(2) At the end of paragraph 2 insert "in accordance with paragraph 3A below".

(3) In paragraph 3(a), for "Lord Chancellor" substitute "Lord Chief Justice of England and Wales".

(4) In paragraph 3(c), for "Lord Chancellor" substitute "Lord Chief Justice of England and Wales".

(5) After paragraph 3 insert—

"3A The two members of each Commission appointed by the Secretary of State shall each be appointed in accordance with the following process—

(a) a selection panel shall be convened by the Secretary of State to select the members of the Commission, which shall comprise—

(i) the deputy chairman of the Commission, and

(ii) two persons appointed by the Speaker of the House of Commons;

(b) the selection panel shall determine the selection process to be applied and apply that process;

(c) the selection panel shall select only one person for recommendation for each appointment as a member of the Commission;

(d) the selection panel shall submit to the Secretary of State a report stating who has been selected and any other information required by the Secretary of State;

(e) the Secretary of State shall on receipt of the report do one of the following—

(i) accept the selection,

(ii) reject the selection, or

(iii) require the panel to reconsider the selection;

(f) the power of the Secretary of State to require the selection panel to reconsider a selection is exercisable only on the ground that, in the Secretary of State's opinion, there is not enough evidence that the person selected is suitable for appointment as a member of the Commission;

(g) the power of the Secretary of State to reject a selection is exercisable only on the ground that, in the Secretary of State's opinion, the person selected is not suitable for appointment as a member of the Commission;

(h) the Secretary of State shall give the selection panel reasons in writing for requiring the reconsideration of, or rejecting, any selection."

(6) In paragraph 4, at end insert ", but the term for which each member (other than the chairman) is appointed shall be a non-renewable term.""

Member's explanatory statement

This amendment would ensure that the appointment of members of the Boundary Commissions is made and is seen to be made independently and without the influence or appearance of influence of the Executive, to remove the possibility of political interference in the process of setting the boundaries of Parliamentary constituencies.

Lord Thomas of Cwmgiedd (CB) [V]: The background to Amendment 12 is the effect of automaticity in moving the focus to the Boundary Commissions, which will now make the final decisions. This means that any

[Lord Thomas of Cwmgiedd]
risk of interference or perception of a lack of partiality or other matters will move to the commission and the process of appointing it. The Constitution Committee suggested we should consider what needed to be done to ensure the independence and impartiality of the commission. I am sure that there is complete agreement that the process must be wholly independent and free from the possibility of political inference or, more importantly, any perception of political interference or influence. Decisions must be independent and be seen to be independent and we must safeguard the process from the US problems of gerrymandering.

The amendment seeks to address this issue in three ways, so that the commission is not only independent and impartial but seems to be so. The first way is the appointment of the deputy chairman. Commissions are chaired by deputy chairmen. In each of our four nations the deputy chairman has to be a High Court judge. In Scotland, the deputy chairman is appointed by the head of the judiciary, the Lord President, and in Northern Ireland by the head of judiciary there, the Lord Chief Justice of Northern Ireland.

However, that is not the position in England and Wales. The appointment is not by the head of the judiciary, the Lord Chief Justice, but by the Lord Chancellor, a Government Minister. For England and Wales this anomaly predates the change to the position of the Lord Chancellor in 2005. Until then, he was the head of the judiciary in England and Wales and a judge. Now, not only is he not head of the judiciary, he is no longer a judge but a political Minister.

The Act should therefore now be changed so that the deputy chairman is no longer appointed by a Government Minister but, as in Scotland and Northern Ireland, by the head of the judiciary. Although the Lord Chancellor consults the Lord Chief Justice, that is insufficient in the light of the proposed change brought about by the Bill. That is because it is necessary to ensure that the independence of the judiciary is not undermined by any perception of partisanship in the appointment. It must be seen to be wholly independent of the political Minister which the Lord Chancellor now is. That is a small and, I hope, uncontroversial change.

The second matter relates to the independence of the appointment process of the other members. I put forward a process based on the commission used for the appointment of the senior judiciary—the Judicial Appointments Commission—and the appointment process it has adopted. I have done so as the process of the commission will be far more akin to a judicial process. It must be impartial and independent and seen to be so. It must make its decision on the evidence and the decision is then put into effect by the other branches of government, without any power to change the decision.

Therefore, I suggest, first, that the panel must be independent. I propose in my amendment that the panel should comprise the deputy chairman, as that reflects current practice, and two panel members appointed by the Speaker of the House of Commons. Secondly, the process should be that determined by the panel. If the panel is appointed as suggested, the selection process should be left to it. I am not in favour of automatic disqualifications, as something you decide now can come back and disqualify someone for something they did many years ago. Thirdly, the panel must put forward one name to the Minister, who can object only on a limited basis and must give reasons in writing. That is the practice followed in judicial appointments. This has proved a very effective mechanism for the appointment of judges and exists—I must emphasise—without in any way undermining public confidence in other appointment processes. It is because the appointment process to the Boundary Commission is so similar to the appointment of judges that I put this forward.

The third means that I think should address the question of impartiality and independence is the non-renewable term. It is clear that the members of the commission must be free of any pressure during their work by the prospect of being offered a further term. That is why a number of bodies with special status have fixed terms that are not renewable. Security of tenure, again, is like that given to judges. If they are not liable to reappointment there cannot be subjective pressure or undue influence. In recent years, the trend has been for constitutional watchdogs to be appointed for a single, non-renewable term. A dozen such bodies whose members cannot be reappointed include the following six, which come under the Cabinet Office: the Civil Service Commission, the Commissioner for Public Appointments, the Committee on Standards on Public Life, the House of Lords Appointments Commission, the Advisory Commission on Business Appointments, and the Local Government Ombudsman. It seems to me that if the Cabinet Office believes in the importance of non-renewal terms for these bodies, why would it not apply this logic to the Boundary Commission?

Parliament also believes in the importance of single, non-renewable terms for constitutional watchdogs. The law was changed in 2006 to make the parliamentary ombudsman appointable for seven years, non-renewable; in 2011 to make the Comptroller and Auditor-General appointable for 10 years, non-renewable; and in 2012 to make the Information Commissioner appointable for seven years, non-renewable. Noble Lords will note that I have not recommended the length of the term. That is because I think it remains to be clarified as to what is planned for the activities of the commissioners, bearing in mind, first, that they are likely to be active for only two to three years in the envisaged eight-year cycle and, secondly, the way in which this is done must make the post attractive. Those are the three bones of this amendment. I beg to move.

Lord Janvrin (CB) [V]: I will speak briefly in support of the amendment introduced by the noble and learned Lord, Lord Thomas. As was discussed on Tuesday, the Bill introduces automaticity into the implementation of new constituency boundaries following a boundary review. This is a move which I support. This amendment is a further step to ensure that the review process is, and is seen to be, totally impartial. Its aim is to strengthen the independence of the Boundary Commissions themselves by setting out how the appointments of their members can be made independently and without the possibility of political interference. The importance

of this was underlined by the Constitution Committee and the arguments in favour of this additional clause have just been well set out by the noble and learned Lord, Lord Thomas.

I simply add that I hope there will be no temptation to argue that this amendment is unnecessary. If the Minister does take that line when he replies, he would be saying in effect that we can trust the present appointments system. I ask him to reflect on this in the context of the level of public trust in politics today, which was touched on in our debate on Tuesday. When winding up the Second Reading debate earlier this year, the Minister said that the Boundary Commissions

"are independent and neutral; they must and will remain so".—[*Official Report*, 27/7/20; col. 96.]

This amendment will surely assist the Government in meeting this worthy pledge.

The Deputy Chairman of Committees (Baroness Henig) (Lab): Lord Liddle. No? We will move on to the noble and learned Lord, Lord Morris of Aberavon.

Lord Morris of Aberavon (Lab) [V]: My Lords, it is a pleasure to support the noble and learned Lord, Lord Thomas. As Welsh Secretary, I ran a mile whenever I thought there was a conflict of interest. It is for others to judge whether I succeeded. It goes without saying that I did the same as Attorney-General. The spirit and meaning of this amendment is that the office of Lord Chancellor has been changed. It certainly gives the appearance of being a more political office. I will make no comment on his statutory duty to maintain the rule of law in the present circumstances, but it is important to distance the appointment of the Boundary Commission from a perception of closeness to party interests. The machinery—the bread and butter—of general elections is the make-up of constituencies. This is what the Bill does, with disastrous consequences for the representation of Welsh electors. A judicial method of appointment removes the semblance of political interests.

As Welsh Secretary, I had experience of a parallel matter. In what I would call my vice-regal role, it was my duty to appoint the chairman of the Local Government Boundary Commission and, I believe, its members. I presume that this duty went, on devolution, to the Assembly and it is too late to amend it, but it is important so far as England is concerned. The same argument—the need to distance decision-making from a politician—applies to this kind of appointment and the Boundary Commission itself. On assuming office, I inherited the proposed appointment of the Local Government Boundary Commission chairman from my Conservative predecessor. I was not satisfied with the proposed appointment.

2.45 pm

The make-up of local government constituencies can have a considerable effect on subsequent parliamentary constituencies. I decided not to implement my predecessor's proposal; I wanted a judicial figure as chairman. I appointed Mr Ronald Waterhouse QC, who later became a distinguished judge in the High Court and Court of Appeal. His first recommendation involved St Dogmaels, a village between Cardiganshire and Pembrokeshire which, given the history of those two constituencies, was of fundamental importance. My predecessor may have been right; I may have been right. We were both political Secretaries of State and neither of us should have had this duty. It can become a political bone of contention. It can give the impression that the appointor—the Secretary of State—has a conflict of interest.

I therefore not only support this amendment but hope that the same issue will be borne in mind in the field of local government, certainly so far as England is concerned. I hope that that will remove the impression of political interference. Local government boundaries are one of the building blocks that the parliamentary commissioner takes into account in resolving what the constituencies should be. It is, therefore, of equal importance. The spirit of the amendment in the name of the noble and learned Lord, Lord Thomas, is to ensure fairness and remoteness from any political decision-making; I strongly support it.

Baroness Humphreys (LD) [V]: My Lords, I begin by apologising for not being able to take part at Second Reading. I thank the noble and learned Lord, Lord Thomas of Cwmgiedd, for tabling this important amendment. As the Committee heard in debates on other amendments on Tuesday, the Bill removes the present power of Parliament to approve the Boundary Commission's proposals at the end of the process of reviewing boundaries in the UK. As it stands, the process allows MPs only to ratify or block the commission's proposals, not to amend them. Even this can still be viewed as politicians being able to influence the final decision, as happened in, for example, 1969 and 2001. However much we deplore these situations and others like them, that is what current legislation allows. However, the removal of this power from parliamentarians and, therefore, the introduction of automatic review implementations, has been described by MPs as a "power grab" by the Executive from the legislature and a constitutional outrage. It is seen by many as another attempt to silence or sideline Parliament.

The UK's four Boundary Commissions pride themselves on the impartiality of their reviews, as they work within the parameters set by various Acts of Parliament. However, up to now that impartiality has ended when the review arrives in Parliament for approval, as history has shown. It is therefore probably right that the UK follow in the footsteps of countries such as Canada, Australia and New Zealand in removing politicians from the process. After all, during the process of a review, politicians and political parties have the ability to express their views in the submissions they make to the commissions, and those submissions are given due regard.

However, this is the most unequal of changes. The Bill takes away the rights of parliamentarians, but the right of the Executive to appoint members to the Boundary Commission remains intact, leaving the impartiality balance skewed in favour of the Government. This is a situation I do not wish to see in Wales—a future Welsh Boundary Commission, influenced by the UK Executive, could hardly claim to be impartial. If the system is to be seen as fair and impartial, all political influence must be avoided. The noble and

[Baroness Humphreys]
learned Lord's amendment achieves just that. If the Government are reluctant to accept it, the accusations of a power grab by the Executive over the legislature will be seen to have substance. On these Benches, we support measures to ensure the independence and impartiality of the Boundary Commission.

Baroness Hayter of Kentish Town (Lab) [V]: Diolch yn fawr. It is very nice to have so many Welsh people speaking in this debate. I think it would be a brave Minister who rejected the advice contained in this amendment from a former and very eminent Lord Chief Justice—and one, I might add, whose term of office coincided, I think, with that of Chris Grayling as the Secretary of State for Justice, although why I should make that particular point I cannot think at the moment .

It is clear that the noble and learned Lord, Lord Thomas of Cwmgiedd, knows a thing or two about the relationship between a Secretary of State and our independent judiciary and legal system. He has no doubt seen at close quarters how decisions are made or influenced and is able to draw on this experience in his advice to the Committee and in the amendment that he has moved today.

The amendment covers two points. First, and crucially, it effectively takes the appointment of commission members out of the hands of an elected politician—indeed, a member of the Cabinet—and places oversight in the hands of the Speaker and the Lord Chief Justice. Secondly, it makes the appointments non-renewable to ensure that Boundary Commission members can carry out their function with absolutely no glance over their shoulder at the possible renewal of their mandate. As the noble and learned Lord says, this fits in well with the Constitution Committee's view that if we are to move to automatic implementation of Boundary Commission recommendations, this will protect against undue political influence only if the commissioners themselves are genuinely impartial and completely independent of political influence, as the noble and learned Lord, Lord Morris, also said .

In particular, the Constitution Committee recommended that commissioners should be appointed for a single, non-renewable term; the Secretary of State should appoint only from names recommended by the selection panel; and the deputy chair of each commission should sit on the selection panel.

The issue of independence was similarly stressed in a useful briefing note by Dr Alan Renwick and Professor Robert Hazell of the UCL Constitution Unit in their submission to the Commons Bill Committee, where they stressed the need to:

"Protect the Boundary Commissions from Government Interference"—

where, as they say,

"automatic implementation is clearly appropriate only if the review process itself is genuinely independent of any improper interference. If that condition is not met—if, for example, government ministers can unduly influence the appointment of Boundary Commission members or the conduct of reviews—then the independence requirement is violated again."

The view of those two eminent academics is also that this amendment meets their benchmark for independence.

I would have hoped that we would not need to write such obvious safeguards into the law, but the recent effective removal of those whose advice does not gel with the Government gives one cause for concern. As was discussed earlier in the Chamber today, Tuesday's news, on the very day of Sir Mark Sedwill's departure, of the resignation of the head of the Government's legal department, Sir Jonathan Jones, over his concerns about a threatened breach of the Northern Ireland Protocol, makes him the sixth senior Whitehall civil servant to resign this year. It sounds as if, "If you don't say the right thing, you don't stay."

In a similar manner, recent appointments suggest that a certain push from No. 10 has magically seen Conservatives appointed to a range of positions: the aforementioned Chris Grayling to the National Portrait Gallery; and our own noble Baroness, Lady Harding, appointed as the effective chair of the National Institute for Health Protection, without any advertisement or selection process, and despite being neither a doctor nor a public health professional.

Angela Bray, a former Conservative MP, was suddenly appointed to VisitBritain as a board member. Sir Patrick McLoughlin, a former Conservative Party chair, is now to chair the British Tourist Authority. Nick de Bois will chair VisitEngland and David Ross, a major donor to the Conservative Party and to Boris Johnson's leadership campaign, is now chair of the Royal Opera House. Political friends have been recently appointed to so-called independent departmental non-executive directorships.

It may well be that all these Conservatives were simply the absolute best, most experienced, most dynamic applicants for these various posts, and that such skills can never be found among Labour or Lib Dem activists, but it does feel as if appointments to important positions may be being handed out on a less than non-political basis. It is therefore crucial, if the Boundary Commission is to have the final say—unchallengeable in Parliament—that we have absolute confidence in the integrity and independence of its members and recommendations and in the appointment of those members.

I say again that I regret that we feel the need to legislate for this. I would have thought that our way of doing government would normally not need this to be written into legislation, but I believe we have to do it. I look forward, therefore, to the Minister's response to this particular suggestion, and I hope very much that the Government will adopt the amendment and put it forward themselves on Report.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, I start by thanking the noble and learned Lord, Lord Thomas of Cwmgiedd, for the detailed thought that he has put into drafting his amendment and to the fact that he has drawn the Committee's attention to this very important topic. I am also grateful to him for the time that he gave to have a private conversation on this matter. I am certainly open to have further conversations with him in the days and weeks ahead. I am grateful to all those who have spoken on this topic today.

I must in preface take up what I thought was a very strikingly polemical political utterance from the noble Baroness, Lady Hayter, in which she purported to

impugn the overall integrity of the public appointments system—an implication which was also left in a much more acceptable but similar fashion by the noble Lord, Lord Janvrin. I will come back to that, because I believe that the integrity of the public appointments system is absolutely fundamental and I am concerned that these kinds of generalised political charges should surface in the manner that we heard from the noble Baroness. I will not trade time in your Lordships' Committee or at a later stage on Report by listing the names of other people of other parties who have taken up political and public appointments.

For my own part, I do not believe that the desire to give public service as a Member of Parliament or as a humble leaflet deliverer for any political party which is represented in Parliament means that that person should be automatically excluded or regarded as suspect if they are appointed to a public body. I believe that the course of politics—the vocation of politics—and public service through politics are honourable vocations, and that ought to be borne in mind as we address this subject.

3 pm

Equally, I do not accept the characterisation by the noble Baroness, Lady Humphreys, that the Bill represents a "power grab". We have had this discussion before. We had it at Second Reading and we have heard it again. This legislation takes power away from the Executive and invests it by automaticity in the Boundary Commission, which brings us—setting aside the political chatter—to the gravamen of the serious, non-political argument which has been put forward.

There is no doubt, and the Government accept, that the introduction of automaticity to the boundary review process—a change the Government regard as critical to achieving regular and effective boundary reviews—shines a light on the Boundary Commissions themselves. As the noble Baroness, Lady Hayter, said, that point was indeed made by the Constitution Committee of your Lordships' House, which said:

"The House may wish to consider what safeguards are required to ensure the independence and impartiality of the Boundary Commissions and their recommendations."

That is accepted.

We believe—and I hope to persuade your Lordships—that the existing system does ensure independence and impartiality. What the Constitution Committee did not do, however—as the noble Baroness sought to persuade the Grand Committee—was to recommend any particular course. In fact, in paragraph 6 it noted merely:

"During committee stage of the Bill in the House of Commons, proposals to strengthen the independence of the Boundary Commissions were suggested".

It set out four, one or two of which are included in the amendment of the noble and learned Lord, Lord Thomas. Others are not; for example, that

"the Commissioners should be subject to the same political restrictions as the Local Government Boundary Commission for England".

So it is not the case that the Constitution Committee specifically recommended these proposals, as was suggested to the Committee.

If we believe that the recommendations of the Boundary Commissions should be implemented automatically, of course we must be able to trust that the commissions themselves are effective and independent. That trust will depend in part on having confidence in the process by which the leaders of the organisations—the deputy chair and the two supporting members—are appointed and reappointed. So I accept the importance of the subject we are discussing. We need to be able to satisfy ourselves that those processes are thorough, independent and fair, and that there is no room for inappropriate influence of any kind.

We believe that the processes we have are all of those things. I hope the Committee will forgive me if I set out the arguments, as the Government see them, in a little detail. I repeat that appointments to the Boundary Commissions are public appointments. That means that the four commissions are listed, alongside many other public bodies and independent offices, in the Public Appointments Order in Council, which provides for the Governance Code on Public Appointments and the independent Commissioner for Public Appointments, who regulates the process. The detailed governance code and the oversight of the commissioner ensure that appointments are made openly and fairly, on merit, to the Boundary Commissions and many hundreds of other bodies carrying out vital public work.

In addition to the requirements of the governance code, the legislation requires the deputy chair of each Boundary Commission to be a High Court judge. In my submission, to have achieved such a senior judicial position, the deputy chair will have undergone an intensive recruitment and vetting procedure that will have tested their suitability to provide impartial leadership of the highest calibre. All deputy chairs are drawn from this pool of High Court judges. The noble and learned Lord, Lord Thomas, seeks to change the current system so that the Lord Chief Justice appoints for England and Wales as an additional safeguard of impartiality. But, as all the candidates will be High Court judges, and their appointment—as the noble and learned Lord, Lord Thomas, acknowledged—will be made in consultation with and with advice from the Lord Chief Justice, we do not see this as a necessary change. As High Court judges, surely these individuals are impartial.

I turn to the main point in relation to the integrity of the public appointments system, which was addressed reasonably by the noble Lord, Lord Janvrin, and more polemically by the noble Baroness, Lady Hayter. In line with the Governance Code on Public Appointments, the two members who support the deputy chair are appointed by Ministers, having been assessed by an advisory assessment panel. It is the job of the panel to assess which candidates are appointable so that Ministers may make an informed and appropriate decision. In accordance with the governance code, the panel will include a senior departmental official, an independent member and a board-level representative of the body concerned, who would, in practice, be the deputy chair—the High Court judge—unless there were practical reasons why this was not possible.

At the application stage, all candidates are asked to declare political activity over the previous five years, which includes: being employed by a political party;

[LORD TRUE]
holding significant office; having stood as a candidate; having publicly spoken on behalf of a party; or having made significant donations or loans. Such activity will be taken into account in the panel's deliberations on suitability, and any such activity undertaken by a successful candidate must be publicly disclosed.

So I hope that noble Lords will rest assured that recent significant political activity would have to be declared during the recruitment of members of the Boundary Commissions. In the case of these appointments, such activity would likely be seen as a conflict of interest. It would be for the advisory assessment panel to consider such conflicts, and whether and how they could be managed, and to satisfy itself that appointable candidates had no conflicts of interest that would call into question their ability to perform the role impartially and in line with the seven principles of public life. While we cannot prejudge the work of future advisory assessment panels, it would seem likely that recent, significant political activity would be seen as presenting a degree of conflict that would be incompatible with finding a candidate appointable.

The public appointments system is used across government for hundreds of senior appointments each year. In the case of the Boundary Commission, following assessment the panel will submit the candidates judged appointable to the Minister, who then makes the appointment from the list provided or asks for the competition to be rerun. The amendment suggests that only one name be put forward. But the safeguards are there within the well-tried system.

The system is well understood, well trusted and fit for purpose. It is a system that I was certainly prepared to trust as a member of Her Majesty's Loyal Opposition, while watching many members of other parties perfectly reasonably finding themselves in a public appointment. It is a system that in various forms has secured dedicated and expert members for the Boundary Commissions over decades—appointments are being made under that system as we speak—and the Government wish to see it remain in place. To do otherwise could cast doubt on an independent, regulated system which ensures that talented individuals with the right skills and experience are appointed to these vital roles.

The amendment of the noble and learned Lord, Lord Thomas, is carefully thought out and substantial. In essence, it would create a bespoke, detailed system of appointment, in primary legislation, for four small public bodies. This would likely be incompatible with the public appointments process, meaning that the current regime and oversight might need to fall away in the case of the Boundary Commissions. I understand the argument that the work of the Boundary Commissions is particular and sensitive. As I indicated earlier, if I am unable to satisfy the Committee today, I am prepared to discuss any further arguments, thoughts and ideas that are put forward, but the Government regard the direction of this amendment, in questioning the current public appointments system, to be unhelpful. We have a robust and respected system of public appointments.

Finally, I must address the noble and learned Lord's suggestion of a single, non-renewable term of office for the deputy chairs and members of the Boundary Commissions as a way of avoiding any potential—I understand the argument—for an appointee's actions to be influenced by a desire for reappointment. There are some practical considerations that I hope the Committee might take into account.

As noble Lords know, this Bill moves boundary reviews to an eight-year cycle. Although we discussed an even longer term on Tuesday, the move to eight years has been widely supported. The new cycle and, one hopes, the avoidance of interim reviews, if that is possible, will inevitably mean some fallow years between boundary reviews, which, as we have discussed, may take a little less than three years out of every eight to complete. Understandably, an incoming deputy chair or member will want to participate in an actual review, which means that, if we were to have a single, non-renewable term that would attract candidates of the very highest calibre, as the post must do, it would need to be at least eight years in length. The noble and learned Lord, Lord Thomas, gave two examples of lengthy appointments, but, in general public appointment terms, that is a very long term indeed. It is likely that such a stretch of time would be off-putting to at least some worthy candidates. The pool of applicants for these positions is not limitless and we would not want to create additional barriers that might see that pool shrink or become less diverse. On these grounds, we are not persuaded that it is advisable to make this change.

I should add that under the current system deputy chairs and members are generally appointed for a maximum of two terms of three to five years, and the governance code sets out a strong presumption that no one should serve more than two terms or a total of 10 years. Therefore, in practice, the current system already delivers what would be the likely result of the amendment of the noble and learned Lord, Lord Thomas. His suggestion would result in a single, eight-year appointment with no reappointment opportunity. In practice, most commissioners serve two appointments of three to five years, subject to a satisfactory appraisal.

I hope that I have provided some reassurance to the Committee and to the noble and learned Lord, Lord Thomas, that the system we have in place is strong and appropriate—certainly more so than was characterised—and deserves to stay in place. I cannot accept the noble and learned Lord's amendment as it is drafted and urge him to withdraw it. Obviously, I shall reflect on the points made by Members of the Committee. As on all matters in this Bill, my door will be open to further consideration and discussion between now and Report.

It is important—it is more than important—that these posts are held by figures who are as impartial as High Court judges and are seen to be impartial in the broadest sense. That does not mean that they have to be a High Court judge in every case, but the aim of impartiality is one to which the Government definitely subscribe. In that spirit, while I cannot accept the noble and learned Lord's amendment, I thank him for raising the point. It is a substantive point; it is an important point; it is one that your Lordships' Constitution Committee drew to our attention; and it is one on which I am certainly open to hearing further suggestions. However, I urge the noble and learned Lord to withdraw his amendment.

The Deputy Chairman of Committees (Baroness Henig) (Lab): I have received a request to speak after the Minister from the noble Baroness, Lady Hayter of Kentish Town.

3.15 pm

Baroness Hayter of Kentish Town (Lab) [V]: The Minister and I obviously have our political differences, but he probably knows that I would very rarely make a claim that was not accurate. I was speaking quite quickly, so he probably did not quite catch what I said, because my quote from the report of the Constitution Committee, which I have in front of me, was absolutely accurate. What I said was—and this was my opinion—that the amendment fits well the Constitution Committee's view, which I quoted, that

"automatic implementation … will only protect against undue political influence if they are themselves genuinely independent."

I then quoted the committee's recommendation that

"the Commissioners should be appointed for a single, non-renewable term … the appointing minister should be required to appoint only from the names recommended by the selection panel; and … the deputy chair of each commission should sit on the selection panel."

I was not claiming that the Constitution Committee endorsed the whole of this; my quote was absolutely from the Constitution Committee, and it was on those lines. I realise that I may have been gabbling and the Minister may not have heard me accurately, because I am sure that he would not have made the error otherwise.

Lord True (Con): My Lords, perhaps I might be permitted to reply to that. I always try to be gracious and I enjoy the challenge that comes from the noble Baroness. The cut and thrust of politics makes it worth while being a Member of your Lordships' House, and let us have more of it. I accept what the noble Baroness says: that she was simply referring to paragraph 6 of the report, which I also have before me. I accept that she was not saying that those were specific recommendations by the Constitution Committee. I hope that she and I, and the whole Committee, will agree that we should consider, as we are doing "what safeguards are required"—which was the recommendation—

"to ensure the independence and impartiality of the Boundary Commissions."

The noble and learned Lord, Lord Thomas, has put forward some proposals. I have argued that the system currently satisfies that objective. But, as I have said, I am open to having further discussions on this matter.

Lord Thomas of Cwmgiedd (CB) [V]: I thank all noble Lords who have spoken in favour of the amendment. Perhaps I might briefly reply to the points made by the Minister. First, as to the position in respect of the appointment of a judicial member, this is now plainly anomalous. I simply cannot understand why the Government seek to have this particular aspect of a judge's deployment within the control and decision of a political Minister. Ministers are not allowed to appoint judges to particular cases. If as a result of a Boundary Commission it was felt that the commission had unduly favoured one party, it would be very damaging to the independence, and the perception of independence, of the judiciary if someone was able to say, "Well, that judge who is the deputy chairman was appointed by a politician."

Further, there seems to be absolutely no reason why the position of those in England and Wales should not brought in line with those in Scotland and Northern Ireland, bearing in mind the logic of the position: namely, that at the time this was done, the Lord Chancellor was a judge. The Lord Chancellor is no such thing these days; he is a political Minister.

Secondly, on the issue of public appointments, I hope that the Minister will reflect further on the unique nature of the decision-making of the commission. It is not a body whose decision can in effect be challenged; it is an independent decision. Therefore, a special process much more akin to that of the judiciary is required. Appointability should not be the criterion.

On renewable terms, it is clear that the Cabinet Office accepts, as Parliament has accepted, that there are certain positions where it is essential that the term of appointment be non-renewable, to remove pressure. The Minister said—I think I heard him correctly, but one is always cautious when hearing matters over a remote link—that someone is reappointed subject to a satisfactory appraisal, but that really has no place in the process of appointing someone who is meant to be independent and who may be expected to make decisions of which Ministers do not approve.

I therefore would very much like to take up the opportunity of discussing this further with the Minister and others because I believe that we should be able to put this matter into a situation where everyone can have confidence, and the perception of confidence, so that the judgment of the commission is never capable of being called into question on the basis that politicians have been involved in its appointment. On those terms I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

The Deputy Chairman of Committees (Baroness Henig) (Lab): We now come to the group consisting of Amendment 13. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate.

Clause 5: Number of parliamentary constituencies

Amendment 13

Moved by ***Lord Norton of Louth***

13: Clause 5, page 4, line 31, leave out "650" and insert "800"

Lord Norton of Louth (Con): My Lords, my noble friend Lord Cormack, who is a signatory to the amendment, sends his apologies for not being able to be present today, but has asked me to stress his support for what I shall be arguing this afternoon.

My amendment to increase the number of parliamentary constituencies from 650 to 800 is drafted for one purpose, and that is to get the Minister, on behalf of the Government, to explain the arguments against having a legislative Chamber of 800 Members.

[Lord Norton of Louth]

We have a second Chamber of roughly 800 Members. The Government have not taken any steps to reduce the number—quite the reverse. What change has been achieved has been through pressure from within this House, primarily in the form of Private Members' legislation, such as the House of Lords Reform Act 2014, which enabled the retirement of Members and the removal of Peers who fail to attend for a Session. Without that measure, the House would be closer to 900 Members. The committee under the noble Lord, Lord Burns, has come up with recommendations to reduce the number to give effect to achieving a House that is no bigger than the House of Commons.

If there is to be a disparity in size, it makes more sense for the Commons to be larger than the Lords. The greater the number of MPs, the smaller the size of the constituencies. That arguably would be to the benefit of constituents. It would make possible even closer contact between Members and their constituents. It would facilitate more cohesive constituencies, avoiding some of the anomalies that were described in Tuesday's proceedings on the Bill. It would potentially reduce the workload of individual Members, which is now becoming quite onerous.

This House has no constituencies. Members do not carry the substantial burdens shouldered by Members of the other place. This House fulfils the role of a reflective Chamber. As such, it merits being smaller than the elected Chamber, as is the norm in other bicameral legislatures.

There is a case not only for this House being smaller than the Commons—a relative point—but for reducing the size of both Houses. I have form in making that case. I chaired a commission that recommended a reduction in the size of the House of Commons over time to 500. I have argued the case for this House to be no bigger than the Commons. Having smaller Houses reduces the pressure on resources, be it in terms of physical space or legislative proceedings. We are, I think, especially alert to the pressures on this House in terms of the number of Members seeking to intervene in time-limited proceedings. However, this is not a question of the convenience of Members. It is important from the perspective of the House if it is to fulfil its core role as a reflective Chamber. There is the danger of quantity overwhelming quality.

The Government also have form, but only in favouring a smaller House of Commons. This Bill stipulates a House of 650, but the Government would have preferred a House of 600. Why, then, has it argued the case for a smaller House of Commons but not for a smaller House of Lords?

Furthermore, what this Bill does is stipulate the number of parliamentary constituencies. The size of the House of Commons has varied. It has had a larger membership in the past, as a consequence of the number of seats in Ireland, but since 1918 the number of constituencies has varied between 625 and 659. The key point is that the number is set in statute. There is no such statutory limit for this House.

If a House of 650 is appropriate for the Commons, why not for the Lords? If there is a fixed number in statute for seats in the first Chamber, why do we not have a statutory cap for the number of Members of the second Chamber? A cap is an important discipline. Those wishing to be MPs have to compete for a parliamentary candidature. A set number for the upper House would impose a discipline on the Prime Minister of the day in nominating Members.

To argue that this House could not operate effectively if it was the same size as, or smaller than, the Commons, is clearly not sustainable. Following the enactment of the House of Lords Act 1999, the size of the House was very similar to that of the House of Commons. The number has expanded massively since, for reasons unrelated to what the House needs to fulfil its key functions.

If having 800 MPs will place too great a strain on resources in the Commons, why does a membership of 800 not place too great a strain on resources in the Lords? In short, what are the arguments against having a House of 800 in respect of the Commons that do not apply to the Lords?

This House has agreed, without a Division, that we are too large. We have pressed for action to reduce our size, making the case for a reduction in terms of output—that is, Members retiring from the House—and a limit on input, in the form of Prime Ministerial nominations. It has to be both if our size is to be reduced. That is key to the work of the Burns committee. The problem in seeking to reduce the size of the House of Lords lies not with the House but with the Executive—hence the following questions to my noble friend Lord True.

Do the Government accept, as the House does, that the House of Lords should be no bigger than the House of Commons? Why are the Government prepared to condone a second Chamber of 800 Members when they seek to limit the first to 650? I look forward to hearing my noble friend's answers, and I beg to move.

Lord Hayward (Con): My Lords, in light of the opening remarks of the noble Baroness, Lady Hayter, perhaps I might start with, "Rwy'n flin, dwi ddim yn siarad Gymraeg.". For those who are not fluent in Welsh—as I have just proved that I am not—that was my attempt at "I'm sorry, I don't speak Welsh." All I wish to add in relation to the comments of the noble Lord, Lord Norton, is that I have signed and supported his amendment, which endorses the Burns committee report that was accepted by all sides of the House of Lords.

3.30 pm

Baroness Deech (CB) [V]: My Lords, I support everything that the noble Lord, Lord Norton, has said and, therefore, I oppose this amendment, because it is clear to everyone that 800 MPs in this or any other legislature in the world is too great a number for ease of debate, expense, space, collegiality and concentrated expertise. Indeed, 650 Members of Parliament was thought to be too many, and it seems that that number has been chosen over 600 to avoid too many MPs losing their seats. If that is the case, 800 is certainly too large for this House as well, even though a substantial proportion rarely show up or participate. Even when we have been operating virtually and many of the barriers to physical arrival in the House have been removed,

only about 550 have participated in votes. One is grateful to those who absent themselves because it relieves the pressure on facilities but, at the same time, one asks what they are doing accepting a peerage if they do not want to join in the work of the House.

In opposing this amendment, I call for a renewed effort to reduce the size of the House to a number comparable with the Commons. The fact that our efforts so far have turned out to be in vain is not our fault. This House, sadly, seems to be as unpopular as it has ever been, partly because of its size and partly because of unexpected appointments. It might have been more explicable if a practice recommended by the Lord Speaker's committee of appending a notice to the announcement to a new appointment of how that person qualifies and expects to serve had been adopted. It is unpopular, too, because it has vigorously and repeatedly rejected the clear will of the electorate, expressed first in a referendum and then confirmed by two subsequent general elections, that they do not want to stay in the European Union. But I wish there was more understanding of our role as scrutineers of legislation and, on occasion, as the moral conscience of the nation—an issue that is likely to come up shortly.

On the issue of size, your Lordships know very well the sensible measures for reduction put forward by the Lord Speaker's committee. We were progressing quite nicely with reduction until the addition of the new appointments made by this and previous Prime Ministers in the last few years. Despite the pledges made, it seems that Prime Ministers cannot resist the temptation of handing peerages to supporters and donors. There is no way that the House can defy the Writ of Summons calling them to Westminster. The size and composition of this House are also hemmed in by the presence of 26 Bishops and the hereditaries—elements that work to block a better gender balance. Therefore, we have to take matters into our own hands and ask the party groupings again to consider how each may reduce its share of membership. Some will have to be thrown off the life raft in order that more may survive. Rejection of this amendment is a spur to action, and I call on it to serve as such.

Lord Morris of Aberavon (Lab) [V]: My Lords, the points made by the noble Baroness, Lady Deech, on the size of the House of Lords are not quite relevant, with respect. When we discussed this before, I said—I was a lonely voice—that our efforts to reduce the size of the House of Lords were bound to fail because of the grim truth that no one could restrain future Prime Ministers. It is the like the puzzle you had as a schoolboy doing your 11 plus or the equivalent—filling the bath at one side and emptying it on the other; there is no means of controlling the end product. That is what I would say on the relevance.

The noble Lord, Lord Norton, whom we all respect for his contributions in this field, has put his case very strongly. There is no magic number of 650. Nobody has explained to me why it should be 650 and not 651 or 649, or whatever number is justified. There is no case in my view for reducing the present membership of the House of Commons. That is why I support the principle, whatever the details of the amendment proposed by the noble Lord, Lord Norton.

Being an MP is now much more demanding. In 41 years of representing my own constituency, things were fairly level. There were other problems, mainly industrial problems, but now the task of the MP has become much more difficult. There is an expectation, with the development of email, of instant action on behalf of a demanding constituent. I tried to pursue two professions—of being a Member in the House of Commons and practising at the criminal Bar—and I hope that I succeeded. I doubt that in the present circumstances, such are the demands on a modern Member of Parliament, one could have done the same thing for 41 years.

This is an important amendment. I support it on the principle that the greater the number of MPs, the lesser the chance of wrecking the physical make-up of the membership in Wales. Under the present proposals, the county that I represented in part would again be subject to a huge wrecking operation to justify an equality of numbers for each of the new constituencies. Therefore, the principle of the greater number helps me in my argument of trying to preserve representation that offers some degree of continuity. I used to speak for constituents; those were the people I represented. They value continuity, value the membership of the House of Commons and value the fact that they know who their Member of Parliament is. In my part of the world that may be more important than in a major industrial area, where perhaps there is more anonymity. In our area, it is important that constituents know who to go to when there is trouble.

I support this amendment very much, because it tries to meet present needs, and a reduction in the House of Commons to 650 is no more justified than the original proposal to reduce it 600.

Lord Blencathra (Con): My Lords, I am speaking to your Lordships from the far end of the Room. It is not that I consider noble Lords extra-contagious, and I hope they do not consider me so, and I am not extra-social distancing; it is just the only place that I can get into in my wheelchair. It was an absolute delight to hear the noble Baroness, Lady Deech, speak, and I agree with every word she said. I hope that that does not do irreparable damage to her reputation, but there you have it.

First, I did not intervene at the end of the Minister's last speech, but I was very surprised by the comments of the noble Baroness, Lady Hayter, for whom I have the utmost respect. I thought she was treated abysmally by Jeremy Corbyn, and I am glad she is back in position. I say simply that I recall from 1997 onwards that Tony Blair stuffed every single quango full of Labour Party apparatchiks and the Tory party is a bit slow in catching up.

I go back to the amendment in the name of my noble friend Lord Norton of Louth. I am afraid that I disagree profoundly with him. There are too many MPs already. I regret that we have gone back to 650 from 600, but I can live with that—I am okay with it. We will come to this later, under the next amendment but, in my opinion, Scotland is heavily overrepresented. Scottish MPs at Westminster have little to do and are earning money on false pretences. English MPs have

[LORD BLENCATHRA]
to deal with all political matters, but Scots at Westminster have MSPs who do the bulk of the work. However, I shall say more about that under the next amendment.

The answer is not to have more MPs or Peers but to increase the powers of parish councils, district councils, county councils, unitary authorities and elected mayors, and to devolve authority down. I agree entirely that the House of Lords should not be larger than the House of Commons, but the answer is to cut the number of Lords and not increase the number of MPs. I am afraid that we have seen, as I said in my detailed report to the committee looking into the size of the Lords, that Prime Ministers will not play ball with recommendations voluntarily to restrict the number of Peers they create. They cannot and will not do it, for many well-known reasons. Like it or not, we are going to have to take matters into our own hands and, at some point, invent a system to have retirement of Peers over a certain age—whatever that may be—and chuck out those who attend less than 20% or 25% of our sittings. But that is for another occasion.

I will also say that MPs do not have a heavier workload now there are no longer MEPs. I am not sure that I ever had any constituents who went to an MEP to handle local problems. They expected the MP to do it. In my experience, most constituents who had a complaint about an EU proposal came to the MP.

I know that the noble and learned Lord, Lord Morris, said that, with email, people expect instant answers. That is the case, but there is also instant availability of the answers on government websites, and on information supplied by the political parties and by the House of Commons and House of Lords Libraries. I do not accept that the workload is so exceptionally increased that we need to increase the number of MPs. I hope my noble friend the Minister will reject the amendment. Admittedly, it was well argued by my noble friend Lord Norton, but I hope he will still reject it.

Lord Rennard (LD): My Lords, the noble Lord, Lord Norton of Louth, made an interesting speech and made points that the Minister might find hard to answer, but he did not make a case for this amendment. The noble and learned Lord, Lord Morris, made an argument in support of it because he wants there to be more Welsh MPs, even if this means more MPs in every other part of the UK. However, I doubt that this proposal would ever make it into a serious party manifesto.

The key question for the Minister is whether the Government accept the principles of the Burns committee and agree with the House of Lords, which wants to reduce the number of its Members. The amendment is clearly born out of frustration that the Prime Minister has just appointed more than 30 new Peers. Perhaps the Minister will explain why.

Baroness Smith of Basildon (Lab): My Lords, I congratulate the noble Lord, Lord Norton, on his ingenuity in bringing this amendment forward. I describe it as an enabling amendment. He hit the nail on the head. He said that one reason was to try to get the Minister to justify why any House with a size of 800 should be deemed acceptable. It also allows us to discuss a very topical issue that has been in the news recently and which gives us all cause for concern: the increasing size of your Lordships' House.

It is relevant to discuss this when we discuss the size of the House of Commons and boundaries, because we cannot look at one House in isolation. The two Houses function as a Parliament. What happens in one, and any changes to one, impact on the other. The two come together. I agree with the noble Lord. It is incredible that the Government were talking about reducing the size the House of Commons at the same time as increasing numbers were being appointed to this House.

At this point, I should say that I find it very difficult to speak without moving my arms. I feel like I am in the language lab when I was at school in the 1970s. If noble Lords hear occasional clicking, it is because my hands have hit the sides. I find the Dispatch Box easier than a Perspex box.

The role of a Member of Parliament is becoming increasingly demanding. I know that a number of former MPs are here today. When I was a Member of Parliament I used to say that my work was in thirds, but not of equal sizes. A third of it was my constituency casework and another was advocacy work for the constituency. I used those two-thirds to inform my parliamentary work. It sometimes strikes me that MPs are finding it harder and harder to carve out the time for that work in Parliament to debate and engage with legislation. That is why our relationship with the House of Commons is so important, because that is the work we focus on. It has rightly been said that we do not have the constituency work or advocacy work, but we have to focus on legislation in a different way from MPs because we are not informed by constituency casework.

To me, that role has always been a very serious point about how our parliamentary system functions effectively. The noble Baroness, Lady Deech, is quite right. She made her own point in some ways when she said that people dislike the House of Lords partly because of its size and partly because of our role on Brexit. People thought that the House of Lords was trying to block Brexit. It never did. All the House of Lords can do is make suggestions to the House of Commons for it to have the final say. In some ways, we are like an advisory body that can be helpful to any Government and the House of Commons.

The Government often misunderstand the relationship between the House of Lords and the House of Commons as being the relationship between the House of Lords and the Government. Drawing a distinction between the House of Commons and the Executive is very important. Our challenge and scrutiny role has a purpose: to be useful and a benefit to the elected House. That is sometimes not a benefit to the Government, but that is not our role, which is to be useful and a benefit to the elected House.

3.45 pm

This discussion about the relative size of the Houses is not just academic, but one that boils down to the implications of how we operate as a second Chamber. The Burns report has already been mentioned. I think that the Burns report was born out of the House of Lords' frustrations with the Government failing to

take action to reduce its size. We looked for a non-legislative solution because the Government said that they would not provide parliamentary time or legislation. There had to be some way to do that and it was wise to do so. My noble friend Lord Grocott's hereditary Peers by-election Bill, which has been before the House and no doubt will come back to the House when we are able again to discuss Private Members' Bills, has overwhelming support in your Lordships' House. The Government support it so that a tiny handful of Peers can block it again and again. It is a sensible reform being stopped by the Government and a small minority.

Theresa May responded positively to the Burns report and, following her appointments, said that she would urge and exercise restraint. That restraint she spoke about has now gone. It exposes the flaws in the system: not having a cap of some kind—I am not sure that I would necessarily support a cap, but a range of numbers that are reasonable for the House to operate under—allows a Prime Minister to see the House of Lords as a numbers game that they have to win. They just want to make as many appointments as they possibly can. Obviously, it has been and will always be the case that a Prime Minister will want to appoint more Peers of their own party than other parties. That has happened since time immemorial.

What happens is that, over time, the party of government often becomes the largest party in your Lordships' House. In 1997, when Labour came into government, it was not the largest party, but nine years later it was. That timescale has now been truncated by the Conservative Party, which, having not been the largest party, became the largest party within two or three years of taking office in the coalition Government. David Cameron appointed more Peers per year than any other Prime Minister since 1958. There was a consequence of that. Because he appointed coalition Peers—most of those Peers were government Peers—we have an inflated number of Liberal Democrat Peers. Inevitably, when the Liberal Democrats crossed sides and went into opposition, the Government had to appoint more Peers to get their majority back. There have been escalating numbers ever since. As the noble Lord, Lord Norton, said, this current list of 35, four of which are Labour, does not reflect the needs of the House but of the Government.

The Burns report's two-out, one-in approach makes sense. It is easy to argue that that now needs to be accelerated to make up for lost time since the report was published in 2017. The noble Baroness, Lady Deech, commented about party groups taking some responsibility. She is right on that. I can tell her that since June 2017, just before the Burns report, my group has lost 30 of its Members, some voluntarily through retirement and some involuntary through death. We have lost a huge number of Peers. There is then an argument that the role of opposition can be conducted only if there is some balance in numbers and how we look at the House.

Professor Meg Russell has an interesting take on this that I think is quite interesting, which is that we should look at the numbers of the House of Lords and have a link with elections to the House of Commons. It would not be a direct link, but if, for example, we see trends over three elections, that could be reflected in the numbers of the House of Lords. Three elections is a sensible way forward to look at the proportion of MPs and how that could be reflected in the House of Lords. The authority of the House of Lords would then be derived only from the authority of the elected House and we would not have this issue regarding legitimacy. The only legitimacy drawn in the Lords would be from the Commons and we would maintain the primacy of the elected House.

We should value the work that we do. A lot of us feel unhappy when that gets undermined by bad stories in the press, because this House should be really proud of the work of our Select Committees and legislative committees. Look at the work of Ministers in the House of Lords; I am sure they are equally proud of the work they do. But that is undermined when criticism comes, as it has in relation to the appointments we have just seen.

I do not like singling out individual Members, but a point was made about quantity overwhelming quality. After the noble Lord, Lord Frost, was introduced on Monday, I commented during a Question which I asked this week that we looked forward to hearing him take part in debates on Brexit. I hear today that he has already taken a leave of absence from your Lordships' House. In many ways, it would be more sensible to delay the introduction to the House of someone who has to take a leave of absence immediately. I want people who come into this House, including the noble Lord, Lord Frost, to be active participants, using their experience and expertise to contribute to the work that we do. It is disappointing when that does not happen.

If our numbers continue to increase as we do our work, the resources to allow that will be stretched too far to be adequate. There is a clear sense that the House of Commons has a greater justification for larger numbers than we do. Whether we support the amendment of the noble Lord, Lord Norton, is almost irrelevant. I suspect that he does not, but has put it forward so that we can have a debate. I would not support an increase to 800, but there is a strong case for this House to be smaller in number than the other place. That would allow us to be more effective in the work that we do.

Lord True (Con): I thank noble Lords, including my noble friends Lord Norton of Louth and Lord Hayward, and all others who spoke. I particularly thank my noble friend Lord Norton for his typical ingenuity in transforming a Bill on parliamentary constituencies, referring to the House of Commons, into a House of Lords Bill 2020. I will address the points that he put, even though the purpose of Clause 5 is narrowly defined and keeps the House of Commons at 650. The Bill really is not a legislative vehicle for considering the size and membership of this place. But here we are in Committee in the wonderful, free House of Lords, whose revising greatness, historically, rests a great deal on the freedom of noble Lords to put forward amendments for discussion—a freedom that I personally greatly value.

I will come to the point about the size of the House of Commons, which can be dealt with fairly quickly. My noble friend was really asking about the size of

[LORD TRUE]

this House and said, "What is the difference between the House of Lords and the House of Commons?". We heard a number of the differences explained in the excellent speech by the noble Baroness the Leader of the Opposition. The roles of the two Houses are fundamentally different. Beyond that, this is—or has been, historically—a part-time House of expertise, with a broader pool of expertise. I cavil at using the term "part-time" because it implies that I think Members of your Lordships' House, as in the nonsense said about them, turn up and do not do the work. This is an extremely hard-working House. Perhaps I should have said that it is not a full-time, professional political House in the sense that the House of Commons is.

A House that is a revising House benefits from a wide pool of expertise and, rightly or wrongly, historically, the House of Lords has worked in that way. When I first had the honour of serving your Lordships' House as private secretary to the Leader of the Opposition in 1997, yes, there were Members who came very rarely in those days. Some spoke perhaps two or three times a year. But some of those individuals—and we all know some who are with us today—came with extraordinary expertise, from which the House benefited and which it listened to. I am not necessarily happy with the argument that the House of Lords must become more and more like the House of Commons—full of professional people who are here all the time. It has a different role. Historically, that has been the reason for a larger number in the House of Lords. The prescriptive history of the House and the process of creations was obviously also the historic reason.

There have been some criticisms of my right honourable friend the Prime Minister for creating new Peers. I am not going to irritate the Committee because I am in an emollient mood, particularly as I am about to try to persuade my noble friend to withdraw his amendment. However, it is the case that Mr Tony Blair created 354 Peers. The noble Baroness, Lady Smith of Basildon, reasonably said that Mr David Cameron created a very large number of Peers, including the Member of the House speaking at the moment. So clearly he was not absolutely accurate in his sense of everybody whom he should appoint, since he dumped me on your Lordships. But the point is that those very large numbers of creations had led to a great bump in the size of the House. To become displeased when a new Prime Minister wishes to make appointments is just a smidgen unreasonable.

The Government have acknowledged that the size of the House of Lords needs addressing but, given retirements and other departures, some new Members are required to keep the expertise and outlook of this place fresh and relevant. A number of ideas have been put forward. The Burns committee has put forward proposals and other statutory ideas have been put forward. The position of the Government is that any reform needs careful consideration and should not be brought forward piecemeal.

The previous attempt to reform your Lordships' House, which did not find favour either in this House or in the other place, would have introduced an elected Chamber. Some of us are not exactly opposed to that; I have not always made myself popular on this subject with some of my colleagues. That would have achieved two things: a limit to the size of the House, and a House whose membership would have been refreshed by Dissolution. This would have addressed some of the problems that have been described. But that is water under the bridge; it is done and just a historical reflection. It is not to be taken as any kind of intimation of the policy of Her Majesty's Government.

What I would reject—and this certainly would be the position of Her Majesty's Government—is the idea put forward by my noble friend that the number in an appointed House should be fixed in statute and could not be increased. The noble Baroness the Leader of the Opposition rightly said that in some circumstances, that could not happen. If an unelected Chamber is in conflict with an elected Chamber, while the House of Lords is now unique, history and the past experience of other countries suggests that a Government must have the ability to make new creations. It was useful to the Liberals to threaten that in 1910 and useful to the Labour Party to threaten it in the 1940s and 1990s. The threat was not really necessary in the 1990s, but it was there.

The arguments for having a fixed number for an appointed House were had at some length on the peerage Bill in the early 18th century. The House of Commons took the view then, rightly, that it could not accept that the numbers of the House of Lords should be limited. So the idea of a cap—not allowing a Prime Minister of whatever party to make appointments beyond a certain number—is not something that could fly.

Although the noble Baroness, Lady Deech, supported the amendment, she referred to—this illustrates my point—the challenge, to use the word used by the Leader of the Opposition, that the House of Lords presented to the other place last year over Brexit. If there were a cap on this House and the House of Commons, with the support of the British people, resolved to go in one direction and the House of Lords, in its wisdom—as it saw it—took a line in the other direction, that would be a recipe for constitutional mayhem of a high order.

4 pm

I accept that the noble Baroness, Lady Smith, whom I respect enormously, would argue that she was not seeking to obstruct Brexit at that time. I must say that some of it did waddle like a duck and quack like a duck, but I accept that it was in fact a docile tabby cat and was not really threatening anything. The serious point is that having the number in an appointed House fixed by statute, as my noble friend suggested, would not be constitutionally comfortable. I repeat: the size of this place needs addressing overall but it must be through some considered, not piecemeal, reform.

As far as the size of the House of Commons is concerned, I hope noble Lords will agree with me rather than my noble friend that if the difference between the number of elected Members in the other place and the number of eligible noble Lords in this place needs to be addressed, it should not be addressed by increasing the size of the other place. That is certainly not the Government's view; it was not the view of the major parties in the House of Commons, both of whom supported the number of 650 in the

debates in the other place; and it was not the view of Members of the House of Commons in their deliberations on this Bill. They took the view that 650 is the right number—that was the view taken by the political parties in the other place—and I urge my noble friend to accept that position.

We had a discussion about 650 rather than 600 in the debate on an earlier group of amendments, so I will not repeat at length the arguments that were put forward then. Circumstances have changed; indeed, the composition of the Government has changed. Since the figure of 600 was put forward, our population has grown and we have left the European Union. I will not rehearse the arguments that we discussed then but, in my judgment, no argument overrides what we now know to be the settled view of the House of Commons: that 650 is right. It has been well supported in the other place.

Clause 5 should stand part of the Bill and this amendment to increase the size of the other place to 800 should be rejected. I therefore urge my noble friend to withdraw his amendment.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): My Lords, I have received a request from the noble Baroness, Lady Smith of Basildon, to speak after the Minister.

Baroness Smith of Basildon (Lab): My Lords, I will speak briefly. First, I make a plea to the Minister never to refer to this House as a part-time House. He half-corrected himself but this House often sits longer and later than the House of Commons. We are a full-time House. The only difference is that not all Members are full-time Members of your Lordships' House; they have other interests and activities. We are a full-time House but not all our Members are full-time.

I want to make a couple of points. The Minister said that reform cannot be piecemeal because it must be considered. Reform can be both considered and piecemeal. Most reforms in British constitutional history have been quite gradual. That does not mean that they have not been considered; they have just taken a step-by-step approach, not the big bang approach. The Minister harked back to ducks and tabby cats; I would liken the House of Lords more to a tabby cat than to a duck.

The night in question, when the Minister and I had many discussions late into the night, went later than either of us wanted to be here in Parliament, but potentially the point the Minister is missing is that, after the conflicts that he referred to, both the 1911 and the 1949 Parliament Acts constrained how the House of Lords works. It is quite clear that we have an advisory role and that the House of Commons has primacy. We do not block legislation, we have no intention of blocking legislation and we have no remit or legitimacy to block legislation, but we have an opportunity and an obligation to advise the House of Commons on the basis of the information that we have.

On the Minister's point about a Prime Minister needing to be able to appoint lots of Peers to get their legislation through, I am not aware of anything that Boris Johnson would have more difficulty with in the House of Commons than in the House of Lords. Even on the rule of law, I suspect that his colleagues in the House of Commons are not terribly happy with him, but that is not why he has appointed these 36 new Peers. It is nothing at all to do with legislation; it is a Prime Ministerial whim and a numbers game.

I am grateful for the Minister's comments on the size of the House of Commons being 650 Members. There is something that we can agree entirely on.

Lord True (Con): First, as I hope I indicated in my remarks, I accept the strictures of the noble Baroness on the phrase "part-time House". It is a House whose expertise derives in part from the presence of people who are here part-time and bring us their expertise, which is a slightly long-winded way of saying the same thing. I think I said specifically that I would not want anyone to run away with that remark and say that that is what I think of your Lordships' House. I revere it.

With that correction, I will not detain noble Lords further but I will bank the statement by the Leader of the Opposition that this House's role is not to block legislation. We shall test those words in the coming weeks and months.

Lord Norton of Louth (Con): My Lords, I am grateful to all those who spoke. The noble Baroness, Lady Smith, just made two of the points that I was going to make but that will not stop me making them anyway.

The noble Baroness, Lady Deech, supported my case by speaking against the amendment; the noble and learned Lord, Lord Morris of Aberavon, supported my case by speaking for it. I am not whether that means that I am more skilled or abysmal at drafting amendments than I thought.

That leads me to the point made by the noble Baroness, Lady Smith. She argued the case for a formula linking the size of the House of Lords to the membership of the House of Commons. I agree; indeed, I tried to devise an amendment on that very point but getting it within the scope of the Bill was problematic, which is why I moved the amendment I did. The noble Baroness and other noble Lords will appreciate that sometimes one must go through some contortions to produce an amendment that will trigger a debate. I speak as someone who, a few years back, moved an amendment to the Psychoactive Substances Bill that would have had the effect of banning the manufacture and sale of alcohol. I realise that it was not going to go anywhere—it was not designed to—but it drew attention to a problem in that Bill.

I have four points to make, two of which the noble Baroness just made in response to my noble friend Lord True. One of her points was that the two Houses have different functions. Of course they do; that was precisely my point. Deriving from that is the case for the House of Lords to be smaller than the House of Commons, given the functions that it fulfils. We are a reflective House. We do not have an outward-facing role in the same way that the Commons does, with Members having to deal with constituencies in relation to their role and in relation to the Executive. The functions are very different. We fulfil different roles, and we add value to the political process by fulfilling

[Lord Norton of Louth]
that reflective role. Deriving from that, we do not need to be quite so big or, indeed, as big as the House of Commons.

Secondly, as was just touched on and as the noble Baroness stressed, this is not a part-time House. It is very much a full-time House, with some Members who work part-time, if you like, because they do their day jobs then come in to provide their expertise. It did a very good job in 1999 when we had more or less the same number of Members as the House of Commons, so unless my noble friend the Minister is going to argue that it was doing a worse job than now, again, there is no case for the arguments that he has advanced in terms of size.

My next point—again one that the noble Baroness touched upon—relates to my noble friend saying that reform should not be piecemeal. Well, the reform that has been achieved has been piecemeal; it has been the grand schemes brought forward by government that have got nowhere. Those piecemeal changes have I think been well considered—I speak as someone who drafted one of the Bills—and have achieved a great deal. Had we not achieved the House of Lords Reform Act 2014, just think what the size of the House would now be. We would be moving in the direction of the size of the House when we had the hereditary Peers and all the problems that derived from that.

Finally, while I am not saying that we should have a statutory number, there is a case for considering it. My noble friend did not really make an argument against that and I draw attention to the fact that it is not at all unusual for nations to have a set number of Members of their second Chambers. There is not really a clear argument against that. I am not necessarily beating the drum for it; I just say that there is no strong argument against it.

So I am not persuaded by any of the points that my noble friend made—he will not be surprised to hear that. I wanted to tease out the stance of the Government and allow us to continue to make the case—as the House has agreed, without a vote—that we are too large and that steps should be taken to reduce the size of the House. We can move towards that; the Burns recommendations create the means for achieving that. We can have a smaller House that fulfils its key functions and adds value. This House fulfils a very important role that is demonstrably different from that of the Commons. That is why it adds value, and that is why we should serve to uphold it. That would, I think, be facilitated by having a smaller, not a larger, House. We should follow Burns and try to reverse the direction of travel when it comes to the size of the House.

So I am, as I have said, grateful to all those who have spoken. I have made all the points that I think are important in this context, and I am extremely grateful for the support I have received from other Members. I am sure that this is something we will continue to pursue but, in the meantime, I beg leave to withdraw the amendment.

Amendment 13 withdrawn.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): Before I call the next group, I have had a request for Members in the room to speak up a little, because I think it is hard for Members, particularly those at the far end, to hear what is going on. It is not made easier by the extraneous noise outside. So if people could perhaps speak a little closer to the microphone, it would be appreciated by the noble Lord who I can see at the end of the table.

We now come to the group beginning with Amendment 14. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate.

Amendment 14

Moved by ***Lord Hain***

14: Clause 5, page 4, line 31, at end insert—

"(2) Rule 3 of Schedule 2 to the 1986 Act (allocation of constituencies to parts of the United Kingdom) is amended in accordance with subsections (3) and (4).

(3) After rule 3(1) insert—

"(1A) The number of constituencies in Wales shall not be less than 35."

(4) In rule 3(2), at the beginning insert "Subject to rule 3(1A),"."

Lord Hain (Lab) [V]: My Lords I beg leave to move Amendment 14, in my name and those of my noble friend Lord Grocott and the noble Lords, Lord Wigley and Lord Rowe-Beddoe. I am especially grateful to my noble friend Lord Grocott for adding an English voice.

Since the Parliamentary Voting System and Constituencies Act was passed in 2011, the subsequent boundary reviews have disproportionately impacted Wales. The 2013 review slashed the number of seats by a quarter from 40 to 30—a huge loss of representation, had it been implemented. The 2018 review was even more savage, with Wales expected to lose 11 of its 40 seats. Even under current proposals, which maintain the total number of MPs, Wales is set to lose eight seats—fully a fifth. Whichever way you look at it, Wales will be the most punitively and uniquely impacted of the four nations.

Such a ruthless cut in the number of seats, coupled with the unique Welsh geography, which can see constituencies vary drastically from vast rural ones that are sparsely populated, such as Brecon and Radnorshire, to the densely populated small urban constituencies in Cardiff and Swansea, will have a brutal impact on parliamentary representation in Wales.

4.15 pm

In the two previous reviews of the last decade, the cut in the number of constituencies resulted in the Boundary Commission for Wales proposing mega-constituencies to achieve numerical parity and to accommodate the vast geographical areas that are sparsely populated and in which there are thousands more sheep than people. The proposed constituency of Ceredigion and North Pembrokeshire extended 87 miles, and the proposed constituency of Brecon, Radnor and Montgomery stretched over 83 miles, from the north to the south of the constituencies. It would take someone well over two hours—maybe three if behind a tractor or a caravan, as often happens on the roads concerned—to drive from one end to the

other, covering communities with very different cultures, including different levels of Welsh language speakers. Despite the vast size of the proposed Ceredigion and North Pembrokeshire constituency, it only just met the minimum threshold for a constituency by less than 300 voters. The proposed South Clwyd and North Montgomeryshire constituency crossed five local authority boundaries, yet it had the smallest electorate and only just scraped inside the minimum size for a constituency by 66 electors.

These Boundary Commission proposals were obviously under the previous legislation, which was never implemented, but there would be a similar impact under this Bill. The impact would be slightly less brutal but still pretty ruthless. By the way, there are no Labour-held seats in this part of Wales and there have not been for many generations, so I am making not a partisan case here but one about democratic representation.

Valley communities, such as the one I represented in Neath, with their unique geography, also suffered. It is not easy to move single communities from a valley and put them in a different constituency. By their very nature, valley communities are linked and do not easily connect with neighbouring valleys. You have to somehow get up to the top or the bottom to get into a neighbouring valley—you cannot climb or drive over a mountain.

Valley communities are also linked to specific towns in terms of both transport and community links, and also historical ties. These community ties form the basis of very many of the valley constituencies in the South Wales area. During the last boundary review, some of those bonds were butchered—there is no other word for it. Islwyn was carved up between three constituencies, while the historic constituencies of Pontypridd and Aberavon were both split in two.

Slashing the number of constituencies in Wales restricted the Boundary Commission's options when redrawing the boundaries, which came at the expense of community ties, history and geography, as will inevitably be the case under this Bill. Constituency boundaries should mirror the communities they represent. The ability of voters to identify with a constituency in our political system is crucial for the health of our democracy; otherwise, it leads to disengagement and a feeling of disenfranchisement, and ultimately undermines democracy.

As a small nation it is vital that Wales's voice is heard in Parliament and that its unique geography is taken into consideration when drawing up the boundaries—and no more so that at this time, when there are threats to the unity of the United Kingdom.

That significance was recognised by Parliament when it first decided over 70 years ago, in the 1944 Act, that, because of its uniqueness, there should be a minimum number of 35 seats in Wales, which is what the amendment seeks to bring about. Now such uniqueness is being ignored and such special consideration and respect for Wales are being casually tossed aside.

That is why I am proposing in Amendment 14 that the Bill should include a minimum number of seats in Wales and that that minimum should be no fewer than 35 seats, as in the House of Commons (Redistribution of Seats) Act 1944 and reaffirmed in the 1986 Act. I am not suggesting a retention of the 40 existing seats. This is a modest and, I hope, acceptable amendment to the Government of a minimum of 35 seats to reflect the special needs of Wales. It would create an average electorate of 66,110 in Wales, based on the 2019 electorate, increasing the average number of electors but not so savagely at the expense of geography, history and community ties as under the Bill.

Although the average size may be lower than in the other nations of the UK, it is a compromise position that is much fairer than the one currently being proposed. Importantly, it has legislative precedent under a national coalition Government, not the most dogmatically partisan one-party Government Britain has experienced, if not ever, then for generations.

Amendment 14 would protect against such a savage and disproportionate cut in the number of seats and would provide the Boundary Commission for Wales with greater flexibility to accommodate the vast geographical areas that are sparsely populated and the more densely populated valley constituencies that are not easy to modify. The unique challenges that Welsh topography poses already create difficulties when drawing boundaries. Slashing the number of seats seriously compounds the problem and leads to terrible disruption, because the Boundary Commission is so hamstrung.

As the Bill stands, the significant hit to the number of Welsh seats will profoundly change the way in which Wales is represented in Parliament. Wales's voice in Parliament will be drastically smaller than it has been for generations. Parliament can already feel very remote to communities across Wales and marginalising their voice will serve only to further erode the link between Parliament and Welsh communities and voters.

No other nation is experiencing the hit that Wales is under the Bill. Wales should be treated fairly, not punitively. Setting a minimum number of Welsh constituencies with legislative precedent strikes a balance, creating more equal-sized constituencies but not at the expense of geography, history and traditions, community ties and, ultimately, democracy. I very much hope, therefore, that the Minister will, in responding, understand the case for the amendment and that the Government will accept it or a version of it.

Lord Wigley (PC) [V]: My Lords, I support Amendment 14 in the name of the noble Lord, Lord Hain, to which I have added my name. It addresses the level of representation that devolved Wales should have in the House of Commons.

As the noble Lord, Lord Hain, described, Amendment 14 provides for a minimum of 35 MPs from Wales. Two distinct issues are at stake with regard to the appropriate level of representation from Wales and they are interrelated. We shall return to the second, the appropriate size of constituency, on which the noble Lord, Lord Hain, has commented, when we debate Amendment 22, so I will not go on to that aspect now. The first and more fundamental issue is whether Wales—or, for that matter, Scotland or Northern Ireland—should, as some suggest, have fewer MPs in future compared with the level that we have enjoyed in the past because we now have our own elected legislatures.

[LORD WIGLEY]

The question arises as a direct result of the ad hoc system of devolution that has been developed over recent years. When non-devolved issues such as general taxation and social security—or, for Wales, policing—arise, it is totally unacceptable that Wales should have a lesser voice because of the existence of our own legislature, dealing with other matters such as education or housing. If it is unfair for Welsh MPs to legislate on English matters, as is quite arguable, it is the same unfairness as having English MPs voting on matters relating to Welsh-language television, for example, as is currently the case. Those difficulties would be sorted by a federal or confederal constitution, but as successive Governments at Westminster have refused to face such anomalies, I am afraid that they have to live with the consequences or cobble up some ad hoc system such as English votes for English laws, which is not entirely satisfactory.

These anomalies certainly do not justify the overall reduction in the number of Welsh MPs because of our unbalanced or inconsistent devolution settlement. Amendment 14 proposes a de minimis of 35 MPs—a reduction of five seats compared with the present level but well above the 29 seats recently advocated. The reduction of five seats is a recognition that relative population is a valid consideration, but it leaves some legroom and flexibility to take on board community considerations, which we will discuss later under Amendment 22.

Amendment 14 is a compromise. I could well make the case that the appropriate level should be maintained at the current 40 Members. The noble Lord, Lord Hain, and I, as well as other supporters of the amendment, are being pre-eminently reasonable. The amendment offers the possibility of a sensible compromise and I commend it to the Committee.

Lord Foulkes of Cumnock (Lab Co-op) [V]: My Lords, these hybrid proceedings are very strange. I was in the Committee Room on Tuesday, so I know that my face is appearing on large screens in front of those noble Lords who are present—quite a frightening prospect.

Noble Lords: Hear, hear.

Lord Foulkes of Cumnock (Lab Co-op) [V]: Indeed it is—I can see that already. Here at home we are at least spared the glass boxes that I suffered on Tuesday.

I am once again speaking up for Scotland, as I do from time to time, after the eloquent speeches by the noble Lords, Lord Hain and Lord Wigley—my good friends. I was happy to see Wales go first in the argument, because it has a strong case to put forward. It is totally wrong for Wales as well as Scotland to lose seats in this review and it needs to be reversed. That is why I tabled Amendment 23, which seeks to protect the number of seats in Scotland at the current level, so that Scotland is allocated 59 constituencies, including the two protected constituencies of the Western Isles and Orkney and Shetland.

Like the noble Lord, Lord Hain, I am not making a political argument. Indeed, some people might say that it is against our interests, as the SNP has so many constituencies in Scotland at the moment. Of course, that is merely a temporary situation, which will be reversed at the next election.

Perhaps I can give a little history. When I was first elected, in 1979, there were 71 constituencies in Scotland. That was when there were only 635 constituencies, not 650, in the United Kingdom as a whole. My noble friend Lord Hain referred to the unique position in Wales. I know this sounds a little strange, but Scotland is even more unique than Wales. Can I say that? I am not sure. We certainly have our own peculiarities. I will give the Committee just some examples.

The largest constituency set out in the Boundary Commission for Scotland's proposal was Highland North, at 12,985 square kilometres. That is about the size of Yorkshire, eight and quarter times the size of Greater London, five times the size of Luxembourg and larger than Cyprus and Luxembourg put together. Indeed, the three largest proposed constituencies—Highland North, Argyll, Bute and Lochaber, and Inverness and Skye—cover 33,000 square kilometres. To put that in context, the three constituencies would cover over 40% of the area of Scotland, which is larger than Belgium. The two constituencies of Highland North and Argyll, Bute and Lochaber would cover an area larger than Slovenia. These large constituencies would also include several island areas, which makes MPs' travel across them even harder. In fact, the constituency of Argyll and Bute already contains five airports.

4.30 pm

I have one point for the noble Lord, Lord Blencathra, who will be speaking later. He said earlier that the reduction from 71 to 59 constituencies from 2005 onwards was to take account of devolution. The fact that we have Members of the Scottish Parliament has already been taken account of. The constituencies that Scottish MPs are expected to represent are just as large, if not larger, than they have always been.

My amendment would also ensure that the boundaries for constituencies of the UK Parliament would take account of the Holyrood constituencies. That would provide opportunities for better connections between the Member and their constituents and also between Members of the UK and Scottish Parliaments when they are dealing with important matters.

The question of the union was also mentioned. The union is in danger, as we know, with pressure from the SNP and from the situation in Northern Ireland. The proposed reduction of the number of Members from Scotland and Wales would add an extra tension. Accepting the amendments put forward by the noble Lord, Lord Hain, and myself would also help strengthen the union. I have the support of the noble Lord, Lord Grocott, who is about to speak on this matter, although his name is not on the amendment. I am grateful to him for his support. I have put forward arguments for the size of the constituencies and for the fact that we have already had a reduction from 71 constituencies—in 1983 it was 72—to 59. There is no argument for further reducing the number of constituencies in Scotland.

Finally, we have four separate commissions dealing with this matter, looking at the situation in each of the countries. That accepts the fact that the situation is

different in each country. It is a de facto acceptance of that. Agreeing that the number of seats in Wales and Scotland should be specified gives clear direction to those separate Boundary Commissions. So I hope that, as well as the amendment put forward by my noble friend Lord Hain, the one that I have put forward will be accepted by the Minister, if not today then at least at some time in the future.

Lord Grocott (Lab) [V]: My Lords, it is my pleasure to give my strong support to both these amendments from my noble friends Lord Hain and Lord Foulkes. It is an oversight on my part that I have not actually signed the amendment tabled by my noble friend Lord Foulkes. As this is a virtual Parliament, perhaps he can now accept my virtual signature. The amendments are quite similar. They establish minimum numbers of MPs who should represent these two countries.

If it is not too presumptuous to say so, I thought it was quite important that an English voice from an English constituency should take part in this short debate. As I shall argue, these two amendments have significance for the whole United Kingdom. However, in my case, it does break the habit of a lifetime in politics—in fact an iron rule of it—of avoiding making political interventions in either Scotland or Wales. It is a cause of some nervousness, but not in this case. It is a question of the representation not just specifically in those two countries but in the United Kingdom as a whole.

Looking at some of the thankfully now-aborted, deeply flawed boundary proposals based on the 600 constituencies, I, like everyone else—like every other former MP—was focusing almost entirely on the effect on my own constituency, perhaps to the neglect of other parts of the country. I can still remember the absolute shock when I was told by friends representing Welsh constituencies that the number of seats in Wales was to be reduced by a quarter. To me, that was absolutely staggering. It was crass. It could only have been the result of some calculating machine operating somewhere—as we know it was—on a very tight formula for electorates of constituencies and with total disregard for pretty much everything else.

I will not go into any more detail as it has already been dealt with thoroughly by my noble friends. In addition to the point that has already been made about the huge significance to the constitution of the country as a whole, a Boundary Commission would be disregarding all that, including geography, history and culture—it is invidious to mention anywhere in particular, but let us say from the valleys of south Wales to the Highlands of Scotland and everything in between—and the massive contribution that MPs from constituencies in those countries have made to the Westminster Parliament. I will not begin to tot up the number of Prime Ministers, Cabinet Ministers and heaven knows who else who have come from there. It really was constitution-making on the hoof, but with regard to only one rule.

I have no hesitation whatever in saying that more factors need to come into play in drawing the electoral boundaries of the United Kingdom than a simple arithmetic rule. The proposals from my noble friends for a minimum number of MPs from both countries seem to be a very sensible structure. If that were to be adhered to, it would be to the benefit of representation and a voice from them. It would benefit the United Kingdom, and it would benefit the variety of opinion, the depth of experience and the representation of unique communities that the House of Commons should rightly pride itself on. I support the two amendments with enthusiasm.

Baroness Humphreys (LD) [V]: I thank the noble Lord, Lord Hain, for tabling Amendment 14 and for presenting us with the opportunity to debate the impact of this Bill on the number of parliamentary constituencies in Wales and for his excellent introduction to this amendment. As we know, Wales has 40 MPs. If the recommendations in the Bill come into being and constituencies of near equal numbers of voters are created, it is estimated that this would result in the number being reduced to somewhere around 32—or, as the leading north Wales newspaper's headline proclaimed:

"Proposed boundary shakeup 'could see Wales lose a quarter of its MPs'."

At a time when it is important that the voice of Wales is heard in Westminster, this reduction in representation is a real disappointment. By making all votes count equally throughout the UK, Wales will lose eight or perhaps even nine MPs to England.

If the Government care about all votes counting equally, could I recommend that they adopt a fair, modern and proportional voting system to represent properly the political views of all voters in the UK? I think that many people in Wales are beginning to view the country's political future in a different light. We know already that as a small country we are massively outnumbered, as it is, by our larger neighbour. This reduction in the number of Welsh MPs will further unsettle voters.

However, attitudes towards our relationship with England and the union are changing. Devolution and, ironically, Covid-19 are contributing to that. A YouGov poll published on 1 September showed that more than twice as many people trust the Senedd as trust Westminster to look after the interests of Wales. The people of Wales are turning their backs on the union with England in another way. While preparing for this debate, I reread the speech I made in October last year in response to the Queen's Speech. I spoke about the independence debate in Wales and the growth of what is termed the "indy-curious"—those people in Wales who do not consider themselves to be nationalist but are curious about independence and open to it. At the time I made the speech, I think around 6% of the Welsh population were in favour of independence. By June this year, the figure had risen to 25% and the latest YouGov poll taken in August shows 32%, the highest figure ever recorded in favour of Welsh independence.

For me, maintaining the status quo would be the ideal. We are rather comfortable with the 40 parliamentary constituencies we have now, but I accept that that is probably a non-starter under the Bill. I regretfully accept that there is very little likelihood that the Minister will agree to the proposed number of Welsh MPs being increased, despite the excellent case made by many speakers in Grand Committee today, but I would be delighted if the Minister proved me wrong.

[Baroness Humphreys]

Fortunately for Welsh voters, there is a way to redress the balance. The Senedd has legislated in Wales for more than 20 years, with only 60 Members. It desperately needs more. As the McAllister review concluded in 2017, the National Assembly, as it was then, needs more Members as its powers continue to grow in order effectively to hold the Welsh Government to account and deliver for the people and communities of Wales—now even more so.

As our representation and voice in Westminster look likely to be reduced, it is not only logical but right that our Senedd take the tools they need to do their job. The Welsh people now understand the value of devolution and the Senedd and the challenge is for political parties to be clear with the electorate as we approach the Senedd elections next year and make the case for increased representation in Cardiff in their manifestos. If Welsh voters are to lose out in Westminster, they cannot and must not also lose out in Cardiff.

Lord Morris of Aberavon (Lab) [V]: My Lords, I support the amendment so ably moved by my noble friend Lord Hain, as is his custom. He was my political neighbour for many years. I represented Aberavon and he represented Neath. I am not going to take up too much time expanding on the observations I made at Second Reading. Indeed, I made the same points almost exactly word for word in the debates on the earlier Bill from the coalition Government. I could see that there had been an obvious increase in Welsh representation over the years. I suspect the reason has been that the Boundary Commission has not wanted to upset unduly the status quo and has taken the easiest route by expanding membership. I suspect it looked at Wales, as it knows it well. In fairness, there were strong arguments for it: first, the affinity with local government; secondly, the advantage of continuity; thirdly, the particular needs of constituencies with the run down of traditional heavy industries; and lastly, the unwritten rule manifested in practice almost without exception over a long period of time that the number should not fall below 35. Can the Minister tell us exactly when and on what occasions and for what period the figure went below 35? I have not gone into the history of the matter, and I hope the Minister will be able to give us the answer to that specific question.

4.45 pm

The previous Boundary Commissions held the line. It is a kind of glue that binds Wales into the United Kingdom. The perception of reducing the number and influence of Welsh political representation does nothing to strengthen the union in which I believe so strongly. I say this very, very solemnly: given the position in Scotland today, the Government should be very wary of inflaming the situation which has been accepted for a very long time that 35 is the minimum number at which we should be represented. The wholesale wrecking of Welsh constituencies, which the proposed number would involve, is highly questionable in the perception of voters, who look to their representatives and know who they are and that they are not forgotten.

When I appeared professionally before the boundary commissioners, I always argued for continuity of membership, constituencies and people as constituents. I regard it as the most crucial and important matter that they should be able to know who their representative is and should have some degree of continuity. When people are in trouble, they want to know who their MP is and who to go to for advice. When my constituency was wrecked after 23 years, it took years to build up a new relationship with the part added on to my constituency just to make up the numbers. I pinched a certain number from the constituency of my noble friend, then the Member for Neath, in order to make up the numbers.

The same situation happened going from east to west in the county of West Glamorgan where there were five constituencies. They had to chip in a little bit here and a little bit there in order to make up the numbers. I was fortunate in building up a new relationship with the new part of my constituency over a number of years. I was very lucky, but it is not easy to build up a new relationship after a long time representing another area in South Wales. I commend the amendment.

Lord Blencathra (Con): My Lords, I listened very carefully to the noble Lord, Lord Hain, expanding on his amendment. While he was talking about the unique difficulties of these extremely large Welsh constituencies and the difficulty of travel, I must confess I was quite sympathetic. When he concluded his remarks, I did a little Google search to find out the largest constituency in Wales. It seems to be Brecon and Radnorshire; the twelfth largest in the UK, it is 1,164 square miles. When I read that, I changed my mind and thought, "Lord Hain, so what? Big deal. Dry your eyes and get over it". My constituency in the Lake District was 1,450 square miles and stretched from the Irish Sea on one side to the Pennines on the other where it was closer to the North Sea than to the other side of the country. If I wanted to travel from the Scottish border to its southern extremity, it was only an hour on the M6, even sticking to the legal speed limits. If I wanted to go from west to east, it was at least two and a half to three hours on minor and difficult roads. I am not quoting that as a sob story, merely to point out that Wales is not entirely unique in having large constituencies. I think the Richmond, Yorkshire constituency of the noble Lord, Lord Hague, was the second largest to mine, although he did not like to hear that.

In a spirit of being helpful, I did not want to be too provocative and stir up the noble Lord, Lord Foulkes of Cumnock. I cannot call him my noble friend but, in some ways, he is my noble pal because we worked together at the Council of Europe. I was tempted to put down an amendment reducing the number of Scottish constituencies to 30. However, I realised that if he was present physically, or even on the large screen, that could cause a bout of apoplexy, so I did not do it. I do not know if Scotland is unique, but the noble Lord, Lord Foulkes, certainly is and the House of Lords is a better place for it.

Scotland—and, to a certain extent Wales, but I do not know much about that—does not need all these excess MPs because the MSPs are doing the majority of the work. I remind the Committee of the matters devolved to Scotland which MSPs are in charge of, taken from the Scottish Government's website: agriculture, forestry and fisheries; education and training; environment;

health and social services; housing; land use; planning; law and order; local government; sport and the arts; some forms of taxation; and many aspects of transport. That is what MSPs do; United Kingdom MPs from Scotland do not have those matters to handle. The reserved matters, in which they can legitimately have an interest and on which they can claim to be working, are: benefits and social security, which I accept is quite a big one; broadcasting; constitution; defence; employment; equal opportunities; foreign policy; immigration; and trade and industry.

Those noble Lords who have been Members of Parliament in the Commons will realise that the former category of devolved matters involves the vast bulk of constituency work. Scottish MPs only have to do the reserved matters; English MPs have to do the whole shooting match—everything that is devolved to Scotland and all the reserved matters as well. I was interested to hear the noble Baroness, Lady Humphreys, say that in Wales most people now seem to accept that the Welsh Assembly Members are the real powerhouse. They are the ones who do all the work and people are increasingly looking to their Welsh Assembly Members to fix all their problems, not the United Kingdom MPs from Wales who come to Westminster.

It cannot be right that we have so many Members of Parliament from Scotland and Wales who are doing half the workload of English MPs. It is notable that all the advocates of these amendments have talked about constituency size in geographical terms, not about the number of constituents or the much-reduced workload for United Kingdom representatives from those countries. That is not right. Rather than halve their salaries, I would like to see their numbers cut to equate to their responsibilities. I am therefore happy to support the Bill in its present form.

Lord Bruce of Bennachie (LD) [V]: My Lords, I support Amendment 23, in the name of the noble Lord, Lord Foulkes. I apologise for not having signed it, because I agree with it wholeheartedly. I could not agree less with what the noble Lord, Lord Blencathra, has said. Not only is he being provocative, but he has knowingly missed an important point.

During my time as an MP and a candidate, I experienced four boundary reviews and I know how disruptive and traumatic they are. The first-past-the-post system sets great store by the connection between an MP and his or her constituents; boundary changes weaken, and can destroy, this, as the noble and learned Lord, Lord Morris, pointed out. This is why the commission should seek to minimise disruption and retain community and geographical links as far as possible. At a time of tension in relations across the UK, a reduction in the number of MPs representing its devolved parts will not be well received.

When I embarked on my parliamentary career, we had 72 MPs in Scotland. Following devolution, we now have 59— just over 9% of the total. The change was made for a particular reason: the effect of devolution. The rural constituencies in Scotland are now, on average, larger areas than their counterparts in the south, in spite of everything mentioned by the noble Lord, Lord Blencathra. They are further away from London and, in most cases, certainly when they are from the north of Scotland, MPs have to fly in order to attend the House of Commons. Travelling time to, from and within constituencies is often greater and it is not practical to nip back for a constituency event during the parliamentary week, other than in exceptional circumstances. It is true that, prior to devolution, details of Scottish policy that are now handled by Holyrood were decided by Westminster. Much of domestic policy is now devolved, but that is why we had the reduction in MPs previously, as the noble Lord, Lord Foulkes, pointed out.

The Government are embarking on a range of radical proposals which have far-reaching implications for Scotland and the future of the UK. I completely refute the case that Scottish Members of Parliament—or Welsh or Northern Irish ones for that matter—will have less work to do. On the contrary, this Government's cavalier lack of interest in the continuation of the United Kingdom means that they will have far more to do than they have had since devolution began. Right now, apart from this Bill, there are the immigration, Trade, Agriculture and internal market Bills, which require detailed scrutiny by representatives from Scotland as well as Wales and Northern Ireland. I have been, and will be, involved in debates on these Bills, seeking to strengthen the devolution settlement and moving us towards a more federal union. Yet the Government are resistant to requiring consent to legislation from the devolved Administrations or considering a form of qualified majority voting to balance the fact that England can always outvote the devolved legislatures.

It is argued that numbers should prevail, but federal countries such as the USA, Canada, Germany and Australia all provide checks and balances between the centre and the parts that make up the whole. For example, California has two senators, as does Wyoming, which has the smallest population of all the United States. I understand the case for approximately equal numbers, but I believe that this can lead to unsatisfactory outcomes. Through the different boundary changes during my time in Parliament, my constituency started out in Aberdeenshire; then it was part of Aberdeenshire with part of Aberdeen; then part of Aberdeenshire with parts of Banffshire; then, finally, part of Aberdeenshire with part of Aberdeen, although not the same part. The Aberdeen part was the northern suburbs, which was confusing as the constituency of Aberdeen North did not include the northernmost wards of the city. All this makes a mockery of the special link between the MP and the constituency, although I was fortunate enough to get myself elected, in spite of these changes, on seven separate occasions.

When the Scottish Parliament was set up, the Westminster constituencies and those for the Scottish Parliament were the same. This was not sustainable when the number of Westminster constituencies reduced. At the foundation of the Scottish Parliament, the Gordon constituency had an MSP and an MP for the same territory. Once the boundaries were changed, the constituency then included parts of east Aberdeenshire, parts of west Aberdeenshire and parts of Donside, which caused further confusion for almost everybody. Even more frustrating, at the start of each boundary review, the electorate of Gordon was almost exactly on quota. The noble and learned Lord, Lord Morris,

[Lord Bruce of Bennachie]
seemed to have had the same issue. Yet the Boundary Commission drew up the boundaries of the surrounding constituencies and took chunks out of Gordon to make up their numbers, which is why I had so many radical constituency changes. I did manage to persuade the Boundary Commission to keep Huntly in Gordon, given that it was the seat of the Dukes of Gordon and the recruiting base for the Gordon Highlanders. It would have been pretty ironic to keep the constituency name and remove the Gordon connection.

I hope the Boundary Commission will have learned from previous reviews and take seriously the need to minimise disruption between Westminster and Holyrood boundaries and anomalous breaches of community links. However, its task will be made harder if amendments such as these and other related ones are not accepted to change this rigid application of numbers, with a totally cavalier disregard for the implications for further tensions in the United Kingdom. The Government are not prepared to consider how the devolution settlement can be updated to allow the devolved Administrations to have a genuine say in UK decisions, rather than a situation where the United Kingdom can overrule them.

5 pm

Maintaining the number of MPs from the devolved parts of the United Kingdom will of course still mean that England can outvote them by about 5:1, but at least their voices will be there. The smaller the voices, the less noise will be heard and the more disregard the Westminster Parliament will have for the continuation of the United Kingdom. The Government should take heed. This is something they should take very seriously if they really do care about what they call the precious union, but which they treat with disregard and disdain.

Lord McNicol of West Kilbride (Lab): For me, this is about priorities. I suppose that is what I shall try to appeal to the Minister about. My priority is the future of the union and what I see, if the Bill goes through in its current form, as the undermining of its unity. The argument we are getting back is that the priority has to be the number of electors in a constituency, the size of the constituencies and how that gives equal weight to votes. However, as we heard on Tuesday, our current first past the post system for Westminster, although I support it, does not offer equal votes with equal responsibilities. We would have to change the electoral system, which I do not want to do, to get to a situation where votes are of equal value.

On Tuesday, the noble Lord, Lord Blencathra, got half of it right and half of it wrong. The half that was right was about the devolution of powers to mayors, the nations, local authorities, councils and local councillors, which I fully support. However, one of his big attacks, which he repeated today, was on numbers. I touched on this at Second Reading: currently, Scotland, Wales and Northern Ireland have 117 constituencies, with London and the south-east having 156. If these proposals go through, Scotland, Wales and Northern Ireland would be reduced to 106, with London and the south-east having 164. Even within the history of United Kingdom, MPs in London and the south-east would easily be able to outvote those from Scotland, Wales and Northern Ireland.

That takes me back to the priority of the union. The best way for us to protect the union, which I think the vast majority, if not all, of us in the Grand Committee want to do, would be to have the voices, concerns and issues of constituents, communities and people across the nation aired well and loudly in Westminster. These reductions in Scotland, and in Wales, as we have heard from far more eloquent speakers, will undermine that. The points that my noble friends Lord Foulkes and Lord Hain made about geography and community are absolutely right and important, but my appeal to the Minister is that if we can retain what we have, we will give those who seek to undermine and break up the union fewer arguments. If we move forward with the proposals as they are in the Bill, it will enhance those arguments for the break-up of the union.

Baroness Randerson (LD): I want to speak specifically about Amendment 14. I am glad to see it on the Marshalled List, because it raises some important and specific issues about the situation in Wales, introduced very ably by the noble Lord, Lord Hain.

The reference to the 1944 Act in this amendment reminds us that Wales has always been accepted as a special case. In terms of population, its smaller rural constituency sizes have been accepted as a practical necessity. The formula that the Government propose would see 32 Welsh constituencies, which is clearly inadequate. Some would argue, as the noble Lord, Lord Blencathra, has, that, now that Wales has devolution, it no longer requires this protection.

My answer is that the Senedd still has unrealistically low numbers of Members—only 60. That is quite out of kilter with Northern Ireland, for example, which has a smaller population and 90 Members of its Assembly. As it has gained more powers, the Senedd has a greater rather than a lesser problem; it is now within the Senedd's own power to increase its size, and it has been Welsh Liberal Democrat policy for many years that there should be greater powers for the Senedd and at least 80 Members. If that were to be the situation, we would not oppose a reduction in the number of Welsh MPs. I considered tabling my own amendment on this, but I could not find a way to cast it that would be acceptable because, as I said, it is the Senedd that decides its membership, and I very much hope that it goes on and approves an increase in membership very soon.

The news yesterday and today in Wales is dominated by the UK Government's internal market Bill, but in Wales there is an additional concern about it because the Government intend to recentralise some powers that were previously devolved. MPs from Wales will therefore apparently be busier than they are now, so it seems a strange time to cut the numbers so drastically.

I looked at the predicted numbers across all the nations of the UK; the totals give a stark picture of 10 more MPs for England and eight fewer MPs for Wales. It sometimes seems that this Government neglect no issue in their attempts to alienate the devolved nations. I warn them not to take Wales for granted. My noble friend Lady Humphreys has pointed out the increasing support for independence. Yesterday's resignation by David Melding, the Conservative shadow Counsel General in Wales, makes the point that this is

not just a nationalist flurry. David Melding is an ex-Deputy Presiding Officer for the Senedd and one of the leading Conservatives in Wales.

When we argue for the special factors in Wales, it is geography which usually dominates the debate. There is an old joke: if Wales was ironed flat it would be as big as England. The mountains are our glory, but they are also powerful barriers, and there are so many of them. In the north there is Snowdonia, in the middle, the Brecon Beacons, and in the south, dividing the valleys. I live in Cardiff, and have to cross Caerphilly Mountain, or go a very long way around the bottom of it, to get to the next local authority. Combining valleys in one constituency means combining totally different communities, served by different local authorities and services. It already takes two or more hours to drive from one end of Brecon and Radnorshire to the other, so combining it with another constituency is clearly ridiculous, as the noble Lord, Lord Hain, said. All this makes a powerful case for the importance of the Electoral Commissions continuing to take into account local community ties and identities, as they always have.

The truth is that no single system is appropriate for every type of area across the UK, from the Cities of London and Westminster to Orkney and Shetland. In Wales, we have a specific additional factor that must be considered: the Welsh language. It is by far the most developed and flourishing UK minority language. I was proud to be the very first Minister for the Welsh language, and I initiated a strong programme to support and encourage its use. It was all community-based. The language's areas of strength are geographically based in the west and north of Wales, although nowadays even areas of Cardiff are recognised as Welsh-speaking areas. It would be a mistake to fragment those Welsh-speaking communities by dividing them into different constituencies.

I realise that a number of other parts of the UK might claim a similar distinctiveness. My noble friend Lord Tyler's Amendment 20 makes a similar point about Cornwall. The following group of amendments that will be considered this afternoon, to which I will not speak, relates to the different percentages that might be used as the permitted variants, and includes Liberal Democrat Amendment 16. These are all ways of attacking the problem that the current 5% variance is too tight to avoid constant reorganisations of constituency boundaries. I hope that when these variations are discussed, this can happen alongside consideration of the importance of local community ties and characteristics.

The proposal for 32 Welsh constituencies is clearly a product of an inflexible approach and an attempt to standardise the fundamentally different parts of this United Kingdom. The 35 seats suggested in Amendment 14 is one way to tackle the issues. Liberal Democrat Amendment 16 is another. It is a different approach, and I hope that they would achieve similar outcomes; they both have similar intention, and I urge the Government to accept one of the proposed compromises.

Lord Lipsey (Lab): My Lords, I was thrilled when in introducing this debate my noble friend Lord Hain thanked my noble friend Lord Grocott for participating as an Englishman but did not thank me. That was quite right, because I have been for 25 years now living half my life in Wales. I am only a little behind my noble friend Lord Hain, who started in Neath in 1991, so I speak now—officially anointed by my noble friend—as a Welshman. I am not going to speak about Wales—there has been a wonderful hwyl about the geographic specialities and peculiarities of my adopted country; no doubt I could persist in that. I am afraid that I am going to speak about crude politics.

We are constantly told that this is a Conservative and Unionist Government, who want to save and protect the union. We are all of us familiar with the threat to the union from Scottish independence, but I am afraid that I detect—I hope that I am wrong, but I do not think I am—a growing threat in Wales. Polls have been referred to. At the beginning of the year, only 19% of Welsh voters were in favour of an independent Wales; that reached 25% in June and 32% in August, when polled by YouGov. That is sharp increase in sentiment in favour of an independent Wales.

We also have elections coming up for the Senedd next year. Not all people in Wales have the great enthusiasm I have for the current Administration in Cardiff, but what are those who do not want to vote Labour supposed to do? The Lib Dems are past their peak down our way. The Welsh are not naturally Conservatives. Brexit or one of those lot? I doubt it. Quite apart from increasing sentiment for independence, there will be a strong temptation to turn to Plaid.

5.15 pm

If I were a Plaid campaigner in those Welsh elections—which I will not be—I would have, as the first and last line in every speech I made, this Bill will dilute the importance of Wales in our national politics and cut the seats of Welsh politicians at Westminster. They would be entirely entitled to say that this Bill is a crude attempt to gerrymander away a few Labour seats and get a few extra Tory seats. That is what will happen. This seems a potent argument that might appeal to the Government in a way that such matters as justice, geography and so on are of no concern to them. Do they really want to create a Wales that is against the national union at a time when Scotland is already in the hands of a party that is against the union? I do not believe they do; I believe they are genuine in their unionism. One of the best ways they could show that is by compromising on this ludicrous reduction.

Lord Rennard (LD): My Lords, I sympathise with many of the sentiments expressed by those who want to protect some of the principles of existing constituency representation in Wales and Scotland, but there is a need to agree a set of rules that can apply across the UK for drawing up constituency boundaries for MPs serving in a UK Parliament. We must look to how best to address all these concerns fairly.

First, I think we need to go back a little in history. In 1996 I was the joint secretary of what became known as the Cook-Maclennan committee, which drew up proposals agreed between the Labour Party and the Liberal Democrats to legislate for the creation of a Scottish Parliament and a Welsh Assembly. The plans were good and were quickly enacted following the

[LORD RENNARD]
1997 general election, but the Labour Party chose not to legislate for the 144-Member Scottish Parliament agreed by all parties in the Scottish Constitutional Convention, nor for the 80-Member Welsh Assembly, as it was then called. It legislated instead for a 129-seat Scottish Parliament and a 60-seat Welsh Assembly. I understand why, for its own interests, it wanted less-proportional outcomes in those elections, but it was wrong in its calculations.

More significantly, given the increased powers given to these devolved Parliaments since 1999, more consideration must now be given to increasing the number of parliamentarians in those places, as suggested by my noble friend Lady Randerson a few minutes ago. This would be instead of simply trying to suggest that different rules should apply for drawing up Westminster constituency boundaries in different parts of the UK. We need fair rules everywhere, and this requires greater flexibility in those rules.

The noble Lord, Lord Hain, described some of the potential consequences to constituencies in Wales that featured in the proposed reviews based on the process legislated for in 2011, but I urge him and his party colleagues to look carefully at Amendment 16 in my name and that of my noble friend Lord Tyler. It gives the Boundary Commissions more latitude, while preserving the agreed principle of the Bill. It allows them to take more account of special geographic considerations including the size, shape and accessibility of constituencies, their existing boundaries, local ties and the need to avoid unnecessary disruption.

The best hope for those sympathetic to these amendments is to be found in Amendment 16, which provides greater flexibility for the Boundary Commissions than any other amendment.

Lord Tyler (LD) [V]: My Lords, I have listened with great interest to this very interesting debate. Some powerful contributions have been made, not least by fellow Celts—I speak as a Cornishman. I have a great deal of sympathy with what they are saying, not least in their emphasis on human geography. After all, in the end, all these proposals will not be there for the benefit of elected MPs, or indeed anybody else in the political system; they must be there to serve the people of the areas concerned. It is the human geography that is important. In that context, it is important for all of us who have been MPs to remind your Lordships' House that when we are elected we are not there just to support, endorse and help only those who happen to be on the electoral register but to support all those who live in the areas concerned. For example, I do not recall ever asking anybody who came to me for help whether they were registered on the electoral roll.

The one thing I found very disappointing about this debate was from the noble Lord, Lord Hain, with whom I have worked in the past and for whom I have a great deal of respect, right back to his radical days as a young Liberal. He of course was a very distinguished member of the Government my noble friend Lord Rennard just referred to; the Government who introduced the first major steps to affording devolved representation at Holyrood and in Cardiff and the powers needed to do a job for those nations. To not see this Bill in the context of the very successful devolution that took place then and that has taken place since is a major disadvantage. I was very glad that my noble friends made reference to that in their contributions.

We Liberal Democrats are concerned about the threat of a disunited kingdom, if I may quote the noble Lord, Lord Lipsey. However, we are also extremely concerned that the forthcoming devolution White Paper for England represents a major change too. As we have very unequal representation at the national level within the United Kingdom, we are in danger of a major political and constitutional problem.

My noble friends referred to the long-standing commitment that we have had for a federal constitution for the United Kingdom, which would take account of the needs of the different nations. In addition, however, we have been firmly committed to the principle of subsidiarity, and reference has been made to that in this and previous debates on the Bill. We believe that decisions should be taken as close as possible to the people who will be affected by them. Therefore, we take very seriously indeed the extent to which we have not been able to extend devolution to parts of England.

Those who have been the strongest protagonists for improved and strengthened devolution powers in Cardiff and in Edinburgh must recognise that English citizens are at present deprived. Even though we have a form of devolution in Cornwall, we would dearly love to have the same sorts of powers that are currently exercised in the Senedd or in Holyrood. Incidentally, the point made by my noble friends about the lack of sufficient membership in the Senedd is extremely valid. As my noble friend Lord Rennard just reminded the Grand Committee, that was not what was intended at the outset in 1999.

I believe that this set of proposals, however powerful, has to be seen in the wider context of the whole of the United Kingdom. If the Bill goes through in its current form, with 650 Members for the whole of the United Kingdom, I must assume that the Minister will, in a few minutes, tell the Grand Committee that every additional Member that is allocated to Wales or to Scotland means fewer for the rest of the United Kingdom. It would be irresponsible just to ignore that point.

As has already been said, there are a number of constituencies in other parts of the United Kingdom that are very big indeed—big both in geography and in the difficulty of representing them adequately, and most importantly, as I said at the outset, big in their human geography. It would surely be folly to ignore that particular lead, simply by trying to deal with the problems that may result in rural Wales or the highlands of Scotland.

As it happens, I know both those areas quite well, as I will explain when we come to the amendment dealing with the current constituency of Brecon and Radnorshire—I know that constituency extremely well. I recognise the special case which can be argued for that part of Wales—of its rurality and the difficulty of communities coming together in an area like that—or indeed in the highlands of Scotland. I had the privilege of going to campaign for the then Member of Parliament in that area, and for the noble Lord, Lord Bruce, when he was the long-standing and much-respected Member

for Gordon. We may need to take special account of both those areas, and it will be the human geography, as well as the physical geography, that will need our attention.

As my noble friend Lord Rennard suggested, when we come to the next group of amendments—particularly the amendment in my name and his—we may be able to find some way of dealing with such special circumstances. I very much hope so, and I hope that Members on other sides of the House and in this Grand Committee will also see the advantage of coming to a firm decision, but one that is applicable throughout the United Kingdom, to deal with the particular problems which have been referred to at this stage.

I look forward with interest to how the Minister will attempt to square the circle. I am sure he will share with all of us the concerns expressed about the service that can be given to people in areas described in this debate. However, I do not think it necessarily will require a major change between the different nations, and therefore a diseconomy between the attitude that is given to Wales, Scotland and Northern Ireland and to other parts of the United Kingdom.

Lord Lennie (Lab): My Lords, thanks are due in particular to the noble Lords, Lord Hain, Lord Wigley, Lord Foulkes and Lord Grocott, for speaking to this amendment. Between them, they made the essential points. I will not go into too much detail of what I wish to say, but it is about the geography of Wales and Scotland and how that relates to the rest of the UK.

The noble Lord, Lord Hain, said that it has been a ruthless, if not brutal, exercise in seeing the proposed move from 600 seats to 650 seats. The noble Lord, Lord Foulkes, made the point that geographic size matters, despite the noble Lord, Lord Blencathra, saying that the noble Lord, Lord Hain, should dry his eyes and get on with it. That would be an unwise piece of advice, given the current state of the union in the United Kingdom.

The noble Lord, Lord Grocott, reminded us of the massive contribution that has come from Welsh and Scottish politicians to the whole of the UK, and it is hard to underestimate the numbers—we referred to Prime Ministers and others—who have come to represent this country.

The noble Lords, Lord Lipsey and Lord McNicol, made the crucial point: the impact that this decision will have upon the survivability of the UK. As we know, the SNP has a majority in Scotland and is promising, or threatening, another independence referendum. In Wales, the mood about whether it needs to strengthen its independence from the rest of the UK is getting stronger. If this Parliament gets this decision wrong, it will have those kinds of consequences. While I am sure that the Minister is thinking very carefully about this, I ask him to bear in mind the consequences on the whole of the UK of the decisions to be made about Wales and Scotland.

5.30 pm

Baroness Scott of Bybrook (Con): My Lords, the two amendments in this group seek to fix the number of constituencies of two nations. Respectively, they propose that, in Wales, there should be a minimum number of 35 and, in Scotland, the current number of 59 constituencies should be retained.

A number of noble Lords brought up the union, and I begin by reiterating that we are committed to equal representation across the United Kingdom and within the constituent nations of our union. Updated and equal boundaries will ensure that every constituent nation in the United Kingdom has equal representation in the UK Parliament and will deliver parity of representation across the United Kingdom's constituencies. The measures in the Bill that address fairness and equality are designed to strengthen the ties between the four parts of our country. We know that a vote has the same value whether it is cast in England, Wales, Northern Ireland or Scotland. Each voter's contribution to the important matter of choosing a Government will be even more clearly a shared and joint endeavour among all nations of the UK.

The Government strongly believe that, for something as important as the right to choose the Government of the day, equality and fairness must be the overriding principles. It is in everyone's interest that our political system is fair and that votes carry a more equal weight throughout the country. If we let some constituencies stay smaller than others, voters in those smaller constituencies will have more power than those in larger ones. That cannot be equitable.

I add that there are no proposals in the Bill to reduce the number of seats in Scotland and Wales—the Boundary Commissions decide on that at each review. If there were a mass population increase in any part of Scotland or Wales, they would get more seats than they already have, and that is the same across the whole United Kingdom.

I thank the noble Lords from Wales and Scotland. I wrote a list: from Wales, we heard the noble Lords, Lord Hain, Lord Wigley and Lord Lipsey, the noble and learned Lord, Lord Morris, and the noble Baronesses, Lady Humphreys and Lady Randerson. From Scotland, there were the noble Lords, Lord Foulkes of Cumnock, Lord Grocott, Lord Bruce of Bennachie and Lord McNicol. These noble Lords obviously love their countries and spoke very strongly for them, but this is not a Bill to discuss the geography of Wales or Scotland, or even, as we heard from the noble Lord, Lord Blencathra, the Lake District. The time for that is when the Boundary Commission comes in.

Within the current rules set out in the legislation, the Boundary Commission continues to take into account factors such as physical geographical features, including the mountains we heard about, rivers, local government boundaries and local ties. It is therefore important that all local people, from politicians to ordinary members of our communities, get involved. As politicians, we should be the ones to encourage people to get involved in those reviews. There will be written representations during the first consultation stage, public meetings in the second, and then a third consultation stage. That is when the issues raised so clearly by noble Lords this afternoon will be taken into account. The Boundary Commission rules say that they must be.

[Baroness Scott of Bybrook]

There are some other issues to raise. The noble and learned Lord, Lord Morris, talked about seats in Wales. I had a little look: the last time that Wales had 32 seats was in 1826. Interestingly enough, in 1945, there were two Scottish MPs for every Welsh MP. That is how unequal it was then; it is now three to two, but it still needs more work, that has to be said.

I also thank the noble Lord, Lord Blencathra, for his support, but I must say that, when the Scottish Parliament came into existence in 2005, Scotland took a reduction of 13 constituencies. It is important that Scotland, Wales and Northern Ireland have equal weight in our UK Parliament. It is Parliament that looks at tax, immigration and defence, which are important things for the people of the whole of the United Kingdom. Therefore, equal representation really matters.

There was quite a bit of talk from noble Lords about tolerance. Later in Committee, we will debate a number of amendments tabled on this issue. They are closely related: by setting a fixed or minimum number of constituencies in a particular area, they dictate that the Boundary Commission will not be able to apply the same tolerance in those places as it is obliged to implement elsewhere. Cementing certain numbers in Scotland and Wales—based, I assume, on your Lordships' hunch that those numbers sound about right—will enshrine electoral inequality. As I have tried to explain, that is exactly what we are trying to move away from.

Under the current legislation, a mathematical formula called the Sainte-Laguë method—I have notes on it but do not intend to explain it—is used to allocate constituency numbers to each of the four nations on the basis of their electorates. This method is widely used internationally and is recognised as one of the fairest ways to make this type of distribution. It is rational and just and should be maintained, not just for England and Northern Ireland but all four nations.

Amendments 14 and 23 take a very different approach. They ignore the notion that a vote in Aberdeen or Aberavon should be the same as one in Aylesbury. The ratio of citizens to MP should be broadly similar across the union. In effect, the amendments would establish separate and lower electoral quotas for Scotland and Wales, providing no justification to the electors of England and Northern Ireland for why that should be the case.

Based on electoral data from 2019, we could expect to see an average constituency size of approximately 67,500 people in Scotland and 66,000 in Wales, while all constituencies in England and Northern Ireland would be pegged to the UK average of approximately 72,500. In fact, the Boundary Commissions for those less-favoured nations might struggle to keep within a 10% range of the electoral quota because, as a result of Scotland and Wales's allocations being earmarked, they would have fewer constituencies than they might have usually expected over which to spread their electorates.

This approach is neither fair nor rational. It flies in the face of the equality that the Government seek to achieve for the United Kingdom and which was endorsed by the other place. I urge the noble Lord to withdraw his amendment.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): I have received requests to speak after the Minister from the noble Lords, Lord McNicol and Lord Lipsey. I first call the noble Lord, Lord McNicol of West Kilbride.

Lord McNicol of West Kilbride (Lab): I want to come back to the Minister. The Government seem to put all their weight behind the equality of the number of electors within constituencies, and have said that all the arguments from all the noble Lords who spoke in the debate are irrelevant because we would move away from equal votes of equal weight across the nations.

How does the Minister explain the exemptions that there are already in place for the islands? Yes, they are islands, but in accepting that they are special cases because they are islands, you are accepting the premise that there can be exceptions. I think that, with the arguments made—specifically the point about protecting the future of the union—these exceptions for Wales and Scotland should outweigh this crass, simplistic, mathematical argument.

I just repeat, because it is really important: under our current electoral system, which I support, if we were to make the changes proposed in the Bill and constituencies were of a similar size within quite a small variation, a single vote in Lerwick would still not be the same as a single vote in Luton. With our electoral system, you cannot make that argument.

Baroness Scott of Bybrook (Con): The five protected constituencies are islands, as the noble Lord has already said, and I think an island is different. The islands need to be of a certain size in order to merit this, but I think that is correct.

I have mentioned the fact that it is for the Boundary Commissions to listen to these arguments about the specifics of constituencies, and that is not just for constituencies in Wales and Scotland; I am sure, as we have heard already today, that similar issues may arise in certain parts of England. Each constituency is unique; every single MP in this country will say that they have a special constituency with unique features which needs unique ways of dealing with these issues.

So, I am sorry, but I do not agree. I think that islands are different, and that is why we have further brought the Isle of Anglesey into this. Any local issues of geography and community should be brought up with the Boundary Commissions when they do their reviews.

Lord Lipsey (Lab): I will just, if I may, correct the Minister on a minor point. She listed among the Scottish Members present my noble friend Lord Grocott. As he was born in Watford, educated at Leicester and Manchester and represented English seats, including The Wrekin, I wonder if she might withdraw that little error.

Baroness Scott of Bybrook (Con): I am sorry; I am very happy to withdraw that. He was supporting the cause of Scotland.

Lord Hain (Lab) [V]: My Lords, I thank all who have participated in the debate, beginning with my noble friend Lord Wigley, whose passion for Wales wins huge respect and affection not just in Wales but in your Lordships' House.

My noble friend Lord Foulkes spoke eloquently about Scotland, but I think that he will nevertheless agree that Wales is impacted far more punitively and that this amendment is far more moderate than his.

I also applaud the noble Baroness, Lady Humphreys, for making the point that twice as many voters trust the Senedd as trust the UK Parliament. That is a pretty salutary figure. She also made the point that there has been a rise in support for independence from a frankly derisory figure that would disappoint my noble friend Lord Wigley up to nearly a third—a point also made by a self-adopted Welshman, my noble friend Lord Lipsey. This should worry the noble Baroness the Minister.

I express gratitude to my former MP neighbour, my noble and learned friend Lord Morris of Aberavon, who has served in public life with such distinction. I agree strongly with his phrase about the wholesale "wrecking" of representation in Wales, which this Bill represents. It is important, as he says, that people know who their MP is.

5.45 pm

I say as gently as I can to the noble Lord, Lord Blencathra, that to say that MPs in Wales have half the workload shows profound ignorance. We should recall that a great bulk of work, especially in recent years, has fallen on MPs in Wales—social security matters under the Department for Work and Pensions are held by them, as are immigration issues. These are hugely complex, time-consuming and difficult cases. It is simply not the case that they have half the workload of English MPs.

My noble friend Lord McNicol and the noble Lord, Lord Bruce, talked about the cavalier approach to the union. The Minister should take that issue much more seriously than she did, but she paid no respect to it at all. As the noble Baroness, Lady Randerson, said, Wales is a special case. She noted pointedly that, while England will have 10 more seats, Wales will have at least eight fewer. Those facts speak for themselves as to where this Government's priorities are.

I thank my noble friend Lord Lennie for his response and the noble Baroness, Lady Scott, for reminding us that Wales had 32 seats—although it was way back in the 19th century, before the great increases in population which subsequently happened with industrialisation and mining. With respect to her, to pass the buck to the Boundary Commission as being responsible for the number of seats in Wales is sophistry. The Minister and her Government are straitjacketing the Boundary Commission for Wales, as with Boundary Commissions elsewhere.

Nobody disputes the principle of equalisation; it has governed Boundary Commission recommendations for generations and is the basic principle on which the commissions for all parts of the United Kingdom have worked. The question is how that principle is applied. If it is just applied willy-nilly and rides roughshod over local traditions, community identities, interests, geography and all such crucial issues—including, in Wales's case, a unique topography—then the Government may say that equalisation should be applied in this rigid fashion, but it will not then result in equal representation if barriers are put in the way of constituents trying to reach their MPs. It turns on its head the traditional role of a Boundary Commission, going back years and years—generations—by straitjacketing its remit. It strips off its ability to apply that principle in the way that it has always been applied: to respect local issues and local communities, instead of riding roughshod over them as the Bill does.

I appeal to the Minister to look again at this amendment, and for the Government to consider supporting it on Report. It is not asking for the status quo; it recognises the Government's desire to move towards greater equalisation. However, it does so in a less harsh way, with a less punitive impact on representation in Wales. If the noble Baroness and her Government want to speak for Wales as a UK Government, in the way that they claim, then they should respect Wales. This amendment, in suggesting a reduction of five, to 35, has legislative precedent. That legislation entrenched that principle while recognising Wales's special interests, as I have tried to argue. I hope that she will reconsider her response and that the Government will consider supporting it, as it is my intention to bring it back on Report.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): Meanwhile, does the noble Lord beg leave to withdraw it?

Lord Hain (Lab) [V]: I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

Clause 5 agreed.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): A little later than we planned, the Committee will now adjourn for 15 minutes.

5.49 pm

Sitting suspended.

6.06 pm

The Deputy Speaker (Lord Bates) (Con): My Lords, we now come to the group beginning with Amendment 15. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate.

Amendment 15

Moved by ***Lord Lennie***

15: After Clause 5, insert the following new Clause—

"Electorate per constituency

(1) Rule 2(1) of Schedule 2 to the 1986 Act (electorate per constituency) is amended as follows.

(2) In paragraph (a), for "95%" substitute "92.5%".

(3) In paragraph (b), for "105%" substitute "107.5%"."

Lord Lennie (Lab): My Lords, if we did not know it before, we now know that this will be an important issue, and it might go on for a little while. I do not intend to delay progress with a lengthy speech. I want to make what I think are the essential points about

[Lord Lennie]
7.5% replacing 5% tolerance levels in the Bill. Incidentally, we can almost safely ignore the amendment from the noble Lord, Lord Forsyth, which is coming later, to reduce the size of tolerance to 2.5% as simply ridiculous. It is never going to happen—but I know it will be debated.

So why 7.5%? It would set variance levels against the normal size of constituencies to allow the Boundary Commissions sufficient latitude to determine where boundaries lay. Incidentally, when the figure of 600 constituencies was proposed, 5% tolerance levels were still part of the proposed legislation that never saw the light of day. That would have given a variance higher than the 7.5% based on 650 constituencies, given that the size will significantly reduce. Therefore, the numbers do matter to the argument. This is important to constituents because it will make it less likely that they will move from one constituency to another, allowing MPs, as we heard on the previous day in Committee, to build bonds and relationships with their constituencies.

The reason why 7.5% seems sufficient comes from evidence taken in the Commons Select Committee from Dr Rossiter, who demonstrated that having tolerance levels of up to 8% has a significant impact on constituencies—and after that it is a diminishing return. I therefore argue that 7.5% is a better level at which to set tolerance than, say, 10%, which will be argued by my noble friend Lord Lipsey, because the amount of benefit between 7.5%, 8.5%, 9.5% and 10% is significantly less than on the way up to 7.5% from a 5% tolerance level.

There is a difficulty in the redistribution of, say, 16,000 electors to neighbouring constituencies in the event of one ceasing to exist, and the knock-on effect is felt most in neighbouring constituencies. However, it is not just in these that the impact happens; it happens as a ripple effect across county areas, beyond these into other counties and so on. That impacts on the relationship between constituencies and local authority boundaries and therefore makes it more likely that we will have ward splittings and all kinds of other means by which the Boundary Commissions can set constituencies at the 650 level with the 5% tolerance applying within them.

The ripple effect becomes more of a wave. Therefore, by giving tolerance levels the variation that we seek, you reduce the disruption to electors and the impact on the relationship between elected representatives and constituents, and you increase the political stability that is felt and needed in terms of the ongoing relationships that exist between constituents and their representatives.

In giving this presentation, I am also grateful to Greg Cook, who is a long-time researcher of these things. He has conclusively shown that these variations are not the thing upon which outcomes of elections are decided. This is not a partisan plea from the Labour Party to seek greater influence in the outcome of elections. What determines these outcomes are events that take place as a result of Governments' and Oppositions' competence in responding to the challenges that they face: the "events", as Macmillan called them, not the size of the tolerance levels around constituencies. If you broaden the tolerance levels, you give the Boundary Commissions a greater chance of getting constituencies that are right and felt to be so by communities and their elected representatives.

So I ask the Government, before concluding this position, to think carefully about what works best in the interests of the whole nation.

Lord Grocott (Lab) [V]: My Lords, these various amendments remind us of a fundamental and inherent contradiction in a key aspect of this Bill. That is to say that, on the one hand, we are told repeatedly by the noble Lord, Lord True, and the noble Baroness, Lady Scott, that the whole heart and function of the Bill is to provide as near as possible arithmetic equality in the way in which constituency boundaries are determined, and that that is the thing that matters most. Some quite elaborate language is used to describe "fair votes" and "equal votes"; I stopped jotting down the number of times that these phrases were used by Ministers but, when *Hansard* is available for this Committee stage, I will make a little note of them all, because this is at the heart of the justification throughout.

That is on the one hand but, on the other hand, of course, we have—as has been mentioned from time to time—the section of the Bill dealing with protected constituencies, where precisely the reverse applies. It says that mathematical accuracy is an irrelevance and that what matters are geographic matters and cultural issues, as well as issues of accessibility, natural boundaries and the rest. For the avoidance of doubt, I emphasise that I totally agree with there being constituencies in that category. All I am saying is that some of the common sense that has led to that decision should be applied to the other 645 constituencies in the United Kingdom.

Even if you take barriers and natural boundaries—the sea is one, of course—the best that Ministers could ever say was that they are all islands, but of course some of them are made up of several islands. While the sea is a barrier, so is a mountain range or a river estuary, when it is difficult to get from one side of the estuary to the other. There is nothing in the rules that prevents you having anything other than constituencies that go across river estuaries because you have to keep to the precise mathematical formula.

6.15 pm

What we should be trying to do, and what the amendments are trying to do, is not to try to square the circle and say that all constituencies should be excepted constituencies—and not, as the Government certainly do not say, that all 650 constituencies should have endless possibilities of variation. The amendments would provide significantly greater flexibility and thus allow for all the things that we know are important, as they always have been, in drawing constituency boundaries. This was fundamental to many of the arguments in the previous group of amendments about Scotland and Wales. You do not want to rip up communities and establish random connections just to get the electorate up by a few hundred votes. You do not want constituencies that straddle a mountain range. I could go on, as we all could, because we all know different parts of the country so well.

Whichever of the amendments is taken—I prefer the one with the largest possibility of variation—in my view, all of them are trying to attach a logic to the Bill as a whole, which the Government have failed to do. I hope that the Minister sees the sense of this and will adopt one or other of these proposals.

Lord Tyler (LD) [V]: My Lords, I wish particularly to speak in support of Amendment 16 in my name and that of my noble friend Lord Rennard. Inevitably, I need also to refer to some of the others in this group which offer slightly different solutions to the fundamental problem with this Bill that we all agree is so apparent. I hope that the noble Lord, Lord Grocott, will break the habit of a lifetime and support a Liberal Democrat proposal, because I think that it would absolutely and precisely meet the circumstances to which he has just referred.

All those who have been carefully examining the psephology on which this Bill is predicated will have been hugely indebted to the independent and non-partisan academic analysis by the late Professor Ron Johnston and his colleagues. This was the core of the evidence presented to the Commons Public Bill Committee. In brief, it proved conclusively that the proposed very limited 5% permitted variance in almost all constituencies, except of course for the five exempted ones, was not an essential requirement in the context of the Government's anxiety to improve the equality of vote value that they repeatedly claim to be their objective in this legislation. My noble friend Lord Rennard will give further details of that analysis.

Meanwhile, there is common ground across your Lordships' Committee that the insistence on the 5% variance straitjacket, imposed on the four Boundary Commissions, will result in the following problems: first, more changes with 650 constituencies than were proposed with the previously proposed 600 constituencies; secondly, more regular changes for more constituencies and more reviews; thirdly, more consequent knock-on changes even to adjoining constituencies that are themselves within the prescribed limits; fourthly, more disruption of historic and naturally cohesive communities; and, fifthly, more disconnection between MPs, councillors and the public, at more regular intervals, than is either necessary or desirable. It is disruption which is going to be the name of the game if we let the 5% stand.

We were told during the coalition that these latter reasons were basically those that motivated the then Conservative Leader of our House to recommend to the Prime Minister that the variance be 10%. I mentioned on Tuesday that some 20 of those who contributed to the Second Reading debate, from all parts of the House, expressed concern about the 5% limit at present in the Bill. We can, perhaps, take it as read that there is a strong argument for more flexibility. The question in this debate is how we should adjust the figure.

Our Amendment 16 recommends a normal 8% variance but permits each of the Boundary Commissions to explore the validity of 10% where exceptional circumstances demand it, in each of the nations of the UK. That would be very relevant to the concerns expressed about local problems to be addressed in the previous debate. This might include avoiding crossing major administrative boundaries—for example, in English counties and unitary authorities—or greater problems of rurality and limited transport links, or other special factors. Paragraph 5(1) of Schedule 2 to the 1986 Act makes detailed references to which we can refer and to which our amendment refers. My noble friend Lord Rennard will pay special attention to some of those.

I recall that in my then North Cornwall constituency, before boundaries were redrawn, to drive from one advice surgery at one end to the next one at the other end could take 90 minutes in winter but up to 150 minutes at the height of the summer holiday season. The noble Lord, Lord Grocott, might note that that involved getting around an estuary. Let us compare that with some inner-city constituencies where a similar electorate can be conveniently served by a short cycle ride or even an energetic jogger.

As has been emphasised by all participants at all stages of the Bill, our prime concern should be for the effect on the individual residents, groups and communities in a distinct area rather than their political representatives or local political parties. That is why we prefer our formulation in Amendment 16 to those in Amendment 15 or Amendment 17. The former seems to us too restrictive and not to recognise the special local circumstances to which I have referred. Some areas will certainly require more variation than 7.5%. I think that is widely acknowledged across the Committee. The latter provides so much variation universally that it fails to accept the significance of a smaller number of potential constituencies with unusual requirements. However, the common cause we all recognise is that the unacceptable level and regularity of disruption, implicit in this current 5% straitjacket, must be avoided. Between now and Report we may be able to achieve a consensus on the optimum solution.

Finally, I suspect that the author of Amendment 19 has not had the advantage of educating himself by reference to the exhaustive independent academic analysis to which I referred earlier. The rest of us hope that the Minister will accept the strength of the case for greater flexibility that so many of your Lordships are advancing. I hope that he is listening.

Lord Lipsey (Lab): My Lords, I think the noble Lord, Lord True, had only just entered the House, in 2010, when we did the 2011 Bill late into the night, night after night. I do not know how that relates to his extreme reluctance to draw any time limit to business tonight or determination to get to the Government's target. We may well make it anyway, but it would be very disappointing if we were left short of time to have these important arguments. Indeed, it would only prolong Report in a way that none of us would really want to see.

I will focus, because I do not want to speak for any longer than I have to, on the central logic that underlies the Government's proposal of 5% in this Bill, which, as the Minister said earlier—I thank him giving me the text—is that each vote must have the same value. The Government realise that they cannot achieve that just through boundary changes. The only way for each vote to have equal value would be to have PR on a national scale, and then each vote would have equal value indeed. I suspect that there is no majority even

[Lord Lipsey]
in this Committee that would favour that approach; most of us would like to see a preservation of the constituency-based system, for very good reasons. Therefore, we do not want to see complete equality of votes.

The more you look at this proposition of the equal vote, the less it stands up. First, the Bill does not pretend to provide equality of votes; within the 5% each way margin, it provides equalities of electorates, which are very different things, because turnouts are very different in different seats. The Government are not even potentially achieving the objective that they have set themselves of equality of votes. Equality of electorates is no doubt a useful surrogate, and you could imagine a system—I could design one, given a few months—in which the Boundary Commission was told to project the likely turnout in each seat, and do that within 5% each way. I do not think that that would prove a very comprehensible system, although it would certainly be a sensible and logical one if you really wanted to equalise votes. But the Government do not really want to equalise votes—they just say they do. They just want to equalise electorates, and there it can.

The second problem with this argument about equalising votes is that only some votes count. Only votes in marginal seats count; all the rest of the seats are in large piles. The occupants of safe seats build up huge majorities, and they make no difference whatever to the national result—nor, when people go and cast those votes, have they any reason to think that it is even remotely possible that their act of civic discipline will change the result of the general election one iota. This is not a sensible goal when most votes do not count under the system that the Government provide.

Thirdly, if you start to look at results and not just high theory, we actually have a gross inequality in votes. Each Conservative Member at the last general election had the support on average of 38,300 voters. For each Labour MP there were 50,800 votes. But to get a Liberal Democrat in required 336,000 votes nationwide, so there is a factor of 10 in the efficiency of vote use against the Liberal Democrats. Interestingly, with all this talk about Scottish and Welsh representation, it may be said that the present system greatly favours Plaid and the SNP. The SNP needed only 26,000 votes per seat, and Plaid only 36,000—less, even, than the Conservatives, so they were favoured by it. But it is a grossly unequal system. There may be good reasons for that, but it is not an equal system. It takes the wind out of the argument that this is somehow a Bill about inequality.

Let us get away from electoral theory and go into the practice of the matter. What you are trying to do with boundaries is to weigh up various important factors and reach some kind of balance. There is no religious solution or mathematical formula that does it for you; you are trying to get to a reasonable solution. Yes, reasonable equality of votes is one factor that should be taken into account. We do not want to go back to Old Sarum, with its two voters choosing a single Member. There has to be reasonable equality between the sizes, but there are many other extraordinarily important factors that have to be weighed.

6.30 pm

The most obvious of these factors is geography. Later in our debates we will come, no doubt, to the question of whether the fact that one thing is an island and another thing is not should make a difference to what we do electorally, but geography is very important. We do not want Welsh MPs to have to go up to the head of their valley, go across and then down to the bottom of the next valley to make a seat. That is important. Local ties are terribly important. Many former Members of the House of Commons have told us what they think about the importance of local ties, local loyalties and, indeed, reasonable consistency over time as to what a constituency is. Local government boundaries are very important: it is extremely hard for a Member of Parliament to deal with multiple local authorities in the course of his work. Ward boundaries are of some importance, albeit probably less.

All these factors have to be weighed to get a sensible amount of variation. Personally, I thought we managed pretty well in the days before we had a set limit laid down, but it seems we are to have one, so what should it be? We have a wide choice before us: 2.5% from the noble Lord, Lord Forsyth, 5% from the Government, 7.5% from the Labour Party, 8%, and 10%. I could go through at great length, as we did in 2011, the anomalies that crop up under each to see how many there are and how bad they are. Like other noble Lords, I took the advice of the great psephologist Ron Johnston and his colleagues about it at the time and it seemed that 10% was a good result. Indeed, I think it is true to say—the noble Lord, Lord Rennard, will put me right if I am wrong—that, in the midst of the Government's Bill being torn to shreds in this House, the Leader was quite happy to go to 10%, which would have solved an awful lot of problems, but the Prime Minister of the day was so cross with us for daring to interfere with his perfectly formed legislation that he would not allow it. We therefore got a Bill that never actually took effect. How extraordinary: all those hours into the night and the Bill was stillborn.

Why was it stillborn? Why did the Government not go ahead, especially when, on all the psephological calculations, the new boundaries on the whole would have suited the Conservative Party reasonably well and the Labour Party less well? I referred to this in my speech on the first day in Committee. It was because bedlam broke out in the parliamentary Conservative Party. It is all very well saying, "This is good for the party nationally", but if it messes up your seat, you will not have it. There was a stream of people going into the Whips' Office saying, "We can't back this", "You've got to stop this", "No", "Go back on it". The stream became so great that it was not the Lib Dems who sank it in the end, but very sensible Conservative Back-Benchers who were not prepared to have their constituencies mucked around to achieve some chimerical equality that was, in fact, no equality at all.

Generally in politics people learn from their mistakes, but the Conservative Party seems to find that extremely difficult to do. Yes, it has gone from 600 back to 650 and that is an improvement. I am slightly sorry that my own party sees that as enough of an improvement and has not put up the fight I would have expected on

the wider question of these limits. I very much hope that the Government will change their mind—10% would be great and I would happily settle for 7.5%, but 5% would be a disaster. If they stick to their guns, it will not be this year that their Bill is ruined, but when Conservative MPs realise what they have done to themselves. A lot of these are newly arrived MPs, after all, from red wall areas, half of whom were not expecting to be there in the first place. They will find that their newly won seats will be destroyed by their Government's own legislation. They will not like it, and neither should we.

Lord Foulkes of Cumnock (Lab Co-op) [V]: My Lords, it is a great pleasure to follow the erudition of my noble friend, in every sense of the word, Lord Lipsey, whose amendment I support. He gave us a very good analysis of the Minister's obsession with equal votes, pointing out that in safe seats, it does not have much of an influence. He also referred to turnouts. There is also the scandal of non-registration of many people who ought to be on the voters' roll. There is a whole range of issues there and no one knows them better than my noble friend Lord Lipsey.

I did not want to intervene after the speech by the noble Baroness, Lady Scott of Bybrook, but I was a wee bit disappointed by her response to the last debate. I am afraid that she did not seem to understand some of the issues. I hope she will do some homework before we get to Report, because this is a very important matter. As I gather from the conversations that took place while we were adjourned, everyone agrees that this is an important issue.

We will come again to the general issue of flexibility at the next session of the Committee when we deal with my amendment in relation to local ties versus arithmetic, and the constant obsession with getting each constituency arithmetically as near as possible to the others rather than taking account of local ties. This matter and others that we have already debated are all part of the issue of getting some flexibility.

The Government seem to be obsessed with 5%. The Minister needs to explain why 5%. Why have they come across this? Why is 5% particularly the figure that they have arrived upon? I look forward to hearing the explanation. My noble friend Lord Lennie in his introduction argued the case convincingly, using some very powerful arguments, for much greater flexibility.

I look forward with even greater fascination to an explanation by the noble Lord, Lord Forsyth, of why 2.5%. I cannot think of any rational explanation whatever, except that, for once, the noble Lord may want to make the Government appear reasonable by making 5% a good balance between 2.5% and 10% It would be an interesting occasion to see the noble Lord take this opportunity to make the Government seem reasonable. Usually, he is—effectively and correctly—undermining, challenging and questioning of what this awful Government are up to.

I support my noble friend Lord Lipsey's amendment. I want more flexibility so that council boundaries can be taken account of in Scotland, as well as Scottish Parliament boundaries, natural boundaries such as rivers, estuaries, lakes and mountains, and community ties as well.

When I was thinking about arbitrary lines, I remembered how the British imperialists in Africa drew straight lines and said, "This side is Uganda and this side is Kenya", or whatever it was, not taking any account of community or historical connections whatever. It was just appropriate so that the British masters went in and ran their parts of the Empire, and they were arbitrarily drawn. Maybe this is not quite as arbitrary as that situation, but it reminded me of it. We must take account of local interests and community, of where people shop and where their schools are; all these kinds of ties need to be taken account of.

That is why I think 10% is the right figure. It does not mean that there has to be a variation of 10%; it just gives the Boundary Commissions flexibility. The commissions need to look at the constituencies carefully, and if they do not think there needs to be a big variation then they will take account of that.

I strongly support my noble friend Lord Lipsey's amendment, and I am looking forward with real excitement to the following speaker, my "noble friend"—I use inverted commas because he is not my noble friend politically but he is in other senses of the word—Lord Forsyth explaining how 2.5% can be in any way be sensible.

Lord Forsyth of Drumlean (Con) [V]: I am very happy to follow the noble Lord, Lord Foulkes. I am not sure he is right about me not being supportive of the Government. I am very supportive of the Government, but it is our role in this House to hold the Government to account.

I did not speak at Second Reading. I thought it was a perfectly sensible Bill implementing a pledge from a manifesto on which the Government obtained a substantial majority, and that pledge was to update and create equal parliamentary boundaries. The Bill has been supported by the House of Commons, whose main concern this is, so I am very surprised that so many colleagues in the House of Lords want to second-guess the electorate and indeed the Commons by seeking to amend it in the way that I have listened to today and that I have read in previous debates. I am delighted that the Government have abandoned the coalition idea of reducing the number of constituencies from 650 to 600, and I very much support the Bill.

I have to say that I was hugely amused by the speeches from the noble Lords, Lord Lennie and Lord McNicol, on an earlier set of amendments, passionately arguing against what is intended here, which is to create equal constituencies. This is a measure that people have argued for since the last century; indeed, it was a central plank of the Chartist movement that they wanted 300 electoral districts consisting of equal numbers of inhabitants. I take the point that we have not yet got to the stage where the electoral roll includes all the inhabitants, but we can and should work towards that as part of a good democracy. However, for people whose heritage in the Labour Party is the Chartist movement to argue that we need something different from that when the Bill seeks to achieve it, and when the voters in the general election endorsed it so strongly, was, shall we say, interesting. The Bill seeks to introduce those equivalent constituencies.

[Lord Forsyth of Drumlean]

The noble Lord, Lord Foulkes, said that he thought 10% was the right figure. I have to tell him that plus or minus 5% is a 10% variation, and plus or minus 10% is a 20% variation. These numbers that appear small are actually very large if they are plus or minus. My amendment would simply recognise that when people talk about 5% they are really talking about plus or minus 5%, and therefore it suggests that the figure should be plus or minus 2.5% to allow for a 5% variation between constituencies. The noble Lord, Lord Lennie, just dismissed that out of hand and said it would not happen. I have news for the noble Lord, Lord Lennie: I do not think any of these amendments are going to happen because this measure is what the Government won an election on proposing.

What has been central to the debate this afternoon, at Second Reading and elsewhere is that you have to choose. Either you have identifiable communities or you have equivalent votes. This Bill is about equality of seats.

6.45 pm

There have been a certain number of holier-than-thou speeches. The noble Lord, Lord Lipsey, said that the decision to try to reduce the number of seats from 650 to 600 was because it would advantage the Conservative Party. Well, it is true that people in the Conservative Party thought that, because there were so many Labour seats that had a very small number of electors relative to other seats. I have been through Boundary Commission reviews and seen the way in which political parties hire QCs and go to great efforts to suggest that this river or this mountain or this local authority ward should be in a constituency, having worked out what the electoral consequences would be for them—particularly in marginal seats. We all know that that happens. To suggest that it is all based on some high-minded view of what the local community represents is to miss a lot of the stuff that happens in smoke-filled rooms, and with all the political parties—although I have to say that my own party has never been as successful as the Labour Party in these matters. Of course it is important to take account of geographical and other factors, but it cannot be right that we have constituencies where the electorate is twice that of others.

On the theme of the gerrymandering tendencies of the political parties, I very much welcome the introduction in the Bill of automaticity. We saw in 1969 the way in which the Labour Party tried to legislate to stop the boundary review being implemented, and we saw what happened in 2011. Our earlier discussions on Amendment 12, moved by the noble and learned Lord, Lord Thomas, covered some of this ground.

Indeed, back in 1997 when I was Secretary of State, before the electorate asked me to leave my office and constituency, under the rules as they were then, I had to sign to implement the Boundary Commission report, which I knew would destroy my chances of holding my constituency. I had to sign my own death warrant. I did that without a second thought because it was the right thing to do, but I have to say that that has not always been the position of Governments from all political parties.

So I welcome the fact that we will have equal constituencies and that we are going to have arguments based not on political advantage, as they often are, but on genuine geographical concerns. Like the noble and learned Lord, Lord Morris, I think that there is merit in automaticity.

I want to pick up on one point, on which I have been silent because of the extraordinary procedures we have that prevent us intervening. Trying to link this matter to the issue of saving the union is very shoddy politics indeed. The whole devolution exercise in Scotland was implemented by a Labour Party that boasted that devolution would kill nationalism stone-dead and saw it as a way of preventing separatism. Someone said in an earlier debate that we should not take the devolved nations for granted. Well, it is also time that we did not take England for granted. We should understand that it is important to stop referring to the Westminster Parliament and to refer instead to the United Kingdom Parliament, and recognise that in the United Kingdom Parliament all constituencies should be of roughly equal size, leaving aside the exceptional issues that arise with the islands.

The pleas that the Committee has heard to move away from the terms of the Bill because of devolution seem to ignore the fact that we now have 120 MSPs in Scotland and 60 Members in Wales as a result of devolution. It is argued that it is somehow essential to treat the United Kingdom Parliament constituency sizes differently, yet there are these additional politicians. I must say, I do not meet many members of the electorate who think that we should have more politicians.

If my noble friend the Minister decides to stick with plus or minus 5%—which is not a new innovation, of course—I hope that he will at least take into account my view that he should perhaps be thinking about plus or minus 2.5%. If I have helped to make him look reasonable, as the noble Lord, Lord Foulkes, suggested, then I am proud of doing so because I know of no one more reasonable than the noble Lord, Lord True.

Lord Shutt of Greetland (LD): My Lords, the amendments in this group are mainly to do with promoting constituencies that are genuine, from a community standpoint, rather than percentage purity. Percentages are useful, but they are a tool; community and geography should trump them. The Committee just heard from the noble Lord, Lord Forsyth, on his amendment, which would make the job of the Boundary Commissions even more difficult than the Government have. The House of Commons Library tells us that the quota is likely to be in the area of 72,600, so 2.5% either side of that would mean a flexibility of no more than 1,800 either way—that is people, not percentages. This would be far less than most local government wards and would lead to the splitting of both wards and polling districts in all but the smallest of rural wards. That amendment would make a poor Bill worse.

The other three amendments all attempt to improve the lot of the Boundary Commission in, hopefully, getting cohesive constituencies based on genuine communities. The flexibility offered by the 5% tolerance from the quota gives 3,600 people—not percentages—either side of it. Amendment 15 would move that up to 5,400. Amendment 16 would move it up to 5,800, or

7,260 in certain cases. Amendment 17 would shift the figure to exactly 7,200. An amendment being tabled next week would move it up to 10,900 in Wales. I trust that we can manage to consolidate these amendments at a later stage.

One of the fallacies of being in the grip of percentages is that the 5% used in the 2018 proposals for the 600-seat House of Commons—which are now well behind us—gave a tolerance of 3,900. These present proposals would reduce that further, as the noble Lord, Lord Lennie, alluded to earlier.

I often try and look at the other fellow's viewpoint. We can learn a little of Her Majesty's Government's thinking by going back in history. Over the years, the inner-city constituencies lost population and the suburbs increased. Conservative politicians thought that meant that their constituencies were disadvantaged. Perhaps the breaking down of the "red wall" might change that a bit.

I am pretty certain that greater flexibility will assist principally in giving, let us say, a modest-sized town its own seat, rather than having to lose a bit of it to another seat or having to take in a small part of a rural area just to make up the numbers. It is of course far easier to use the building blocks of wards and polling districts to build constituencies in large cities. Small towns and large seats in rural areas are the ones that will really benefit if we can change this business of percentage purity. I hope that we can do something to make the geography and community sense of our constituencies real for people to absolutely understand.

The Deputy Chairman of Committees (Lord Bates) (Con): With the consent of the noble Lord, Lord Hayward, I call the noble Lord, Lord Blencathra, next.

Lord Blencathra (Con): My Lords, these are important amendments—among the most important in the Bill. I congratulate all noble Lords who have made such telling arguments about the need for flexibility so that communities and local links are retained intact, and made them with a straight face and an earnest tone. For a moment or two, I was almost convinced, then I came back to reality.

All of us in this Room may not in a technical sense be noble friends, but we are political colleagues. Let us in the closeness of this Room, with no one listening in, be honest with one another about the arguments that we have all made to inspectors hearing constituency boundary inquiries. All noble Lords who were MPs, myself included, have sat at inquiries and made the most earnest arguments that boundaries should be changed or not changed because, as I said at Second Reading, they conformed with local travel-to-work areas, social habits, local boundaries, communities, cultural norms, mountains, lakes and rivers which could or could not be crossed, motorways, shopping habits or ancient history such as the routes followed by King Edward III when he invaded Scotland in 1356.

It is always a pleasure to listen to my pal, my noble friend Lord Foulkes of Cumnock; I think that he would have made an excellent governor-general in parts of Africa in his dress uniform and cocked, plumed hat. However, I care to bet that, at some point in his distinguished career as a Member of Parliament for Carrick, Cumnock and Doon Valley—is that not a magnificent name?—the noble Lord would have quoted Rabbie Burns as justification for including or excluding a part of Ayrshire. After all, there were few parts of the county to which Rabbie Burns did not wander in his travel to work as an exciseman or travel for favours in pursuit of many bonnie Jeans and bonnie lassies.

I think that I had a run-in my noble friend Lord Hayward who, wearing his hat as a national Conservative Party expert on constituencies, had a plan for boundary redistribution in Cumbria. At that time, Carlisle had about 50,000 electors, while I had more than 80,000 and the largest geographical constituency in England. Thus it made sense that part of my constituency should be added to Carlisle. I opposed it on the selfish basis that I did not want to give away part of my 18,000-strong majority, and the Labour Party strongly opposed it on every ground under the sun when the real reason was that it was afraid that an influx of Tory voters would lose it the seat. I recall us arguing for the creation of a new seat in Cumbria that was more than 100 miles long and banana-shaped, stretching from Barrow-in-Furness in the south and up the west coast, taking in Maryport and Whitehaven and almost reaching Carlisle. We said in all honesty to the inspector that this was a traditional travel-to-work route and a shopping route, and that people did this for recreation et cetera. The inspector said that, in that case, he would drive it next day and check it out for himself. I do not think that the poor fellow was ever seen again, lost in the wilds around Sellafield.

7 pm

The arguments made by Labour, Lib Dem and Conservative MPs were all bogus, as everyone in this Room knows. It was happening in every constituency, not just in Cumbria. What we were all after was getting a constituency boundary with sufficient wards to give us a safe majority so we could give away enough of our own supporters so that we could take the neighbouring seat for our party. That is a perfectly legitimate aim. Let us be honest about it. Let no former MP now in this House deny that that was indeed the game—because we all played it for political advantage. Thus I do not accept that we should have all the flexibilities argued for by the movers of these amendments.

When I wrote my notes, I did not know exactly what the new theoretical average constituency size would be. I took 78,000 as an example. I now understand it will be about 76,000, but my figure is perfectly valid for the comparisons I will now make. The current law would permit constituencies to range by 10%. It is not 5%. It is 5% down and 5% up, which is a range of 10%, from 95% to 105%—or, in my calculations, from 74,100 electors to 81,900. That leeway of 10% is a considerable number: 7,800 electors. I much prefer my noble friend Lord Forsyth's amendment, which would restrict that to a range of 76,050 to 79,950.

Amendment 15 would make the range 15%, from 72,150 to 83,850, or a range of 11,700 electors. Amendment 16 is slightly worse. It would make the

[Lord Blencathra]
range 16%—not 8%—or from 71,760 to 84,240, or 12,480 electors' difference. Amendment 17 is by far the most extreme, making the range 20%. If the average electorate is 78,000, this amendment, if approved, would permit deviations as low as 70,200 or as high as 85,800, or a 15,600 variation. If this amendment were to be accepted, we could have a constituency with 70,000 electors sitting next door to one with almost 86,000 electors. That is preposterous and there is no electoral justification for that. There are no legitimate arguments for having constituencies with sizes varying by almost 12,000 in Amendment 15, over 12,000 in Amendment 16 and almost 16,000 in Amendment 17.

Integrated communities of that size do not exist as coherent electoral units any more. Just as people no longer have loyalty to one supermarket—apart from some Waitrose and Ocado customers, it seems at the moment—there are no longer party loyalties. People do not care who is their MP. This talk of a relationship between electors and MPs is nonsense. If it were true, seats would not change hands.

Electors no longer think that they have to operate in strict district, county or unitary authority guidelines. Let us not kid ourselves that local ties to an MP are important. They are now irrelevant. Even if they were important, the time has come for change. Local council boundaries are not nearly so important now as in the past. My former constituency of 1,500 square miles stretched from the Irish Sea to over the Pennines. I had one county council, three district councils and, while all of it was in England, we had Scottish postal codes in some of it, as well as Cumbrian pupils going to school in Northumberland. Health trusts covered different wards from the water utilities, which were different from the gas and electricity suppliers.

The only really silly boundary I had was a little stream between Cumbria and Northumberland, which ran right through the middle of the village of Gilsland. Electoral law did not permit it to remain intact and put it wholly in Cumbria or Northumberland. That is just one reason why the Boundary Commission must have the flexibility to cross district and county lines.

The electorate will not care one way or another. They simply want someone to deal with their problems, and they do not care whether it is one MP on one side of the street or a different MP on the other. It is all irrelevant these days, especially since we have the insidious single-issue pressure groups, whereby electors bypass MPs and try to get the law changed by mass political pressure rather than by MPs taking an overall view on the balance of duties and responsibilities, freedoms and liberties.

In conclusion, I congratulate my noble friend Lord Forsyth on the points that he made about saving the union. It is nonsense to say that we should increase the number of MPs from Wales or Scotland in order to save the union. I am sure that if we increased the number of MPs from Scotland to 100 or 200, Sturgeon would not immediately stop campaigning for an independent Scotland—no way. I cannot see Scottish electors saying, "Oh well, that's okay then. We've got double the number of MPs in Westminster, so we shan't vote for independence".

Therefore, I hope that my noble friend the Minister will reject Amendments 15, 16 and 17 as driving a coach and horses through electoral fairness. Although I like the sound of Amendment 19, I am content to stick with the current variation.

Lord Hayward (Con): My Lords, perhaps I may pick up on a number of points that have been raised by other noble Lords before I move on to commenting on the core points that I want to make.

First, I pick up on the comment made by the noble Lord, Lord Lipsey, in relation to the loyalties of constituents. If the Committee will indulge me, I am pleased to say that constituents are loyal on many occasions, and MPs are loyal to their constituents. One of my former constituents, Gary Sheppard, retires today as a doorkeeper in this House. I had the pleasure of refereeing him on a number of occasions, and I am wearing my Bristol referee's tie as a compliment to the doorkeeper who is retiring this evening. I wish him well in his retirement.

I move on to the different interpretations of percentages. My noble friend Lord Blencathra gave some calculations, but perhaps I may indicate that, certainly going on the December 2019 electorates, the projection would probably be that the average constituency of 650 seats would be around 73,000, rather than the slightly higher figure that he gave. However, that does not deny the point that he made. I certainly did not come to blows with him over what he said when he argued with me. I remember Sir Michael Fallon making exactly the same point when I worked for the Tory party on a national basis. Basically he said to me, "What you want is two seats with 7,000 majorities and I want one seat with a 14,000 majority." That sums up the view of most Members of Parliament when one is trying to deal with the issue on a national basis.

As for arguing that you follow the route that one English monarch followed when invading Scotland, that is for mere beginners. I remember listening to Hazel Blears argue that there was a distinct difference between Salford and Manchester because Salford predated Manchester in the Bronze Age. I think that that was the term she used, but certainly it was very common to go back way beyond the Norman invasion, and Roman times were cited on many other occasions.

There is a difficulty with a 5% target, although I support it. It provides a reasonable range, as my noble friend Lord Blencathra indicated. People talk of going down to 2.5%, 3% or 3.5%. Australia has scales of geography and difficulty way beyond ours in terms of distance, yet it operates on a target of 3.5%. I think that 5% provides a good range, and I say that because the presumption is that 5% will be the cause of all the problems. The noble Lord, Lord Foulkes, made the point that one has to adhere to local ties. The other day I cited the existing legislation, which goes unchanged. Rule 5 quite specifically says:

"A Boundary Commission may take into account, if and to such extent as they think fit—(a) special geographical considerations …; (b) local government boundaries …; (c) boundaries of existing constituencies; (d) any local ties that would be broken by changes in constituencies; (e) the inconveniences attendant on such changes."

Those rules are not changing.

However, the problem people start to identify is on the supposition that everything is perfect at the moment and that all will fall away if we have a 5% rule rather than a 7.5% rule. The noble Lord, Lord Lennie, identified that that is not the case because it does not change political allegiance very often. He cited Greg Cook's research. Greg Cook and I have shared many a hearing in one part of the country or another and I respect him enormously, but it denies what the noble Lord, Lord Lipsey, said, which is that people were storming in to see the Whips because they discovered that they were going to lose their seats because the range was 5%. They discovered that they were going to lose their seats for a whole series of other reasons, but it was not to do with 5%. It probably had a lot more to do with the fact that the number of seats was going down from 650 to 600 and you cannot force a quart into a pint pot.

I will give some examples of the difficulties one has at the moment. Take the MP for Carshalton and Wallington, who was formerly a Liberal and is now Elliot Colburn. He cannot get from one part of his constituency, Clock House, to the rest of his constituency without going out of it. Tom Brake likewise could not do so.

Equally, Lancaster and Fleetwood is split by a river. If you go from Fleetwood to the rest of the constituency, you have to go out of the constituency and through two other constituencies, I believe, to get back into the other part, except for the fact that you could, if you were lucky, catch the ferry. But the ferry finishes at 5.45 pm, so if you have an evening engagement or surgery you will have to drive round. This is not something that is specifically new.

If Jon Cruddas leaves the core of his constituency and visits Rush Green, the main route he follows, which he does not have to take, takes him into Andrew Rosindell's constituency. Why? Because the boundary of Barking and Dagenham borough is based on the grounds of Barking Abbey, which existed in the 15th and 16th centuries. It makes no sense. Rush Green is very close to the centre of Romford and it should not be part of the other constituency, but it is.

Any noble Lord who knows the Albert Hall and the Albert Memorial will know that there is that slight sliver at the top of Knightsbridge—the museum area—which is part of Westminster. Logically, it should be part of Kensington. Why is it not part of Kensington instead of Westminster? Because Queen Victoria did not want Bertie in the suburbs, was the phrase she used.

A thin finger of land links Newmarket with the rest of Suffolk. I think that I am right in saying that if the Secretary of State gets off the train at Newmarket station he is in his constituency, but if he gets on it on the other platform he is in a neighbouring constituency. There are houses to the south that are not in his constituency. There is a vast range of these circumstances right across the country already where problems exist.

Boundaries do change. I represented what used to be the city and county of Bristol. It then became the county of Avon. It shifted its boundaries. I am a Devonian by birth. My father is Cornish by birth. The boundaries of Devon and Cornwall constituencies have changed. They are not immutable, as some Cornish friends of mine would maintain. The constituencies shifted in the 1960s. A series of problems already exist.

There is no question that there are problems with the ranges. Statistically, if you move to a broader range, you are likely to solve some of the problems. Some of the evidence has been identified, but as I said, I think that 7,000 and a bit is a good range.

7.15 pm

Reference has been made to David Rossiter and Ron Johnston's research. I am looking at the document which they published in July 2014, *Equality, Community and Continuity*. They identified that with a bigger range some problems are clearly solved. But another, better way of solving a problem is by splitting wards. The English Boundary Commission is the exception among the four: it had always been unwilling to split wards, until the second aborted review. Faced by the difficulties there were, it then chose to accept some splitting of wards in South Yorkshire and the West Midlands.

The splitting of South Yorkshire's wards was agreed by Clive Betts and me while sat in Portcullis House. We made a joint submission on how we split the wards in Sheffield. The noble Lord, Lord Blunkett, was a bit unfair this week on the commission because it does in fact hold boundary hearings in major cities. I checked the figures overnight with the Boundary Commission; the Sheffield hearings have been relatively poorly attended. That is no fault of the Boundary Commission. It has advertised them, as it has in other places.

Ward splits solve some of the problems, but the significant thing is that quite a lot of them are not solved by increasing the range. Even if we go to a much bigger range, well beyond 7.5% or 8%, the wards we have in some of the big cities will still not be resolved. These are places such as Bradford, Manchester, Leeds and much of Birmingham—despite the recent changes in its boundaries—Wakefield, Kirklees, Bromley, parts of Croydon and Greenwich, Wandsworth and Tower Hamlets. It is not just the big, historical cities. There are wards in Milton Keynes, Southampton and Portsmouth which are beyond the ranges, unless you go up to 10%. Just increasing the range does not solve the problem.

I hope and believe that the English Boundary Commission will be willing, as it was in the second aborted review, to accept splitting of wards in places where you cannot solve the problem other than by having incredibly weird constituencies. The Boundary Commission came up with some very bad ones but, significantly, it changed them after representations from the different political parties.

Looking at the paper which Johnston, Pattie and Rossiter produced, they identify in tables 17 and 18 what range of seats in counties that have problems might be resolved by increasing the range and what problems are solved by splitting wards. It is quite clear that far more are solved by splitting a few wards in some places. Most other counties, where the majority of seats are situated, do not face the problem because their electorates are in general between 4,000 and 6,000. On the basis that, as far as I am concerned, first, there are already problems that are not solved by

[LORD HAYWARD]
increasing the quota and, secondly, there is another part to the solution through ward splitting in a very limited number of places, we can progress to a reasonable set of boundaries across the whole United Kingdom.

Debate on Amendment 15 adjourned.

The Deputy Chairman of Committees (Lord Bates) (Con): That completes the work of the Committee for today. The Committee stands adjourned; I remind Members to sanitise their desks and chairs before leaving the Room.

Committee adjourned at 7.19 pm.