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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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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 22 October 2020

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of London.

Introduction: The Lord Archbishop of York

12.07 pm

Stephen Geoffrey, Lord Archbishop of York, was introduced and took the oath, supported by the Archbishop of Canterbury and the Bishop of London, and signed an undertaking to abide by the Code of Conduct.

Arrangement of Business

Announcement

12.11 pm

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

Royal Assent

12.11 pm

The following Acts were given Royal Assent:

Sentencing Act,

Extradition (Provisional Arrest) Act.

Arrangement of Business

Announcement

12.12 pm

The Deputy Speaker (Lord Brougham and Vaux) (Con): My Lords, Oral Questions will now commence. Please can those asking supplementary questions keep them to no longer than 30 seconds and confined to two points? I ask that Ministers' answers are also brief.

Almshouses

Question

12.12 pm

Tabled by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what assessment they have made of the role of alms houses in the provision of housing for the elderly.

Baroness Wilcox of Newport (Lab) [V]: On behalf of my noble friend Lord Kennedy of Southwark, and with his permission, I beg leave to ask the Question standing in his name on the Order Paper.

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): The Government welcome the important role that almshouses play in helping to meet the housing need of older people, providing them with homes in a safe and secure environment. They enable residents to retain their independence in the locality of their choice and within easy reach of their relatives and friends.

Baroness Wilcox of Newport (Lab) [V]: Does the Minister agree that the modern and progressive almshouse movement for the 21st century has much to offer older people in communities by providing much-needed housing, but that it needs support to address the challenges of updating their constitutions and developing modern governance models? My noble friend Lord Kennedy is a trustee of United St Saviour's, a charity that is building a new almshouse in Southwark Park Road. When conditions allow, my noble friend would be delighted if the Minister would visit that site with him.

Lord Greenhalgh (Con): My Lords, I am very happy to accept the kind invitation of the noble Lord, Lord Kennedy, to visit the almshouse. I recognise the important contribution made by almshouses in providing that kind of housing. I believe that they provide 36,000 homes for elderly people who otherwise would not have accommodation of that sort.

The Lord Bishop of London: My Lords, I declare my interests as stated in the register. The Church of England continues to provide excellent almshouses provision as a support to older people through its charities. There are over 30,000 almshouses in the UK and more than 1,000 new ones have been built in the last decade. Another 750 are in the pipeline, providing places of flourishing and support for the elderly. However, the complexities of the buildings themselves prohibit modern building standards being achieved. Will the Minister comment on whether Her Majesty's Government will provide grants for local almshouse charities to upgrade their facilities within the complex planning frameworks associated with these buildings?

Lord Greenhalgh (Con): My Lords, I thank the Church of England for the contribution it has made to the almshouse movement, particularly in London. I remember the Lygon Almshouses in my local authority. This is a problem for all forms of sheltered and secure accommodation; much of it needs to be upgraded. I will take away the right reverend Prelate's point and write to her, if I may.

Lord Mackay of Clashfern (Con) [V]: My Lords, I am a vice-patron of the almshouses. Is there a place for this excellent organisation in the Government's awaited policy for social care?

Lord Greenhalgh (Con): My Lords, I thank my noble friend for raising the issue of the support that goes with the bricks and mortar in terms of social care for the elderly and frail. These are very complex questions to address, but I would point out that the Government

[Lord Greenhalgh]
have committed £1 billion of extra funding every year for more social care staff and better infrastructure, technology and facilities.

The Deputy Speaker (Lord Brougham and Vaux) (Con): The noble Baroness, Lady Greengross, has withdrawn, so I call the noble Baroness, Lady Warwick of Undercliffe.

Baroness Warwick of Undercliffe (Lab): My Lords, I declare my interest as in the register. Many almshouses are provided by housing associations with low-cost housing, often in rural areas, helping to tackle the problem of isolation experienced by so many older people. One of the biggest, which I know well, is Durham Aged Mineworkers, and only this morning I was talking to the marvellous care provider Brunelcare in Bristol. Care homes right across the country desperately need support, particularly in these difficult times, and the long-awaited reform of social care funding is an opportunity to look at housing need right across the country. Can the Minister confirm when the Government will bring this forward?

Lord Greenhalgh (Con): My Lords, I point out that the Government have seen 140,000 affordable homes delivered by local authorities in rural England since April 2010, and I will write to the noble Baroness on that matter.

Baroness Grender (LD) [V]: Does the Minister agree that almshouses are welcome but do not fill the gap identified by the Housing Learning and Improvement Network, which projected a shortfall of 400,000 units of specialist housing for older people in the next 15 years? Can he therefore tell us how many new social—not affordable—housing units are to be created specifically for older people to avoid the unsuitable alternative, which is inevitably the private rented sector?

Lord Greenhalgh (Con): My Lords, I have pointed out that there are 36,000 almshouses. However, there are 700,000 specialist supported and secure accommodation homes for people in this country. In addition, the affordable homes programme includes 10% towards specialist housing—but I will write further if I can provide any assistance on that point.

Lord Young of Cookham (Con): My Lords, will the current review of the planning system consider exempting almshouses from the infrastructure levy, which is raised at differential levels throughout the country, thereby freeing up the finances of these charitable institutions to continue to deliver homes to those in need?

Lord Greenhalgh (Con): My Lords, my noble friend makes an incredibly important point: we want them to continue their endeavours without being burdened by the community infrastructure levy. We are currently consulting on the proposals for reform set out in the planning White Paper. We will listen carefully to all representations made, including those from almshouses.

Lord Foulkes of Cumnock (Lab Co-op) [V]: My Lords, if the Government gave some money to these almshouses, it would not only provide safe and secure accommodation for more older people but would free up larger accommodation for families with young children. I do not think the Minister answered the question from the right reverend Prelate the Bishop of London: will they seriously consider giving financial assistance to the almshouses to enable them to look after more older people?

Lord Greenhalgh (Con): My Lords, respectfully, I feel that the almshouse movement is an extension of philanthropy which sits outside the state social housing system. There are some that elect to be registered providers. It is important to recognise that the Government are providing a great deal of support towards the new build of affordable housing, both intermediate and social. Of course we want to see almshouses continue to thrive, and I point out that in recent years we have seen the greatest growth in modern times—since the Victorian era—so something is going right with regard to new build.

Lord Best (CB) [V]: My Lords, almshouses are important providers of homes for older people, but the annual programme of housebuilding for this age group by all private and social providers has fallen dramatically from over 28,000 homes 30 years ago to only around 7,000 today. Does the Minister agree that government, Homes England, the GLA and local planning authorities should once again give greater priority to homes specifically for our ageing population?

Lord Greenhalgh (Con): My Lords, the noble Lord, Lord Best, is an expert on this, and I remember his Housing our Ageing Population panel and discussing with him the benefits of extra care and supported housing for the elderly when I was leader of Hammersmith and Fulham Council. The noble Lord is quite right that we need to provide housing of all types, for all needs, and specifically for our elderly, but that has to be private as well as social care. This is very much part of the Government's thinking in the planning White Paper in relation to housing of all types and tenures.

Baroness Verma (Con): My Lords, does my noble friend not agree that it is time to rethink urban planning and how multigenerational households can live together, and to slow down the constant building of flats in cities, which outprices and overlooks the benefits of community living for both younger and older people? Would my noble friend be willing to meet with a brilliant Leicestershire businessman who is looking at doing this there?

Lord Greenhalgh (Con): My Lords, I thank my noble friend for that invitation. I am always looking to get out and about, particularly in these difficult times, so I would very much welcome doing that as soon as it can be organised. I point out that we need housing of all types and tenures. It is not just about volume; we need enough family-sized accommodation and the right accommodation for our elderly, and it is about

getting that balance. It is not just a drive for numbers; housing of all types and tenures has to be the name of the game.

Baroness Scott of Needham Market (LD) [V]: My Lords, the regulations for VAT that govern charities which own buildings—and therefore have to maintain, repair and enhance them—are extremely complex to administer. Will the Minister consider talking to his Treasury colleagues to see how these may be simplified? It seems perverse to direct charitable giving to the Treasury.

Lord Greenhalgh (Con): My Lords, as a humble entrepreneur and businessman, I say that we all want to see things thrive, and being weighed down by bureaucracy is not a good thing, so I am happy to make those representations on the noble Baroness's behalf to colleagues in HMT.

The Deputy Speaker (Lord Brougham and Vaux) (Con): My Lords, all supplementary questions have been asked.

Covid-19: Gig Economy

Question

12.23 pm

Asked by ***The Lord Bishop of Oxford***

To ask Her Majesty's Government what assessment they have made of the impact of the COVID-19 pandemic on the gig economy.

Baroness Penn (Con): My Lords, the Government have stood by businesses and workers with one of the most comprehensive and generous packages of support globally. We are working intensively with employers and industry groups to understand the long-term effects of Covid-19 and specific challenges to businesses and workers, including in the gig economy. Following announcements of further measures to control the spread of Covid-19, we are continuing to monitor the impact of government support in different sectors.

The Lord Bishop of Oxford [V]: I thank the Minister very much for her Answer. While the job coaches and extra provision made may improve the CVs and present conditions of those forced into the gig economy, they will do nothing to improve the security or the working conditions of those so precariously employed and poorly protected. Therefore, will the employment Bill provide a clearer definition of what counts as an employer-employee relationship? How will it stop platform employers retaining all of the profits while socialising essential costs such as sickness pay or a basic pension in old age?

Baroness Penn (Con): My Lords, the Government announced an employment Bill in the Queen's Speech, and details of that will be brought forward in due course. But the Government are not waiting for that Bill to take action to ensure that the gig economy, while it remains flexible, is also fair to the workers who work within it. Since the Taylor review, we have legislated for a number of stronger protections for workers, including extending the right to a written statement of core terms of employment and quadrupling the maximum fine for employers who treat their workers badly.

Baroness Redfern (Con) [V]: My Lords, the time when full-time jobs were secure has now long gone. Almost no full-time employee today can guarantee that they will be in the same position in a year's time. However, financial insecurity is much higher for gig workers and the self-employed, as highlighted more strongly during this Covid crisis. I ask my noble friend the Minister: what action can be looked at to address the issue of continual late payments for goods and services, as this has a very great impact on this sector?

Baroness Penn (Con): My Lords, I believe that this is something that falls within the remit of the Small Business Commissioner, and the Government have looked at increasing the enforcement of those provisions.

The Earl of Clancarty (CB): My Lords, a problem with the term "gig economy" is that, in practical terms, it incorporates a wide and varied group, many of whom have had vocational training and are self-employed by choice because of the nature of the work they do. Does the Minister acknowledge that there needs to be a sea change in the way the self-employed as a whole are regarded and that to support them through this crisis—and they need considerably more financial support—would be to protect an investment for the future?

Baroness Penn (Con): My Lords, the Government acknowledge the important work that the self-employed do across this country, and I am sure the noble Earl will welcome today's announcement that the support for the self-employed in the next two grants under the scheme will double from 20% to 40%, meaning that the maximum grant will rise from £1,875 to £3,750.

Baroness Blower (Lab) [V]: Your Lordships will be aware that thousands of gig economy workers are employed in the hospitality sector, which saw a decline of over 80% between April and June this year and which faces further uncertainty due to tier 3 regional restrictions. Will the Minister agree to consider the proposals in the hospitality rescue review published today by Unite the Union to protect jobs and the health and safety of these workers by, in particular, immediately establishing a tripartite hospitality commission of employers, unions and government to help secure the survival of this important sector?

Baroness Penn (Con): My Lords, the Government will look at all recommendations for what we can do to support the economy and businesses during this difficult time, including the ones that the noble Baroness mentioned. Today, the Government have announced more support for the hospitality sector: we announced grants for businesses that have to close under tier 3, but those that suffer a downturn in their business due

[Baroness Penn]
to tier 2 restrictions will also be able to access grants, which will be backdated for those areas that were already under similar restrictions before the tiered system was put in place.

Lord Taylor of Goss Moor (LD) [V]: The Chancellor's announcements today are welcome as they improve support for those in work and the self-employed, but I hope that the Minister recognises that there are very large numbers of people in all forms of the gig economy who are not getting support. In particular, I cite those who work in the arts and elsewhere, who will not currently have employment and have little hope of it, or those who are directors working through limited companies, who cannot now get income because they are not supported because they took their income through dividends. Does the Minister have any estimate of how many people have been excluded from support?

Baroness Penn (Con): My Lords, the noble Lord is talking about two of the support schemes: the Job Support Scheme, or the furlough scheme, and the self-employed scheme. Of course, for those who are not able to access those schemes, there are many other support schemes available, including bounce-back loans for businesses, where we have increased the generosity of those terms, and the Cultural Renewal Taskforce, which provides over £1.5 billion of funding to cultural institutions. One of the effects of this, we hope, will be that freelancers working in that sector will have more opportunities for work and be able to stay in the sector to which they contribute so much.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, the Minister mentioned the Taylor review, *Good Work*, which was completed in 2017. All of its recommendations were accepted. It contained important recommendations on closing the gap in law between the limited rights available to workers and the better rights available to employees. Will these be included in the long-awaited employment Bill?

Baroness Penn (Con): My Lords, as I said to the right reverend Prelate, we will bring forward the employment Bill, but I cannot preview what will be in it today. As I have also said, we have not waited for that Bill as the opportunity to make changes to the balance between flexibility for employers and flexibility for employees. We will continue to take measures to protect workers where we can.

Viscount Trenchard (Con): My Lords, I declare my interest as stated in the register. Is the Minister aware that the basis for allocations of Arts Council England's cultural recovery fund grants is widely seen as incomprehensible, arbitrary and unfair, leaving many viable festivals with no funding to repay hundreds of thousands of pounds to thousands of ticketholders who have not rolled over their tickets to 2021? Will she confirm that there will be an appeals process to ensure that the undistributed part of the grant can be allocated fairly to those whose applications may not have been properly considered?

Baroness Penn (Con): My Lords, I do not recognise my noble friend's description of the criteria for the allocation of grants under that fund. The Government have been clear that priority will be given to organisations with national or international reputation and to those central to the cultural fabric of our towns and regions. However, I will take my noble friend's point about an appeals process back to the department.

Lord Berkeley of Knighton (CB) [V]: My Lords, the word "gig" of course comes from music. I am afraid that the announcements today will not help the problem that I am about to enunciate. Does the Minister share my concern that, when we look at the Government's own figures for the Self-employment Income Support Scheme, it is alarming that only 34% of those who are self-employed in arts and entertainment have taken up the scheme? Therefore, without further support for those freelancers falling through the many cracks, we are at risk of losing highly skilled talent from our world-leading music industry.

Baroness Penn (Con): My Lords, 95% of those who get half or more of their income from self-employment would qualify for the self-employed scheme. As I have said to noble Lords, for those who do not qualify, it is not the only route of support that the Government are providing. We completely recognise the contribution of those in the arts to our country. That is why we have a specific fund dedicated to supporting cultural recovery.

Baroness Goudie (Lab) [V]: My Lords, as part of the seven steps towards fair and decent work with realistic scope for development and fulfilment outlined in the Taylor report, what will the Government do to ensure that this community has an opportunity for training and retraining, particularly in the tech industry?

Baroness Penn (Con): My Lords, a huge amount of support is going into the Government's plan for jobs, which has a focus on improving the amount of training and retraining available where people wish to take it up. That support is there. The entire plan is worth around £30 billion and will be in place to help those unable to find work in the current circumstances.

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

Northern Ireland: Commission for Victims and Survivors

Question

12.33 pm

Asked by ***Baroness Ritchie of Downpatrick***

To ask Her Majesty's Government what discussions they have had with the Commission for Victims and Survivors for Northern Ireland regarding proposals to address the legacy of the Troubles in Northern Ireland.

Viscount Younger of Leckie (Con): My Lords, the Government will bring forward legislation addressing the legacy of the Troubles to focus on reconciliation and deliver for victims. The Government engaged with the Commission for Victims and Survivors at both ministerial and official level, including the victims' commissioner and the Victims and Survivors Forum. We remain committed to making progress on this as soon as possible and will continue to engage with a range of stakeholders as part of this process.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, we need a victim-centred approach to the legacy investigations that delivers for families who have had to wait a long time for truth, that is balanced and transparent and that operates locally to rebuild trust. All these could be obtained under the Stormont House agreement and not through the Government's Statement of 18 March. Can the Minister assure me that the forthcoming legislation will provide for that victim-centred approach?

Viscount Younger of Leckie (Con): Indeed, the noble Baroness is right. She will know that legacy is one of the most complex, sensitive and profoundly important issues for the people of Northern Ireland, so it is important that the Government get it right. While progress on this has, like other priorities, been affected by the challenging wider circumstances of the past few months, I can assure the noble Baroness that the Government are moving as quickly as they can.

Lord Dubs (Lab) [V]: My Lords, the Minister will be aware that, for the families of victims, closure is a fundamental right, and waiting and waiting is just not acceptable. Can he say a little more about the proposed legislation to give effect to the Stormont House agreement? When will it be forthcoming? Does he realise that it is urgent, and that people are waiting anxiously for progress?

Viscount Younger of Leckie (Con): I can understand the noble Lord's interest and frustration. I am unable to give him a timetable, but I give further reassurance that we are committed to bringing forward legislation that focuses on reconciliation, delivers for victims and ends the cycle of reinvestigations into the Troubles in Northern Ireland. This is on the back of the consultation that he will know about.

Lord Bruce of Bennachie (LD) [V]: My Lords, when the commissioner, Judith Thompson, retired at the end of August, she said that legislation needs to be passed that has

"the full support of Victims and Survivors and is not a Westminster solution to a Northern Ireland problem."

Does the Minister accept that sound advice and recognise that, as she has not yet been replaced, a continuing role for a commission is needed? Do the Government support that, and will the Minister use his office to ensure that a commissioner is appointed and that the commission is properly supported?

Viscount Younger of Leckie (Con): The noble Lord echoes the wise words of the previous commissioner. Though he will know that the appointment of a new commissioner is a matter for the Northern Ireland Executive, I understand that the First and Deputy First Ministers are currently considering the options for the post of the Commissioner for Victims and Survivors.

Lord Caine (Con): My Lords, in dealing with legacy issues in Northern Ireland, will the Government always be mindful of the tremendous sacrifice of the Royal Ulster Constabulary and our Armed Forces, who are the real unsung heroes of the peace process? Furthermore, will they continue robustly to challenge those who seek to rewrite history to justify acts of terrorism, as, to his credit, the Secretary of State for Northern Ireland did recently in response to an appalling tweet by a serving member of the Northern Ireland Policing Board eulogising the Maze prison escape, in which one man died and another was shot in the head?

Viscount Younger of Leckie (Con): My noble friend is right to draw attention to the brief comments made by the Secretary of State. He, with many others, is working hard to help all communities in Northern Ireland move away from the past and look to the future, including giving hope to future generations.

Lord Singh of Wimbledon (CB) [V]: My Lords, the Troubles in Northern Ireland, like similar inter-religious disputes in other parts of the world, resulted from a misplaced emphasis on supposed irreconcilable religious differences. Does the Minister agree that the healing can result only from an urgent focus on far greater areas of commonality and shared self-interest in looking to a much better future for present and future generations?

Viscount Younger of Leckie (Con): The noble Lord makes an important point about reconciliation and, as I referred to earlier, looking forward rather than looking back. He is right: there needs to be a degree of urgency, despite the fact that Northern Ireland is dealing with huge issues at the moment due to Covid. However, focusing on information, recovery and reconciliation is the right way forward.

Lord Murphy of Torfaen (Lab) [V]: My Lords, I quite understand that the national emergency is causing a huge problem in dealing with issues such as this one but it is disappointing that we have no date for the legacy legislation; I hope that it will come soon. Does the Minister accept that any such legislation will be fruitless unless the Government recognise the importance of extensive and meaningful consultation with victims' groups, communities and stakeholders on these difficult issues? I know that he is in touch with many groups in Northern Ireland but this really has to be extremely extensive—including, of course, the Executive in Belfast.

Viscount Younger of Leckie (Con): The noble Lord, with all his experience of Northern Ireland, is right. I assure him that, since March, Ministers and officials have engaged with a range of stakeholders, including victim support groups, religious leaders and groups across academia and civic society. He is right that it is important to build on the huge work that was undertaken as a result of the consultation and move forward, bringing communities with us.

Lord Alderdice (LD) [V]: My Lords, while legal responsibility can be devolved, moral responsibility for past events cannot. For most of the years when people became victims in Northern Ireland, the Government and Parliament in London were directly responsible. Given how quickly the Prime Minister overruled the mayor of Greater Manchester for the sake of its population, can the Minister understand how victims in Northern Ireland feel rather abandoned by the delays in Her Majesty's Government after so many years in ensuring that their various needs are properly addressed—when necessary, obviating obstruction or intransigence in Belfast?

Viscount Younger of Leckie (Con): Yes. Again, I can hear the frustration in the comments made by the noble Lord. However, I assure him that, as he will expect me to say—it is true—this is a priority. There are other priorities but this is a priority, and I know that the various parties want to move ahead to address the long-spoken-about legacy issues.

Lord McCrea of Magherafelt and Cookstown (DUP) [V]: Does the Minister agree that innocent victims have been traumatised enough through a long and vicious terrorist campaign? They do not need a rewriting of the history of the past to excuse IRA terrorism but require proper justice, a recognition of their suffering and a hastening of the payment of pensions and compensation where appropriate.

Viscount Younger of Leckie (Con): I understand that the general theme from the noble Lord is focused on justice but we must be clear that, with the passage of time—he will know this—the number of convictions flowing from any investigative process is likely to be low. That is why, on the back of the consultation, we think that it is right to move forward, focusing on information recovery and reconciliation, which is a vital part of it.

Lord Trimble (Con): My Lords, these comments from other Members are what one would want to hear, in many respects, but we must remember that we are dealing here with the republican movement. I use that term to underline the extent to which and way in which it tries to present itself as something innocuous, wanting to rewrite the past—or, if it cannot do that, pretend or create a situation in which blame can be put on the security forces that have worked so hard over the years. We need to move forward on that carefully and understand the full nature of what we are dealing with.

Viscount Younger of Leckie (Con): That allows me to say, in response to my noble friend's question, that the focus is on looking ahead, not back, and on information recovery and reconciliation. Those two things should be at the heart of the revised legacy system, not looking back.

Lord Empey (UUP): Can my noble friend tell the House whether he or his colleagues have had discussions with the newly appointed Northern Ireland veterans' commissioner? Furthermore, is it now government policy that the historical inquiries unit proposed in the Stormont House agreement will not be established?

Viscount Younger of Leckie (Con): To follow on from my noble friend's question, we welcome the appointment of Danny Kinahan, the veterans' commissioner. It is good that he will act as a voice and advocate for veterans in Northern Ireland as they make the transition to civilian life. However, first and foremost, to answer the noble Lord's question, Mr Kinahan is already making himself accessible to veterans: he is listening to their needs and he is getting around the various parties to bring himself up to date with their interests, needs and wishes.

The Deputy Speaker (Lord Brougham and Vaux) (Con): My Lords, the time allocated for this Question has elapsed.

Armed Forces: Reduction

Question

12.44 pm

Asked by ***Lord Touhig***

To ask Her Majesty's Government what military (1) activities, (2) deployments, and (3) training, they plan to end following any reduction in the number of armed forces personnel.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, the Government continually review the balance between levels of activity, including deployments and training, and Armed Forces personnel resources. It would not be appropriate, obviously, to comment on specific matters that could compromise security.

Lord Touhig (Lab) [V]: My Lords, following reports that the Government plan to cut the size of the Army, Tobias Ellwood, the chair of the Defence Select Committee, said that this was "sheer madness" and completely wrong. I agree. I must tell the Minister that, if the Government downgrade the Army, they downgrade the vision of global Britain and our role in the world. The Minister is highly regarded in this House. All I ask of her is that she goes back to the MoD and tells her colleagues that the British Army is overstretched now and should not be cut further.

Baroness Goldie (Con): The noble Lord raises significant issues. His question impinges on two aspects: one is the integrated review and the other is the spending review. In relation to the latter, the spending review process continues in respect of the defence budget, and the Ministry of Defence is in discussion with the Treasury on the department's settlement. In relation to the integrated review, because of the decision to move to a one-year spending review, the Government are considering the implications for the completion of the integrated review and will provide an update to Parliament once that is decided.

Lord Browne of Ladyton (Lab) [V]: My Lords, on 30 September, when launching the Integrated Operating Concept 2025, the CDS described the UK's future

campaign posture as demanding and said—I shall read this in short—that we would see

"armed forces much more in use"

and

"engaged and forward-deployed"—

with

"training and exercising being delivered as operations"—

and that it would involve supporting other countries in a pattern of possible combat operations against common threats.

Since then, as well as anonymous government briefings that a cost-cutting Army will slash its manpower by 7,000, we learn from MoD evidence to the Defence Select Committee that by 2025, the Army will not even be able to meet the demands of the 2015 Strategic Defence and Security Review, never mind the IOC. Can the Minister explain those apparent contradictions?

Baroness Goldie (Con): The noble Lord is predicating his question on speculation and hypothesis. I can respond to his question only in relation to facts as I am aware of them. The core obligation of the MoD is, of course, to protect the UK and keep our citizens safe. We shall always prioritise how we respond to the threats that the UK faces. For example, the Armed Forces continue to meet all their current commitments, keeping the country and its interests safe.

Lord Wigley (PC) [V]: My Lords, in the event of land occupied by the Sennybridge training centre becoming superfluous to requirements, will the Government bear in mind how the residents of 54 farms on those 30,000 acres of land were, in 1940, given just three months to quit their farms, some of which had been farmed by their families for generations, on the understanding that the land would be returned to them after the war—something that never happened? If the MoD no longer needs that land, will it please pass it back to the farming community and work with the farming unions and Powys County Council to that end?

Baroness Goldie (Con): I apologise to the noble Lord but I am inadequately briefed to respond to his question in any meaningful fashion. I shall look at *Hansard*, take away what he has asked and see whether I can respond to him.

Lord Robathan (Con): My Lords, on one hand, we have Russian aggrandisement in Ukraine and elsewhere—and, indeed, concerning developments with China in the South China Sea. On the other, we have the usage of Armed Forces personnel to fight the current Covid crisis. It seems that the Armed Forces are already pretty stretched. Therefore, looking at the facts, as my noble friend the Minister said, can I urge her to follow up on what the noble Lord, Lord Touhig, said and take back to the MoD and Cabinet that now is definitely not the time to cut further our already much-depleted Armed Forces?

Baroness Goldie (Con): I repeat what I said to the noble Lord, Lord Browne of Ladyton, and assure my noble friend that we are always cognisant in the MoD of what we are there to do and what our priorities must be. We shall ensure that we have the resource to address those key priorities, which are, as I said earlier, looking after the security of the United Kingdom and protecting our citizens.

Lord Campbell of Pittenweem (LD): My Lords, in spite of what the noble Baroness has said, should we not be giving our allies an assurance that we will be able to fulfil existing obligations? I have in mind our leadership of the multinational battle group, which is part of NATO's enhanced forward presence in Estonia.

Baroness Goldie (Con): As the noble Lord is aware, the Government have committed to honour our spend commitment to NATO by spending 2% of GDP on defence. We also had a manifesto commitment to increase the defence budget by at least 0.5% above inflation every year of this Parliament. We are currently involved in the exercise to which the noble Lord referred, which is important. We are aware that the Baltic and north Arctic areas are strategically significant, and we will ensure that we have the key resources to address any emerging threats.

Baroness Warsi (Con) [V]: My Lords, I welcome the Government's commitment of up to £70 million to the Afghan national defence and security forces for 2021. Can my noble friend confirm how this amount differs from that in 2020 and 2019? If she does not have the figures, will she write to me? As violence escalates and there seems to be little progress on the peace talks, and as victims of the Taliban are still not being heard in the peace and reconciliation process, can my noble friend detail plans for our long-term, ongoing commitment to Afghanistan?

Baroness Goldie (Con): I will look at the specific issue to which my noble friend referred and come back to her with a more detailed answer. On the broader front, we do retain a presence in Afghanistan and are concerned about the current situation, which we monitor on a regular basis. We shall certainly try to ensure, through our colleagues in the FCDO, that the necessary protections are in place.

Viscount Waverley (CB) [V]: My Lords, resource allocation also requires understanding of the role of the Armed Forces in a moderately peaceful, democratic society, and the UK's preference for a non-interventionist approach towards foreign policy. However, should chemical, biological, radiological and nuclear capabilities, in addition to back-office activities such as cyber offence and defence, not now be bolstered and become centre-stage activities, together with mobilising the Army on Covid-related duties here and abroad, freeing up valuable resource as a result?

Baroness Goldie (Con): The noble Viscount identified two critical areas of activity. I agree with the importance that he attaches to them. As he is aware, we are positively responsive to these areas through our nuclear deterrent and our support for the Organisation for the Prohibition of Chemical Weapons. He will also be aware that the MoD is currently engaged in planning winter preparedness. We regularly review that, taking into account the possibility of our needing to be

[Baroness Goldie]
drawn on to meet MACA requests in respect of Covid. I reassure the noble Viscount that we are satisfied that we have the personnel and resources to respond to that.

Lord Thomas of Gresford (LD) [V]: The Service Prosecuting Authority is an independent organisation which receives its funding, in the region of £5 million annually, as part of the defence budget. Will the Minister assure the House that the Service Prosecuting Authority will remain fully manned and funded, in order to preserve its essential role in the pursuit of justice in the military?

Baroness Goldie (Con): The noble Lord is correct. The Service Prosecuting Authority is essential, as part of the framework under which our Armed Forces operate. I could not envisage a situation where that would not continue to be an essential and necessary structure of our attention to law and order in respect of activity by members of the Armed Forces.

Lord Ramsbotham (CB) [V]: My Lords, over recent years there has been a reduction in the number of activities that keep the military in the public eye. Will the Minister please tell the House whether anything is being done to address this reduction?

Baroness Goldie (Con): The noble Lord will understand that the pandemic has inevitably imposed restrictions on what it is possible to do. That is a matter of regret, but it is a necessity and we have to accept it. Annual events, such as Armed Forces Day, for which I have recently been involved in looking at planning and detailed arrangements, are one way of bringing to public awareness the important role that our Armed Forces perform and the debt that we all owe to them for the jobs that they do.

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

12.55 pm

Sitting suspended.

Guantanamo Bay Detainees

Private Notice Question

1.01 pm

Asked by ***Baroness D'Souza***

To ask Her Majesty's Government what representations they have made to the government of the United Arab Emirates about the possible repatriation of 18 former Guantanamo Bay detainees to Yemen.

The Parliamentary Under-Secretary of State, Foreign, Commonwealth and Development Office (Baroness Sugg) (Con) [V]: My Lords, we have not made representations to the Government of the UAE on their plans to return 18 former Guantanamo Bay detainees to Yemen. The UK regularly raises human rights issues with the UAE, and we remain deeply concerned about the human rights situation in Yemen. We will monitor the situation closely.

Baroness D'Souza (CB) [V]: I thank the Minister for what was a rather disappointing reply. UN experts have expressed deep concern about the 18 previous Guantanamo detainees, all of whom have been cleared of being terrorist suspects by no less than six USA security bodies. They have already undergone two decades of detention and mistreatment, first in Guantanamo and then in the UAE. Repatriation to Yemen would likely result in torture, disappearance and death.

Given the UK's principled opposition to the Guantanamo detention facility and the death penalty and its often-stated close relationship with the UAE, which allows it to raise sensitive human rights issues, will the Government now call on the UAE to release these men immediately from arbitrary detention and the threat of forcible repatriation?

Baroness Sugg (Con) [V]: My Lords, the case is ultimately one between the parties involved—the UAE, Yemen and the United States—but as the noble Baroness highlights, we remain committed to the promotion of universal freedoms and human rights. As she also highlights, we are more likely to bring about change through engagement, dialogue and co-operation. We will continue our relationship with the UAE and raise human rights issues both in private and in public.

Lord Collins of Highbury (Lab): I hear what the noble Baroness says but I repeat: these people have been arbitrarily detained and denied the right to a free trial, and they are now threatened with transportation to a place where they may be tortured, persecuted and killed. There is a clear opportunity for the United Kingdom Government to raise these concerns directly with the UAE. I hope that today, she will confirm that the Government will do that.

Baroness Sugg (Con) [V]: My Lords, the return of a person to another state where there are substantial grounds to believe that a danger exists of their being subjected to torture is prohibited under international law. I say again that we regularly discuss human rights issues with the UAE. We will continue to monitor events and cases closely and will continue to urge the UAE to uphold international and human rights obligations.

Baroness Northover (LD): My Lords, as the noble Baroness, Lady D'Souza, has said, these 18 men were cleared for release by six US security agencies and transferred to the UAE on the understanding that they would be reintegrated into society there. Will the Government oppose their continued detention in the UAE and call for their release and integration into UAE society? Following up on what the noble Lord, Lord Collins, has said, how will the Government actually carry through their human rights obligations here?

Baroness Sugg (Con) [V]: My Lords, as I said, the case is ultimately one for the parties involved: the UAE, Yemen and the United States. We will continue to engage with the UAE. We will raise concerns, as we do, at senior level, and we will continue to encourage the UAE to uphold its obligations and promote regional stability.

Lord Polak (Con): My Lords, I refer the House to my registered interests. It is absolutely clear that questions need to be answered by a number of international actors in this situation, and if lives are put in danger, pressure should be exerted. However, on the positive side, does the Minister agree that the UAE should be praised for its efforts to secure peace and stability in the region? The US-brokered UAE-Israel normalisation agreement is good news. Does she also agree that the fact that the UAE ambassador to the UK, Mansoor Abulhoul, gave his first interview to *Jewish News* last week, saying that the

"narrative that the Arabs should be in endless war with the Israelis is absolute nonsense and the Abraham Accords proves that"

is good news for all in the region?

Baroness Sugg (Con) [V]: My Lords, I join my noble friend in welcoming the news of the normalisation of relations between the UAE and Israel. This is a historic step that takes annexation off the table and is a real opportunity to restart talks between Israel and Palestine.

Lord Dholakia (LD): My Lords, none of the 18 has been charged with any crime in the UAE, and there is no indication of any rehabilitation process taking place there. They were all cleared by the US security agencies, including the Departments of Defense and of Homeland Security. They were all told they would be settled in the United Arab Emirates. This has not happened. We have a close relationship with the United Arab Emirates. It is no good simply saying, "We regularly discuss"; it is a question of the future of 18 individuals in Yemen. So, will she make every possible representation now?

Baroness Sugg (Con) [V]: My Lords, I am afraid I have nothing further to add to my previous comments, which were to reassure noble Lords that we do regularly raise human rights issues with the UAE. We have a close relationship with them, and we will continue to raise these issues as and when we are able to.

Baroness Uddin (Non-Afl): My Lords, in 2006, my noble and learned friend Lord Falconer said that the existence of Guantanamo was a "shocking affront to … democracy." Our illegal and immoral wars, causing untold deaths and mayhem in Iraq and elsewhere in the region, are a humiliating stain on our history. This screams out the question: could our Government have done more at that time to prevent the construction of what the man who was asked to construct it, US Marine Major-General Lehnert, described as the

"most notorious prison … that should never have been opened",

and which was created alongside other global detention centres to hold enemy combatants regarded as not suitable for prosecution?

I am deeply disappointed and disheartened by the Minister's response. If there have been no dialogues, can our Government ensure that those due for transfer will receive proper and independent legal representation and due care throughout the justice process and on their release? Surely, if this Government can lead in enabling justice, we may redeem some sense of international honour and good will.

Baroness Sugg (Con) [V]: My Lords, the UK Government's long-standing position is that the detention facility at Guantanamo Bay should close. We will continue to engage with the US Government on this issue, as we do on a range of national security issues in the context of our joint determination to tackle international terrorism and combat violent extremism.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I declare my position as co-chair of the All-Party Parliamentary Group on Hong Kong. I begin by commending the Government, who have spoken out both unilaterally and through multilateral channels on a number of occasions about the imposition of the national security law by China on Hong Kong. However, does the Minister agree that human rights are universal and that Britain should be standing up for them around the world, particularly when people are threatened, as they clearly are in Hong Kong? If Britain is standing up in the case of Hong Kong, why is it not standing up in the case of these men, who were clearly in imminent danger of their lives and subject to long-term abuse?

Baroness Sugg (Con) [V]: My Lords, I thank the noble Baroness for her words on Hong Kong and I welcome her commendation of our activity there. The UK takes great pride in standing up for universal human rights and freedoms. We will continue to do so with all our partners. We will continue to monitor this event and all cases closely and will continue to regularly raise human rights concerns with the Government of the UAE at senior levels, both in public and in private.

The Deputy Speaker (Lord Lexden) (Con): My Lords, all supplementary questions have now been asked.

Procedure and Privileges Committee

Motion to Agree

1.11 pm

Moved by ***The Senior Deputy Speaker***

That the Report from the Select Committee *Leave of absence; Committee rotations; Changes to procedure relating to legislation; Deletion of Standing Order 76; Wording in the Companion relating to "the closure"; Changes to Standing Order 64; and Legislative consent* (4th Report, HL Paper 140) be agreed to.

The Senior Deputy Speaker (Lord McFall of Alcluith) [V]: My Lords, the report proposes a number of recommendations to the House for changes to the Standing Orders and the *Companion to the Standing Orders*. As we explain in the report, these were agreed

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at the committee's meetings on 27 January and 9 March this year. At the time of those meetings, new editions of both the Standing Orders and the *Companion* were thought to be imminent, and the committee decided to present all the changes to the House when these new editions were ready. Work on the new editions was, however, paused when the coronavirus pandemic started, and the procedures underpinning the virtual and hybrid proceedings became the focus. More recently, on 6 October, the committee agreed changes to procedures regarding legislative consent Motions and we have decided to wrap up all the outstanding changes in this one report.

I shall briefly explain each of the changes outlined in the report. The changes to the process for taking a leave of absence from the House are to avoid any ambiguity in the use of the leave of absence procedure and to safeguard against Members using a leave of absence as an alternative to retirement from the House.

With regard to committee member rotations, we recommend that from January 2021, all Select Committee member rotations should take place at the start of each January. We recognise the unique situation of the European Union Committee and recommend that any "normal" rotation of EU Committee membership should be deferred until any changes to the structure of the EU Committee are implemented.

The Lord Speaker, Leaders, Chief Whips, Deputy Chief Whips, the Convener of the Cross Benches, the Senior Deputy Speaker and the chair of the EU Committee are already exempt from the rotation rule. We recommend that this exemption should be extended to any Member serving as a substitute for the Leaders, Chief Whips, Deputy Chief Whips or the Convener of the Cross Benches.

We recommend that Standing Order 64 should be updated to reflect the new committee names following the Liaison Committee report *Review of House of Lords Investigative and Scrutiny Committees: Towards a New Thematic Committee Structure*.

At our meeting on 27 January, we considered a paper proposing a number of modest changes to procedures relating to legislation. We agreed a number of those changes, and the details are set out in the committee's report.

Noble Lords will recall that, on 24 September 2019, the Supreme Court ruled that the Prorogation of Parliament was not itself a proceeding in Parliament but was a prerogative act of the Crown. The committee therefore recommends that Standing Order 76—

"Proroguing the Parliament at close of session"—

should be deleted to avoid the implication that prorogation is a proceeding of Parliament. We also recommend a number of changes to the *Companion* contingent upon this.

We recommend clarifying the guidance around the use of the closure Motion to make it absolutely clear that there must be a Question before the House before the closure can be moved, and to get rid of the wording suggesting it is a "most exceptional" procedure. On the Motion "That the noble Lord be no longer heard", the committee recommends making it explicit in the *Companion*, first, that this Motion prevents a Member speaking only on the specific Question before the House, rather than on the wider substantive Motion or stage; and, secondly, that it is not necessary for a Question to be before the House for "That the noble Lord be no longer heard" to be moved.

On the length of balloted debates on Thursdays, we recommend that the *Companion* should be amended to give the House greater flexibility to determine the length of balloted debates to more than the currently available options of two hours, two-and-a-half hours and three hours.

Lastly, I turn to legislative consent, which the committee discussed on 6 October. We recommend that when legislative consent has been refused or not yet granted by the time of Third Reading, a Minister should orally draw it to the attention of the House before Third Reading commences. In doing this, the Minister should set out the efforts that were made to secure consent and the reasons for the disagreement.

Noble Lords will no doubt have noticed a second Motion in my name on the Order Paper today, immediately following this one. That Motion seeks the House's agreement to changes to the Standing Orders that are consequential to the recommendations in this report. I beg to move.

Lord McAvoy (Lab): My Lords, I am sure that the whole House will pay tribute to the noble Lord, Lord McFall, for the work that he has put in and the very many suggestions that he has made. I am sure the whole House will support them. However, there is one issue that has arisen; it is entirely due to the situation we find ourselves in with the coronavirus and is no reflection on the House or the noble Lord. Recently, people have sometimes been scheduled to be in two places at the same time—for a Grand Committee debate and also on the Floor of the House. Will the noble Lord look at that and see whether there is a reasonable alternative to the current situation?

The Deputy Speaker (Lord Lexden) (Con): If no one else in the Chamber wishes to speak, I call the Senior Deputy Speaker to reply.

The Senior Deputy Speaker (Lord McFall of Alcluith) [V]: I thank the noble Lord, Lord McAvoy, for his remarks and I will most certainly look into this issue which has arisen subsequent to our proposals for changes. I will consult with the usual channels, including himself, and I hope we can get a remedy to the legitimate problem he has earmarked.

Motion agreed.

Standing Orders (Public Business)

Motion to Agree

1.19 pm

Moved by ***The Senior Deputy Speaker***

The Senior Deputy Speaker to move that the standing orders relating to public business be amended as follows:

Standing Order 22 *(Leave of absence)*

In Standing Order 22:

in line 1, leave out "Lords" and insert "Members of the House"

in line 4, leave out "Lord" and insert "member of the House"

in line 5, leave out "Parliament" and insert "session" in both places

in line 6, leave out "Lord" and insert "member of the House"

in line 6, leave out "his" and insert "their"

in line 7, after "application" insert "the date that they expect to return, the reason for their leave of absence"

in line 7, leave out "he has" and insert "they have"

in line 7, leave out the second "he" and insert "they"

in line 12, leave out "On the issue of writs for the calling of a new" and insert "At the end of a session of"

in line 13, leave out "Lord" and insert "member of the House"

in line 14, leave out "Parliament" and insert "session"

in line 15, leave out "he wishes" and insert "they wish"

in line 16, leave out "he expects" and insert "they expect"

in line 18, leave out "Lord" and insert "member of the House"

in line 22, leave out "Lord" and insert "member of the House"

in line 23, leave out "he" and insert "they"

in line 25, leave out "he wishes" and insert "they wish"

Standing Order 50 *(Printing of Bills brought from the Commons)*

In Standing Order 50:

in line 1, leave out "brought up" and insert "carried"

in line 3, after "sitting" insert "whether adjourned until a future day or during pleasure,"

in line 10, after "sitting" insert "whether adjourned until a future day or during pleasure,"

Standing Order 63 *(Committee of Selection)*

In Standing Order 63:

in line 3, leave out "Lords" and insert "members of the House"

at the start of line 4, insert "At the beginning of each January"

in line 5, leave out "Lords" and insert "members of the House"

in line 22, leave out "Lord" and insert "member of the House"

in line 22, leave out "Chairman" and insert "Chair"

in line 23, leave out "Chairman" and insert "Chair"

in line 25, leave out "Chairman" and insert "Chair"

in line 30, leave out "Lords" and insert "members of the House"

in line 35, leave out "Lords" and insert "members of the House"

Standing Order 64 *(Sessional Committees)*

In Standing Order 64:

(1) after "Communications" insert "and Digital"

(2) after "International Relations" insert "and Defence"

(3) after "Procedure and Privileges Committee" insert "Public Services Committee"

Delete **Standing Order 76** *(Proroguing the Parliament at close of session)*.

Motion agreed.

Covid-19: South Yorkshire

Statement

The following Statement was made on Wednesday 21 October in the House of Commons.

"With permission, I would like to make a Statement on coronavirus, further to the Statement made by my right honourable friend the Secretary of State for Health and Social Care last night.

This virus remains a serious threat, and over 1 million people have tested positive for coronavirus in Europe over the past week. Here in the UK, we recorded 21,331 positive cases yesterday—one of the highest recorded daily figures. Average daily hospital admissions in the UK have doubled in the past 14 days, and yesterday we recorded the highest number of daily deaths, 241, since early June.

We must keep working hard, together, to keep this virus under control. We have been vigilant in monitoring the data and putting in place targeted local measures so that we can bear down hard on the virus wherever we see it emerging. We have seen how local action can help flatten the curve, for example in Leicester and Bolton. This targeted local approach, supported by our local Covid alert level system, means we can have different rules in places like Cornwall, where transmission is low, from those in places where transmission is high and rising.

I would like to update the House specifically on the discussions we have been having with local leaders in South Yorkshire. The situation in South Yorkshire remains serious. There have been more cases in South Yorkshire so far in October—over 12,000—than in July, August and September combined. The number of patients with Covid-19 in intensive care beds has reached over half the number seen at the height of the pandemic earlier this year, and the latest data suggests that the numbers of patients on mechanical ventilation will soon be comparable to the first peak in March. We need to act now to prevent the epidemic in South Yorkshire from continuing to grow.

I am pleased to inform the House that, following discussions this week, the Government have reached an agreement with South Yorkshire on a package of

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measures to drive down transmission. That means that South Yorkshire—so the city of Sheffield, Barnsley, Rotherham and Doncaster—will be moving to the local Covid alert level "Very High", taking effect at one minute past midnight on Saturday morning. That includes the baseline measures to the very high alert level which were agreed by the House earlier this month.

As well as this, and as agreed with local leaders, unfortunately, casinos, betting shops, adult gaming centres and soft play centres will also have to close, and while gyms will remain open classes will not be allowed. On that point, the Liverpool City Region and my honourable friend the Member for Southport, Damien Moore, have also requested to bring their region into line with those measures. So gyms will be open and soft play centres will close in the Liverpool City Region.

We know that some of the measures I have announced today are challenging and will have a real impact on people and businesses in South Yorkshire, so we will be putting in place substantial support. That includes the job support scheme, which ensures those affected by business closures are still paid. Once topped up with universal credit, those on low incomes will receive at least 80% of their normal income. The agreement also includes additional funding of £11.2 million for the local area for local enforcement and contact-tracing activity. As well as that, we are putting in place extra funding so that local authorities in South Yorkshire can continue to support businesses through this period.

From the Dispatch Box, I would like to thank all the local leaders in South Yorkshire for the collegiate and constructive way in which they have approached the negotiations. I would like to thank all honourable Members representing constituencies in the region as well. We have worked across party lines to reach an agreement that will protect public health and the NHS in South Yorkshire, while also supporting those who need it most. I know those local measures will be hard and entail further sacrifice but, through bearing down hard on the virus wherever and whenever we see it emerge, we can help to slow the spread of this virus and protect our loved ones and our local communities. The agreement will help us to protect lives and livelihoods in South Yorkshire and I commend the statement to the House."

1.19 pm

Baroness Thornton (Lab): My Lords, the last few days have been very unfortunate. Arrogance, spitefulness and divisiveness seem to be the characteristics of the Government's approach to attempting to control the Covid infection these days. If I were being charitable, I might say that this is a product of panic and not actually knowing what to do next. If I were being less charitable, I would say that it is a characteristic of order by diktat, punishing and humiliating—or trying to—those who will not do as they are told when championing their communities. Thus, instead of dividing communities and bargaining with people's jobs, there needs to be a one-nation approach to bring this country together, get control of the virus and protect the NHS. We have not seen that this week.

The Mayor of Greater Manchester said that he felt that the Government were

"playing poker with places and people's lives through a pandemic".

He asked what that is about. Is that the politics of the Prime Minister, Mr Cummings and the Cabinet?

To underline what we are facing, on Tuesday, the number of UK deaths rose by 241—the highest daily reported rise since the first wave of the pandemic. Noble Lords might remember the ridicule Patrick Vallance suffered when his chart suggested that an unchecked virus would lead to 200 deaths a day by mid-November; we are in mid-October and we are at 241. Similarly scary were Jonathan Van-Tam's charts showing rising hospitalisation of the over-60s and the NHS medical director Stephen Powis saying that, on Wednesday, Liverpool hospitals will have as many Covid patients as they did at the height of the pandemic in April, and that Manchester hospitals will face the same record in two weeks' time.

If I might be political about this, I remind the Minister that many of the new MPs from those seats on which the Government's majority depends are learning the hard way what they signed up for: a great deal more than an oven-ready Brexit and quite the opposite of levelling up. They will have to go to their communities and justify: what the Government are doing and not doing; why children might not be properly fed over the winter months; why there will be a huge unemployment rate and businesses going to the wall; and, indeed, why the Covid infection rate is not responding to the sacrifices already being made in South Yorkshire, Manchester and other places in the north and the Midlands.

I will repeat some of the questions put in the Commons by my right honourable friend the leader of the Labour Party; perhaps I might get more coherent responses than he achieved. He asked,

"how does an area which goes into tier 3 restrictions get out of those restrictions? … If the infection rate, R, in a tier 3 area has not come below 1, will it be possible in any circumstances for that area to come out of tier 3"?—[*Official Report,* Commons, 21/10/20; col. 1053.]

If the criteria is not the R rate being under one, what is the criteria for moving from one tier to another? Millions of people need to know the answer to that question; millions of them are in tier 3 and millions are more likely to go into tier 3.

Last Friday, the Chief Scientific Officer said that tier 3 on its own would certainly not be enough to get the R rate below one but, on the same day, the Prime Minister said that there was only one chance of getting the infection rate down. So I repeat my right honourable friend's question: which is it? Let us try to find some clarification on the confusion. There is still no clarity about how any local area gets out of tier 3 restrictions, nor any guarantees that communities will get the funding that they need to save jobs and businesses. I hope that they will but I am not sure that they will.

Sheffield went into tier 2 restrictions a week last Wednesday. Did Ministers make the wrong judgment a week ago or has new evidence that was not apparent then come to light, because it has now been put into tier 3? How many other areas in tier 2, such as those that neighbour South Yorkshire—including Bradford,

my hometown, North East Derbyshire and Nottinghamshire—face the same fate as Sheffield? Can the Minister tell us how long South Yorkshire will be in this tier 3 lockdown? I repeat again: does the nationwide R number need to fall below one? What happens if Doncaster gets below one? Will it be able to leave lockdown?

Finally, I turn to shielding because it was suspended a few months ago, as noble Lords might recall. As we move into tier 3 and while all the science seems to suggest that the infection rate is creeping up the age groups, what will happen to shielding? Dr Stephen Griffin, associate professor in the School of Medicine at the University of Leeds, said:

"Critically, I am aghast that shielding remains paused. Whilst it saddens me to see that this is once again our only recourse to protect those most vulnerable to COVID, they must be enabled both socially and financially to protect themselves once more. Whatever transpires as a result of policy, it must be accompanied by a return to the commitments made earlier this year. Most importantly, testing"

has to work properly. His comments came after the Deputy Chief Medical Officer, Jonathan Van-Tam, expressed his concern for the rate of change in infections among the over-60s across the nation.

Lord Scriven (LD): My Lords, I declare my interests as a resident of Sheffield and, knowing the area well, as a former leader of Sheffield City Council. I note that I will not be the only former leader of Sheffield City Council who will speak on this Statement; unusually, we will probably both agree with each other again.

We have to remind ourselves that going into any of these tiers, particularly very high, and a blanket lockdown is a failure of one thing: an effective test, trace and isolate system. Countries that have that do not have to have blanket lockdowns; it is absolutely vital that the Government understand that.

There is beginning to be a feeling of a north/south divide on this. It is ironic that Greater Manchester has not had any extra support for jobs when it has been in the equivalent of tier 2 for quite a few months. It is telling that, just a couple of days after London goes into tier 2, suddenly the Chancellor is on his feet talking about a tier 2 system for extra job support.

Having spoken to a number of people in South Yorkshire over the last 24 hours, let me tell you what the feeling is: anxiety, fear and uncertainty. I have spoken to people in tears, who have a business and who just do not understand why they are asked to do things. I reiterate the comments of the noble Baroness, Lady Thornton: you cannot plan a business or your life if you have no idea of the criteria and the trigger points for being released from tier 3. This cannot be left to a number of suits in an office, deciding the livelihoods and the businesses of many areas. What are the criteria and the trigger points for release and for going into a certain tier—not just tier 3? They need to be public, not the private judgments of people in a private meeting.

Also, why is the support package per head and not more nuanced? The support package for people in Sheffield is £29 per head—£30 million for business and £11 million for public health—but why is it a flat rate? When we know that older people, BAME communities and deprived people are more affected, why is there not a weighting in an area for those particular issues? They are the ones who will be greatly affected and more spending will be needed. Again, why is the business support package per capita? Why is it not based on the number and type of businesses that will be affected? Why does the formula seem so out of sync with what local areas will need to do?

I am pleased that there is support, at only £8 per head, for public health, which includes a local test, trace and isolate system. From this support, apart from money, what extra resources and expertise will local areas in South Yorkshire be able to call on to implement an effective localised test, trace and isolate system? We want to do our bit in South Yorkshire but we want to see fairness and a package that will minimise the effect of this high-level rate on both businesses and people.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, the noble Lord, Lord Scriven, put the sense of jeopardy and anxiety about the current situation extremely well. Anyone providing for their family or running a business will feel a huge amount of anxiety or even deep concern about the prospects for the next few months, and that is completely understandable. That is why we take all these matters incredibly seriously, why we are focused on it as a Government, and why we have made it such a large priority. The noble Baroness, Lady Thornton, put the grave sense of jeopardy extremely well when she referenced the Vallance graph, which was so derided when it was first posted and which has come to haunt us since then, the clear sense of concern from Jonathan Van-Tam, and the description of the state of our hospitals and intensive care units from Steve Powis. All those were grave warnings and have come to play out in a way that I am afraid worries us all.

At the heart of this debate is a question about the local lockdowns. They are necessary for those very reasons I just described. The infection rates have gone through the roof, they are profound, and they are having an impact right through all the demographics. In many cases they may have started in universities and with young people but they have moved relentlessly through the age demographics and are leading to hospitals filling up in a way that any mathematician, or anyone like me with an O-level in maths, can see is completely unsustainable without a major intervention. Our priority is to try to manage those interventions in a way that strikes the right balance, preserving the economy, keeping the schools open and keeping our lives as normal as possible, but which has an impact on the transmission of the disease. That is why these local lockdowns are so very important, because they are a way of introducing targeted measures to populations in a way that can close down the spread of the disease within a community.

When we say "community", one of the lessons we have learned is that people travel within their regions a great deal, so we cannot be laser-like and targeted and just shut down a street, a town or a village. We have learned that we have to apply it to substantial regions; otherwise, the disease rolls from one small community to the next. Making these local lockdowns work is not

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in any particular government interest but in all of our interests. I ask noble Lords to step back from the temptation to introduce party politics into a subject which is driven by genuine public health concerns. It does not help anyone to talk in terms of north-south divides, people being at each other's throats, scum, or any of the other political rhetoric that has been associated with the last week.

I come back to something that I have said many times at this Dispatch Box. It has been derided by those on the Benches opposite but it remains true and I see it every day of the week. There is a huge amount of bilateral and multilateral dialogue between central government and the agencies of central government—including the Cabinet Office, the DHSC, BEIS, MHCLG, NHS Test and Trace, and the NHS—and those in the regions and in the DAs. There are massive weekly calls, such as the one between the CMO and the DPHs, the one between the BEIS Secretary of State and the business community up and down the country, and the Thursday call between the MHCLG and 350 council chief executives and leaders. There is a relentless drumbeat of engagement and a huge amount of engagement on a one-to-one basis, as was shown by the revealing telephone logs of those on the phone to the mayor of Manchester on Wednesday, which seems to suggest that he was much more in touch with central government than perhaps was apparent from his photo call. I reassure the Chamber that that spirit of partnership to get the local national partnership working is genuine, backed by substantial amounts of money—£1 billion has been pledged for local authorities to support the local lockdown policy—and it is in all our interests to get this to work.

If it does not work, and if there is not the political leadership and trust at a community basis in the efficacy of this approach, we have only one choice. I am looking at the SAGE table which I have in front of me, and it is really clear. These kinds of tactical interventions can knock a point or two off R. However, the only way of knocking an integer off R is a national, home-based lockdown. That is the alternative: that we all go back to March and April, to being at home, with shops closed and no travel. If this local lockdown policy does not work, that is where we will end up, and that is why we are committed to working as hard as we can.

I pay tribute to the large number of those involved in local government at all levels who have worked really hard in their communities to make it work. We are here to talk about Lancashire, and I pay tribute to those in Lancashire who have agreed to and in fact called for the lockdown there. The noble Baroness, Lady Thornton, and the noble Lord, Lord Scriven, are right on the exit strategy. It is absolutely critical that everyone understands what the exit strategy is, and our focus needs to be on that. But I can tell your Lordships that it takes a lot longer to get out than it does to get in. The ramp up is a lot steeper than the ramp down, and it is a big struggle that will need the support of individuals, households, streets, communities, local authorities, regions, mayors and the national resources to make it work. I very much appeal for collaboration in this matter and hope that we can move on from what the noble Baroness, Lady Thornton, rightly characterised as a bit of an unseemly scramble this week.

The noble Baroness, Lady Thornton asked about shielding, which is incredibly important. We wrote to the shielding list on 13 October. That letter struck the balance between the need to protect those who are vulnerable and to take on board the feedback from many, including those in the Chamber today, that extreme shielding—locking up those who are vulnerable—does not support their mental health and will have massive consequences for them personally and for their communities. Therefore, the advice we have provided, in consultation with charities and groups representing those who are being shielded, strikes the right balance.

The noble Lord said something that I need to knock on the head in a big way, because it is a very destructive and counterproductive idea. He said that the fact that we are bringing in local lockdowns is itself proof of the failure of test and trace. That is simply not true. The only way to beat the virus is through the principal interaction of "hands, face, space". You cannot break the virus's spread entirely by isolating those who, retrospectively, you have identified as having the disease. That will never work, and we have never claimed it will work. SAGE and the Royal Society have been very clear that the impact of test and trace is complementary but it is not unique. The idea that local lockdowns are somehow solely and uniquely caused by the failure of test and trace takes the responsibility for beating the virus away from individuals, communities, employers, local authorities and the Government. With the greatest respect, I plead with the noble Lord to move away from that rhetoric, because it undermines the public communication of the importance of "hands, face, space".

I return to my opening remarks. No one could take the development of these local lockdowns more seriously than the Government. It is done with huge regret. We can see perhaps the flattening of some numbers in some places that would indicate that local lockdowns are having an impact. It is too early to call at this stage. However, I live in hope that they will have the impact that we desire, and I live in fear that they will not.

The Deputy Speaker (Lord Lexden) (Con): My Lords, we now come to the 30 minutes allocated for Back-Bench questions. I ask that questions and answers be brief so that the maximum number of speakers can be called.

1.40 pm

Lord Patel (CB) [V]: My Lords, as the infection rates and admissions to hospital rise, as seen in tier 3 areas, what are the Government doing to accelerate clinical trials to bring more treatments that could help patients with Covid infections? We have got to the market two treatments: dexamethsasone and remdesivir. Recent anecdotal and observational studies suggest that vitamin D, for instance, is related to mortality ratios in Covid infections. What are the Government doing to accelerate clinical trials of other treatments, including vitamin D, to improve the outcome for Covid patients?

Lord Bethell (Con): My Lords, I acknowledge the noble Lord's reference to anecdotal reports and observational studies that have reported benefits of vitamin D in reducing the effects of Covid-19. We are absolutely keeping an eye on those reports. However, the clinical and evidential support for a clear link between vitamin D and Covid-19 recovery is not concrete or provable at this stage. None the less, in April, we reissued our advice on vitamin D supplementation, particularly to help those with musculoskeletal development needs, and we are absolutely keeping an eye on international developments with a view to investing in trials, should the evidential support for those arise.

The Lord Bishop of Manchester [V]: My Lords, the Greater Manchester tier 3 proposals were the main UK news item across our broadcasting media for at least a week. However, to the best of my knowledge, at no time did senior members of Her Majesty's Government come to Manchester to meet its people, hear its voices and seek to reach an agreement face to face with our civic leaders. Moreover, yesterday the *Manchester Evening News* published a story claiming that senior leaders logged into one crucial meeting only to discover that the Government side had set up controls that did not allow members to unmute themselves. It then allegedly used that facility to prevent voices being heard.

Whatever the practicalities of managing virtual meetings —indeed, irrespective of whether the newspaper reports are wholly accurate—there is now a strong perception in the north-west that local leaders have been treated throughout this process with a great lack of respect. The affairs of Manchester and those of other regions cannot be settled from behind a computer screen in Westminster, one hand controlling the purse strings and the other the menu for mute, no more than can the proceedings of this House. I therefore ask the Minister and, through him, other senior members of Her Majesty's Government, to commit to this House to coming to Manchester within the next couple of weeks to seek to repair the present breakdown in trust. We may bark loudly, at least when we are unmuted, but we rarely bite.

Lord Bethell (Con): The right reverend Prelate makes a very touching appeal, and I reassure him that both the representatives and the people of Manchester are massively valued. I do not want to cite all the details, but many people in this Government, including me, have spent a vast amount of time in Manchester, value the city, love the people and are greatly distressed at the thought that anyone thinks otherwise. The practicalities of this epidemic have been very regrettable on travel. As a Minister, I regret massively the fact that I have not been able to travel up and down the country. It is not possible to visit cities for face-to-face negotiations in the middle of an epidemic. That would strike the wrong note. It is a contagious threat and that is not possible, but I reassure the right reverend Prelate that everything is being done to value the opinions of the representatives of Manchester, and it will continue to be so.

Lord Herbert of South Downs (Con): My Lords, I agree with the Minister's main point, which is that local lockdowns are really the only choice available to us at the moment if we wish to avoid a national lockdown—which will penalise those areas that do not have the relevant levels of Covid and cause further economic hardship—and are to reject those voices which, through things such as the Great Barrington declaration, suggest that there should be no restrictions at all other than shielding the vulnerable, which would exact a tremendous humanitarian toll. That being the choice, surely local lockdowns, backed by the relevant economic assistance, must be the current policy. If people are looking for bigger solutions, those ought to lie in the advance of either rapid testing or a vaccine. Can my noble friend update us on the potential timetable and likelihood of a vaccine and how prioritisation will be organised to ensure that it is available to those who most need it first?

Lord Bethell (Con): The feedback from the Vaccine Taskforce is very promising. It has six contracts for vaccines on four different platforms. The Oxford vaccine is by far the front runner, but what is really encouraging is the substantial pipeline of other vaccines coming through. I am afraid I cannot commit to the timing on that, but all the news we have is extremely encouraging and we are putting deployment protocols in place to be able to deliver it as quickly as possible. I also flag that the therapeutic drugs and rapid testing also provide strong answers to the threat of coronavirus.

Lord Blunkett (Lab): I have a similar declaration to the noble Lord, Lord Scriven, and agree with his comments on tests, where the 24-hour turnaround for tests has now dropped to 15% of the total. Perhaps the Minister could comment on the fact that, given the announcement this morning by the Chancellor, including the £2,000 retrospective contribution per month for those businesses not legally locked down and closed but which are being devastated by what is happening around them, it would have been perfectly reasonable to have reached a settlement with the Mayor of Greater Manchester, and it would be perfectly reasonable to expect the Sheffield City Region now to have its resource topped up from the £30 million that has been allocated to take account of that announcement this morning.

Lord Bethell (Con): First, I am glad to say that we have struck a financial arrangement with the Mayor of Manchester, and one of the valuable points that I think the noble Lord is alluding to is that that agreement is fair to all the other regions where we have struck agreements. It is not possible to do more generous agreements with one region over another simply because of the hard bargaining of one mayor over another. I pay tribute to those in Sheffield and South Yorkshire for the way in which they have gone about their negotiations and the implementation of the new tiering system in South Yorkshire.

Baroness Jolly (LD) [V]: My Lords, as was shown in Manchester, the Government can impose tier 3 on an area where an agreement cannot be reached. Can the Minister inform the House if discussions with local leaders are now about not whether the area will be placed in tier 3 for the good of the population's well-being but the financial package?

Lord Bethell (Con): My Lords, it is with great regret that central government imposes lockdowns under the tiering arrangement. In all the other areas where we have put in local restrictions, it has been done either at the immediate and clear request of the local authorities or in close collaboration with them. That is our intention going forward: we do not intend to impose anything. In fact, the considerable time lag in Manchester, which, as everyone, took many days before the imposition of restrictions, was extremely regrettable, and we will reflect on the cost of that to the community in Manchester at a future date.

The Deputy Speaker (Lord Lexden) (Con): Both the noble Lords, Lord Robathan and Lord Desai, who are next on the list, have withdrawn, so I call the noble Baroness, Lady Barker.

Baroness Barker (LD): Will the Minister explain to the person in Sheffield who, having registered themselves as being positive for Covid, was contacted four times a day for four days on the trot, and managed to stop it only when they got the nurse to explain that they were so ill that they were in hospital, how their statistics will be recorded by Serco? Can he explain to the people of Sheffield why the Government continue to spend so much money on a system that is so bad?

Lord Bethell (Con): The noble Baroness alludes to a glitch that the noble Baroness, Lady Thornton, raised yesterday, which I looked into overnight at her suggestion. It is true that if someone lives in a household with several other people who have been reported to have Covid, they are, at the moment, each receiving emails or calls, not on a household basis. We are looking at this and I hope to have it fixed in the next few days. I am grateful to the noble Baroness, Lady Thornton, for raising it.

Baroness Andrews (Lab) [V]: My Lords, scientific evidence now suggests that one of the reasons for the spike in cases in the northern regions is due to the fact that Covid has been more virulent and persistent there, and that restrictions were lifted too soon. What have the Government learned from that? Returning to the questions asked by my noble friend Lady Thornton, what will be the criteria in determining when it will be safe to move from the latest restrictions? The Minister spoke movingly of how fearful he was that they would not work. Difficult though it is, the question is: when will we know whether they are working? What will be the elements and criteria of the exit strategy?

Lord Bethell (Con): My Lords, the exit strategy question is extremely important and I am grateful to the noble Baroness for raising it. We have not published strict criteria for each exit strategy for moving from one tier to another. It is part art and part science, in any case. We look at a large number of indices, including hospitalisation, transmission and incidence rates, and so on. What the Government and local authorities can do is to figure out local Covid plans with inherent exit strategies. We will be working on those as a matter of priority.

The Deputy Speaker (Lord Lexden)(Con): The noble Baroness, Lady Pidding, who is next on the list, has withdrawn , so I call the noble Baroness, Lady Blackstone

Baroness Blackstone (Ind Lab): My Lords, what steps are the Government taking to increase NHS lab capacity for testing in areas suffering from new restrictions? What advice has been given to care homes in those areas to alleviate the appallingly inhumane denial of access of families to their elderly relatives? For example, will regular testing be made available to those visiting their desperately lonely and sometimes confused relatives in care homes?

Lord Bethell (Con): I pay tribute to NHS colleagues who have done an enormous amount to increase NHS lab capacity, and would be happy to share the numbers with the noble Baroness. We have written to care homes to emphasise the critical importance of the pastoral visits to which she refers. There is no question of a care home shutting out visitors if it can be avoided and we are putting regular testing in place to protect care homes. We are looking at providing regular testing for visitors and hope to make progress on it.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I take issue with the Minister's response to the Front-Bench spokespeople when he urged everyone not to make party-political points during this pandemic, yet went on to swipe at Andy Burnham, the Mayor of Greater Manchester. The Minister needs to hold himself to the same high standards he urges on others. This Government promised to level up the north but all we are getting so far is the north being put into tier 3 lockdown and given £8 per head in compensation. When are they going to come up with a long-term economic plan? We have record low interest rates and this is the time to borrow and invest if we are to have any sort of green, productive future.

Lord Bethell (Con): I am grateful to the noble Baroness, who has clearly read the Conservative Party manifesto. I should be grateful for her recommendations on how we can do exactly what she suggests.

Lord Haselhurst (Con) [V]: While I warmly welcome the measures announced by the Chancellor this morning, which should ease the lot of people working in the hospitality sector in South Yorkshire and elsewhere, has there been any assessment of any negative impact on public health if restaurants—which, by definition, provide substantive meals—were allowed to stay open until 11 pm, in order to accommodate two sittings, a factor that they say is crucial to their viability in many cases?

Lord Bethell (Con): My Lords, having worked in the hospitality industry for 10 years, I feel great kinship with restaurant owners but cannot avoid the fact that restaurants represent a major focus for transmission. Sitting opposite someone and having a long meal for a couple of hours, sharing the same air and space, presents a massive risk. There is no question that this is a substantial cause of the introduction of the disease into new households and we stand by the 10 pm curfew as introduced.

Lord Rooker (Lab) [V]: Should not Greater Manchester receive a backlog payment for tier 2 funding for the past two months, now that London has received one after two weeks? Given that the Government have got

the UK into the world-leading position of third in most new cases, fifth in most deaths and sixth in deaths per million, why has no scientific adviser or Minister resigned over that appalling killing record?

Lord Bethell (Con): My Lords, I am glad to reassure the noble Lord that Manchester businesses will be getting a payment to cover the backlog, as he described.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, my city, Sheffield, and the South Yorkshire region have been mentioned a great deal today. My specific question, of which I have given prior notice, comes from the Green councillors there but is, sadly, of interest to an increasing number of areas of the country. When can the funding for tier 3 areas be expected to arrive? Will it be in regular tranches or a lump sum? When can it be expected to reach businesses? Are conditions attached to the money and its continuation?

Lord Bethell (Con): My Lords, grants will be available from 1 November, will be administered by local authorities and will remain in place until April 2021, with a review point in January. The funding will apply only to England and, if applied across the country, would provide over £250 million of support each month.

Lord Dubs (Lab) [V]: The Minister was asked about exit strategies from tier 3 or any of the tiers. He said that the answer was part art and part science. Will he assure us that that does not mean that when the Government do not feel like accepting science, they will simply be vague and ignore what the scientists say? He also referred to travel. Has he looked at the position at German airports, a point raised with him yesterday or the day before? Can we look again at checking people on arrival at airports? I know that one cannot be sure but checking on arrival and again a few days later would prevent the need for long periods of quarantine that are difficult for people to cope with. They may lose a lot of money and their jobs. Can we look again at this?

Lord Bethell (Con): The noble Lord is right that the situation at airports is distressing and has caused huge damage to travel, the airline business and hotels. However, foreign travel represents a massive threat in forward transmission of the virus. Testing at airports catches only a tiny proportion of those infected, and quarantine arrangements are not wholly reliable. For that reason, we are running a pilot in the UK to see what can be done but we will tread cautiously.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, the Minister has said that he will not publish the criteria under which a local area can move in and out of a tier. Does he agree that publishing some indication would give local people a clearer understanding of what needs to happen to move out of a tier? Perhaps I may refer to the proceedings of the Secondary Legislation Scrutiny Committee earlier today, which, looking at the tiered approach, said, "For public trust to be maintained, the Government have to be much more transparent in explaining the basis of their decision-making, including setting out how they balance the competing health, social and economic interests and the data to support the decision." Will the Minister look at this?

Lord Bethell (Con): My Lords, I hear the point loud and clear from both the noble Lord and others who have raised it. The question of the exit strategy is a priority and it is inevitable that people will be asking exactly that. We have sought hard over recent months to make the regulations clearer, simpler and more understandable for the public; the rule of six, the tier strategy and other measures are efforts to do that. However, his point about exit strategies is extremely well made and I would be glad to take it back to the department and to push as hard as I can on it.

2 pm

Sitting suspended.

Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020

Motion to Approve

2.05 pm

Moved by ***Lord Bethell***

That the Regulations laid before the House on 28 September be approved.

Relevant document: Special attention drawn to the instrument by the Secondary Legislation Scrutiny Committee, 29th Report.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, this instrument sets out the regulations on the legal duty to stay at home and self-isolate for people who test positive for Covid-19 and their contacts who are told to self-isolate by NHS Test and Trace, which came into force on 28 September. The principle of self-isolation is a key component of our strategy to break the chain of transmission, which in turn stops the spread of the virus, protects individuals and local communities and avoids further societal and economic restrictions. The legal requirement in this statutory instrument is to make it crystal clear to the public—more than any marketing, published guidelines or televised Downing Street presentation possibly could—that people who are infectious or potentially so should stay at home and self-isolate. Providing this clarity about the right thing to do is an essential step to securing a more normal way of life and supporting the economy.

On the scientific substantiation for this strategy, perhaps I may reassure noble Lords that SAGE has advised that ensuring that infected individuals and their close contacts isolate is a vital tool in controlling transmission. Faced with the current rising incidence levels, it is the right time to provide this clarity. Positive cases have increased sharply, with seven times as many cases compared with the end of August. Since it was launched on 28 May, 290,034 people have tested positive and have had their cases transferred to NHS Test and Trace. Some 1,198,151 contacts have been identified and 82% of those for whom contacts have been given

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have been reached and told to self-isolate. These are astonishing figures. The most recent weekly statistics for 8 to 14 October show that 101,494 people tested positive during that week at least once, an increase of 12% compared with the previous week. I cannot emphasise enough how important it is that those people should self-isolate when instructed.

We are naturally concerned about compliance levels. We cannot knock on 1 million doors every day for 10 days for each person when they are isolated, so we cannot be certain about compliance levels. However, there is enough evidence to suggest that it is not good enough and we have a programme in place of measures to improve it. The first is to increase public understanding of the importance of self-isolation in stopping the spread of the virus. We have put in place a comprehensive media campaign to explain what test and trace is, why it is important and what the public need to do when they are told to self-isolate.

I thank the Secondary Legislation Scrutiny Committee for its important review of this SI and its impact on the public's understanding, and I acknowledge the committee's comments on the importance of that. However, I point out that the SI is part of a broad effort to simplify and clarify the rules, which includes the introduction of local alert levels in England and the rule of six.

Secondly, we are supporting people to self-isolate by providing assistance to those who may have practical difficulties in self-isolating. NHS Test and Trace will check with individuals who test positive and their contacts to reinforce the importance of self-isolation. They will ensure that they have access to any support needed. Since 28 September, contact tracers have made around 35,000 to 50,000 calls a day to people who are self-isolating.

The £500 test and trace support payment has been introduced to ensure that people on low incomes self-isolate when they test positive or are identified as a contact, and to encourage more people to get tested. Eligible individuals receive an up-front, one-off payment of £500. This is on top of any benefits and statutory sick pay that they may currently receive. The Government set a deadline of 12 October for local authorities to be ready to administer the test and trace support payment scheme.

Local authorities are now making payments to people on low incomes to support them to self-isolate. We are monitoring the situation to ensure that national coverage is in place. I acknowledge that a small number of local authorities are experiencing technical difficulties in administering the scheme, as we would expect with a programme set up so quickly. We are supporting them to resolve these issues as soon as possible. In addition to the support payment, local authorities will focus on the principle of encouraging, educating and supporting self-compliance.

Thirdly, we are introducing fixed penalty notices for those who do not follow the rules to send a clear message about the seriousness of not self-isolating. Penalties and offences were designed in conjunction with legal colleagues, consulting previous precedents. During this process, the Department of Health and Social Care worked closely with the Home Office, the National Police Chiefs' Council and the Government Legal Department to agree the memorandum of understanding. The Information Commissioner's Office has also advised on the process of information sharing involved to ensure data is shared appropriately and proportionately. BEIS and MHCLG also supported the decision-making around enforcement methods and processes. Fines start at £1,000 and may increase up to £10,000 for repeat offenders. For more serious breaches, fines start at £4,000, increasing up to £10,000.

We have needed to use emergency powers to introduce these regulations so that we can respond quickly to the increased threat posed by Covid. The urgency in this case arises from the increasing rate of diagnosed positive cases at the time of making the instrument. The Secretary of State for Health and Social Care keeps the necessity of regulations under consideration between formal review points. We are committed to ensuring that these measures are in place only for as long as necessary.

The requirement on people who are notified to self-isolate plays a key role in slowing or preventing the spread of the virus. The regulations will protect individuals and their loved ones. They will help to ensure that we keep the virus under control. For that reason, I beg to move.

2.12 pm

Lord Rooker (Lab) [V]: My Lords, the message was "clarity"; that is a joke. There are no less than five ways to calculate the period of time for self-isolation in the regulations: at Regulation 3(3)(a), Regulation 3(3)(b), Regulation 3(4)(a)i, Regulation 3(4)(a)ii and Regulation 3(4)(b). Who makes the calculation? If you slip up, potentially more than once, as the Minister indicated, there could be a fine of up to £10,000. This is completely unacceptable.

Why is there no mention of exercise as a reason for leaving the place of self-isolation? Exercise is a requirement to maintain physical and mental health. You cannot just isolate away if there is no prospect of exercise at all. Are the BMA and SAGE fully on board with this aspect of the regulations?

I do not accept that the police should be involved in the first place. Environmental health officers are perfectly capable and would have more trust in the locality if they were tasked with this role. In effect, the Government are starting to lose the trust of the people. I repeat: who makes the calculation of the time period for self-isolation?

2.14 pm

Baroness Jolly (LD) [V]: My Lords, when an individual self-isolates, the whole household is impacted too. What financial support might be available? Does enforced self-isolation mean that the individual is entitled to statutory sick pay? In Germany they would get full pay. If the rest of the family have to isolate too, are they entitled to any financial support to supplement their loss of income? Who gives guidance to the Covid-affected individual as to what they may and may not do, and where to find help and support? Are there arrangements for non-English speakers? What about caring responsibilities?

What other criteria might there be to extend the isolation if a family member shows signs, is tested and found positive? Does that then become a family lockdown? Are those family members expected to quarantine for two weeks?

Could the Minister clarify paragraph 6.7 of the Explanatory Memorandum? It states that adults who have been notified other than through the app that they are positive should self-isolate "for a specified period". What is the contact: by phone, in person, by letter or by email? Of course, some parts of the countryside have no mobile coverage. I have no signal at home, but I am not aware that I have indicated my preferred method of communication.

Not everyone has the app. Could the Minister tell us what proportion of the adult population has downloaded it? A recent report suggests that many people may use a phone only to text and chat. What assumptions has the test and trace team made in this regard? What proportion of the general population are regular IT users who can handle this way of information dissemination?

Has the Department of Health and Social Care done any analysis of the effectiveness of test and trace? It certainly got off to a bumpy start, but could the Minister tell the House whether there are any plans to carry out a review so that it could be improved for a possible second or subsequent wave?

2.17 pm

Baroness Meacher (CB) [V]: My Lords, I begin by thanking our hard-working Minister for a very helpful meeting we had recently about parents of school-age children who had been required to self-isolate for months because of their exceptional vulnerability to Covid-19. These same parents are now required not to self-isolate, despite their exceptional vulnerability, but rather to send their children to school as normal. I declare an interest in this issue: one of my daughters was in the shielding group and received a text every day saying, "Do not leave your house".

These regulations deal with the situation where a child tests positive for coronavirus or comes into close contact with someone who has tested positive. We are told in Regulation 2(3)(a)(i) that the child in question must then self-isolate in their home. This means that a child of an exceptionally vulnerable parent who contracts coronavirus has to remain isolated in the house of the exceptionally vulnerable parent. It is hard to think of anything more completely unreasonable.

I emphasise that the Minister, whom I greatly respect, is not responsible for this state of affairs. I raise this concern more by way of a follow-up to our helpful meeting to offer an alternative solution to these very vulnerable parents. Germany ensured that children could attend school safely without presenting a risk to their families. The main interventions included face coverings in classrooms, handwashing and an effective testing regime. Saliva tests that produce results in 15 minutes now exist. Does the Minister yet know how much longer vulnerable parents will have to wait for every school to have weekly testing of their pupils using the saliva test? If he cannot answer this question today, perhaps his officials could write to me.

2.19 pm

Baroness Rawlings (Con) [V]: My Lords, I thank the Minister for presenting so clearly this vital regulation. I am sure that your Lordships agree that it would be wrong not to self-isolate as instructed, and wrong not to make disobedience a serious offence. However, what is the government procedure for contacting the general public if a person who is already infected with Covid-19 does not self-isolate but travels on public transport, obviously spreading it? As the noble Baroness, Lady Jolly, asked, how do the Government contact anyone who could have been close to the diseased person, and make it public? Is PHE responsible if it does not contact the relevant public? Is it fined? After all, we all want to save lives.

2.20 pm

Lord Hunt of Kings Heath (Lab) [V]: My Lords, we have just two minutes each to debate these important regulations, which create large fines and come at the same time as the agreement reached with the police for the handing over of the personal information of individuals notified to isolate. This is a travesty of parliamentary scrutiny. I simply do not understand why we could not have debated these regulations before they came into force.

On clarity, as the Minister said, I am extremely sympathetic to the argument of Big Brother Watch, and of my noble friend Lord Rooker, that the sheer complexity of the regulations means that the period of time that a person must isolate for is not immediately evident and requires very careful reading of the regulations —not a good basis for public trust.

Added to this is the concern expressed by the Secondary Legislation Scrutiny Committee that those without the app, who may be poorer or more elderly, could be more likely to be contacted by traditional track and trace, and therefore more liable to be fined. Can the Minister comment on this?

Finally, a fascinating report, recently published by the Nuffield Council on Bioethics, asked some searching questions about the values which inform the most recent decisions on Covid-19 restrictions, and the challenging trade-offs between different rights and interests. It asked what support is to be given to those in the parts of society asked to bear the greatest burden in the Covid-19 response, arguing that the state has a duty to ensure that they are supported to do so. I hope that the Minister might be prepared to look at its work.

2.22 pm

Baroness Walmsley (LD) [V]: My Lords, I agree with the noble Lord, Lord Rooker, about the difficulty posed by the complexity of these regulations, and with the noble Lord, Lord Hunt. Poorer people, without a smartphone that supports the NHS app, are more likely to be fined if they fail to isolate than those who have the app. This is because, without the app, the only way that they can be asked to self-isolate is by test and trace or a council official. If those with the app who learn that they have had a contact are not subsequently contacted by test and trace and asked to self-isolate, nobody will be able to enforce the penalty if they do not.

[Baroness Walmsley]

Given the poor record of NHS Test and Trace in contacting those who have tested positive and their contacts, that would leave an awful lot of people not self-isolating and not liable for a penalty if they do not. I am concerned that these penalties may deter people from taking a test. Also, a person who tests positive may be quite reluctant to disclose any contact who they predict is not likely to be able to self-isolate, in case they expose them to the possibility of a big fine.

Like the noble Lord, Lord Hunt, I am also concerned about the disclosure that the police will be given the details of people who have been asked to self-isolate. The BMA and the Chief Medical Officer have expressed concerns that this could also deter people from getting a test, and this would apply in particular to those who feel that they cannot afford not to go to work. Why is it necessary to involve the police? This is a disclosure of health information and an invasion of privacy. If the police are informed, what guidance and training are they given about how to approach the person concerned? Will they initially explain why self-isolation is important and direct them to support before using the big hammer of a fine?

2.24 pm

Lord Loomba (CB) [V]: My Lords, the Secondary Legislation Scrutiny Committee has drawn these regulations to the attention of the House due to their potentially discriminatory nature. This is because the regulations do not apply to people who use the NHS app. The committee believes—and I agree—that the elderly and the poor are less likely to use the NHS app, as it only works on newer, more sophisticated phones, and therefore they are more likely to be contacted by the normal test and trace team. This means that there is the potential for more poorer or elderly people to end up being fined than people who are informed by the app but who do not go on to get a test.

My second point is that a swathe of coronavirus regulations is coming into force, amid numerous reports of the public being confused and not understanding what is the law and what is guidance, and what applies to them in their situation. With these regulations, we have another instance of the potential to confuse, precisely because these regulations mandate people to self-isolate if they are told to do so by NHS Test and Trace team or by an official, but not if they are informed by the NHS app.

2.26 pm

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I think it is obvious that most people agree that self-isolation when you have a communicable disease is a good idea if you can possibly do it—so most people will of course obey the instruction. But for those people who do not, I fear that the Government have only themselves to blame. There is far too much confusion. We have had six or seven months of advice and laws and regulations, and police activity, with the police themselves being very confused. The Government must urgently tidy up all that so that we can be clear about what we all need to do.

Secondly, the Government urged people to go back to work, which was a pretty stupid thing to do while the pandemic was still very active among us. Thirdly, they encouraged people to "eat out to help out"—while of course at the same time abandoning hungry school-children. So the Government have only themselves to blame, because there is confusion around these regulations.

In an earlier question-and-answer session, the Minister suggested that I give him some ideas for an economic recovery for Britain: a long-term plan so that we do not just lurch from crisis to crisis. I am more than happy to set up a meeting with Green Party economists, and in particular our professor of economics, Molly Scott Cato. I will be in touch with the Minister's office to do that as soon as this debate is finished.

2.28 pm

Lord Moynihan (Con): I will follow the noble Lord, Lord Rooker, and his emphasis on the importance of exercise, and the noble Baroness, Lady Meacher, on the critical importance of children in isolation. Will the Minister tell us what public health advice concerning physical well-being and mental health is being given to the young, who are often traumatised by having not just to stay home but to self-isolate as a result of these regulations?

The outstanding work done in this area by YoungMinds is worthy of national distribution by the Government. Its four pillars—"staying connected", "staying calm", "dealing with stressful situations at home" and "helplines and resources"—are critical. Guidance on mindfulness, social media, physical activity at home, and unfollowing or muting accounts that create anxiety, is important. We need a national information campaign to back these regulations, including advice on exercise at home and staying as mentally and physically fit as possible.

Joe Wicks led the way earlier this year, and the Government should fund such fitness programmes as the nights draw in. As test and trace increases its reach, this work for innately gregarious young people during these difficult days is essential. It is young people who are shouldering the lion's share of the burden of this crisis, while the average age of someone dying from Covid remains above 82. When isolation is over and rejoining wider society is permitted, I repeat my plea to the Government to reclassify gyms, pools and leisure centres as essential services and to keep them open.

2.30 pm

Baroness Massey of Darwen (Lab) [V]: My Lords, individuals will be required to isolate for specified periods in specified places. This implies that such periods will vary. On what does that depend? Failure to isolate will incur a fine ranging from £1,000 to £10,000. That is quite a range. What criteria will determine the amount of a fine? It is not clear, even among professionals, such as the police.

The virus is now evident among younger people, such as students. They may be asymptomatic but infectious. How will any proposed system of isolation work for them? Handing out massive fines to students having parties may be a deterrent, but would it not be better to persuade and involve young people in behaving differently than to deal out punishment? We have powerful examples of working with young people to change health behaviour, perhaps the most striking

being the highly successful teenage pregnancy strategy, introduced in 2000. Why do the Government not build on good practice?

I agree with the noble Lord, Lord Moynihan. Mental health charities and services warn of serious and expensive consequences if mental health in isolation is not given more attention. Will the Minister say whether mental health services, which were underequipped before Covid, will be expanded, with more staffing and resources, including helplines, which are already dealing with huge increases in demand?

What about older people in isolation? They may be suffering loneliness and stress. I recognise and admire the efforts made by local communities through phone calls and practical help. Will local authorities have the resources to check that elderly people do not fall through the net? Most importantly, if the Government continue to hand out confusing information without strategies to involve individuals and communities—strategies best funded to be carried out at local level—the objective of defeating Covid will be more difficult.

2.32 pm

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, I understand why these regulations have been made and share many of the concerns of other noble Lords. The first point that has to be made is that it all depends on the effectiveness of test and trace.

One of the effects of the measures extending to employers is that there is a flurry of circulars from lawyers and other employment advisers with good, simple explanations of what can and cannot be done, and that should have a reinforcing effect on compliance, with more checks via line managers and information to employees. It also opens the door to cross-checking—for example, if one person reports in as self-isolating and another, who might have been expected to be in similar circumstances, does not. In that context, I understand that whistleblowing legislation would cover this instrument in the event that there are instances of reporting by employees either on other employees or on businesses, and that whistleblowing protections must apply. Will the Minister confirm that? There have been reports of threats of redundancy if employees do not turn up to work. This instrument may deter threats, but unfortunately it may not deter redundancies where loss of workers is the last loss of business income that the employer can withstand, especially if several employees are affected at once.

Finally, with regard to enforcement, local authorities could nominate Covid marshals or possibly security guards, similar to those used at Manchester Metropolitan University before there was a legal basis. What kind of training safeguards would be in place, especially around the use of reasonable force?

2.34 pm

Lord Bilimoria (CB) [V]: My Lords, with millions of people and many thousands of businesses in tier 2 and tier 3 areas, the support measures announced today by the Chancellor will bring a huge sigh of relief to many, especially those in the hospitality sector. However, it is no exaggeration to say that successful, affordable mass testing could transform the way we live and work in the months ahead. The Minister has worked very hard in this area. Will he give us an update on the 20 million 15-minute antigen tests that have now been procured and are being deployed around the country?

The Prime Minister, the Health Secretary, the Transport Secretary and even the Minister have consistently used Public Health England's 7% figure to reject calls for the introduction of airport testing. By contrast, 30 other countries are now implementing airport testing on arrival. Some have gone further to test after five days of quarantine to reduce the number of asymptomatic carriers who might be missed. Today, the *Daily Telegraph* reported that

"Oxera and Edge Health, said the 7 per cent figure was 'significantly understated' because it excluded not only travellers who might have symptoms but also those whose viral load could be detected … 'If all infected passengers (including detectable symptomatic passengers) who attempted to enter the UK population but were prevented from doing so were to be included in the estimate, this estimate would be 63 per cent.'"

That is nine times 7%. They also said that the public health report was based on a modelling exercise and did not take into account

"'real-world' evidence from … airport testing regimes such as Jersey, where only a tiny fraction of arrivals tested positive without any onward community transmission."

Will the Minister explain why we cannot implement airport testing, which will help our tourism industry, business, airports and airlines, which have suffered so much through this pandemic?

2.36 pm

Lord Adonis (Lab): My Lords, the isolation of school pupils is a crucial issue, and the Minister kindly agreed to address five questions which I posed on Tuesday. First, will the Government undertake in England not to follow Wales and close all secondary schools as part of any revised tier 3 or circuit-break arrangements? Secondly, will the Government codify advice to schools on best practice and the definition of bubbles with a view, where infections are identified, to only groups who sit together being sent home rather than whole classes and year groups, as is often happening at the moment? Thirdly, will Ofsted give best practice guidance on what constitutes adequate online learning where pupils are sent home, including live instruction and interactive learning? Fourthly, where pupils are sent home and do not have the necessary IT equipment or wi-fi, will the Minister undertake that schools can apply for laptops for pupils who do not have them up-front under the Government's scheme without having to wait until pupils are actually sent home so that learning can start immediately? Fifthly, where pupils, by the nature of their home circumstances, do not have wi-fi, will the Government set out to schools what they should do, where possible, to provide it, including the provision of financial support?

2.38 pm

Baroness Uddin (Non-Afl): My Lords, regardless of the statistics the Minister has suggested on the number of those reached for self-isolation, communities with large minority communities remain unaware of government regulations and, most importantly, the unnecessary punitive fines. Some of the latest statistics

[Baroness Uddin]
suggest that more than 60% of close contacts of those who are Covid-positive have not been reached. Are statistics available for their profile, including their ethnic backgrounds? What assessment has been made of the reasons for the evident and serious gap in trust in the Government's management of their communications with the public? Needless to say, their resistance to engaging with the leaders of Manchester will not have filled ordinary citizens with great confidence, and any clarity is in the messaging that the Government will not accept any scrutiny or dissent.

These are emotionally testing times for us all. Problems with mental health and well-being are also at pandemic level and, regardless of government funding strategies, why are respected national and local statutory and voluntary organisations struggling to access essential funds to provide assessments, counselling and other support, while many people end up in A&E? What urgent consideration and resources have been allocated to national and local children's organisations to support individuals and families before they reach crisis point?

Under emergency modes, we have overlooked social divisions as communities become ever more segregated, with more vulnerable families increasingly detached from those who have and those who remain at the margin of inadequate, unequal access to financial, educational, digital and emotional support. Now is the time to reach out for better management of this pandemic. The politically biased attention given to local leaders is unbecoming of this Government leading a national and global pandemic.

2.39 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady Uddin.

I applaud the work ethic of my noble friend and thank him very much for setting out the regulations. I certainly support the intent behind them, but they are, of course, dependent for their efficacy on several factors.

The first important factor relates to clarity. As other noble Lords have said, these regulations are not a model of clarity. Can my noble friend say something about getting some simple messages across to people, so that those affected by these regulations are in a position to understand them? At the moment, it is very difficult to do so.

A second factor relating to the efficacy of the regulations is whether people will obey them. Can my noble friend say what discussions there have been with the police about their implementation and about resources?

Also very material is the extent to which the regulations are being used. My noble friend referred to the importance of fixed penalty notices. How many have been levied so far? That is a very important consideration. Have they been used at all? It would be good to hear something on that.

Another factor relating to their efficacy is, as the noble Baroness, Lady Massey of Darwen, said, test and trace. The national Covid-19 app does not require people to self-isolate. Why on earth not? We were told that this app was going to be world beating. I wonder in what respect it has been. According to SAGE, it is making only a marginal difference. It is not tracing nearly enough people and is not being used as effectively as it might be. Perhaps I may ask my noble friend, as I have done previously, about the importance of using local public health teams throughout the country to improve traceability.

I approve of the rationale behind the regulations, but many questions need to be answered.

2.42 pm

Baroness Finlay of Llandaff (CB) [V]: My Lords, these regulations read as punitive. Currently, around 18% of people self-isolate after developing symptoms, but only 11% of people in contact with them quarantine for 14 days. It seems that one in 10 with Covid is a high spreader, inadvertently passing the virus to around 80% of the subsequent cases. Containing these outbreaks requires very rapid testing and tracing, because in two and a half days each will have doubled in size.

Non-adherence is associated with men, younger age groups, having a dependent child at home, lower socio-economic grade, greater hardship during the pandemic and working in a key sector. We hear of those who cannot miss work for financial reasons, whose housing makes self-isolation impossible, whose caring responsibilities mean that self-isolation would cause disproportionate suffering for others, whose mental health and welfare are deteriorating, or whose cognitive difficulties mean that they cannot understand why they are being punished by being kept away from the activities and people they depend on.

Crippling fines and a police record will only disincentivise people to seek testing and disclose their contacts. The criteria behind the instruction to self-isolate are not transparent and there is no appeal mechanism for those who feel they have been inappropriately instructed. That runs counter to the principles of co-production and the findings from the CORSAIR study, which showed that practical support and financial reimbursement, with targeted messaging and clear policies, are likely to improve adherence. Punitive measures set up blame and division, not supportive collaboration. Any instruction must help people understand the benefit to them and those they care for, not jeopardise health by driving people to conceal their symptoms I am sure that is a risk that our hard-working Minister recognises and does not want to take.

2.44 pm

Lord Hain (Lab) [V]: My Lords, it is a pleasure to follow my noble friend Lady Finlay of Llandaff and to agree with the thrust of her remarks.

Can the Minister respond to the interview given to last Sunday's *Observer* by Graham Medley, a member of SAGE, the Government's Scientific Advisory Group for Emergencies, and chair of its sub-committee on modelling? He argued that a massive expansion of testing will still leave Britain struggling to keep Covid-19 infections under control unless the system can inform people within 24 hours that they are positive. Ministers are fond of quoting rising figures on numbers tested, but surely returning test results within 24 hours is as

critical as capacity in a successful test and trace system. Graham Medley said that, if necessary, capacity should be curbed in favour of speed.

The latest figures show significant delays in the test and trace system. In the first week of October, just 33% of tests conducted at regional test sites were returned within 24 hours. The figures were 24% for local walk-in sites and 42% for mobile testing sites. The number of home-testing kits received within 48 hours was a measly16%. Graham Medley told the *Observer*:

"The length of time it takes to get the test result is critical for the contact-tracing. And so there has to be a potential compromise between the volume of testing done and the ability to return the result, ideally within 24 hours … Suppose you could treble the number of tests you did, but only at the expense of returning them in a longer period of time, then that's not really going to work. The volume is important, but only if it can be done promptly."

Surely the system is still a shambles. Almost 250,000 contacts of people who tested positive in England had not been reached by tracers since the end of May. And that has still not improved very much.

2.46 pm

Lord Naseby (Con): My Lords, frankly, I do not see why this particular SI could not have been tabled earlier, in September. We had the break in August. I hope that my noble friend on the Front Bench will answer the case regarding children put by the noble Baroness, Lady Meacher, and pay particular attention to the plea from the noble Lord, Lord Bilimoria, for this country, remembering that we are an exporter and that we have to export to succeed.

One of the main problems hampering Her Majesty's Government in making sensible decisions is the lack of timely data. We were talking about isolation; now, everybody has to have a test. I checked the figures over the weekend. Fewer than a third of the test results have been coming back within 48 hours, but last Sunday, the figure was only 16%. Frankly, that is hopeless. We have now had six months' experience, and nothing seems to have improved on that front. It is not acceptable. It is important to publish—ideally, weekly—not just the number of cases and tests but the percentage of people who test positive. That makes it possible to tell how much of the increase is due to more testing.

Last week, I mentioned what was happening with reporting the number of deaths. Also important is the primary cause of death on the death certificate for those who have had Covid. The number of deaths between 10 August and 7 October was precisely 43, in 60 days. Even on a macro scale, we are not out of line with what normally happens at this time of the year.

The weekly and monthly mandated data of the Secondary Uses Service, the repository for healthcare data in England, shows a dramatic reduction in respiratory condition admissions compared to normal. We have seven Nightingale hospitals, with £220 million having been spent on them. What on earth are we using them for?

2.48 pm

Lord Desai (Lab) [V]: My Lords, there are various things to say here. First, whenever we make regulations, I guess that we have to assume that people are the same, depending on their age, gender or profession—but they are different. Even among the elderly, there is a great difference among BAME people, some of whom live in crowded surroundings and are not easily reachable by modern technology. It is assumed that everybody has a smartphone or is accessible via wi-fi or some other device. We have to look after people in a way that recognises that different circumstances require separate agencies to reach them.

We also have to be clear about whether we are taking these measures to slow down the spread of infection or to try to reduce mortality. As I said the other day, we have to be clear about whether our objective is to reduce mortality or to reduce infection. If it is to reduce mortality, we need only to reach the affected person quickly and give them notice that, having tested positive, they are in danger and ought to do something about it.

We have to be quite sure that local community agencies, mosques, temples and corner shops are used to reach people who might be in danger. Lastly, there ought to be a single source that people can reach to give them clarity about the rules, because right now there is no single source that people can go to.

2.51 pm

Lord McColl of Dulwich (Con) [V]: My Lords, these regulations also stress the importance of personal responsibility. A recent survey indicated low levels of adherence to self-isolation guidance, at 18%. The study was conducted by a range of bodies, including Public Health England and academic institutions. Will the Government publish that figure and emphasise that people must play their part in correcting it?

These regulations are, of course, an essential part of preventive medicine. Many countries with a high incidence of Covid also have a high prevalence of malfunctioning immune systems. Why do the majority of these citizens have immune systems that do not work effectively? It is simply because their immune systems have been poisoned by cytokines, which leak out of the excessive number of fat cells. The majority of people in these countries with a high Covid incidence are obese. Covid and obesity is a dangerous and often fatal combination, and we need an all-out nationwide campaign to reduce the obesity epidemic before we are overwhelmed by the next pandemic. Would the Minister agree?

2.52 pm

Baroness Altmann (Con): I thank my noble friend, for whose stamina, good humour and diligence I have enormous respect, for introducing these regulations. He certainly received the hospital pass. He says that the aim of this SI is to make it crystal clear to the public that people should stay at home and self-isolate but, as the noble Lords, Lord Rooker and Lord Hunt, and the noble Baroness, Lady Meacher, and others have said, for how long? Should it be for 14 days or 10 days, and from when—five days before what? It is convoluted. This SI is part of a broad effort to simplify and clarify the rules, but they have ended up being highly confusing, with huge fines.

With such penalties, it is particularly regrettable that there has been no proper parliamentary scrutiny of these measures. They were not debated in the Commons, even though they were announced about a

[Baroness Altmann]
week before they came into force, and we are now debating them well after commencement. The SI states, for example, that parents are responsible for ensuring that children under 18 self-isolate. Can my noble friend confirm that a parent could be fined thousands of pounds if their rebellious 16 year-old persistently sneaks out of the house to go to the gym? What advice does the Government have for effective restraints or solitary confinement methods for individual homes?

I recognise that my noble friend believes that these measures are designed to protect individuals and their loved ones, but isolation itself costs lives. Psychological damage, collapsing cancer tests and other treatments, and the lack of exercise, as my noble friend Lord Moynihan, has said, have already caused thousands of deaths as a direct or indirect result of lockdown. The poorest groups are the hardest hit, as the Secondary Legislation Scrutiny Committee warns, including so many of the young.

2.55 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I take this opportunity to thank the Minister for his explanation of the regulations. It is always a pleasure to follow the noble Baroness, Lady Altmann.

There is no doubt that there is confusion around the intent of these regulations and the issue of self-isolation, which of itself, notwithstanding the rigours of this pandemic and its impact on the wider community in the level of cases, is very penalising and punitive. To withdraw from society has its own associated health issues outside the pandemic.

The Secondary Legislation Scrutiny Committee has been particularly instructive about the whole area of test and trace. It highlighted the fact that those using the NHS Test and Trace app did so anonymously and would not be liable for the self-isolation requirements unless they took a test or were otherwise notified by an official. In such circumstances, it is believed that people may now avoid doing so and could avoid the connected fines for not self-isolating. In contrast, it is believed that those without the app, such as those in lower income categories or elderly people, are more likely to be contacted by traditional track and trace and more liable to fines. Has the Minister a solution to that state of affairs?

In the Minister's earlier comments, he referred to a vaccine and said that there were something like six contracts and four platforms. Is he able to specify a date or timescale when the vaccine will become available, because that would deal with the issue of self-isolation in itself?

2.57 pm

Baroness McIntosh of Pickering (Con) [V]: It is a pleasure to follow the noble Baroness and to join others in congratulating my noble friend on his stamina and energy in pressing these regulations.

I ask my noble friend to address a number of practical problems and limitations with the app and the track and trace system. On a practical issue, how can we advise people who are working away from home to self-isolate at home, which may be some distance away, without putting others at risk? This is a perennial problem and normally flagged up when it is a high-profile individual who is deemed to have fallen foul of the rules.

I want to address the issue of the app not necessarily updating sufficiently. It has also come to the attention of many that it drains the battery enormously, which is a disincentive to those who are using their mobile phone for other purposes during the course of the day to rely on the app, because they simply do not have enough battery usage left.

I know that there has been a lot of criticism of consultants being paid £7,000 a day, but I would like to understand what particular role the consultants played to justify what seems like an extraordinarily high fee. I welcome the fact that we are now using unqualified people to work track and trace; presumably they have been trained up at high speed. This is very welcome, and I wonder why we have not been using them earlier. I welcome this opportunity to address these issues and ask my noble friend as far as possible to find solutions to the issues that I have identified here.

2.59 pm

Lord Scriven (LD): I, too, pay tribute from these Benches to the Minister's work ethic in coming forward with these continuous regulations. I want to hit on that—and no one else in the debate so far really has done. On these Benches, we accept that in a public health crisis proportionate, evidence-based and reasonable restrictions on people are required to prevent the public health threat getting out of control. However, as many noble Lords have said, when you have an emergency pushing through legislation, some huge unintended consequences come from how the statutory instrument is written.

I have to challenge the Minister. At the beginning, he said that there was a need for emergency legislation. No, there is not. There is for certain things, but self-isolation during a public health threat is not something that you cannot foresee. This should have been proper, primary legislation. Many noble Lords have raised very detailed and reasonable questions through the debate about the time, the implication for children, and the implication in terms of the app or non-app. These points could have been teased out so that when these provisions gained Royal Assent and became law, many of these issues would have been ironed out.

This House has to stand up more each time the Government say that they need emergency legislation. I accept that some will be needed, but self-isolation during a public health crisis can be foreseen and legislated for. It has on a number of previous occasions, so I completely reject this as needing to be emergency legislation. You cannot police yourself out of a public health crisis by the approach of pushing through and accepting emergency legislation.

I want to raise a couple of things within the regulations which no one else has mentioned so far. Many noble Lords have mentioned issues, but there is one to do with enforcement. The regulations talk about "reasonable force"; I think my noble friend Lady Bowles mentioned this. But which people are allowed to carry out "reasonable force"? Part 3 of this instrument refers specifically, in Regulation 10(6), to

"(a) a constable … (b) a police community support officer"

and

"(c) a person designated by the Secretary of State for the purposes of this regulation".

Over and above a constable and a police community support officer, what type of person would the Secretary of State designate? Sub-paragraph (d) refers to

"an officer designated by the relevant local authority for the purposes of this regulation".

Is that any officer of a local authority? Could it be a director of finance, a refuse collector or a traffic warden?

The way that this is written is serious: the powers that the Government have given to a local authority—I declare my interest as a vice-president of the Local Government Association—are far too wide. Whether the intent is reasonable or not, should my reading of the provision be that any local government officer can use reasonable force to take somebody off the street, if they refuse to go to a house and do not self-isolate? This is why emergency regulation has to stop. It is serious and goes wide.

I will move away and look at the bigger picture. These Benches do not believe, and nor do I, that we can police our way out of a public health threat and crisis. There needs to be far more carrot and less stick. The countries getting this right, such as Taiwan and Germany, are putting far more carrot into the system. In Germany, you get paid your wage to stay at home; you are seen to be doing it in the national interest. Many people will not go for a test and self-isolate, because you will self-isolate only those who have actually had the test and feel secure financially, with support to do so. Why can the Minister and the Government not look at a proper support package, so that people will do the right thing? Many people want to do the right thing, and many are doing so. Some want to do so but fear what it means for putting food on the table to feed their children. This is a serious issue and it needs to be addressed.

In Germany, there are Covid support teams which provide social, economic and mental health support. This is seen not as punitive but as a support mechanism, with regular knocking on doors for people who have self-isolated. I understand the Minister will say that local government has been given money, but it is paltry compared to what is needed to support properly somebody in isolation who does not have the means to provide things. As I say, the intention is correct, but these regulations raise many questions. I hope the Minister can answer them because self-isolation is an important part of dealing with the public health threat.

3.05 pm

Lord Touhig (Lab) [V]: My Lords, I thank the Minister for introducing this instrument, although I must put on record my concern that we are only now able to debate these regulations, almost four weeks after they came into effect. Moreover, it is simply unacceptable that this instrument came into force a mere seven hours after it was laid on a Sunday evening. Given that it contains significant requirements and penalties for individuals and employers, a lead time would have been reasonable to communicate these changes to the public and encourage compliance.

The Government say that these regulations are necessary precisely because there have been low levels of compliance. A study commissioned by the Government found that just 18% of people who had symptoms went into isolation. Why was this evidence not included in the Explanatory Memorandum? Is it because the Government are embarrassed by their record? The low levels of compliance must be viewed in the context of the failure of the Government's test and trace system. The most recent weekly statistics show that only two-thirds of people who tested positive were transferred to the contact tracing system. How can we possibly expect people to self-isolate if they are not contacted?

It beggars belief that what was called Britain's world-beating app, costing tens of millions of pounds, was finally rolled out months later than promised and is unable to operate on phones more than five years old. This world-beating app cannot accept all coronavirus test codes; it struggles to calculate distances and does not require people to self-isolate. Can the Minister explain why the app, a vital tool in the fight to contain coronavirus, is not part of these regulations?

While I understand the data and privacy concerns, the Government appear to have no qualms about sharing information obtained through the contact-tracing programme with the police—a point made by a number of colleagues. The Secondary Legislation Scrutiny Committee pointed out that those informed by the app could avoid being fined for failing to self-isolate if they do not follow up the notification by applying for a test. Who would know? A number of colleagues today have also made that point. Does the Minister accept that excluding app users is ineffective and discriminatory? It is discriminatory because those who do not have access to the app are more likely to be identified by track and trace, and to be fined.

The Government have said that people on low incomes who cannot work from home and have lost income will be eligible for a new £500 test and trace support payment. With around 4 million people in receipt of benefits in England expected to be eligible for this payment, we welcome this support, however belated its introduction was. However, the Health Minister, Helen Whately, said that only 60 people had received a £500 payment as of last week—60 out of a potential 4 million people. How many people have applied and how many are awaiting a decision for this compensation and support? This is important because these regulations require our fellow citizens to act and do the right thing. The effective delivery of financial support where it is needed is therefore vital to ensure that no one is pushed into poverty for doing the right thing.

Lord Bethell (Con): My Lords, I am enormously grateful for a debate that shed a huge amount of light on an issue which acutely illustrates the delicate task that we and a lot of liberal democracies face in fighting Covid: on the one hand, balancing the preservation of life and the difficult public health measures necessary to protect it with, on the other, our liberty and freedoms, the livelihoods we need and the love of family and friends that we enjoy. I believe that these measures do strike the right balance, but this debate has rightly raised important questions about whether we have hit exactly the right point. I will address a few of those.

[Lord Bethell]

I reassure all noble Lords that these measures in no way seek to instigate some kind of mass fining or punishment regime. They are about supporting the principle of isolation, to ensure that there is absolute clarity about its meaning and the requirements expected of people, and to give the authorities the powers to enforce these—if absolutely necessary and only in the most extreme circumstances—when they have been most overtly breached.

We recognise that the people who are breaching isolation have not respected a clear and simple public health message in the first place. It is, therefore, not our policy to believe that they would necessarily be motivated by the threat of a fine. Instead, we seek to support people in a number of important ways and to educate them on the importance of isolation. We remain committed to the principle of consent, wherever possible, and we believe in the good nature and good intentions of the British public. That support has been enhanced by a payment of £500. The noble Lord, Lord Touhig, asked about the number of payments. Those payments are being made by local authorities and we are putting in place the measures necessary to count the number being made.

A number of noble Lords asked about the precise nature of isolation: how long should you isolate for; what is isolation; what are the requirements of those who have been asked to isolate? In the last five months, we have taken a large number of genuinely complex measures through the Chamber. This is not one of them. The protocols around isolation are clearly spelled out. If anyone needs to, they can look at GOV.UK/coronavirus or google "Do I need to isolate?" They will see, spelled out in very clear terms, the timing of the isolation, what is required when you isolate and the support you get when you do. I take with a large pinch of salt the suggestion that this is not clear.

What is definitely true is that isolation is a big challenge. For those in casual work, it may have a massive impact on their income. For those with families to support, it hits their ability to look after them. I do not doubt that it is an onerous obligation, but it is a necessary one, because there is no other way of breaking the chain of transmission. If those with the disease travel in our community and share the virus with those they love or pass by, we will never contain it. If people adhere to isolation, the regime of local lockdowns and of hands, face, space, stands a chance of being effective. We believe that it is effective on the great majority of occasions and we applaud the British public for their adherence.

We have sought not to make these measures draconian. There are exemptions for travelling for food and medical emergencies and for other reasons. As I said, there is support from NHS volunteers, statutory sick pay and discretionary payments from local authorities.

A number of noble Lords raised the impact on the elderly, and I hear their concerns loud and clear. It is without doubt that the Covid regime puts a huge emphasis on digital communication, whether that is getting information from websites or the app itself, which is available on 89% of phones. The elderly undoubtedly have a larger proportion of the older phones or have not updated their technology recently. However, the lack of the app does not necessarily mean that you are somehow excluded from the isolation protocols. The 111 telephone facility is enormously helpful and has proved hugely successful. We have given local authorities special support to reach out to the elderly to ensure that they have both the necessary support under isolation and the information to understand the protocols.

A number of noble Lords mentioned the impact on children. The impact on their mental health is enormous, which is why we are supporting local authorities and charities with funds. The noble Baroness, Lady Meacher, asked about testing in schools. I reassure her that we have, today, started a large set of pilots, first in Stoke and then in a number of schools up and down the country, to try to use testing in a much smarter way in order to keep schools open.

The noble Baroness, Lady Altmann, mentioned the pressure on families and the discipline needed in schools. She made her point very well: it is my personal lived experience and I have no doubts about that pressure. However, I cannot avoid the fact that containing this virus does require us to stop the chain of transmission, in children as well as everyone else.

The noble Lord, Lord Adonis, asked a number of pertinent, thoughtful and detailed questions. I will be happy to write to him with answers to some of them. I reassure him that, although the Welsh may have closed secondary schools, it is very much our intention to keep the schools in England open. On inspecting online learning, on 6 October Ofsted published the first of a new series of briefings looking at how schools are managing pupils' return, including online learning. The Department for Education has made available an initial 250,000 additional laptops and tablets for children who need them. On wi-fi, the department has delivered over 50,000 4G wireless routers to support disadvantaged children in accessing remote education and vital support services.

There were a number of other detailed questions that I will be glad to write to noble Lords about. The noble Lord, Lord Hain, made a number of points, not all of which I completely agree with, but he is absolutely right that there is a balance to strike between speed and quantity. We have massively increased quantity and will continue to do so, but we have a case to answer on the turnaround time of our tests. The noble Lord is right that turnaround time is very important.

In conclusion, the noble Baroness, Lady Jones, set me a challenge about what we can do to "build back better". Those were not her words but the Prime Minister's, but they capture rather well her intention regarding the investment needed to address the levelling-up agenda and the damage done by Covid. I am afraid that I do not run the Treasury, so I cannot necessarily meet with her economists.

However, there are a number of resonant themes in the healthcare sector regarding the way in which Covid will actually lead to improvements in our healthcare system if we take the right measures now to capture that progress. I get reports from the front line about an enormous culture of collaboration between different parts of the healthcare system, which is refreshing and impressive. That is exemplified by the sharing of data.

Although we have not changed the guidelines or rules on data sharing, we have hugely encouraged it, which has helped with treatment and therapeutics. The renaissance in the diagnostics and pathology professions, and the investment in a large amount of diagnostic kit, is going to have a huge impact on early interventions in disease. The investment and progress we have made in vaccines and therapeutics demonstrates Britain's leadership role in and the value of science, and illustrates the huge return on the British taxpayer's investment in science. It is a sign of how we should take things from here.

Motion agreed.

3.20 pm

Sitting suspended.

Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2020

Motion to Approve

3.30 pm

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

That the Order laid before the House on 10 September be approved.

Relevant document: 27th Report from the Secondary Legislation Scrutiny Committee

Baroness Scott of Bybrook (Con): My Lords, the purpose of this order is to bring into force a revised code of practice under the Criminal Procedure and Investigations Act 1996. The revised code will replace the current code, which was introduced in 2015.

Material that is obtained in the course of a criminal investigation may include material that tends to undermine the prosecution case or support the case for the accused. Disclosing such material to the defence is crucial to ensuring a fair trial and avoiding miscarriages of justice. Unfortunately, disclosure does not always take place promptly and can result in trials collapsing. This happened in several high-profile cases in late 2017, shaking the public's confidence in the administration of justice.

A review of the efficiency and effectiveness of disclosure had already been announced by the then Attorney-General; its findings were published in November 2018. The review highlighted significant concerns with the culture around disclosure, engagement between relevant parties—prosecutors, investigators and defence practitioners—and the challenges of modern technology. It made a series of practical recommendations, many of which aligned with the findings of the Justice Select Committee's inquiry into disclosure, which reported in July 2018. These included the need for a shift in culture so that disclosure was regarded as a core duty, better technology to review the volume of material available and clearer guidance on handling sensitive material.

Giving effect to these recommendations involved revising both the code of practice with which we are concerned today and the Attorney-General's disclosure guidelines. The code sets out the manner in which police officers are to record, retain and reveal to the prosecutor material obtained in a criminal investigation. The guidelines are a more detailed document, aimed at prosecutors, investigators and defence practitioners, and designed to embed nationally consistent best practice.

The ethos of the guidelines has been reworked so that investigators and prosecutors are encouraged to adopt a "thinking approach" to the disclosure process, treating it as integral to the investigation rather than simply an "add-on". To aid this new approach, and in an attempt to change the culture that exists around the current disclosure process, the guidelines have been reconstructed to follow the trial process, starting from the early investigatory decisions and ending at the conclusion of trial.

I am extremely grateful to all those across the criminal justice system who have come together to solve one of the most complex issues in it. The police and CPS especially have been at the forefront of this whole-system focus to ensure that we uphold our fair trial process. Through their joint working and close collaboration with government officials and other criminal justice partners, the revised guidelines and code of practice will ensure that a new thinking culture is embedded to improve the performance of disclosure practices.

One of the most significant changes for those on the operational front line is the introduction of a rebuttable presumption. The Attorney-General's review found that there are certain items of material that almost always assist the defence and therefore meet the test for disclosure but are frequently not disclosed until there has been significant correspondence and challenge from the defence, wasting time and resources. The review therefore proposed that there should be a rebuttable presumption that certain categories of unused material meet the disclosure test. This change is not intended to encourage automatic disclosure, but it should support investigators and prosecutors in dealing with the volume of material that they are required to consider by acting as a "nudge", requiring them to explain why the material in question does not meet the disclosure test if that is their conclusion.

The most important changes to the code of practice are associated with this recommendation, but the opportunity has also been taken to make other amendments designed to improve clarity. The streamlined disclosure certificate that forms an annexe to the existing code of practice has been omitted from the new code; the successor form is being revised under the auspices of the Criminal Procedure Rule Committee and the Lord Chief Justice will be invited to authorise its issue in due course.

In accordance with the process set out in the Criminal Procedure and Investigations Act 1996, the revised code of practice was published in draft for consultation in February this year, together with the Attorney-General's revised guidelines. The deadline for responses was extended by three months to take account of the Covid-19 emergency. A total of 45 responses was received; the revised code was then amended slightly further in the light of them.

The order will bring the revised code of practice into force on 31 December 2020 or, in case both the necessary affirmative resolutions are not forthcoming

[Baroness Scott of Bybrook]
by then, the day after the second resolution is passed. There is a particular reason for a relatively long delay before the intended commencement date: routinely preparing documents for service, including by redacting them where necessary, will have an impact on the police. That impact can be mitigated by greater use of computer technology to redact documents and images. Police forces are making preparations to enable them to do this, but some forces needed more time to ensure that the necessary software was ready. I beg to move.

3.37 pm

Lord Morris of Aberavon (Lab) [V]: My Lords, I thank the Minister for her explanation of the code of practice. Part 10 deals with the content of the indictment. It reminds me of drafting fairly simple indictments for prosecutions at Swansea borough court of sessions as a young barrister. At that stage of my career, it was not a simple task. After a long career at the criminal Bar, fortunately indictments had been granted by that stage, but I welcome anything that makes it simple.

The rules are put in a better order, which is a help, and the code winnows parts that are no longer required; I shall not spend any more time on that. The important provision is the rebuttable presumption on disclosure—or should I say the problem of non-disclosure? That was drawn to my attention as far back as 1998 when I was Attorney-General by the noble and learned Baroness, Lady Hallett, who was then chairman of the Bar Council. There has been an increase in problems ever since, though I thought it had been solved.

It is a very time-consuming operation to ensure that all documents, which may or may not relevant, are disclosed; unfortunately, short cuts have been taken in the past. The previous Attorney-General but two invited me to put my views forward in a meeting in his chambers. I thought that, where we are now, with the growth of mobile telephones, social media and the like, there should be a trigger mechanism to ensure that, whenever that issue might be raised, there should be special and particular attention. I welcome the change in culture and that, in future, there will be a rebuttable presumption that documents will be revealed unless, as I understand it, there is a good reason to the contrary. With those few words, I very much welcome what has been proposed.

3.39 pm

Lord Thomas of Gresford (LD) [V]: In the Attorney-General's review, published in November 2018, there was a section on disclosure pre-charge. Chapter 5 stated:

"The evidence given by almost all stakeholders to the Review is that early and meaningful engagement between the prosecution team and the defence is crucial to improve the disclosure process."

It went on:

"This is not a new idea … but the recent increases in the volume and complexity of digital material encountered in investigations make it ever more important and urgent. Both the prosecution and the defence have a responsibility to identify the issues in a case as early as possible."

The review points out that the suspect has a statutory right to silence but refers to the Criminal Justice and Public Order Act 1994, which permits a judge to direct a jury that inferences can be drawn if the suspect has failed to mention, when questioned, a fact that he could reasonably have been expected to mention. After that Act was introduced, and with interviews of suspects being routinely video recorded, it became the common practice for investigators to withhold full disclosure of relevant material. In a clumsy and unfair cross-examination, they would try, in the interview with a suspect, to lead him to make some assertion that could be triumphantly refuted by the sudden production of thitherto withheld material.

The unintended consequence of this was that experienced defence solicitors would advise their client to rely on his right to silence and refuse to reply in a so-called "no comment" interview. It was thought better to risk an adverse comment from the judge in his summing up than to have some contradictory account in interview laid before the jury, which may as well have arisen from confusion or misunderstanding as from guilt.

The Attorney-General, in his review, said:

"There is usually only very limited information or 'pre-interview disclosure' provided in advance of an interview under caution. There is nothing wrong with that as the investigators will wish to get a frank account of what took place from the suspect."

I take issue with that. Investigators undoubtedly used trickery in the way of partial disclosure to confuse or confound the suspect, and I am sure it led to unjust convictions. The withholding of information does not lead to a

"frank account of what took place"

—rather the reverse.

The review report confirmed my view and contradicts itself. It says that

"evidence provided to the Review reveals a gap pre-charge where, (i) if the defence knew more about the prosecution case they might volunteer more information, and (ii) if the investigator and prosecutor knew about that information it would help them identify new lines of inquiry, particularly in relation to where exculpatory material might be on a digital device or social media."

I wholeheartedly agree.

The fact of the matter is that nobody gains from a "no comment" interview. What generally happens at trial is that prosecution and defence agree that, rather than read out 100 or 200 pages or more of a "no comment" interview, a statement of the issues raised by the investigator, to which no reply was made, be prepared. If it is set out on a single page, it is far preferable for assisting the jury's understanding of the interview.

The Attorney-General's review had a positive recommendation, 5A, that the Attorney-General's guidelines should

"include guidance on pre-charge engagement."

I have yet to find that in the guidelines, but as far as this revised code is concerned—the subject of this statutory instrument—there is no reference to this very important issue. I would be grateful for an explanation from the Minister of why the clear recommendation of the Attorney-General's review has been ignored in this code.

The second issue I would like to raise is the standing of the disclosure officer. Paragraph 3.1 of the code states:

"The functions of the investigator, the officer in charge of an investigation and the disclosure officer are separate."

The investigator is naturally anxious that his investigations should lead to charge and conviction if the evidence is there. The disclosure officer, on the other hand, is under a duty to ensure that nothing that damages the prosecution case or capable of helping the defence—that is the common-law obligation—is concealed or withheld. But the code envisages that the investigator and the disclosure officer could be one and the same person. In my opinion, combining the duties of investigation with disclosure is highly undesirable. The responsibilities are, as the code explicitly states, separate. There is a potential conflict.

The third issue I would like to mention is the disclosure of social media records on mobile phones. This is particularly important in cases involving sexual assault, where a victim may discontinue a complaint rather than make her whole life public. We have discussed this many times, and I have urged the MoJ on, I think, three occasions on the Floor of the House to agree a protocol with prosecutors and defence lawyers, whereby if a defendant seeks to trawl over a mobile phone, he should first state the nature of his defence to show relevance and, secondly, provide the key words for a controlled search, such as dates, names and places, which he believes might reveal exculpatory material. Unhappily, the code contains no guidance on this very important issue, and the Minister might like to explain why. It cannot be said that the MoJ is ignorant of this issue.

3.47 pm

Lord Mackay of Clashfern (Con) [V]: My Lords, my introduction to law in government was as the Lord Advocate, then a member of the UK Government and responsible for the conduct of prosecutions in Scotland, among some other things represented in local areas by procurators fiscal. This arrangement was very old and intended to provide a fair system of prosecution across Scotland. Much later, an organised police force was created but bound to obey any relevant instructions of the Lord Advocate. This resulted in a unified prosecution system. In this part of the kingdom, the police had a more independent part in prosecution. During my time in the Government, the Crown Prosecution Service was set up, but it was not given the same formal relationship with the police to which I had been accustomed. This code is the result.

While I was Lord Chancellor, a case arose that demonstrated the importance of disclosure to the fairness of a prosecution. The Home Secretary, Michael Howard, decided that this was appropriate for legislation, and he kindly invited me to participate in the formulation of the legislation. After a good deal of thought, we agreed on the provisions of the Act, which—looking at them again after all this time—I think are rather neat and complete.

In the nature of their training, a difference in sensitivity on this matter is to be expected between lawyers and police officers, and serious difficulties emerged in some cases. The detailed review and consideration that have followed have produced this revised code. In my view, it captures the spirit of the statutory provisions. Of necessity, it contains important provisions of a bureaucratic nature. Some of these have been the subject of questions by the noble Lord, Lord Thomas of Gresford, who is extremely experienced in this area, and I commend to the Minister answering these questions, because they show there may be room for improvement in the code in due time—although I think it is important that the code as it now is should be brought into force as soon as possible.

3.50 pm

Lord Paddick (LD): My Lords, I thank the Minister for introducing this order. We have heard from a number of lawyers this afternoon. I am not a lawyer, but I was a police officer for more than 30 years, and when the noble Lord, Lord Blair of Boughton, was Commissioner of the Metropolitan Police, he asked me to do a review into rape investigation. I have to say, as the noble and learned Lord, Lord Mackay of Clashfern, has just said, that there is a difference of view between lawyers and police officers, and I think that is going to become apparent.

The Minister said that these new guidelines will make disclosure a core duty. The police have always considered disclosure to be a core duty, and as for the extent to which they fulfilled their obligations as far as disclosure is concerned, one has to ask how much of this was due to culture and how much of it was due to lack of resources, as other noble Lords have said. As the noble and learned Lord, Lord Morris of Aberavon, said, the problem is that it is a very time-consuming operation, and it has become even more time-consuming with the advent of such things as mobile phones.

I was concerned that the noble Baroness did not mention anything about the protection of complainants and their privacy, or, as my noble friend Lord Thomas of Gresford said, the potential for victims or complainants discontinuing a case to prevent the entire contents of their mobile phone being disclosed. I was very encouraged that the noble Baroness talked about greater use of computer technology, so that only the absolutely relevant parts of the contents of a mobile phone would be disclosed to the defence. My question is what funding is being made available to the police to invest in the computers and the software necessary to take that forward.

My noble friend Lord Thomas of Gresford talked about how, in the past, there have been cases where investigators have withheld information prior to interview to "trick the accused", as I think he said—the police might use a slightly different term. It is interesting that the new guidelines talk about "pre-charge engagement" and the potential benefits of disclosing more to the defence before a decision is made to charge. The only thing I would say on that is that it could potentially bring about delays between arrest and charge, and could potentially lead to somebody who is a danger to the public being released on police bail, or released under investigation, because of the delays caused by the disclosure process being brought forward before a charge is made.

Rebuttable presumption is a good way forward, but it will be effective only if proper resources and training are made available both to investigators and prosecutors. Clearly, another issue for the Government is what additional resources will be made available to enable the police to more effectively comply with this new guidance.

[Lord Paddick]

My noble friend Lord Thomas of Gresford also mentioned the standing of the disclosure officer and the fact that there is nothing in the guidance about the importance of the investigating officer being separate from the disclosure officer because there will be a potential conflict of interests between the two. The disclosure officer should have a completely independent view of what might be helpful to the defence, while the officer pursuing a prosecution might take a different view.

As the noble and learned Lord, Lord Mackay of Clashfern, said, these guidelines are an important step forward but potentially do not go far enough, for the reasons that other noble Lords and noble and learned Lords have given this afternoon.

3.56 pm

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, I too thank the Minister for her explanation of this statutory instrument. I am also not a lawyer. I remind the House that I sit as a magistrate in central London. When I started as a magistrate, some 15 years ago, if we had a trial about a street fight, for example, we would usually have a handful of witnesses and maybe some CCTV to help us reach our verdict. Now, the very first thing that happens when there is a street fight is that it is filmed. Anyone in the vicinity will walk towards that street fight and film the activity. When the police arrive, they will all be wearing body-worn video cameras. This all means that there is a huge amount of digital data generated for one street fight. It is for the police and the CPS to reduce this huge amount of data to something that is manageable and fair, so it can be taken to trial for the court to determine the results. This is not a trivial exercise and it goes to the heart of the problem we are discussing today: the disclosure of evidence. We have seen where this has gone wrong in high-profile cases, but it is a very live issue in a huge proportion of the day-to-day cases that we see in courts up and down the country.

There was a damning report by the Justice Select Committee in 2018, which identified that the CPS may have prioritised case timeliness over getting the decisions right. It concluded that

"disclosure failures have been widely acknowledged for many years but have gone unresolved, in part, because of insufficient focus and leadership by Ministers and senior officials."

Today's statutory instrument seeks to amend the CPIA 1996 by introducing a revised code of practice. The code sets out the way police and others must record, retain and reveal to the prosecutor material obtained during the investigation, including material that may undermine the case against the individual. The code was last revised in 2015 and the main revision is the introduction of the rebuttal presumption, which other noble Lords have agreed is a good step forward. It says that certain types of unused material should meet disclosure tests and should be revealed unless there is a reason not to reveal them. In the Attorney-General's 2018 review, he concluded that there were certain types of unused material that almost always assisted the defence but were not frequently disclosed. The introduction of a rebuttal presumption seeks to address this point.

The Minister will be aware that 95% of all criminal cases are heard in magistrates' courts, and that the 5% heard in Crown Courts tend to be more serious cases with longer sentences applied to them. So in magistrates' courts, there is a very high volume of cases, most of which are simpler and shorter. Nevertheless, a number of cases in magistrates' courts are also very long and complex, even though they are less severe. The Attorney-General's review has made a number of cross-cutting recommendations that affect both Crown Courts and magistrates' courts, but in paragraph 23 in particular it makes the point about the disclosure test for high-volume crime cases—these are the type of crime cases seen in magistrates' courts. The Attorney-General's review recommends that there should be a rebuttal presumption in favour of disclosure for these types of cases. There is a huge cost implication for this. Can the Minister say how adequately she believes they have looked at the cost of this review process?

It is certainly my experience—and, I suspect, that of anyone who has sat in a magistrates' court—that disclosure, or problems with disclosure, very often leads to delay in cases being heard. There is very often the obligation on the defence to call for an additional case management hearing, or something like that, because they are just not getting the disclosure which they are due under the current rules, and of course there will be more disclosure under these revised rules. Can the Minister say what review the Government will be doing of this? Is there any additional money or training for prosecutors so that they can meet these new obligations, so that this will not be yet another source of delay, which we see so often in magistrates' courts?

We as the opposition party are supportive of these changes and in particular of the rebuttal presumption. We look forward to reviewing them and to all people participating in the court process believing that they have had at least a fair hearing.

I want to pick up on a couple of points made by previous speakers, the first of which is from the noble Lord, Lord Thomas. It is certainly my experience, in particular in youth courts, that a very large proportion of youths—I would say a majority—go "no comment". They do so because that is what they pick up from media and their friends, and they are advised to do it by their lawyers. It is not helpful to the process. The noble Lord, Lord Thomas, made a point about lawyers taking a calculated risk that it would not be held against the youth too much, but it is slowing up the process, which is not for the benefit of the youths. It is not that unusual that, when you hear the youth's explanation, it is one that deserves a hearing, but they did not say so when they were in the police station. That is an important point which the noble Lord, Lord Thomas, raised. I look forward to the Minister's answer.

4.03 pm

Baroness Scott of Bybrook (Con): I am grateful to all noble Lords who spoke in this short debate for their comments. I will attempt to answer all of them; if I miss anything, I will look at *Hansard* and make sure that we get a written response to noble Lords.

I start by saying that I am very grateful to my noble and learned friend Lord Mackay for his support in this matter. Times have indeed changed since he considered the original legislation, and I am delighted by the recognition of this code and the related guidelines as part of the Government's response to dealing with those changes. We have to think of this code alongside the changes in the way people use social media and technology, which is the challenge to the justice system at the moment.

Most noble Lords are, for the most part, supportive of this new code, and most brought out the fact that the most important part of it is probably the rebuttal presumption. All respondents to the consultation, including the police, agreed that key categories of material are generated in most investigations which will often, although not always, fall to be disclosed to the defence—things such as custody records, 999 calls, and so on. The presumption applies to material in these categories. It will alert the police and the prosecution to the need to consider such material for disclosure to the defence. Items in these categories ought to be considered for disclosure as a matter of routine. However, this has not always been done. The noble and learned Lord, Lord Morris, and the noble Lords, Lord Thomas, Lord Paddick and Lord Ponsonby, all agreed that this was probably the right way forward.

The noble Lords, Lord Thomas and Lord Paddick, quite rightly brought up the victim's right to privacy. We welcome the ICO report on this and recognise the importance and complexity of protecting the victim's and the complainant's data. The Attorney-General is committed to working alongside criminal justice partners and the ICO to ensure that this can be done in a way that is proportionate, protecting privacy but securing justice, with safeguards in place to maintain trust and avoid unnecessary intrusion. This work is ongoing.

Important and welcome guidance on how to balance the right to a fair trial with the right to privacy, and confirming what victims of crime can expect in the course of an investigation, was given by the Court of Appeal in the recent Bater-James case. That set out key principles that investigators and prosecutors must follow when assessing when it is appropriate to seek a victim's digitally stored data. Those principles are amplified and supported with further guidance in the Attorney-General's guidelines. However, there is a delicate balance in order to ensure that there is no unjustified intrusion into any privacy rights, and we must make sure that any line of inquiry regarding victims' and witnesses' personal information is pursued only if it is reasonable in the context of that case and that collection is conducted in accordance with the law.

The noble Lords, Lord Thomas, Lord Paddick and Lord Ponsonby, talked about the resources and training required, both for the police and for the justice system. Technology has contributed significantly to the disclosure challenge—there are no two ways about it; this is the modern era—through the proliferation of digital data and the amount of material available to investigators in the course of volume crime investigations, as noble Lords said. The Government are committed to investing in tools and training that can help the criminal justice agencies to meet these challenges, while recognising that there is no one silver bullet. There has been an unprecedented focus over the past two years on ensuring that investigators and prosecutors are properly equipped to deal with large volumes of electronic evidence and to fully understand their roles and obligations to all parties within the criminal justice system. Through the close working of the national disclosure improvement board, the police are currently rolling out a technological solution which will assist with the swifter redaction of sensitive information in the material that falls to be disclosed. This will ease the burden and save front-line officers' time as they adapt to the changes brought in by the guidance and the code.

The noble Lords, Lord Thomas and Lord Paddick, also asked what would happen, roughly, if the Government do not get the desired effect and disclosure performance does not improve. That is extremely important: when you change something, you always need to go back and see whether it has made a difference. We are confident that the changes made by the code and the guidelines will assist in making the necessary improvements that are required by embedding a change of culture and a thinking process into disclosure obligations. We know that some significant changes are being made and that developments in technologies mean that disclosure practices will continue to evolve. To that end, the Attorney-General has committed to Parliament in the Justice Select Committee that she will undertake an annual review of the operation of the guidelines, with input from key partners and stakeholders, to ensure that they are making a positive impact in improving the performance of disclosure obligations.

The noble Lords, Lord Thomas and Lord Paddick, brought up the pre-charge stage and whether these changes will lead to large inefficiencies at that point. The police, the CPS and all relevant criminal justice partners have been represented on the disclosure sub-group, a forum established by the National Criminal Justice Board to better understand the issues and complexities of the disclosure process and to make recommendations to the Attorney-General on how that process might be improved. We accept the apprehension that this will have an impact on policing resources, but we remain of the view that the changes contained in the code and the guidelines will bring real benefits to the quality of charging decisions by ensuring that the prosecutor can review all appropriate information when making the decision. It will also further embed the thinking process for disclosure, which is one of the fundamental principles on which the code and guidelines are predicated.

We now get to the concerns of the noble Lord, Lord Paddick, as a non-lawyer but an ex-policeman, about the burden on the police. We need to be very clear that the police have been engaged throughout this drive to improve disclosure and we are very grateful for their support. They are clear that it is important that critical documents should routinely be considered for disclosure. We acknowledge the impact on the police of routinely preparing documents for service by redacting them where necessary. This impact can be mitigated by greater use of technology and police forces are making preparations to enable them to do so. These preparations are well in hand, but to allow sufficient time for them to be made, as I said in my

[Baroness Scott of Bybrook]
opening remarks, the date when the guidelines and code will come into force will be no earlier than 31 December to give them that little bit of extra time.

We come on to police resourcing. As I know the noble Lord, Lord Paddick, knows, the police funding settlement for 2020-21 sets out the biggest increase of funding for the police since 2010. The Government will provide a total funding settlement of up to £15.2 billion in 2020-21, which is an increase of £1.1 billion compared with 2019-20. The PCCs will receive £700 million to recruit up to 6,000 additional officers by the end of March next year. That will be shared across England and Wales.

It also important to remember that the NPCC's digital policing portfolio published its landscape review in 2019, assessing the high-level solutions currently available in the technology marketplace and outlining the requirements for the nationally scalable solution for redacting sensitive material. The NPCC's work with techUK will ensure that interoperability between different criminal justice systems will be at the forefront of thinking, which will save money and make some difference to police resources, which we know are, and always will be, stretched. In response to the noble Lord, Lord Thomas, the Government have announced £85 million to the CPS over the following two years to help it with its increased caseload, in particular from the 20,000 additional police officers, but also to better deliver the disclosure obligations that this brings.

I think the noble Lord, Lord Ponsonby, also raised funding for the defence community for the cost of early advice to its clients. In certain cases pre-charge engagements can be a positive mechanism to ensure that reasonable lines of inquiry are identified at an earlier stage in proceedings. In the near future, the Ministry of Justice will consult on the fee scheme to support this principle and pay fairly for the work that is done.

I have got to the end of my time—I am probably a bit over—but if I have missed anything I will make sure that I write to noble Lords and I will put a copy in the Library. I commend the instrument and the code it introduces.

Motion agreed.

Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020

Motion to Approve

4.16 pm

Moved by ***Baroness Williams of Trafford***

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

Relevant document: 29th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, in moving this Motion, I will speak also to the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 and the Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020.

Since the referendum, the Government have prioritised the protection of EU, other EEA and Swiss citizens who have made their home in the UK. We have repeatedly said that they are our friends and neighbours and we want them to stay. Parliament passed the European Union (Withdrawal Agreement) Act 2020 to protect their rights.

The Government have established the EU settlement scheme to provide a simple means by which they and their family members can obtain the status they deserve to remain living and working in the UK. More than 4 million applications to the scheme have now been received and nearly 3.8 million grants of status have been made. This is a remarkable achievement and the biggest immigration scheme in UK history.

The Government have now brought forward three statutory instruments that further protect citizens' rights. They give effect to the UK's obligations to EU, other EEA and Swiss citizens—who I will refer to as EEA citizens for simplicity—under the EU withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement. The instruments are made under powers in the European Union (Withdrawal Agreement) Act. I will explain briefly the purpose of each.

The first SI is the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020—or the grace period SI. The Government were pleased to share an illustrative text of the statutory instrument with the House in early September. Noble Lords also discussed this instrument in Committee on the Immigration and Social Security Co-ordination (EU Withdrawal) Bill.

The grace period SI has two purposes. First, it establishes the deadline of 30 June 2021 for applications to the EU settlement scheme by those EEA citizens and their family members who are resident in the UK by 31 December this year—the end of the transition period. Secondly, it saves existing relevant EU law rights for those EEA citizens and their family members who are lawfully resident in the UK at the end of the transition period but who have yet to obtain status under the EU settlement scheme. This is because, at the end of this year, the Immigration (European Economic Area) Regulations 2016 will be revoked, subject to Parliament's agreement to the Immigration and Social Security (EU Withdrawal) Bill. The grace period refers to the period between the ending of free movement and the deadline for applications to the scheme.

The SI saves existing relevant EU law rights for those who make their EU settlement scheme application before the end of the grace period, until the application is finally determined. It makes some modifications to the EEA regulations to reflect the end of free movement, as well as to reflect recent case law, which remains binding on the UK. It does not alter the eligibility criteria for the EU settlement scheme; nor does it affect the Government's commitment, in line with the agreements, to accept late applications where there are reasonable grounds for missing the deadline.

Broadly, the instrument maintains the status quo during the grace period, meaning there is no change to the way in which EEA citizens live and work in the UK. Those who have yet to apply to the scheme,

whether they are here lawfully or not at the end of the transition period, will be in no lesser position in respect of their rights of residence in the UK on 1 January 2021 than they were on 31 December 2020, pending an application to the scheme.

The second statutory instrument is the Citizens' Rights (Frontier Worker) (EU Exit) Regulations 2020, or the "frontier workers SI", as I will refer to it. This instrument protects the rights of EEA citizens who work in the UK but live elsewhere, who are referred to as "frontier workers", by 31 December 2020. Protected frontier workers have the right to continue to come here to work once free movement has ended for as long as they continue to be a frontier worker.

In accordance with the withdrawal agreements, the instrument will establish a frontier worker permit scheme so that protected frontier workers can apply for a permit certifying their rights under the agreements. The permit does not grant frontier workers a new immigration status. The frontier worker permit scheme will open in December this year. Applications for frontier worker permits will be made online, and the process will be simple, streamlined and free of charge.

From the end of the grace period, which is 1 July 2021, frontier workers will be required to hold a valid frontier worker permit in order to evidence their right to enter the UK on this basis. The instrument also sets out the circumstances in which a protected frontier worker's rights can be restricted and a permit can be refused or revoked, in accordance with the withdrawal agreements. Finally, the frontier worker SI provides protected frontier workers with statutory rights of appeal against decisions that restrict their rights as well as a right of administrative review against certain decisions concerning eligibility.

The third instrument is the Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020, or the "restrictions saving SI". This instrument gives effect to the UK's obligations under the withdrawal agreements. When restricting the rights to enter or reside of a person protected by those agreements, the agreements require the UK to consider conduct committed before the end of the transition period in accordance with the current EU public policy, public security and public health test. We are also extending this approach to people protected by the UK's domestic implementation of the agreements. Therefore, the EU law threshold will apply to those who are protected by the agreements or by the UK's domestic implementation of them. This includes those who have status under the EU settlement scheme, have an EU settlement scheme family permit, have a right to enter the UK for the purpose of a continuing course of healthcare, have entered the UK as a Swiss service provider or are a frontier worker.

However, now that we have left the EU, it is right and important that we create parity for all foreign nationals in the UK. Currently, there is a stricter and more specific test for non-EEA nationals liable to deportation than that for EEA citizens. This means that it is easier to deport non-EEA nationals who have committed criminal offences. A similar distinction exists for other types of restriction decisions—for example, a person's exclusion from the UK. Conduct committed after the end of the transition period will be assessed according to the same UK criminality thresholds that apply to non-EEA nationals. Again, this is consistent with the agreements and creates a fair immigration system for all.

This instrument will come into force once the Bill revokes the EEA regulations at the end of the transition period, subject to the agreement of Parliament. We need to save and modify relevant provisions in the EEA regulations in so far as they apply to deportation decisions in order to comply with our obligations under the withdrawal agreements. This will allow us to apply the current EU law thresholds to conduct committed before the end of the transition period. The instrument also provides that deportation decisions made in accordance with these protections continue to be appealable in accordance with the UK's obligations.

These three draft instruments implement the Government's citizens' rights commitments under the withdrawal agreements, and I commend them to the House.

Amendment to the Motion

Moved by ***Baroness Hamwee***

As an amendment to the above motion, to leave out from "that" to the end and to insert "this House declines to approve the draft Regulations because the so-called 'grace period' of six months from 1 January 2021 for applications to the EU Settlement Scheme does not replicate the provisions which apply during the implementation period."

4.25 pm

Baroness Hamwee (LD) [V]: My Lords, I am grateful to the Minister for going through those detailed and technical provisions. I have tabled this amendment opposing the grace period statutory instrument not because I oppose the grace period as such—and, in any event, at least six months is required by the withdrawal agreement—but in the hope of persuading the Government to sit down quietly to discuss the detail with those who are concerned about some of its not immediately obvious effects: "A slow conversation", as she might put it.

The limitations of parliamentary procedures lead me to this. We cannot amend the instrument and, although I share the regret of the noble Lord, Lord Rosser, merely expressing concern does not require anyone to do anything. Effective scrutiny should lead somewhere: if not to a change in policy, at least to a consensus as to exactly what an instrument means and how best to express it. Everyone needs to know where they are; immigration law is quite complex enough.

The widely held view is that the grace period is a straightforward continuation of the transition period, with no difference in any EEA citizen's position. In our view, that is just what it should be, in every detail, because that is right in itself and because of that widespread understanding.

The Minister, Mr Foster, has spoken of the SI saving "relevant … rights" and

"broadly maintaining the status quo".—[*Official Report*, Commons, 14/10/20; col. 4.]

[Baroness Hamwee]

The qualifying terms are significant. The savings under the SI apply to individuals and their families who, by the end of this year, do not have leave to enter or remain under the scheme. That is, they apply if your application has not been determined or if you have not yet applied but are entitled to status, provided you are "lawfully resident"—a very significant qualifying term in the instrument.

If you were not exercising treaty rights on 31 December this year, it seems you will not, in the interim period, have all the rights that go with that status. Crucially, you will not be able to access benefits or healthcare. Mr Foster said that you can "work and live" as now, provided that you are subsequently granted status. I will leave aside the retrospective effect on you and your employer if it is not granted. He has written that an EEA citizen or family member who is resident but does not have a right of permanent residence and is not exercising specific free movement rights will not have those rights protected during the grace period and will not be able to start exercising them.

If you have not been exercising treaty rights but are here, for instance, as a family member, can you apply for a job or a tenancy in this period? What about benefits or healthcare, as I have mentioned? I can do no more in the time available than flag up the issue of private health insurance and treaty rights. The term "lawfully resident" begs a question that would be answered by a change to simply "resident" or "present".

I doubt I need to emphasise the difficulty of finding a job in the current circumstances so as to exercise treaty rights if someone has not previously done so, nor the problem of a last-minute surge in applications, or if a lockdown causes delays in decisions in the Home Office. I appreciate that the department is encouraging citizens to apply to the EUSS by the end of the year and we will shortly see the arrangements and the guidance for people who have a reasonable excuse for not having applied. However, the encouragement to apply by the end of the year will be seen as something administrative and I doubt whether it will be understood that a citizen who does not have status under the scheme will be in a different position after the year end. Ironically, however, today's announcement on criminality rules may highlight this because it states:

"These changes do not apply to EU citizens protected by the Withdrawal Agreement, such as those with status under the EU Settlement Scheme."

Briefly, on the restrictions instrument, perhaps I might ask about people who have criminal convictions, both those who are serving and those who have served their sentences; they have rights too, which should not be lost retrospectively. If they do not have status under the scheme by the end of this year, does the Home Office intend automatically to issue deportation notices where it could not do so at the moment? Will it ensure that EEA citizens in prison or on licence understand the importance of applying for status without delay? Briefly, Keeling schedules should be used in the SIs so that the reader can see exactly what is being proposed without following up dozens of references.

These are not easy points technically, never mind politically. I hope that noble Lords will understand my concern for clarity and shared understanding. That is why I seek at least to pause the process and ask that the Home Office should work with stakeholders, who have spent a lot of time analysing the grace period SI to this end. I beg to move and I will seek the opinion of the House when the moment comes.

4.32 pm

Lord Rosser (Lab) [V]: My Lords, the terms of my amendment are that this House regrets that citizens' rights applications in the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 do not provide clear statutory protection during the grace period for all EEA, Swiss nationals and their family members who are eligible for the EU settlement scheme. Unless the Government persuade me otherwise in their response, I will seek the opinion of the House on my amendment.

We will not support the amendment in the name of the noble Baroness, Lady Hamwee, because it is well established that this unelected House, except in the most exceptional circumstances, does not vote down statutory instruments. This instrument has already been through the elected House of Commons, where it was passed following a Division in which we voted against it. It is also the case that voting down this SI would mean that the unelected House had voted down a measure passed by the elected House and as a result, the rights and protections applicable very shortly, which this SI guarantees to a significant number of people, would no longer be there.

We are considering three draft regulations. In respect of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020, we do not have any specific concerns. The regulations fulfil our obligations under agreements to allow those who are employed or self-employed in the UK but living elsewhere to continue to do so as long as they remain a frontier worker. This group of people will be required to obtain a permit as evidence of their right to enter the UK after 1 July 2021.

The Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020 deliver our obligations under the withdrawal agreement to consider the conduct of a person before the end of the transition period in accordance with the current EU thresholds when relating to deportation decisions. These decisions will continue to be appealable.

I have a couple of questions. As with the grace period SI, which I will come on to, are there any EU citizens who are currently living in the UK to whom the current thresholds will not continue to apply for conduct committed before the end of the transition period and who will have the UK thresholds after 1 January 2021 retrospectively applied to them?

Crucially, there have been reports this morning that the Government intend to make homelessness grounds for deportation. The shadow Home Secretary has raised his concerns over these immoral plans, which are particularly shocking in the midst of a pandemic and a jobs crisis. This issue is not covered by the SI before us today, but it would be good to have further clarity on the changes we are paving the way for. Can the Minister tell us whether it is the Government's view that a person falling into homelessness is grounds for deportation?

Our main concern today is with the draft regulation usually referred to as the grace period SI, to which our amendment to the Motion relates. The3million, representing EU nationals in the UK, and the Immigration Law Practitioners' Association are concerned that the way in which this regulation is drafted could technically mean that a large number of people would have a question mark over their rights during the grace period and while their application under the settlement scheme was pending. The Immigration Law Practitioners' Association did suggest that changing the text from "lawfully resident" to "resident or present" would align much more closely with the spirit of the EU settlement scheme and our obligations under the withdrawal agreement.

Currently there is no provision in relation to the resident's status during the grace period for EEA and Swiss citizens, or their family members, who are not granted leave under the scheme by the implementation period completion date in some 10 weeks' time and are not lawfully resident as defined by the SI. Such persons could therefore face difficulty in accessing services, such as healthcare or employment, during the grace period or during the time that an in-time application is decided or an appeal is pending.

Can the Minister confirm that the individuals not covered by this SI would include a person who is dependent on their spouse, so is self-sufficient but does not have comprehensive sickness insurance, and a person who is unable to enter the labour market due to a disability, and so is not working? If no further provision is made for these people, it would seem to diminish the meaning of the grace period and contradict the mechanisms made in what I understand to be other related regulations which do provide for protection for persons who are eligible under the EU settlement scheme but not lawfully resident under the EEA regulations.

As we understand it, the protected cohort under the European Union (Withdrawal Agreement) Act 2020 should include all those who are eligible for status via the settlement scheme, not just those exercising their rights within the EEA regulations. In Committee on the immigration Bill in the Commons, assurances were sought from the Government on this point. The Government gave an unequivocal assurance in Committee when the Minister said, during the sixth sitting, that

"section 7 of the European Union (Withdrawal Agreement) Act provides powers to make regulations to provide temporary protection for this cohort during the grace period. That means that if someone has not applied under the EU settlement scheme by the end of the transition period, they will be able to continue to work and live their lives in the UK as they do now, provided that they apply by 30 June 2021 and are then granted status."—[*Official Report*, Commons, Immigration and Social Security Co-ordination (EU Withdrawal) Bill Committee, 16/6/20; col. 195.]

The draft regulation ought to reflect that position and protect the entire cohort of those who are eligible to apply for settled status. As it stands, the consequences of the wording of the draft regulation are potentially severe for those affected, who are eligible for status via the EU settlement scheme but will be left in legal limbo, entirely of the Government's own making, if this is not resolved.

In addition, anyone who has submitted an application to the EU settlement scheme before the end of the transition period and is pending a decision after the transition period ends will have to demonstrate that they fall within the scope of the draft regulations to have the benefit of their protection. The Government's answer so far on this issue appears to be that no one will be challenged on their rights during the grace period, but that is no way to make law. If the Government knew this was to be their position—if they planned this carefully—what extra work has gone into ensuring that those who will not be covered by this SI have been supported to apply for the EU settlement scheme before 31 December this year?

What statutory provision do those EU citizens not protected by the regulations but eligible for status via the EU settlement scheme rely on in relation to their rights to work or to rent, and rights to protection from removal from the UK during the grace period? What statutory provision do those EU citizens not protected by the regulations, who have an application pending with the EU settlement scheme past the grace period deadline, rely on in relation to their rights to work or to rent, and rights to protection from removal from the UK?

The terms of the regulations ought to make it clear beyond any doubt, but fail to do so, that they are giving statutory protection during the grace period for all EEA and Swiss nationals and their family members who are eligible for the EU settlement scheme—as the Minister said in the Commons was the Government's position. I beg to move.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): For the convenience of the House, I remind your Lordships that the Question before it is the amendment in the name of the noble Baroness, Lady Hamwee. The noble Lord, Lord Rosser, will have the opportunity to move his amendment if her amendment is defeated at the end of the debate.

4.40 pm

Lord Bowness (Con) [V]: My Lords, I thank my noble friend for her introduction and the clarity that she has brought to these issues. That said, I have great sympathy with the views expressed by the noble Baroness, Lady Hamwee, although, for the reasons given by the noble Lord, Lord Rosser, I cannot support a fatal amendment. I will listen to what my noble friend says in answer to the points raised by the noble Lord.

My attention was brought to these instruments by virtue of their title on engaging citizens' rights. We need to take the greatest care with the rights of those who, until now, have enjoyed with us not only national but European citizenship.

My first observation about all three instruments is that they are extremely difficult to follow. It may be that I am no good at following these matters but, given the many cross-references to other pieces of primary, European and secondary legislation, we are trying to uncover very tangled documents. While that might not matter for us, and I understand that these issues are complex and must be legally correct and certain, the rules set out in the instruments engage and affect citizens, some of whom will not have English as a first language. There is reference in the Explanatory Memorandum to publication of guidance, which might

[Lord Bowness]
be fine, but not all official guidance, in my experience, is easy to comprehend, and posting these texts or the guidance on a website will not be sufficient. What efforts will we therefore make to reduce these measures into plain language for citizens to understand without the need for a lawyer, and how will we publicise them? We hear a great deal from Ministers telling us to get prepared for Brexit, but we do not know quite what we are preparing for and we need some clarity.

My second general point relates to the statement in each Explanatory Memorandum that no consolidation version is planned. Surely, with as many pieces of legislation from disparate sources such as these, that should be considered.

Regarding the instrument on frontier workers, I am surprised that there has been no consultation on implementation, even if the Government are bound to produce the regulations. Nor do I understand the statement that the instrument does not affect small businesses, even if they employ frontier workers. The Minister has confirmed that that the application for frontier workers will be free of charge. Can she confirm that the certificate will be free of charge? Further, while the Explanatory Memorandum states that the permit

"can be issued in a digital form",

does that mean that a hard copy will be available? If so, why are we making a distinction between this permit and the confirmation of settled status?

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): The noble Viscount, Lord Waverley, has withdrawn from the debate, so I call the noble Lord, Lord Foulkes of Cumnock.

4.44 pm

Lord Foulkes of Cumnock (Lab Co-op) [V]: It is becoming increasingly difficult to reconcile debates in this House with the reality of the world outside, particularly in relation to whether and how the Government are adhering to the provisions of the withdrawal agreement.

As others have done, I want to deal particularly with the application deadline and temporary protection regulations, which we in Labour opposed in the House of Commons, as my noble friend Lord Rosser said, and were debated here during Report on the Bill. Incidentally, I do not understand why the extent of the regulations is described as

"England and Wales, Scotland and Northern Ireland",

while in the other two instruments it is "the United Kingdom". What is the difference? Perhaps the Minister can explain. But that is just incidental.

The real concern with this instrument is that there is no provision in relation to residence status during the so-called "grace period"—which I must say is an unfortunate term; it sounds like grace and favour, and it may be that people on the other side of the House think of it in those terms—for EEA and Swiss citizens and their families, who are now "lawfully resident", as they are defined in the statutory instrument. We sought to change that term in the Commons to something like "resident and present"—not, as the noble Baroness, Lady Hamwee, said, "resident or present". Otherwise, as my noble friend Lord Rosser said, they are likely to face difficulties accessing services such as healthcare and employment during this period.

Given the hostility fostered towards those people by people such as the Home Secretary, I can understand their fear. Remember that many of them are the people whose dedication has kept our NHS and care sector going during the current pandemic. The implications are severe for those who do not have a legal basis to live in the UK, but they are eligible to apply for status under the scheme, and they will be left in legal limbo. Given the record of the Home Office on Windrush and other such issues, I must say that I do not think that any of the verbal assurances are sufficient. We need much greater clarification on this.

The Liberal Democrats have tabled a fatal amendment to the Motion, which I fear is either more of their virtue signalling or, it may be, an exculpation of their dark deeds when they were in coalition with the Tories. Presumably, they will then be on to social media like a measles rash attacking us for not supporting what they know is only a gesture but they pretend has some effect. As my noble friend Lord Rosser said, if we vote down this SI, it would mean not only the unelected House overturning the elected Chamber but losing the other rights and protections included in the regulations. Our amendment is meant to follow up the opposition in the Commons Committee, where Labour and, indeed, the SNP—no Liberal Democrats—voted against the regulations.

If the Government and this Minister had any sense, they would accept the powerful arguments we have made today but, more important, the concerns of the people involved, and the Minister would agree to take this issue away and look at it again. In the letter which she helpfully sent, dated today—and we received it today—the Minister says that, following my noble friend Lady Lister's amendment at Report on the Bill on 5 October, she would be discussing this with the Home Secretary. Surely, this is the opportunity. This is where and when this issue could and should be resolved.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, the noble Baroness, Lady Warsi, has withdrawn, so I call the noble Baroness, Lady Ludford.

4.48 pm

Baroness Ludford (LD): My Lords, we are facing a perverse and peculiar situation. The Government have generously extended the scope of the settlement scheme beyond those exercising EU treaty free movement rights to those simply continuously resident here. Thus, echoing remarks he made in the other place on 16 June that the noble Lord, Lord Rosser, cited, the Immigration Minister, Kevin Foster, said in a letter last week to Holly Lynch MP,

"the Government has made it clear we will protect the rights"

of EEA citizens

"who have made the UK their home, but may not be exercising a specific Free Movement right."

He also said in that letter:

"an EEA citizen or their family member who is resident in the UK at the end of the transition period, but who does not have a right of permanent residence and is not exercising specific free movement rights … will still be able to apply to the EU Settlement Scheme by the deadline of 30 June 2021."

In that and other sentences in the letter, he kept referring to "those resident here", with no reference to having to be lawfully resident under the EEA regulations 2016. He affirmed that those people would have the right to rent and the right to work in the six-month period, but without the caveat that my noble friend Lady Hamwee cited from his remarks on 16 June about needing to be subsequently granted status. How that would work retrospectively is a mystery.

So the Government will apparently protect the rights of all EEA citizens and they want them to stay, but those promises from the Government have not been translated into the text of the grace period SI and in fact they set an obstacle course for the period from January to June next year for those not exercising treaty rights. Yes, they can rent, work and apply to the settlement scheme, but they will not be lawfully resident in those six months. What good is that? When the Immigration Minister said

"we want them to stay",

he failed to add an honest "but we will make them illegal residents for six months".

The Government should create new residence rights to apply for six months for all those covered by the withdrawal agreement and eligible to apply for settled status. It is deeply unfair and capricious to lead people to believe that their rights are fully protected until they get settled status when that is not actually the case. The Government could of course just correct that problem by making the test for the grace period SI simple "residence" rather than "lawful residence".

Thus, my noble friend's fatal amendment should be supported. In fact, the noble Lord, Lord Rosser, gave very good reasons for doing so, notwithstanding the rather polemical remarks of the noble Lord, Lord Foulkes.

Finally, I would be grateful if the Minister could explain what changes the Government are making on the back of assurances referred to in the European Commission's report of the recent meeting of the EU-UK joint committee. It says:

"The EU side further sought and received political assurances that under the UK settlement scheme, all EU citizens with residence status will benefit from the same set and level of rights as those guaranteed by the Withdrawal Agreement."

Can the Minister explain what that paragraph means and what assurances have been given?

4.52 pm

Lord Kirkhope of Harrogate (Con) [V]: My Lords, we have been most fortunate to have had many EU and EEA citizens working in our country for many years. Without them and the services that they have performed, and still do perform, many of our key businesses and public services would be hard pressed.

One of the greatest areas of mutual benefit of our membership of the EU has been the possibility of free movement and the choice made by Europeans to work and live here, and by many UK subjects to work and live in other European countries. Therefore, whatever we can do to alleviate the new pressures on those who wish to continue their lives here is to be welcomed.

I had the privilege of serving as the Immigration Minister in the Home Office for a time in the 1990s. Then, although I was a strong adherent to UK immigration and asylum procedures, I adopted a principle of dealing with cases in a way that we deemed firm but fair. I therefore noted the reference to that principle by the Minister on the immigration Bill yesterday and am glad to see that it has remained in the Home Office psyche ever since.

In dealing with our EU citizens here, we now need rather better mood music. Whatever rules and regulations we need to introduce, such as the three measures before us today, we really must ensure that the new requirements and burdens on those subject to the provisions are operated not only firmly and fairly but, above all, sympathetically, where needed.

I fully recognise that, once the transition period ends, the Government intend to remove the more favourable treatment offered to European citizens over citizens from other parts of the world, but the withdrawal agreement, which we and the EU parties signed, set down clearly the arrangements on which these three measures are based. It gave EU citizens here and UK citizens in Europe certain specific rights and an exceptional status in the short term. On frontier workers, it is mainly of relevance to Irish citizens, who, since July, have required a permit to be here. Recent debates have been to do with the form of that permit. Can my noble friend confirm that this is now a physical document, not merely an electronic notice? The restrictions on rights of entry or residence arise under Article 20 of the withdrawal agreement. Can my noble friend confirm that all decisions on removal are fully appealable?

On the third item, regarding the application deadline and temporary protection, a period of six months is described as a period of grace. This needs clarification in a number of respects. There are contradictions, so can my noble friend assist us in describing precisely the status of an applicant for residence during the period of grace following the end of the transition period on 31 December 2020? If leave is not granted by that date, applicants are no longer lawfully resident. What of their rights to healthcare and employment? Will they be protected throughout the grace period? What is the position if a decision on their case has been taken and an appeal is pending? The period of grace must allow for some generosity in the implementation. The applications are for residency, often for people who have been here for years.

Many of us are hoping that the outcome of current negotiations with the EU will include major co-operation areas in the fields of justice and security. As someone who spent many years in the European Parliament helping to put together many provisions which are there to protect us all from terrorism and criminality, I strongly hope that we reach a satisfactory outcome. Without a close arrangement, matters such as those being debated here will be more problematic in cases where some joint action or enforcement is required. The announcement today in the other place of a toughening up of action against EU criminals will be of little use unless the real-time exchange of data between law enforcers and intelligence agencies negotiated and agreed by me and many others over many years is protected and available to us.

These are necessary SIs, but as with so many others they depend on our reaching a friendly accord with

[Lord Kirkhope of Harrogate]
the 27 states of Europe and, of course, on proper adherence to the withdrawal agreement in which these specific items are enshrined.

4.56 pm

Baroness Williams of Trafford (Con): My Lords, I thank all noble Lords who have contributed to the debate. I think some confusion has arisen because it is, in fact, a lot simpler than might first have been thought. Those who have yet to apply to the scheme will be in no less a position regarding their right of residence in the UK on 1 January 2021 than they were on 31 December 2020, pending an application to the EU settlement scheme.

I turn first to the amendment moved by the noble Baroness, Lady Hamwee, which, although she says it does not oppose the grace period, actually abolishes it. The grace period SI does not replicate the provisions which apply during the implementation period because, subject to Royal Assent to the Bill, free movement will end at end of that period, so those living in the UK but not exercising EU law rights at that point will be able to regularise their position by applying for status under the EU settlement scheme, if they have not already done so. The grace period SI complies with the withdrawal agreement and confirms the protections for those EEA citizens to whom the agreement applies. Like the noble Lord, Lord Rosser, I do not think that Parliament should refuse to support that.

I now turn to the amendment in the name of the noble Lord, Lord Rosser. Where a person has yet to obtain status under the EU settlement scheme, the grace period SI will protect any relevant EU law rights which they hold when, subject to Royal Assent to the Bill, free movement to the UK ends at the end of the transition period. This is in line with agreements and reflects the current position under EU law. An EEA citizen or their family member who is resident in the UK at the end of the transition period but is not exercising EU treaty rights will not have residence rights under free movement rules to be protected during the grace period. They will not be able to start exercising free movement rights in the UK after free movement in the UK has ended at the end of the transition period, but they will still be able to, and will be encouraged to, secure the status that they need under UK law to continue living in the UK beyond 31 June 2021 by obtaining status under the EU settlement scheme.

The noble Baroness, Lady Hamwee, raised comprehensive sickness insurance. The grace period SI does not change the eligibility criteria for the EU settlement scheme. As I have said on many occasions and repeat today, there is no change to the Government's policy that CSI is not required to obtain status under the scheme. The grace period SI maintains CSI as a requirement for lawful residence during the grace period as a student or self-sufficient person under the saved EEA regulations, and this is consistent with EU law.

The noble Baroness, Lady Hamwee, and other noble Lords raised Minister Foster's speech made in Committee in the other place in June. The Government have provided the means to protect all who are resident in the UK by the end of the transition period by establishing the EU settlement scheme. When speaking in the other place, my honourable friend the Minister for Future Borders and Immigration did not suggest that this instrument would be used to create new free movement rights once free movement has ended. To regularise their status in the UK, those not residing here lawfully at the end of the transition period can apply to the EU settlement scheme.

The noble Baroness, Lady Hamwee, and the noble Lords, Lord Rosser and Lord Foulkes of Cumnock, raised the question of replacing "lawfully resident" with "resident" or "present" in the UK. Having an EU right to reside confers other rights beyond the right to remain in the UK, such as access to benefits, and after the end of the transition period it would not be appropriate to widen EEA citizens' entitlements beyond those groups who have them now. The Government have instead given EEA citizens not exercising EU treaty rights the means to resolve their situation by making an application to the EU settlement scheme. It was never the Government's intention to change how we have implemented EU law by bringing within scope of the saved EEA regulations individuals not residing lawfully in the UK at the end of the transition period. To regularise their status in the UK, they need to make an application to the EU settlement scheme.

The noble Baroness, Lady Hamwee, and the noble Lord, Lord Rosser, also raised the issue of exclusion of EEA nationals. Decisions to exclude EEA nationals are outside the scope of this instrument, which saves only deportation powers, although the noble Lord may have mentioned deportation. Decisions to exclude those protected by the withdrawal agreement will be made by the Home Secretary directly, as is the process for non-EEA nationals. Where the exclusion is based on conduct which took place before the end of the transition period, the Home Secretary will ensure that the decision meets the EU law thresholds on the grounds of public policy, public security or public health.

My noble friend Lord Kirkhope of Harrogate talked about the Article 8 threshold for deportation. Article 8 of the ECHR's right to respect for private and family life is a qualified right, which can be circumscribed, where lawful, necessary and proportionate, in the interests of a number of factors, including national security, public safety, the prevention of disorder or crime, and the protection of the rights and freedoms of others.

Section 117C of the Nationality, Immigration and Asylum Act 2002 provides that when assessing whether deportation breaches Article 8 of the ECHR, the deportation of a foreign national offender must be in the public interest, unless certain exceptions apply. This is a stricter threshold than in non-criminal cases, because of the greater public interest in deporting serious or persistent foreign criminals. Parliament has expressly required a particularly strict threshold when assessing whether the deportation of those sentenced to at least four years' imprisonment is in the public interest. This reflects Parliament's view that the more serious the crime, the more serious the response.

The noble Lord, Lord Rosser, referred to rough sleeping. We are committed to transforming the lives of some of the most vulnerable people living in this country, and to ending rough sleeping for good. This

year, the Government spent more than £700 million in total to tackle homelessness and rough sleeping, which includes the £112 million of funding for the rough sleeping initiative and the £266 million this year for the Next Steps Accommodation Programme, which aims to ensure that as many people as possible do not return to the streets; it also puts in place support over winter. For those who refuse support, the new rules provide a discretionary basis to cancel or refuse a person's leave where they are found to be rough sleeping and are engaged in persistent anti-social behaviour. I assure the noble Lord that the new provision will be used sparingly and only when individuals refuse to engage with the range of available support mechanisms.

The noble Lord also asked about enforcement action against those eligible to apply to the EU settlement scheme during the grace period. The Government have made it clear that EEA citizens and their family members who are resident in the UK by 31 December of this year have until the end of the grace period, on 30 June next year, to apply to the EUSS. During the grace period, the Home Office will not enforce the removal from the UK of those who are eligible to apply to the EU settlement scheme, pending their application to the scheme and its final determination. This includes those without a right to reside, for example individuals who are studying or living here and do not possess comprehensive sickness insurance, or who are not in genuine and effective work. Our focus will remain on signposting individuals to the scheme and providing the necessary support to apply. We will, though, continue to take enforcement action against those involved in serious or persistent criminality. For conduct committed after the end of the transition period, this will be on the ground that it is conducive to the public good.

The noble Lord also asked about the position of someone with a pending EUSS application at the end of the grace period. The grace period SI will save relevant rights at the end of the transition period, in relation to residence and access to benefits and services, for those who make a valid application to the EUSS by 30 June 2021 and until it is finally determined. This includes pending the outcome of any appeal against a decision to refuse status under the scheme. This means that someone who applies by the 30 June deadline and has not yet been granted status under the EU settlement scheme can continue to live their life in the UK as now until their application is finally determined. An individual undergoing an eligibility check while the outcome of an application made by the deadline is pending will have the same entitlement to accommodation, work, benefits or services as they did before the grace period ended. Where it is needed, the Home Office will be able to confirm that an application is pending.

My noble friends Lord Bowness and Lord Kirkhope of Harrogate asked about engaging with frontier workers, first, so that they can be alerted as to their rights and what they need to do. The applications will open in December this year. They will be made online and the process will be simple, streamlined and—my noble friend Lord Bowness asked about this—free of charge. Ahead of the scheme opening, the Government will ensure that EEA frontier workers and their UK employers are fully aware of their rights and obligations, and will encourage frontier workers to obtain the permit to certify their rights under the agreements. Regarding a physical document being available—this goes to my noble friend Lord Kirkhope's other question—those with an ID card with an inoperable biometric chip will initially be issued with a physical permit, but as soon as the technology is available, it will be a digital system.

I hope that I have answered all noble Lords' questions. I ask the Liberal Democrats to reflect on the effect that a fatal Motion will have on those EU citizens whom they so badly want to protect.

5.10 pm

Baroness Hamwee (LD): My Lords, I say to the noble Lord, Lord Bowness, that I wondered whether I might talk about the drafting for a full eight or nine minutes and decided that that would not be very appealing to your Lordships. To the noble Lord, Lord Foulkes, I say that I do not use social media—I am a dinosaur. I am sure that he knows far more about the dark arts than I do; he might regard that as a compliment, of course.

With regard to the substance, the Minister repeated many of the terms that your Lordships have questioned and did not, I think, answer the concerns that were expressed. I remain uneasy about approving an SI when I am still unclear about the detail regarding status during the grace period. I still think that there is a lack of clarity and an uncertainty affecting a very large number of people.

I made my objective quite clear: to seek to persuade the Government to discuss the detail and get a consensus on the meaning of what is provided. What I am proposing would not affect citizens if there was a consensus as to the meaning—even leaving aside what underlies it—so citizens, who are indeed our friends, would not be affected because there is time to get that consensus and bring an agreed SI back to the House. I refute the motivation that has been implied; it is not that at all.

Noble Lords are well aware of the constraints of our proceedings. This is the only step now open. Therefore, I seek to test the opinion of the House.

5.12 pm

Division conducted remotely on Baroness Hamwee's amendment to the Motion

Contents 120; Not-Contents 266.

Baroness Hamwee's amendment to the Motion disagreed.

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5.25 pm

Amendment to the Motion

Moved by ***Lord Rosser***

As an amendment to the above motion, at end to insert "but that this House regrets that the draft Regulations do not provide clear statutory protection during the "grace period" for all European Economic Area and Swiss nationals and their family members who are eligible for the EU Settlement Scheme."

Lord Rosser (Lab) [V]: As I understand it, I am now to formally move my amendment. I think I have the opportunity just to say a few words, and they will be a few.

I gave two specific examples: first, someone dependent on their spouse, so self-sufficient but without sickness insurance, and, secondly, someone unable to enter the labour market due to a disability and so not working. I asked the Government to confirm that in neither of those examples would the individual be covered by this SI. In my opinion, I did not get a specific yes or no. I was left with the strong impression from what was said that, even though in both examples the individuals affected would be eligible for the EU settlement scheme, they would not be protected during the grace period by this SI if still seeking settled status as they would be in the category of those deemed not to be exercising EU free movement rights.

We need clarity. We need the Government to put wording in this SI that reflects what the Minister said in Committee on the Bill in the Commons about protection during the grace period for all EEA nationals and their family members. I wish to test the opinion of the House on my amendment.

5.26 pm

Division conducted remotely on Lord Rosser's amendment to the Motion

Contents 261; Not-Contents 252.

Lord Rosser's amendment to the Motion agreed.

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Motion, as amended, agreed.

Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020

Motion to Approve

5.38 pm

Moved by ***Baroness Williams of Trafford***

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

Relevant document: 29th Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020

Motion to Approve

5.39 pm

Moved by ***Baroness Williams of Trafford***

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

Relevant document: 29th Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

General Synod (Remote Meetings) (Temporary Standing Orders) Measure

Motion to Direct

5.39 pm

Moved by ***The Lord Bishop of London***

That this House do direct that, in accordance with the Church of England Assembly (Powers) Act 1919, the General Synod (Remote Meetings) (Temporary Standing Orders) Measure be presented to Her Majesty for the Royal Assent.

The Lord Bishop of London: My Lords, this Measure will enable the General Synod—the legislative body of the Church of England—to meet and conduct its business remotely. Current coronavirus restrictions mean it is not practically possible for the synod to meet in the usual way, with 500 people from across England gathering in the same place.

Arrangements made under the Measure could allow for all synod members to participate remotely, but it would also be possible for the synod to adopt a hybrid approach, with some members in the chamber and some joining online. Noble Lords will be familiar with these types of arrangements, since they have been in use in your Lordships' House since April. The precise arrangements adopted by the General Synod will need to take account of the relevant regulations and government guidance as they develop over the coming months.

In this place, we were able to make provision for virtual proceedings using Business of the House Motions. However, as the General Synod was created by statute law, it does not have the same freedom and the legislation is required to enable the synod to meet remotely. Noble Lords will recall that the Coronavirus Bill contained provision enabling local authorities to hold virtual meetings. The Measure makes equivalent provision for the General Synod.

There is some urgency to this legislation as there is business that the General Synod needs to do before the end of this year. This includes legislation giving effect to recommendations from a 2019 report of the Independent Inquiry into Child Sexual Abuse. There

are also statutory deadlines that need to be complied with, including the approval of the Church of England's national budget for 2021. If the Measure is approved, the General Synod will meet remotely this November to deal with that and other significant business.

Because of the practical issues arising from the coronavirus restrictions that I have already mentioned, the synod met in September to pass this Measure with only a quorum of members attending and maintaining social distancing. Other members graciously refrained from exercising their right to attend. The Measure was passed by synod with no votes against in any of the three houses.

The Ecclesiastical Committee of Parliament considered the Measure on 6 October and has reported that it considers the Measure expedient. I take the opportunity to express my thanks to the Ecclesiastical Committee, the clerks and the usual channels for the trouble they have taken to facilitate the swift dispatch of this business. I beg to move.

The Deputy Speaker (Lord Duncan of Springbank) (Con): The next speaker, the noble Lord, Lord Judd, is now not taking part, so I call the noble and learned Baroness, Lady Butler-Sloss.

5.43 pm

Baroness Butler-Sloss (CB): My Lords, I chair the Ecclesiastical Committee. As the right reverend Prelate said, we met in November and found this Measure to be expedient. It is perfectly sensible. The only sadness for me is that it is a shame it has to come to Parliament and cannot be dealt with by the synod itself. Since the synod is created by Parliament, that is why that cannot be done, as the right reverend Prelate said. I give my support to it and say that that is exactly what the Ecclesiastical Committee said.

5.44 pm

Lord Bhatia (Non-Afl) [V]: My Lords, the Measure makes provision for the General Synod to meet and transact business remotely in accordance with temporary special standing orders made jointly by the archbishops and officers of the synod. In the era of Covid, this is the right decision. The synod's business has to continue despite the lockdowns.

As I respect the synod's work, I have only one comment to make. The amendment safeguarding legislation to take account of the recommendations contained in the 2019 Anglican Church report from the Independent Inquiry into Child Sexual Abuse is an important issue that should be considered as soon as possible by remote meetings.

5.45 pm

The Lord Bishop of London: I thank the noble and learned Baroness, Lady Butler-Sloss, for her comments and for her work on the Ecclesiastical Committee. I also thank the noble Lord, Lord Bhatia, for his comment, and I agree with him that the recommendations of the 2019 IICSA report should be taken as soon as possible. This Measure allows us to do that.

Covid-19 is presenting us with a marathon and not a sprint, which means that, rather than waiting for this to pass, we have to change the way we work. This Measure will allow the Church of England General Synod to undertake its business in support of the Church of England, which contributes not only spiritual capital but also social capital to our communities at this challenging time. I beg to move.

Motion agreed.

House adjourned at 5.46 pm.