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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Thursday 19 November 2020

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Salisbury.

Introduction: Lord Bellingham

12.08 pm

Sir Henry Campbell Bellingham, Knight, having been created Baron Bellingham, of Congham in the County of Norfolk, was introduced and took the oath, supported by Lord Glenarthur and Lord Garnier, and signed an undertaking to abide by the Code of Conduct.

Arrangement of Business

Announcement

12.13 pm

The Deputy Speaker (The Earl of Kinnoull) (Non-Afl): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber and others are participating remotely. All Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House. Oral Questions will now commence. Please can those asking supplementary questions keep them to no longer than 30 seconds and confined to two points? I also ask that Ministers are brief in their answers.

Face-to-Face Medical Appointments

Question

12.13 pm

Asked by ***Lord Balfe***

To ask Her Majesty's Government what progress they have made towards the return to face to face appointments on demand for medical patients.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, face-to-face GP appointments increased from 10 million in August to 15 million in September. I should like to take this moment to thank those who have worked hard to restart primary care and serve patients in difficult circumstances. But I should also flag that the proportion of consultations by phone and video is currently running at around 40% and, for many people, this represents a safe, convenient, low-stress, low-cost and hygienic way to get the clinical engagement they need.

Lord Balfe (Con): My Lords, I thank the Minister for his response and note that public trust in the Government is not rising at the moment, and that many people feel that the absence of effort to get medical practice back to normal is a contributory factor in this. Will the department make it a priority to get face-to-face appointments back to the level that they were before? If it cannot, the Government will find that trust declines even further.

Lord Bethell (Con): My Lords, I thank my noble friend for his comments and reassure him that the Government are absolutely focused on the restart programme. The chief executive of the NHS has written to GPs, emphasising the absolute and primary importance of face-to-face appointments, for exactly the reasons that my noble friend knows full well. I also emphasise the enormous response that we have had from the public, and that we are meeting exacting targets for those face-to-face meetings. I also emphasise that new technologies and techniques have been very much welcomed by the public. Telemedicine, and telephone and video consultations, have proved to be extremely popular and helped to increase the number of appointments last month compared with this time last year.

Lord Harris of Haringey (Lab): My Lords, nearly three-quarters of GP consultations at the peak of the pandemic were conducted by telephone or video call. A BMA survey in June found that nine in 10 GPs want to continue to deliver consultations remotely, once the pandemic has ended. Many people are reluctant to discuss their symptoms in this way, or cannot access the necessary technology, and often diagnoses are not possible without a physical examination. Is the Minister happy with such a change? What guidance does the department intend to give on this, and will the GP contract be reviewed to reflect what is happening?

Lord Bethell (Con): The noble Lord is entirely right. Without doubt, there are very many circumstances in which a face-to-face appointment is absolutely necessary, whether that is for a physical analysis, for the comfort of the patient or to check out other symptoms that may not be apparent from a telephone call. However, there are other people for whom telephone appointments are helpful. The Royal College of Physicians found that 20% of patients over 65 felt worse after an in-person appointment because of the stress involved. But the noble Lord is entirely right that guidelines do need to be evolved in order to reflect the changes, and there may be a moment when the GP contract needs to be revisited.

Lord Mann (Non-Afl): Iceland has better survival rates for strokes by using telemedicine for decisions in acute care on thrombolysis. Will the Government not take this opportunity to move primary care far more into the modern era by encouraging a far greater use of telemedicine, and not simply hark back to the past as we learn from the experiences of Covid?

Lord Bethell (Con): The noble Lord makes an incredibly interesting parallel with Iceland. It is not one that I knew, but I will take care to look into it, because it is instructive and informative. He is right to say that Covid has demonstrated the power of telemedicine, and we are keen to learn that lesson. We do not want the elastic band of old practice to snap back to where

[Lord Bethell]
it was before. To reflect the words of a noble Lord who spoke previously, there will be occasions when telemedicine is right. The key is getting the blend correct and ensuring that the right format is used in the right circumstances.

Baroness Browning (Con) [V]: I quite accept that there is a role for telemedicine, but an accurate diagnosis in cases of serious disease and illness is dependent not just on the questions that the doctor asks and the observations he makes but on the ability of the patient to give accurate information. I will give the example from my family in the past few months of antibiotics prescribed for a "lung infection" that was actually a fatal pulmonary embolism. Getting that mix right is not easy; there are very many shades of grey.

Lord Bethell (Con): My noble friend makes a very good point. Diagnosis is phenomenally difficult and, quite often, patients who present with seemingly one condition have something altogether different. It may be that a face-to-face appointment will be the moment when that difference is spotted and caught. She is entirely right to say that we cannot omit that format for the right circumstances, but a great many patients see their GPs very regularly. Their journeys may be onerous, uncomfortable and stressful, and telemedicine might offer them an alternative opportunity. There are others for whom speed is of the essence, and having telemedicine, particularly when it is supported by apps that provide essential information about their condition, can be an important and urgent alternative.

Baroness Tyler of Enfield (LD) [V]: My Lords, according to the June edition of the *British Medical Journal*, the biggest change for mental health services has been the rapid adoption of video and phone consultations, an approach that had rarely been used in a field where relationships and trust between clinicians and patients are vital and where body language and eye contact are often a key part of the assessment. Many in the sector have reported that virtual appointments are at best inferior, particularly with young people, those with learning disabilities and the elderly. What assurances can the Minister give that face-to-face appointments will continue to be made available for those who need them in this field?

Lord Bethell (Con): The noble Baroness has raised an important point. I saw the *BMJ* article to which she has referred; it was a very interesting warning shot, whereby we should not overshoot in this area. But perhaps I can also emphasise that other interesting evidence shows that some mental health services have been better provided by online consultations. For instance, some young people do not like visiting clinics, where they feel uncomfortable, and prefer video conferences. I think it is too early to call it on this one, because we need to analyse closely the benefits and disbenefits in the area of mental health. We must ensure that we have the right format for the right occasion, but I completely take on board the warnings of the noble Baroness.

Lord Flight (Con): My Lords, my personal experience of online doctor appointments is that they are most satisfactory, efficient and time-saving, but I do understand that many older citizens may want and often need to have traditional face-to-face appointments. Appointments on demand are surely not practical, but does the Minister support citizens having the legal right to request one-to-one doctor appointments?

Lord Bethell (Con): I agree with my noble friend that the terms of service should be clear, although I am not sure that we necessarily have the scope for or benefits of a legal right per se. However, perhaps I may disagree with him on one point. He said that there is a greater demand among older citizens for face-to-face contact, but that is not our experience. Older citizens are often very engaged digitally, prefer to engage with their clinicians, on occasion, from the comfort of their own homes, and can often be early adopters of such technologies.

Baroness Meacher (CB) [V]: My Lords, I agree with the Minister that, much to doctors' surprise, many older people prefer to have virtual appointments, whether by Zoom or telephone. We can make assumptions about people, but doctors have been quite surprised by the extent to which patients prefer having an online consultation. Does the Minister agree that, in the end, this needs to be a matter for doctors to decide? Very often, they will have an initial conversation and then agree to see the patient when that is necessary. However, this is probably not a matter for government to decide on or to intervene in, and certainly not until doctors have settled down to a pattern of consultations based on their experience and understanding of their patients.

Lord Bethell (Con): The noble Baroness makes a good point, but I would put a slightly different perspective on it. Doctors have not been the most progressive group in this area; as she says, they have been caught by surprise by patients' views. I would actually give patients the loudest voice in this particular conversation.

The Deputy Speaker (The Earl of Kinnoull) (Non-Afl): My Lords, I regret that the time allotted for this Question has now elapsed.

Brain Tumour Research

Question

12.24 pm

Asked by ***Lord O'Shaughnessy***

To ask Her Majesty's Government what financial support they are providing for research into therapies and treatments for people with brain tumours.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, in 2018, the Government announced funding of £40 million over five years for brain tumour research as part of the Tessa Jowell Brain Cancer Mission, through the NIHR. We are relying on researchers to

submit high-quality research proposals in this very difficult area. To encourage such applications, in April 2018 we released an NIHR highlight notice on brain tumour research asking research teams to submit collaborative applications, building on recent initiatives and investments.

Lord O'Shaughnessy (Con): I am grateful to my noble friend for that Answer. Nearly three years ago, this House was witness to one of the most courageous and moving speeches in its long history when Baroness Jowell argued for better support for people who, sadly, like her, die from rare cancers. We have made progress since then; fluorescent dye to aid surgical accuracy has been rolled out and new specialist brain cancer centres have been set up across the NHS. However, funding for research is lagging. Of that £40 million promised by the NIHR, only £6 million has been allocated. Can my noble friend tell the House what the department is doing to address this issue and is he prepared to meet with representatives of the brain cancer research charities in order to think of a way forward?

Lord Bethell (Con): My Lords, the memory of Baroness Tessa Jowell has had a huge impact in this area. I remember well her testimony from these Benches and the mood of the House then. It was an extremely moving and impactful occasion and we remember her very fondly indeed.

My noble friend is entirely right that it is extremely frustrating that not more of this money has been spent. You will not catch me saying that very often at the Dispatch Box, but in this case, it is true. Managing the pipeline of research submissions through the process to the NIHR is a challenge. The NIHR has very high standards for the allocation of research grants and to date, it has struggled to find the number and quality of grants to support. That is why we will put a renewed focus on supporting the drafting of better grants, and I would be pleased to meet with the charities recommended by my noble friend in order to discuss the ways we can do that.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I have been told that only 5% of national spend on cancer research is devoted to brain tumour research. Let us consider the collaborative work being undertaken on precision medicine by the University of Bristol and Queen's University Belfast. What additional funding could be dedicated to this area, which provides individualised treatments to ensure better patient outcomes?

Lord Bethell (Con): The noble Baroness is entirely right that precision medicine offers an enormous and powerful opportunity for us to tackle cancers. Brain cancers are particularly difficult to tackle, especially in adults, and we are daunted by the struggle to make further progress in this area. Since April 2018, we have spent £5.7 million on directly funded brain tumour research, but that is not enough and we would like to spend more. I am open to recommendations on how the money could be spent.

Baroness Morgan of Cotes (Con) [V]: My Lords, brain tumours kill more children and adults under the age of 40 than any other cancer, and I am grateful to hear my noble friend's acknowledgement that research funding is not yet enough. Does he agree with the proposal to change the system so that if a site-specific brain tumour grant is deemed fundable by a panel, it will automatically be funded during a highlighted brain tumour funding round such as the one announced last month?

Lord Bethell (Con): My Lords, I am extremely grateful for a briefing given by Professor Richard Gilbertson earlier today on the specific question raised by my noble friend, which is grants for brain tumours in children. The NIHR system is a gold standard that is envied by the world and does not necessarily need to be broken and restarted. However, the point made by my noble friend is a good one and we are looking at ways of ensuring that more and better recommendations for grants go into the system in the first place so that, basically, we can spend the money more quickly.

Lord Carlile of Berriew (CB) [V]: My Lords, on 6 November this year, the Government spoke of developing quality research and funding through a successful partnership and sustainable alignment with the charity sector. When can we expect to see some results from that initiative, with work and funding to achieve those goals?

Lord Bethell (Con): My Lords, the work of the charity sector in medical research is absolutely fundamental to national progress in this area. However, it too has been hit incredibly hard by Covid. We are having a number of dialogues with medical research sector representatives on how we can help. There will need to be a short, medium and long-term approach to getting back to where we were at the beginning of the year. How we bridge the current funding gap is a source of enormous concern to the department and the NHS. I cannot guarantee that we can necessarily embark on exactly the same framework that we envisaged at the beginning of the year, but I can reassure the noble Lord that we are very committed to the research community and we engage with it regularly on how we can help.

Lord Reid of Cardowan (Lab): My Lords, several references have been made to our late and much-loved colleague Tessa Jowell, who I was proud to call a friend. Was she not prescient when in her last speech to this Chamber she said:

"I am not afraid. I am fearful that this new and important approach"—

referring to research—

"may be put into the 'too difficult' box". [*Official Report*, 25/1/18; col. 1170]

When the Minister tells us in all sincerity that it is just too difficult to spend the £40 million that was promised, will he at least give this House an assurance that after this discussion he will take a personal and direct oversight of this matter, because it would be a great tragedy if those words of Tessa Jowell proved to be correct in the long run?

Lord Bethell (Con): I hear the noble Lord's words loud and clear. I reassure him that the good news is that Tessa Jowell left behind her in the Tessa Jowell

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Brain Cancer Mission an incredibly effective organisation that is holding the feet of Ministers firmly to the fire—not least through my noble friend Lord O'Shaughnessy, who is on my case in a very big way.

I recognise that this is one of the tricky scientific challenges of our age. We have struggled to tackle adult brain tumours for a very long time. There has to be investment in the basic science around them, in the techniques, such as the very focused radiology, and in provable therapeutics that work in the field. This is not going to happen overnight, but I reassure the noble Lord that we are committed to finding a solution.

Baroness Jolly (LD) [V]: My Lords, the noble Lord, Lord Reid, referred to Baroness Jowell's final speech, when she told us not to give up fighting this pernicious cancer. The noble Lord, Lord O'Shaughnessy, the then Minister, gave the assurance that the Government would not cease support for research into new treatments. Can the Minister confirm how many more research programmes into brain tumour treatments and therapies have been funded by NIHR since then? Is he confident that enough is being done?

Lord Bethell (Con): My Lords, I have a table of all the brain tumour research projects that we have backed over the last 10 years and I would be very glad to share it with the noble Baroness in correspondence. The short answer is, not enough. I would like there to be more grants and of higher value, but I recognise the challenge. When I speak to the scientists—even Richard Gilbertson, who is a very measured practitioner in this area—they recognise that more work needs to be done at an earlier stage to ensure that they are the kinds of projects that the NIHR system can back. We need to have a conversation about how we can encourage the early-stage science and the creative drafting of fresh ideas for that pipeline. That is something that I am very keen to get on with and have a dialogue about.

Lord Polak (Con): I, too, was privileged to be present when Baroness Jowell spoke. In 1988, a 27 year-old man whose wife was eight months pregnant and who had just completed the London Marathon, was told by a neurologist that he had a brain tumour and six months to live. My Lords, that young man was me. I thank God and the doctors and nurses at the Royal Free Hospital that I am here to tell this story.

What is being done to educate and work with families and loved ones, who take the brunt of providing support for the patient and who most likely have no medical knowledge? While the Minister will be aware that not all brain tumours are cancerous, can he explain the Government's commitment to fighting this niche but deadly form of cancer?

Lord Bethell (Con): My Lords, on behalf of everyone, I thank my noble friend for that powerful personal testimony. I am sure there will be many others in the Chamber or listening who have known or lived through some association with brain cancer or cancer of some kind. It is extremely gratifying that in many areas of cancer we have made enormous progress—to the extent that it is a completely treatable disease in many respects—but in the area of brain cancer, that is not true. That is not good enough and we are working on trying to find a solution. Money has been spent, but not enough. We need more focus on this.

On my noble friend's point on supporting families, that is something that trusts work on, but it is left to the charities and support organisations to do. In all areas of illness, that is something where perhaps we could or should be doing more and I completely take on board his comments.

The Deputy Speaker (The Earl of Kinnoull) (Non-Afl): The time allowed for this Question has elapsed.

Fossil Fuels: Business

Question

12. 35pm

Asked by ***The Lord Bishop of Salisbury***

To ask Her Majesty's Government, further to the report by the Transition Pathway Initiative *Management Quality and Carbon Performance of Energy Companies: September 2020*, published on 7 October, what steps they plan to take to encourage fossil fuel intensive businesses to accelerate their move to net zero carbon emissions.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the Government have schemes worth nearly £2 billion operating or in development to support our vital energy-intensive industries to decarbonise. These schemes include the industrial energy transformation fund to help companies to reduce their fuel bills and transition to low-carbon technologies, and the industrial decarbonisation challenge to support industry with the development of low-carbon technologies in industrial clusters.

The Lord Bishop of Salisbury: I thank the Minister for his Answer. There have been some welcome and notable commitments, particularly by European oil and gas companies, but overall, the sector is not moving fast enough to align with the Paris agreement. How does the Minister see the Government supporting companies to move faster and have consistent standards for reporting all emissions from scopes 1, 2 and 3 so companies demonstrate alignment clearly in their reporting? I commend to the Minister the work of the Institutional Investors Group on Climate Change working with TPI to establish a net-zero standard. It would be marvellous if the Government supported these endeavours in the context of their presidency of COP.

Lord Callanan (Con): First, we welcome commitments from any company setting out its net-zero plans. We note the important and notable commitments from the oil and gas sector from the likes of Shell and BP. I endorse the right reverend Prelate's comments about COP and the other matter he mentioned.

Lord Sarfraz (Con): My Lords, significant investment will be required by energy-intensive industries moving to net zero. Will the Minister advise the House on efforts being made downstream to ensure that these businesses remain competitive in price-sensitive international markets where the competition might not play by the same rules?

Lord Callanan (Con): The noble Lord makes a very good point. We recognise that currently the costs of decarbonisation technologies are very high in many industries and many businesses are unable to pass on the increased costs of decarbonisation to consumers. That is why we are working very closely with industry and addressing this is one of the key aims of our industrial decarbonisation strategy.

Baroness Young of Old Scone (Lab) [V]: My Lords, I declare an interest as a pensioner of the Environment Agency pension fund, which co-chairs the transition pathway initiative. The TPI report shows that no oil and gas company can yet claim to be aligned with the Paris agreement. Does the Minister agree that accelerating the phase out of petrol and diesel cars in the UK will do little to impact the global oil and gas market in which UK-based multinational oil and gas companies operate? Will he tell the House what real leverage there is in the Prime Minister's 10-point plan on these global companies to drive faster and better delivery by the aim of Paris in their global operations?

Lord Callanan (Con): In the transition, the North Sea will remain a strategic asset for the UK providing high-quality jobs. We are working closely with the sector to support its transition. The noble Baroness will get more details in the upcoming energy White Paper and the North Sea transition deal.

Baroness Sheehan (LD) [V]: My Lords, according to the UK extractive industries transparency initiative, between 2015 and 2017, the Treasury gave more money to oil companies than it took from them in taxes—quite shocking. Is it still the Government's policy to extract every last drop from the North Sea, no matter what the cost to our economy and to the future of our planet?

Lord Callanan (Con): As I just said in answer to a previous questioner, the North Sea is vital to our economy and the transition. We will work closely with those companies, and already have some world-leading commitments from many on how they are taking forward the decarbonisation agenda.

Lord Grantchester (Lab): My Lords, now in its fourth year of monitoring, the Transition Pathway Initiative reports that companies make progress rather slowly and that only 18% are aligned with even the benchmark of below 2 degrees. It has also reported that climate science dictates that the pathway matters, not just the endpoint. Can the Minister explain why, in the scatter-gun 10-point environment plan, there is no mention of the oil and gas sector deal promised in the Conservative Party manifesto? It is meaningless without another of the missing strategy frameworks—the heat strategy.

Lord Callanan (Con): I referred to the North Sea strategy deal in my previous answer. The noble Lord will have to be patient until it comes out, but we are publishing a number of these strategy documents over the next 11 months before the COP in Glasgow next year.

Lord Bourne of Aberystwyth (Con) [V]: My Lords, I very much welcome the Government's 10-point green industrial revolution. What are we doing to lever private finance and what are the timescales for carbon capture and storage projects, specifically regarding Port Talbot, Teesside and Grangemouth?

Lord Callanan (Con): My noble friend makes an extremely good point: we want to be a world leader in carbon capture usage and storage technologies. He will have noted the announcement of an extra £200 million to add to the £800 million already committed in the plan, for a total of £1 billion in this world-leading technology.

Lord Ravensdale (CB) [V]: My Lords, I declare my interests as in the register. I very much welcome the Government's ambition for London to become the global centre of green finance and the announcement by the Task Force on Climate-related Financial Disclosures last week. Have the Government considered legislating to mandate financial institutions to align portfolios to net zero, as a way to incentivise fossil-fuel-intensive businesses to accelerate their moves towards this goal?

Lord Callanan (Con): As the noble Lord referenced in his question, we are mandating climate information in financial disclosures. We welcome other commitments from the many banks and financial institutions that are already joining us on the path to net zero.

Lord Browne of Ladyton (Lab) [V]: My Lords, as the right reverend Prelate and other noble Lords have pointed out, this report shows that most energy companies are not on track. This means that, to an extent, we will be dependent on fossil fuels for energy beyond 2050. Robust plans for that are essential. What is the Government's best estimate of the scale of the emissions challenge that this continuing dependency will create? As we heard, yesterday the Prime Minister unveiled a strategy to establish four carbon capture and storage clusters. If they operate at maximum capacity, will they meet a significant proportion of that challenge?

Lord Callanan (Con): They will contribute to that challenge, but we need a number of different technologies and methods to meet our legally binding commitment to net zero. The noble Lord is right in that respect, and the 10-point plan is a useful contribution towards that objective.

Lord Teverson (LD): My Lords, energy-intensive industries can only go so far in getting energy efficiency right. There is therefore a risk of carbon leakage from these organisations offshoring elsewhere in the world, which does nothing for global climate change. Are the

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Government considering a carbon border tax, as some of our European friends are, to make sure that that offshoring does not happen?

Lord Callanan (Con): The noble Lord is right to highlight the difficulties of potential carbon leakage. There are many problems with a carbon border tax, of which the noble Lord will be aware—difficulties with the WTO, et cetera—but I leave announcements on taxes to the Chancellor.

The Earl of Caithness (Con): My Lords, I welcome the 10-point plan that the Prime Minister announced yesterday, but ask my noble friend what discussions he has had with industry, particularly the producers of electric cars, to ensure that batteries, given their diversity, are fully recyclable throughout the country. We should not take away one problem just to replace it with another.

Lord Callanan (Con): My noble friend is right to highlight the problem of recycling batteries. We are investigating the environmental opportunities of a transition to zero-emission vehicles, and are keen to encourage a circular economy in these vehicles, particularly for batteries. We are supporting the innovation infrastructure and regulatory environment required to create a proper battery recycling scheme.

The Deputy Speaker (The Earl of Kinnoull) (Non-Afl): My Lords, all the supplementary questions have been asked and answered. We therefore move to the fourth Oral Question.

Union Capability: Dunlop Review

Question

12.45 pm

Asked by ***Lord Foulkes of Cumnock***

To ask Her Majesty's Government when they expect to publish the report of the Dunlop Review into UK Government Union capability.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, as the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office told the House of Commons Public Administration and Constitutional Affairs Committee on 10 September, the Government intend to publish the Dunlop review before the end of the year.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, does the Minister recall that the noble Lord, Lord Dunlop, was asked to review the strengthening and sustaining of the union? Given the Prime Minister's gaffe when speaking to northern MPs earlier this week, which fuelled the fires of nationalism, is it not time for the Dunlop report to be published now and for the Prime Minister to act on it?

Lord True (Con): My Lords, as I have said, the review will be published before the end of the year. It makes a number of recommendations, which Ministers are taking the time to consider carefully, before setting out how they will take them forward. Unfortunately, work has been delayed by a focus on the UK-wide response to Covid.

Baroness Clark of Kilwinning (Lab): Polling carried out in September showed that the Prime Minister Boris Johnson was himself the major driver of voters in Scotland towards support for independence. Given that, does the Minister not agree that it is time for the Government to review their policies and attitudes towards Scotland?

Lord True (Con): My Lords, the Government believe in devolution. The individual devolution settlements and their effectiveness have been appraised on a range of occasions, in the last 20 years. The Prime Minister, quite rightly, drew attention to the threat posed by the SNP to the unity of our kingdom.

Lord Bruce of Bennachie (LD) [V]: I have no doubt that the Dunlop review will be well informed and constructive, but I echo the comment of the noble Lord, Lord Foulkes, that the Government must address this issue urgently, given the Prime Minister's recent remarks and the almost universal opposition expressed to almost all aspects of the UK Internal Market Bill. Does the Minister accept not only that we need clarity now to secure the devolution settlement, but that there is a case for a constitutional convention that respects devolution and achieves a collaborative approach to UK decision-making, rather than unilateral decisions by the UK Government?

Lord True (Con): My Lords, good contacts exist between the UK Government and devolved Administrations. I recently reported to the House on the positive development in the review of intergovernmental relations. I assure the House that the Government take these matters seriously. The Prime Minister has set up a Cabinet committee for union policy implementation to support the delivery of policies that sustain our union.

Lord Caine (Con): My Lords, does my noble friend agree that, far too often, the unionist case is framed by references to what we achieved together in the past, when we urgently need a modern compelling unionist vision for the future of our United Kingdom? This is unlikely to be the preserve of any one party; what is required is for unionists across the United Kingdom to come together and make common cause, if we are to preserve our great union and defeat those who would tear it apart.

Lord True (Con): My Lords, I very strongly agree with my noble friend, and spoke yesterday of the importance of not imputing bad intent where there is none. We are at our strongest when we work as one union, with the needs of all our citizens as the priority. The UK Government have provided billions in support of businesses and individuals in all parts of the UK

during the Covid crisis. Our welfare system has been able to support people across the UK and our armed services have been invaluable. My noble friend is quite right: this is a story that unionists from all parties should tell.

Lord Kerr of Kinlochard (CB) [V]: The Prime Minister may choose to disparage the devolution settlement, but this House showed yesterday that it is not ready to destroy it, and we can infer that—like the noble Lord, Lord Dunlop, and Sir John Major—the House thinks that it is better to improve and use rather than abuse the intergovernmental consensus-building mechanisms which exist. Why can we not get on with that now? Why must we wait until the end of the year before we see the Dunlop report? Can the Minister answer the pertinent questions which the noble Lord, Lord Dunlop, put to him in the Chamber on 19 October? How do the Government react to Sir John Major's lecture 10 days ago?

Lord True (Con): My Lords, I have not had the time to read Sir John's lecture. I said that the review would be published before the end of the year. It is important that we do not denigrate the substantive progress being made in the review of intergovernmental relations. I commend the devolved Administrations and the UK Government in the work going on there. It is very risky to claim that there is no co-operative work going on in this kingdom.

Baroness Smith of Basildon (Lab) [V]: My Lords, can I take the Minister back to his first Answer? He said that Michael Gove had said that the review would be published before the end of the year. In fact, Michael Gove linked this review to the UK internal market Bill, which is currently going through the House, and said that it would be published before the Bill received Royal Assent. Most of us assumed that to mean that what is in that review will be helpful to our deliberations on the Bill, which has the devolution settlement at its heart, and most of us think that the Government have got this wrong. Would the review by the noble Lord, Lord Dunlop, not be a helpful way to get to the bottom of some of these issues and have a proper informed discussion? It could help us with that, so why do the Government not publish it now, while we are discussing these very issues in legislation in your Lordships' House?

Lord True (Con): My Lords, I have underlined the importance of the issues and said that the Government gave a Written Ministerial Statement recently about relations and transparency. The Government are determined to carry this work forward, so far as the UKIM Bill is concerned. I do not agree with the characterisation of it, and the Government will reintroduce Part 5 in the House of Commons.

Lord Campbell of Pittenweem (LD): Does the Minister understand the extent of the damage caused by the recent remarks of the Prime Minister, underlined by the sophistry of his subsequent attempt at explanation? He will be familiar with the old dictum that careless talk costs lives. In this case, careless talk costs votes.

Lord True (Con): My Lords, the Prime Minister told the House of Commons:

"I think what has unquestionably been a disaster is the way in which the Scottish nationalist party has taken and used devolution as a means not to improve the lives of its constituents, not to address their health concerns or to improve education in Scotland, but… constantly to campaign for the break-up of our country".—[*Official Report*, Commons, 18/11/20; col. 315.]

I agree with him.

Lord Empey (UUP) [V]: My Lords, on 10 November in Grand Committee, introducing the Common Rules for Exports (EU Exit) Regulations 2020, the noble Lord, Lord Grimstone, said that the EU Commission

"will exercise these powers in Northern Ireland."—[*Official Report*, 10/11/20; col. GC 421.]

Can my noble friend explain how allowing a foreign power to exercise executive authority in a part of the United Kingdom is consistent with the Government's commitment to taking back control and to the maintenance of the union?

Lord True (Con): My Lords, I have not seen my noble friend Lord Grimstone's remarks in context, so I will respond to the noble Lord by letter.

Lord Lexden (Con): Can the Minister, who throughout his career has been a powerful advocate for the union, agree that a strengthening of it is the cardinal requirement at this moment? Does he think that the recommendations of the Dunlop report will help to secure that great objective?

Lord True (Con): My Lords, I cannot anticipate the detailed response to the Dunlop report. I commend both my noble friends Lord Lexden and Lord Dunlop for their commitment to the union. I hope that the package of measures in the intergovernmental review, and in response to the Dunlop review and other work, will make very clear this Government's commitment to sustaining our vital and precious union.

Viscount Waverley (CB) [V]: My Lords, I am a unionist but, given where we are and before the United Kingdom implodes, what workable alternatives can the Government advance beyond federalism as possibly the most equitable and pragmatic form of governance that would best serve the regions of the United Kingdom? We have divorced ourselves from the concept of EU regionalism and face challenges north of the border, the long underinvestment debate in the north of England, the current Northern Ireland complexities and, importantly, the UK's citizenry across the regions generally feeling distanced from each other. It is all coming to roost.

Lord True (Con): My Lords, I do not agree that the United Kingdom is imploding. That is unhelpful talk. No political party in this country wishes to actively and swiftly break up the United Kingdom, except the one that I have mentioned. There is important co-operative work going on which will continue in full respect of the devolution settlement. We should all, in all parties, subscribe to that, as the noble Lord, Lord Caine, said.

The Deputy Speaker (The Earl of Kinnoull) (Non-Afl): My Lords, the time allowed for this Question has now elapsed.

12.56 pm

Sitting suspended.

Personal Protective Equipment: Procurement

Private Notice Question

1.01 pm

Asked by ***Baroness Hayter of Kentish Town***

To ask Her Majesty's Government whether they will (1) outline the transparency and reporting requirements of the procurement of personal protective equipment, (2) detail the steps taken to register any potential conflicts of interest in that process, and (3) publish all information about any such contracts awarded, including payments for intermediaries; and if not, why not.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, the National Audit Office report on Covid-19 procurement activity, published yesterday, recognised how we needed to procure new PPE contracts with extreme urgency in order to save lives. We are committed to publishing all the information about these contracts. Robust due diligence processes were in place. The report makes clear that there were no conflict-of-interest issues in procurement decisions. We will respond to the report's recommendations in due course.

Baroness Hayter of Kentish Town (Lab): My Lords, I am surprised by the Minister's reply. The NAO report revealed numerous issues of concern, from lobbying by an adviser to Liz Truss for a transaction in which he had an interest to the creation of a VIP fast track which happened to assist those with connections to senior Conservatives. Some awards were made without tender; some had no written contracts. There was no documented proof of urgency, nor of how to handle conflicts of interest. Awards were made to a pest control firm and £250,000 went to a jewellery company with no PPE experience. Today, we learn of a cannabis research firm with just £6,000 in assets being handed PPE contracts of £33 million.

The Minister has helpfully tweeted that he is going to respond by saying how well people did in responding to the Covid crisis. That is no excuse for improper dealing. Will the Minister say not only that these details will be published but that I and other Members of this House will get that list soon, as the information should have been published within 30 days of the contracts being signed?

Lord Bethell (Con): I am grateful to the noble Baroness for this opportunity. We take transparency extremely seriously. We share the same values about doing things in the proper way. I stress "the proper way". The NAO report does not say that the way in which the pandemic was responded to was "improper", as she suggested. In many ways, the report is supportive of the point that we were facing an unprecedented global pandemic that posed a massive challenge to the entire country. We needed to procure contracts with extreme urgency in order to secure vital supplies. The shadow Health Secretary called on the Government to "move heaven and earth" to get needed PPE to staff. The leader of the Opposition quite rightly called on the Government to get rid of blockages in the system, saying:

"The Government must act to ensure supplies are delivered."

We did everything we could to do that and I am proud of the achievement of those involved.

The Deputy Speaker (Lord Haskel) (Lab): The noble Baroness, Lady Jolly, has withdrawn, so I call the noble Lord, Lord Balfe.

Lord Balfe (Con): My Lords, the report does not make for happy reading, to put it mildly. There is a perception that the reality is some way away from where the Minister thinks it is. That may be fanned by the press, but the image of a tawdry chumocracy is to the fore in many newspaper reports. There were five recommendations in this report, all of which would benefit from the disinfectant of sunlight. My question to the Minister is quite simple: will the Government accept, implement and investigate the five recommendations?

Lord Bethell (Con): My Lords, I encourage my noble friend to look beyond newspaper reports. The reality is—

Lord Balfe (Con): No, it is in the report.

Lord Bethell (Con): I ask my noble friend to look beyond newspapers for his analysis of the report. I take the five recommendations very seriously. They are encouraging and ally absolutely with the Government's values. We will look at how to implement them in due course.

Lord Berkeley of Knighton (CB) [V]: My Lords, I listened yesterday to the Minister's response to a similar Question. I accept that Governments were under an incredible strain, but many were better positioned and prepared than we were. Does the Minister have any regrets to which he will own up about the way in which money was handed out to procure PPE?

Lord Bethell (Con): I have to be careful about what I say because legal proceedings are in place. The noble Lord is right; I do not pretend for a moment that everything was perfect. I have spoken quite candidly—possibly more candidly than I should have—about the challenges that we faced. Not everything was perfect or ran smoothly, and no well-honed machine sprang into life. However, I am proud that we reacted with energy, skill and elan. We made the most of a very difficult and unprecedented situation. I cannot hide my gratitude to those who stood up to help. Offers of help came from all sorts of places. We should be cheering them and not in any way attacking them.

Lord Triesman (Lab) [V]: My Lords, I declare my interests as in the register. I welcome the fact that the Minister intends to publish this information. I urge him to do so as rapidly as possible, as my noble friend Lady Hayter has suggested. Perhaps we could refine what sort of information would be desirable. Will the Minister ensure that the names of each of the 144 companies that the National Audit Office says were introduced to the VIP channel by Ministers' private offices are published? Who authorised their acceptance into that channel? Who are the ultimate beneficial owners of those companies? This is critical. Which Minister made the introduction in each case?

Lord Bethell (Con): The noble Lord, Lord Triesman, misconstrues the nature of events. The Prime Minister made a number of public calls for help, which resulted in more than 15,000 offers. Of course, those had to be triaged. Not all were credible. Some were helpful and some were well-intentioned but not all were practical. We had to find a way of prioritising the most impactful. Anyone in our position would have done the same. This credible list included senior professional healthcare clinicians; members of former Governments of all parties; leaders of British industry; and all manner of helpful people, some of whom came from completely unexpected places. I should be happy to tell the stories of some of those unexpected offers another time. The noble Lord's description of the prioritised channel is a misrepresentation. I regret that I cannot proceed as he asks.

Lord Scriven (LD): My Lords, let us be clear. The issue is not that people stood up; it is what the Government then did to procure goods and services. Yesterday's National Audit Office report states

"we cannot give assurance that government … mitigated the increased risks … or applied appropriate commercial practices"

at all times. That is technical-speak for not being able to rule out fraud or corruption. How can the Minister stand at the Dispatch Box and say with any credibility that all the rules were carried out and there were no conflicts of interest? Which should we believe, a line from the Dispatch Box or a report from the National Audit Office?

Lord Bethell (Con): My Lords, I do not really recognise the noble Lord's technical-speak interpretation of the NAO report. In fact, the report is crystal clear. Yesterday, I quoted from its references to Ministers and conflicts of interest, and I do not think that I need to repeat it: it was crystal clear. However, perhaps I may reassure the noble Lord. I do not pretend for a moment that every single piece of paperwork got done on time during the pandemic—quite the opposite. We rewrote the guidelines on 18 March and reissued them: there is no way that you can jump through the hoops of a normal tendering process when you are in the middle of a massive global land grab. I am not pretending that; I am saying that there were not conflicts of interest, that Ministers were not involved in the procurement decisions and that the nation should be proud of the way in which we responded to the pandemic.

Lord Marlesford (Con) [V]: My Lords, what taxpayers will really want is a list of the Covid contracts that went wrong, either because the goods and services were not delivered or because they were not up to standard. They will want to know, in each case, the value of the contract, the amount of public money paid to the contractor, the amount reclaimed by the Government because of failure and the amount recovered for the taxpayer. Will my noble friend agree to produce such a list—eventually, at least—and put it in the Library of the House so that everybody can see it?

Lord Bethell (Con): I entirely agree with my noble friend. Such lists will be published. Eighty-nine per cent of the contract award notices have already been published under the *Official Journal* of the EU; I would be glad to send my noble friend a link.

Lord Alton of Liverpool (CB) [V]: My Lords, in a Written Answer, the Minister confirmed to me that the NHS warehouse for PPE at Daventry has masks made by Medwell Medical Products. It is estimated that a quarter of the workers at its Chinese factory are Uighurs in a facility 3,444 kilometres from Xinjiang, so it is implausible that they went there voluntarily. In his Answer, why did the Minister not name the intermediary company involved? Will he now say whether it was Meheco or another state-owned company, what the value of the deal was, whether our embassy was involved, whether the UK made the deal before or after July—when Medwell was named in reports—and what steps he is taking to ensure that the United Kingdom is not complicit in using Uighur slave labour to produce PPE for the NHS and profits for the Chinese Communist Party?

Lord Bethell (Con): My Lords, I acknowledge the extremely good work that the noble Lord does on this issue. Of course, no one wants to see Uighur slave labour used to produce PPE for the NHS. On his specific questions, I do not have the details to hand, but I am happy to revisit the Written Answer that I gave him to see whether I can provide any further details.

Lord West of Spithead (Lab): My Lords, this issue and the report fill me with despair, I must say, as does the fact that it appears that the Government took action almost in a panic. Yes, horrible things happen but Governments should not panic, and there are rules, which should be followed. One could understand an individual who is ill informed and not well educated grabbing a supermarket trolley and filling it with loo rolls, but that is not how Governments should act. There are very clear ways of behaving. When I was in Whitehall and wanted to procure things, I had to go through several hoops. Civil Service rules and the law demanded it, and the fact that we had to do things quickly was not an excuse. Post all this, will we check that Civil Service rules were complied with and that the correct actions were taken that did not break any laws of the land?

Lord Bethell (Con): I am always grateful for advice from the Ministry of Defence on procurement, which it always manages extremely well. With regard to the work of civil servants, the report speaks for itself. That is the exact purpose of the report.

The Earl of Shrewsbury (Con): My Lords, is my noble friend aware of a BBC Midlands TV news report earlier this week of a recent meeting at University Hospitals Birmingham NHS Foundation Trust regarding procurement? Those attending that meeting were informed that the DHSC had ceased funding the purchase of PPE by regional NHS trusts and that those trusts would have to purchase PPE directly from NHS Improvement. Further, is he aware that such a decision greatly affects a successful and efficient manufacturer of some 10,000 PPE gowns a week called Wearwell, based in Tamworth, Staffordshire? It will no longer be able to supply the local NHS trust, by which it is recognised and approved as a supplier, as it is not recognised and approved as such by the NHS national framework. Is that situation not completely ridiculous? Will he look into the matter urgently and perhaps write to me?

Lord Bethell (Con): I am extremely grateful to my noble friend for giving me advance notice of his question. I am aware of the changes in procurement practices in the NHS, which I welcome. They will have a huge impact and protect us in the case of future pandemics. I am also aware of the phenomenal effort by British manufacturers, which have stepped up to the challenge of producing PPE and have, in my view, gone a lot further than anyone expected, producing around 50% of the NHS's PPE. There have clearly been unintended consequences if this company, Wearwell, has somehow fallen off the procurement list. I would be happy to take a letter from my noble friend and look into the matter.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, public trust has clearly been lost over PPE procurement and the NAO report. What do the Government plan to do to restore it?

Lord Bethell (Con): My Lords, I simply do not accept the assumption of that question. I think that the public see a Government who stepped up to an enormous challenge and did their best under very difficult circumstances. Many of the public individually stood up as volunteers and many professionals returned to former jobs to help out. Many businesspeople turned over their capacity, their staff or their focus to help out in the pandemic, and the Government took on a huge amount of support from members of the public. These sweeping assumptions that somehow everything was done in a negative way are very unhelpful and in fact do not chime with the mood of the public at all.

The Deputy Speaker (Lord Haskel) (Lab): My Lords, the time allowed for this Private Notice Question has elapsed.

Conduct Committee Report

Motion to Agree

1.17 pm

Moved by ***Lord Mance***

That the Report from the Select Committee *The Conduct of Lord Ahmed* be agreed to. (6th Report, HL Paper 170)

Lord Mance (CB) [V]: My Lords, as the chair of the Conduct Committee, first, I draw the House's attention to Standing Order 68A, which states that Motions on reports resulting from investigations under the Code of Conduct are decided without debate. This is therefore not an occasion on which I can, or will, take questions.

The reasons for Standing Order 68A are not only that reports such as this one can be highly sensitive and often involve vulnerable people but that the House has established a formal system of decision-making and appeals on which I hope noble Lords can be sure they can rely. Such reports are the culmination of a full investigation by the House's independent Commissioner for Standards and very careful consideration thereafter by the Conduct Committee of any appeal. In this serious case, the appeal was considered by all nine members of the Conduct Committee, four of whom are independent lay members. The House can rest assured that it considered every aspect of this case.

The resulting report upholds the key findings of the commissioner to the effect that, first, Lord Ahmed breached the Code of Conduct by failing to act on his personal honour—in particular, by sexually assaulting a vulnerable member of the public who came to him as a parliamentarian asking for his help in relation to a complaint to the police about a faith healer's activities. Secondly, he misled her by lying about his intentions to help her pursue that complaint, and he exploited her emotionally and sexually.

Lord Ahmed appealed to the Conduct Committee. As I have said, we heard that appeal, which included a ground suggesting significant fresh evidence. We remitted that ground to the commissioner who, after investigation, concluded in a supplementary report that there was nothing in that respect to disturb her previous conclusions. We then considered and prepared our 46-paragraph report, which noble Lords have, covering all aspects of Lord Ahmed's appeal against the commissioner's original and supplementary reports. We upheld the key findings, which I have set out, as well as the sanction recommended of expulsion.

We noted that the commissioner had found Lord Ahmed unco-operative and dishonest in the key areas and that he had shown no regret, remorse or understanding of the inappropriateness of his conduct or its effect on a vulnerable victim. We said in paragraph 45 of our report:

> "The abuse of the privileged position of membership for a member's own gain or gratification, at the expense of the vulnerable or less privileged, involves a fundamental breach of trust and merits the gravest sanction. Even though it is possible to think of even more serious breaches, the case in all its circumstances which we have set out crosses the threshold calling for immediate and definitive expulsion."

The report therefore recommends that Lord Ahmed be expelled from the House. However, after Lord Ahmed was shown an embargoed copy of the report last Thursday, he gave notice of his retirement from the House on Saturday 14 November 2020 under the provisions of the House of Lords Reform Act 2014. The House is therefore not being asked to agree a separate expulsion Motion today because Lord Ahmed is no longer a Member. I know that some Members of the House have asked why his resignation was accepted.

The answer is that there is no provision under the Act to refuse or delay it. The resignation takes automatic effect at the beginning of the date given for retirement.

However, I confirm to the House that Lord Ahmed will retain none of the privileges of a retired Member. If this Motion is agreed today, the House of Lords Commission has agreed that with immediate effect Lord Ahmed will not be entitled to a retired Member's pass and will not be able to access any of the facilities of the House. I beg to move.

Motion agreed.

Northern Ireland Protocol: Implementation Proposals

Commons Urgent Question

1.22 pm

The following Answer to an Urgent Question was given in the House of Commons on Wednesday 18 November.

"We continue our work to implement the protocol in a pragmatic and proportionate way that minimises the disruption to people's day-to-day lives and preserves the gains of the 22 years since the Belfast/Good Friday agreement was signed. We are helping traders to prepare for the end of the transition period. We published business guidance in August and are updating it all the time as arrangements are finalised. We have established the trader support scheme, backed by £200 million of Government funding. More than 7,000 businesses have signed up, and hundreds more are joining them every day. We are considering further support measures for agri-food traders, with further details to be announced shortly.

We are getting on with the work that we need to do so that our systems and facilities are ready. We are putting in place the IT systems that are needed to process goods movements, supported by £155 million, which we announced in August. We are working with the Northern Ireland Executive on the delivery of expanded points of entry for agri-food, with the contract now awarded and work under way on arrangements on day one and thereafter.

We are getting on with putting the legislative framework in place for manufactured goods and food safety among many other issues, and our programme is well on track to be delivered in full by the end of the year. We are delivering on our unequivocal commitment to unfettered access. We have provided for robust protections in the United Kingdom Internal Market Bill for mutual recognition and a prohibition on new checks and controls. We will re-table those clauses when the Bill returns to the House.

We laid a draft statutory instrument in Parliament, which was approved on 10 November by this House and is scheduled for debate in the other place on 30 November. That will ensure that on 1 January Northern Ireland businesses can continue to move their goods as they do now. We are working with the Executive to introduce a longer-lasting second phase of that system, to focus its benefits on Northern Ireland businesses, to be introduced in the course of 2021.

We are working intensively and in good faith through the Joint Committee to pursue the solutions that we need to support our approach. We have already agreed a phased approach for medicines rules in Northern Ireland, ensuring that those critical goods can continue to flow. We have agreed an approach to scoping the application of the electricity directive in respect of Northern Ireland's single electricity market that will ensure that the single electricity market continues to deliver for Northern Ireland.

We are working to ensure that UK internal freight is not subject to tariffs, and to remove export declarations from Northern Ireland to GB trade. We continue to pursue specific solutions for supermarket trade, noting the huge social and economic importance of avoiding disruption. That essential work will continue at pace in the coming days but, of course, I cannot give a running commentary on discussions with the European Union."

Lord Murphy of Torfaen (Lab) [V]: My Lords, yesterday Northern Ireland business leaders told Members of Parliament that the Government have left them without clarity, details or time to deal with the huge change that is coming. The president of the Ulster Farmers' Union said they are being asked to prepare with both arms tied behind their back and a blindfold on. So what are the contingency plans for business if the customs declaration service is not available by 1 January? Why have businesses had no information on how a tariff rebate system would work? As noble Lords know, businesses always need certainty, and certainty here is absolutely lacking.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, the Government are committed to ensuring that businesses and communities are ready for the end of the transition period. I am sorry to hear of the remarks reported by the noble Lord, but our intensive programme of engagement with industry continues at pace. The Business Engagement Forum has now met 20 times since May, and this month the Chancellor of the Duchy formed a UK-wide business readiness task force. We have also made considerable progress on the provision of guidance, publishing over 25 pieces of sectoral guidance for businesses moving goods between Northern Ireland and GB in recent weeks.

Lord Bruce of Bennachie (LD) [V]: Yesterday's Statement in in the House of Commons was a bravura performance, but completely out of touch with reality. Is it not the case that any small business in Northern Ireland planning for Brexit is faced with a nightmare of distraction, with few hard facts on which to base any decisions? The five essential steps on InterTradeIreland pose detailed questions on the supply chain, customs, people and data, to which answers are not available. If you ask your supply chain, they do not yet have the answers; if you ask customs, neither do they, and so on. When will the trader support service be in a position to deliver to businesses that register? Does the Minister accept that, given the continuing uncertainty, services in support of the trader support service will be needed for years to come?

Lord True (Con): My Lords, in relation to the trader support service, I can report to the House that, whereas my honourable friend in the House of Commons said that 7,000 businesses had signed up, 9,000 businesses have now signed up, with hundreds more joining every day. We will shortly set out further support for agri-food producers engaging with new SPS processes.

Lord Caine (Con): My Lords, does my noble friend share my concern that far too many people see this issue solely through the prism of strand 2 of the Belfast agreement and of avoiding a hard border on the island of Ireland? Will he confirm that the 1998 agreement contains three strands, while the consent principle underpins Northern Ireland's position as an integral part of our United Kingdom? As such, is it not imperative that Northern Ireland continues to benefit from free and unfettered access to what is by far its largest single market?

Lord True (Con): My noble friend raises an important point and I can certainly reassure him that the Government remain committed to the Belfast/Good Friday agreement in its entirety, including all three strands; east-west is vital, as he says. We are delivering on our unequivocal commitment to deliver unfettered access, and I hope very much that noble Lords will reconsider their obstruction of the legislation on that subject.

The Earl of Kinnoull (Non-Afl): My Lords, I warmly welcome the joint letter of 5 November from the First Minister and Deputy First Minister to Commissioner Šefčovič. In view of the significant concerns that they jointly expressed, what is being done to allow supermarkets to continue to service Northern Ireland from Great Britain? Can the Minister confirm reports that the UK and the EU are considering agreeing a grace period to allow supermarkets time to adapt to the protocols approach, which is still under discussion in the Joint Committee?

Lord True (Con): My Lords, the noble Earl raises an extremely important point. I cannot go into matters that are, as he implies, under active discussion, but we have certainly committed to an intensified process of engagement with the EU to resolve all outstanding issues such as this, which includes securing flexibilities for trade from GB to NI. That is particularly important for supermarkets, where we have been clear that specific solutions are required. The recent joint letter from the First Minister and Deputy First Minister reflects how important that issue is for Northern Ireland, and we will continue to work closely with the Executive to get a solution to this problem.

Lord Bilimoria (CB) [V]: Agreement with the EU is key for the sustainability and implementation of the protocol. As president of the CBI, I hear from businesses on a daily basis about the urgent need for the clarity that is needed on the transfer of goods from Great Britain to Northern Ireland. Businesses want clarity, but they also want to ensure that the protocol works long-term for peace, trade and investment—and this starts with a deal. Does the Minister agree that clarity is needed to ensure the continued flow of goods between Great Britain and Northern Ireland?

Lord True (Con): I certainly agree on the importance of clarity. As I have said, certain matters are still under discussion in the joint committee, but the Government have already issued 25 documents of sectoral guidance. We are actively engaged with business in Northern Ireland and we attach the highest importance to these points.

Baroness Goudie (Lab) [V]: This situation threatens the rights and equality clauses in the Belfast agreement, because European law has long been crucial to support those rights. At the time of the Belfast agreement, it was guaranteed that there would be no diminution of such rights as a result of Brexit. These rights are also threatened with regard to Britain's future membership of the European Convention on Human Rights. In addition, the UK Government's lack of commitment to guaranteed labour, anti-discrimination and environmental rights in Northern Ireland equal to those enjoyed during the EU membership suggests that they are also under threat.

Lord True (Con): I disagree with the noble Baroness. The Government are committed to human rights principles and to the maintenance of the Good Friday agreement.

Baroness McIntosh of Pickering (Con) [V]: My Lords, the Northern Ireland protocol commits to "unfettered" access for all goods, including agri-foods. Does my noble friend accept that there will be a new legal obligation for submitting a customs declaration for import and export purposes that will both take time and incur expense to fill in? How does that square with the commitment to unfettered access?

Lord True (Con): My Lords, unfettered access from Northern Ireland to GB will be sustained and there will be no customs checks. So far as GB-NI is concerned, any control will be at a very minimal level, with risk assessment and administration undertaken by UK authorities.

Lord Singh of Wimbledon (CB) [V]: My Lords, would the Minister agree that we are being a little hypocritical in admonishing China over Hong Kong while preparing to renege on provisions in the EU withdrawal agreement and the Northern Ireland protocol? Would he also agree that trying to get the best of all worlds in trade could seriously affect progress under the Good Friday agreement?

Lord True (Con): No, I do not. The maintenance of the Good Friday agreement requires unfettered access, which was committed to by the EU and in the reformation of the Northern Ireland Executive. So far as comparing the actions of the UK Government with those of communist China, I indignantly reject the parallel.

Lord Robathan (Con) [V]: My Lords, does Her Majesty's Government consider that both sides in the negotiations regarding the protocol and the withdrawal agreement are acting in good faith? Would it not cause much greater harm to, and further undermine, the Belfast agreement if we were to separate Great Britain from Northern Ireland, contrary to the wishes, or without the consent, of all the people in Northern Ireland?

Lord True (Con): My Lords, consent—and the consent of both communities—is absolutely fundamental to this whole process. I agree with my noble friend that it would be to the benefit of all if a reasonable agreement could be reached sooner, as the UK Government hope is still possible.

Lord Hain (Lab) [V]: My Lords, has the Minister any idea of how desperate businesses in Northern Ireland, especially those trading across the Irish Sea—as many do—are to know what their future will be in a month's time? I say bluntly: please do not give us the same old warm waffle about how it will be all right on the night. People's jobs and livelihoods are at stake here, and they have no idea what the future holds for them.

Lord True (Con): My Lords, to say that the Government are wholly committed to the future security and prosperity of business in Northern Ireland is not "warm waffle"; it is the truth of the matter. We are providing extensive support through the trader support service. I have referred to other measures, including the £150 million that has been put into IT systems, and we are working at pace to deliver all that is necessary. I hope that agreement can be reached in the joint committee and that any uncertainties there can be resolved.

The Deputy Speaker (Lord Haskel) (Lab): All the questions have now been answered.

Towns Fund

Commons Urgent Question

1.33 pm

The following Answer to an Urgent Question was given in the House of Commons on Wednesday 18 November.

"The towns fund is one element of this Government's mission to spread opportunity and to level up by investing in towns and smaller cities—places to support businesses and communities so that we can help them to thrive.

Last year we announced that 101 places had been invited to develop proposals for a town deal as part of the £3.6 billion towns fund. These towns are spread across the country. Many are birthplaces of industry and centres of commerce. Others are bastions of the maritime economy or the pleasures of the English seaside. Others are great agricultural and market towns. They are all different. But what they do have in common is that they have been underinvested in and undervalued by central Government for too long as too much investment has been centred on our big cities.

Town deals are about reversing that trend. They are about providing investment and confidence at a crucial time for these communities. Through town deals, we are driving economic regeneration and growth, raising living standards and boosting productivity. We are investing in new uses for often derelict and unloved spaces. We are creating new cultural and economic assets that will benefit those communities not just today but for generations to come. We are connecting people through better infrastructure both digital and physical, such as the new walking and cycling routes planned for Torquay and the creation of the new digitech factory in Norwich.

We have already made some investments as a rapid response to the effects of Covid-19 where towns are particularly vulnerable. Up-front grants of up to £1 million are being spent in places such as Burton-on-Trent, on its new main shopping centre to allow greater access for pedestrians and cyclists, or on demolishing and rebuilding unloved buildings in places like Newcastle-under-Lyme. Many towns are repurposing empty shops into vibrant community and business spaces that will help them to bounce back when Covid is done.

Each town selected to bid for a town deal is eligible for an investment of up to £25 million. Of course, that is not guaranteed, and all proposals are rigorously assessed by officials in my Department. In exceptional circumstances, such as the nationally significant plans for the great town of Blackpool, we will invest more. I am particularly excited by Blackpool's plans to make its illuminations even more impressive and attract more visitors when they are back next year.

Town deals are about more than simply investment. They are about the whole town coming together, to create and share a genuine vision for the future of that place. We have just offered Barrow-in-Furness a town deal that will help to address the skills gap, create better housing and support local businesses to grow and employ more people. I am hugely excited by these deals. They offer a chance to turn around the fortunes of many, many places.

This is just the start. The Government are committed to levelling up all parts of the country. We want everyone, wherever they live, to benefit from increased economic growth and prosperity. Town deals are but one way to achieve that. All Members of the House will agree that places such as Blackpool, Barrow and Darlington need and deserve investment, and they will have it under this Government. The work of the towns fund is just beginning."

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

I welcome the towns fund, as getting funding to communities is always welcome news, but this whole issue has arisen because of concerns about how the funding is allocated. It must be fair and based on understandable criteria and a proper assessment of the need and must have clear goals. At no point should there ever be any suggestion that funding is taking place on political terms. What assurance can the noble Lord give the House that this has not been the case with funds allocated to date? Can he provide information on the different areas where funding was allocated or refused and on the criteria used by his department to make such decisions?

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con) [V]: My Lords, I am very happy to provide an outline of how the towns were selected.

[Lord Greenhalgh]
Officials ruled out 541 towns based on their lower levels of deprivation. The remaining towns were ranked as higher, medium or low priority based on an evidence-based methodology. The top 40 high-priority towns were chosen for town deals. Ministers used their local knowledge to conduct a qualitative assessment when picking the remaining 61 towns. This involved—

Baroness Bloomfield of Hinton Waldrist (Con): I am afraid we cannot hear you well enough; your diction is very indistinct. If you could sit forward a bit, that would be very helpful.

Lord Greenhalgh (Con) [V]: I am very sorry about my diction. Can you hear me better now? I hope so. I was saying that the top 40 towns were chosen for town deals and that Ministers used their local knowledge to conduct a qualitative assessment when picking the remaining 61 towns. A deals process, rather than an open competition, was used, as many previously left-behind towns lacked the capacity to bid. In that sense, the process was very clear and fair in relation to the basis for allocating the considerable amount of money involved.

Baroness Pinnock (LD) [V]: My Lords, I have relevant interests, as set out in the register, and I also welcome the towns fund. however, it is not quite correct that, as the Minister has just said, the top 40 towns, as assessed by the criteria, were chosen for the money in the towns fund. There were many towns in the highest-priority category that were not selected. Can the Minister explain why they were rejected? What can I tell their local representatives about why they are failing to meet the eye of the Minister when they meet the criteria?

Lord Greenhalgh (Con) [V]: I want to make clear that the process was driven by officials using an evidence-based methodology. The top 40 high-priority towns were chosen for town deals. For the remaining 61 towns, there was ministerial involvement but using a process designed by officials in my department. I add that I am delighted that Dewsbury in the borough of Kirklees has been selected to develop proposals for a town deal. My department is looking forward to receiving its town investment plan early next year.

Lord Moynihan (Con): My Lords, in all the government guidance on the towns fund, there is the prospect of there being a major missed opportunity for prioritising co-investment with the private sector in sport, recreation and active-lifestyle facilities. I praise my noble friend the Minister for personally promoting the importance of sport as a catalyst for levelling up and inspiring communities, as we did in the deprived East End of London with the Olympic and Paralympic Games in 2012. I hope my noble friend the Minister will agree that we urgently need to build regeneration, inspiration and legacy into our town fund initiatives, particularly in the north of England?

Lord Greenhalgh (Con) [V]: My Lords, there is no greater champion of the role of sport, leisure and recreation in place-making. I point out that the towns fund guidance provides the envelope upon which towns can prioritise leisure facilities. As a department, we hope to see many towns come forward, building in leisure facilities, parks and green spaces, cycle lanes and a myriad of sports activities within their bids.

The Lord Bishop of St Albans [V]: My Lords, I am also delighted that the Government have set up the towns fund, which will make a significant contribution to many poorer communities. Nevertheless, it still remains that the Public Accounts Committee has expressed concerns about why some towns were chosen and some were not. In future, will Her Majesty's Government undertake to publish the objective criteria and evidence that will be used for selection so that everyone can be assured that there is no political influence in making these selections and choices?

Lord Greenhalgh (Con) [V]: In my answer to the previous question, I made it clear that this is a combination of using an evidence-based methodology and Ministers using their local knowledge. That benefited 101 towns in the first instance. There is more money to be spent on regeneration, but the foundation stone of the allocation of funds was using a clear methodology with multiple criteria, including productivity and exposure to economic shocks.

Baroness Armstrong of Hill Top (Lab) [V]: My Lords, I thank the Minister for his responses, but his last response gives rise to some concern. It certainly looks as if many of the decisions were partial and, given what was said during the election by the Secretary of State to Conservative candidates about the likelihood of the towns in their constituencies receiving consideration in the towns fund, his view that Ministers used their personal knowledge gives folk like me from the northern part of Durham real concern. Will the Minister therefore be clearer than he was with the right reverend Prelate the Bishop of St Albans and state that, in future, criteria will be published so that we can see that an independent, proper decision to allocate public money to towns that need it—and they do need it—is transparently fair?

Lord Greenhalgh (Con) [V]: I would point out that the National Audit Office looked into this. Its report sets out the town deal selection process in detail. The report showed that the more affluent towns were ruled out and the 40 most deprived towns were rightly favoured, with the remainder selected from a shortlist that considered a wide range of evidence. This process was developed by officials but there was political oversight, as there should be.

Baroness Uddin (Non-Afl): I, too, welcome this immense support for local towns. I am sure that the Minister will be perfectly aware of the political leadership required in any such allocations, be it locally or centrally. Despite what the noble Lord, Lord Moynihan, said about the beautiful Canary Wharf development, access is the most important thing. That has not always been meritorious or led by local demand. Can the Minster assure the House, me and local communities that he will ensure that women leaders play a vital role locally and take part in the regeneration and redevelopment of new towns?

Lord Greenhalgh (Con) [V]: My Lords, there is no doubt that regeneration involves physical regeneration, economic regeneration and social renewal. Women often play a bigger part than men in that process, from my experience in local government.

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

Yesterday, the Government made an announcement acknowledging both the urgency of the climate emergency and their special global responsibility in chairing COP 26. If the Government are operating in a joined-up way, you would expect the towns fund money to be used for super-policies that have environmental benefits in addition to economic ones. Can the Minister tell me what percentage of spending addresses those goals?

Lord Greenhalgh (Con) [V]: My Lords, I am happy to write to the noble Baroness on that point as I do not have those figures to hand.

The Deputy Speaker (Lord Haskel) (Lab): All questions have now been asked.

Arrangement of Business

Announcement

1.45 pm

The Deputy Speaker (Lord Haskel) (Lab): These proceedings will follow guidance issued by the Procedure and Privileges Committee. When there are counterpropositions, any Member in the Chamber may speak, subject to the usual seating arrangements and capacity of the Chamber. Anyone intending to do so should email the clerk or indicate when asked. Members not intending to speak on a group should make room for Members who do. All speakers will be called by the Chair. Short questions of elucidations after the Minister's response are permitted but discouraged. A Member wishing to ask such a question, including Members in the Chamber, must email the clerk. The groupings are binding. Leave should be given to withdraw. When putting the Question, I will collect voices in the Chamber only. Where there is no counterproposition, the Minister's Motion may not be opposed. If a Member speaking remotely intends to trigger a Division, they should make this clear when speaking on the group. Noble Lords following proceedings remotely but not speaking may submit their voice, content or not content, to the collection of the voices by emailing the clerk during the debate. Members cannot vote by email. The way to vote will be via the remote voting system.

Private International Law (Implementation of Agreements) Bill [HL]

Commons Amendments

1.47 pm

Motion on Amendments 1 to 1B

Moved by ***Lord Stewart of Dirleton***

That this House do agree with the Commons in their Amendment 1, and do propose Amendments 1A and 1B as amendments thereto—

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

"Implementation of other agreements on private international law

(1) The appropriate national authority may make regulations for the purpose of, or in connection with, implementing any international agreement, as it has effect from time to time, so far as relating to private international law (a "relevant international agreement").

(2) The appropriate national authority may make regulations for the purpose of, or in connection with, applying a relevant international agreement, with or without modifications, as between different jurisdictions within the United Kingdom.

(3) The appropriate national authority may make regulations for the purpose of, or in connection with, giving effect to any arrangements made between—

(a) Her Majesty's government in the United Kingdom, and

(b) the government of a relevant territory,

for applying a relevant international agreement, with or without modifications, as between the United Kingdom, or a jurisdiction within the United Kingdom, and that territory.

(4) Regulations under this section may make—

(a) consequential, supplementary, incidental, transitional or saving provision;

(b) different provision for different purposes or for different parts of the United Kingdom.

(5) Regulations under this section may include provision about—

(a) enforcement of obligations arising under or by virtue of the regulations;

(b) sharing of information;

(c) legal aid.

(6) Schedule (*Regulations under section (Implementation of other agreements on private international law)*) makes further provision about regulations under this section.

(7) In this section—

"appropriate national authority" means—

(a) in relation to England and Wales, the Secretary of State;

(b) in relation to Scotland—

(i) the Scottish Ministers, or

(ii) the Secretary of State acting with the consent of the Scottish Ministers;

(c) in relation to Northern Ireland—

(i) a Northern Ireland department, or

(ii) the Secretary of State acting with the consent of a Northern Ireland department

"international agreement" means a convention, treaty or other agreement to which the United Kingdom is, or is expected to become, a party; "private international law" includes rules and other provisions about—

(a) jurisdiction and applicable law;

(b) recognition and enforcement in one country or territory of any of the following that originate in another country or territory—

(i) a judgment, order or arbitral award;

(ii) an agreement, decision or authentic instrument determining or otherwise relating to rights and obligations;

(c) co-operation between judicial or other authorities in different countries or territories in relation to—

(i) service of documents, taking of evidence and other procedures, or

(ii) anything within paragraph (a) or (b);

"relevant international agreement" has the meaning given in subsection (1);

"relevant territory" means—

(a) the Isle of Man;

(b) any of the Channel Islands;

(c) a British overseas territory.

(8) This section and Schedule (*Regulations under section (Implementation of other agreements on private international law)*) have effect, with the following modifications, in relation to a model law adopted by an international organisation of which the United Kingdom is a member as it has effect in relation to an international agreement to which the United Kingdom is, or is expected to become, a party.

The modifications are—

(a) a reference in this section or that Schedule to implementing or applying a relevant international agreement is to be read as a reference to giving effect to the model law (with or without modifications);

(b) subsection (1) is to be read as if the words "as revised from time to time" were substituted for the words "as it has effect from time to time"."

1A: After subsection (3) insert—

"(3A) Regulations under subsections (1) to (3) may only be made during the operative period.

(3B) The operative period is the period of five years beginning with the day on which this Act is passed.

(3C) The appropriate national authority in relation to a part of the United Kingdom may by regulations extend the operative period for that part of the United Kingdom by a period of five years.

(3D) The power under subsection (3C) may be exercised more than once.

(3E) The operative period may not be extended for any part of the United Kingdom after it has expired in relation to that part of the United Kingdom."

1B: In subsection (5) leave out "this section" and insert "subsections (1) to (3)"

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, I will speak to Commons Amendments 1 to 5 and Amendments 1A, 1B and 4A to 4E, which are in my name.

Private international law is a technical area of law, but it is important to people and businesses that become involved in legal disputes with a cross-border aspect. A family may need to enforce a maintenance decision when one parent moves abroad, or a small business that has been left out of pocket by a foreign supplier may need to seek redress. Agreements on private international law create reciprocal rules to enable UK businesses, families and individuals to resolve these difficult and challenging situations. They prevent multiple court cases taking place in different countries and allow for the decisions of UK courts to be recognised and enforced across borders. All of this helps to reduce costs and anxiety for the parties involved.

The House will recall that this Bill contains two substantive clauses. The first implements three key Hague conventions which currently apply as a consequence of our former membership of the European Union, allowing us to continue to co-operate on important aspects of private international law with existing partners. The second establishes a delegated power to implement further agreements on private international law now that we have regained full competence in this area from the European Union. This stood part of the Bill on its Lords introduction but was removed on Report. Commons Amendments 1, 2, 4 and 5 simply return this clause, and related provisions, to the Bill.

There is also Commons Amendment 3, which I hope will be uncontroversial and will not address in detail. It adds a permissive extent clause to the Bill allowing the implementing power to be extended to the Isle of Man; this is at the request of the Isle of Man Government. This is the standard approach to extending UK legislation to the overseas territories or Crown dependencies and in this case does not directly affect the United Kingdom. My noble and learned friend Lord Keen spoke in detail on this amendment back in May but was unable to move the amendment at the time.

The agreements implemented under Clause 1 are widely supported by interested parties in the legal and finance sectors, and indeed by Members in this House and the other place. The 1996 Hague Convention aims to improve the protection of children in cross-border disputes. It deals with issues such as residence of and contact with children whose parents live in different countries. The 2005 Hague Convention on Choice of Court Agreements aims to ensure the effectiveness of exclusive choice of court agreements between parties to international commercial transactions. The 2007 Hague Convention provides rules for the international recovery of child support and spousal maintenance. The Government have already taken the necessary international steps to ensure our continued membership of these agreements following the end of the transition period.

It is vital that the UK's membership of these agreements continues seamlessly from the end of the transition period. This means that Clause 1 needs to be in force within a few weeks. Although the implementation of the Hague conventions contained in Clause 1 is agreed and not subject to further amendments, the timing aspect creates an imperative for us to agree a way forward on the delegated power promptly.

Before I address the amendments, I will clarify the types of agreements that can be implemented under the delegated power. The power only covers the implementation of international agreements on a very narrowly defined area of law: agreements which are typically uncontroversial and have received widespread support in Parliament in the past. The Bill only allows implementation of private international law agreements which it defines in subsection (7) of the relevant clause. Principally, such agreements cover rules on jurisdiction to hear disputes which raise cross-border issues; which country's law should apply to such cases; recognition and enforcement of foreign judgments; and co-operation between judicial and other authorities in different countries on these matters. It will not be possible for matters outside the areas covered by the definition of "private international law" in the clause to be implemented using the power.

I know that, in the past, debate on this Bill has touched on topics such as the Hague-Visby Rules, or the 1961 Warsaw Convention on the carriage of goods by air. Let me be clear: these conventions—bar possibly one or two provisions—are out of scope of the power, and if the UK joined these conventions today they would still need to be implemented by primary legislation. This Bill is only concerned with implementing provisions on private international law, not any international agreements on private law matters generally.

Bearing that point in mind, I turn to the amendments. This House has already discussed the delegated power at length and made its views known. However, the

clause comes back from the other place with a majority of 149, so, despite the reservations many of your Lordships have and have expressed, I believe we need to accept that such a clause has a place in the Bill and think about how to make it more acceptable to this House. The amended clause will still allow private international law agreements to be implemented promptly. This is important because, following the end of the transition period, there is a need to update the United Kingdom's private international law framework. The Government have already made clear their intention to join the Lugano Convention. This power minimises any gap in its application if we are able to rejoin that convention and allows us to respond flexibly if we are not.

Implementation of these narrow and technical private international law agreements is largely about drawing down into domestic law detailed rules that have already been agreed at an international level. There is very limited ability for Ministers to deviate from these once the UK agrees to become bound by the relevant agreement. The rules in the agreement will not be amendable, and implementation will often largely be a yes or no question, coupled with making provisions largely of a procedural or technical nature, making the affirmative statutory instrument procedure appropriate. There are well-established precedents for implementing agreements which meet our definition of private international law by secondary legislation. It is not just that much of our current private international law framework was implemented under the powers of the European Communities Act. Even before that, there were many examples of agreements of this type being implemented through secondary legislation. The most notable of these is the Foreign Judgments (Reciprocal Enforcement) Act 1933.

Without this power, each new private international law agreement or update to an existing agreement would require primary legislation. Given the need to update our private international law framework and the current busy parliamentary agenda, such a requirement would be disproportionate and damaging. The intellectual arguments about the extent to which the implementation of international agreements by secondary legislation is constitutionally appropriate are important, but the other House recognised that those arguments are not the beginning and end of this debate. We must remember that these agreements can have a real impact on the lives of the general public, and delays in implementing them and reaping their benefits could negatively impact UK businesses and families. It is my view that the power provides a proportionate solution to an important problem, while retaining a far greater role for Parliament in the scrutiny process than it has had for many years.

All that said, I recognise the many and varied concerns that have previously been raised about this power. Opinions are sincerely held and there is merit to many of the points which have been made. I have sought to familiarise myself with the views your Lordships expressed in the Chamber during earlier debates, and I have listened closely to concerns expressed by noble Lords in engagement with myself and ministerial colleagues in recent weeks. The amendments in my name are a good-faith attempt to find a way forward. Indeed, the noble Lord, Lord Pannick, described the suite of amendments that I have put before this House as "substantial and constructive". They attempt to strike a balance, sensitive to the aims of the Government and the concerns of your Lordships' House.

First, Amendment 4A removes from the power the ability to create criminal offences which are punishable by imprisonment. In my analysis of the debates on this Bill, it is clear that this aspect of the power has been the most widely criticised. I certainly see that this is a sensitive issue, and it is right that the Government act cautiously. Although private international law agreements do not generally require contracting parties to create criminal offences, there are exceptions. Some conventions include non-discrimination clauses that require states to apply the same enforcement methods for foreign judgments as are available in domestic cases.

2 pm

In fact, our current approach to the implementation of the Lugano Convention, which the Government intend to reimplement promptly should our application to rejoin as an independent contracting party be successful, includes a criminal offence in Northern Ireland. This applies where a person obliged to pay maintenance under an incoming maintenance decision, subject to recognition and enforcement in Northern Ireland, fails to update a Northern Ireland court with changes to their address. In my view, this is a good example of the "limited" type of criminal offence with which we are concerned and highlights the value of retaining the ability to create offences punishable by, for example, fines. Although I understand the concerns that some may have about even this type of criminal offence being created by secondary legislation, there are in practice a large number of offences created by secondary legislation and retaining this aspect of the power, albeit in a more restricted form, is not out of step with other legislation.

The effect of the amendment, therefore, would be to require any provisions in a private international law agreement that entail the creation of criminal offences carrying a custodial sentence to be implemented by primary legislation. This will provide Parliament with significant additional scrutiny of this important matter. I hope that this addresses a major source of concern about the power.

Secondly, Amendments 1A and 1B, and 4C, 4D and 4E, add a five-year sunset period—extendable on a recurring basis by affirmative statutory instrument—to the regulation-making power. This is not an amendment that the Government would ideally have wanted to make to the Bill. We still consider the delegated power to be a proportionate approach that would afford the flexibility to implement future private international law agreements promptly in the years to come. The Government have already been clear about how they intend to use the power over the next few years. This amendment would ensure that if a future Government, of any colour, wanted to extend the five-year period, they would need to provide similar clarity. This approach of providing an extendable sunset period has been taken in other legislation, such as the Trade Bill. It is also, in my view, proportionate for the implementation of agreements of this nature—technical agreements,

[Lord Stewart of Dirleton]
agreed at international law level, being drawn down into domestic law. This additional role for Parliament provides significant additional scrutiny and will influence how Governments use the power.

The reviewable sunset period means that the Government can still make necessary changes to the UK's framework of PIL agreements over the next few years and maintain their ability to respond flexibly to any uncertainty following the end of the transition period. However, it would also provide the Government with an opportunity to review the use of this power in the future without the current time pressures and to take a reasoned decision on whether it should be terminated. If the Government believe at that stage that the power should be extended, they will need to make their case to Parliament and have the regulations approved in both Houses. I also remind colleagues that a statutory instrument to extend the power would still be subject to an obligation to consult—something I will come on to talk about in more detail shortly. I believe that this approach strikes the right balance between flexibility and scrutiny and offers an effective solution to many of the concerns raised. To my mind, it represents a workable compromise between the position of the Government, as set out, and the principal concerns that the House had aired.

The third amendment, Amendment 4B, puts an obligation on the Secretary of State to consult before using the implementing power or extending it for a further five-year period. My ministerial colleagues have made it clear at various stages of the Bill's passage that they greatly value the views of experts in this area. The current Lord Chancellor reconvened the advisory committee on private international law, chaired by the noble and learned Lord, Lord Mance, and I know that both the Lord Chancellor and Minister Chalk have engaged regularly with other members of the legal sector through the Ministry of Justice's International Law Committee. Consultation is our usual practice, and indeed the Ministry of Justice has already consulted the advisory committee on draft regulations that it may make under the power to implement the Lugano Convention 2007, should our application to rejoin be successful. However, having reflected on the views expressed to me since I took on responsibility for the Bill, I have concluded that putting on the face of the legislation an obligation to carry out such consultation, before making regulations under the delegated power, is a proportionate and appropriate step.

This obligation to consult is drafted in a general way so as not to refer specifically to any groups or bodies. This is because, while the advisory committee, for example, contains a significant wealth of expertise in the field of private international law, it is not a statutory body. Therefore, to refer specifically to it in legislation would not be appropriate. Equally, referring to specific parliamentary committees is not without risk, as interested committees may change or be renamed as time passes. Parliament would already have an opportunity to scrutinise draft affirmative statutory instruments to be made under the power and, even without naming them in the legislation, the Government would always consider most seriously any representations made by parliamentary committees. The same applies to other named consultees that some may suggest adding to the Bill. The Government will be under a duty to make sure that the consultation carried out is appropriate.

I also remind the House that a statutory obligation to consult carries with it a requirement to take due account of the representations received. I can give an undertaking that the Government will meet that requirement. We will provide a thorough and detailed explanation of the consultation that has taken place, setting out not only those with whom we have consulted, but a fair and balanced summary of the views expressed. That will be set out in the Explanatory Memorandum that must accompany any statutory instrument laid before this House. This will give parliamentarians and any relevant parliamentary committee an opportunity to scrutinise the consultation that has taken place and the way the Government have taken account of the views that have been expressed.

I am satisfied that this approach strikes the right balance between ensuring that the Government take account of the views of the relevant experts while allowing for a flexible approach to engage with the most appropriate interested parties in each specific case. I hope that your Lordships will agree that it demonstrates that the Government are sincere in their intent to engage Parliament and other stakeholders in the process. In my view, when taken as a whole, these three amendments represent a significant amount of extra scrutiny for Parliament. I hope that the House will consider them a compromise sensitive to the aims of both sides. I beg to move.

The Deputy Speaker (The Earl of Kinnoull) (Non-Afl): The question is that the House do agree with the Commons in their Amendment 1 and do propose Amendments 1A and 1B as amendments thereto. On Amendment 1C, I call the noble and learned Lord, Lord Falconer of Thoroton.

Amendment 1C (as an amendment to Amendment 1A)

Moved by ***Lord Falconer of Thoroton***

1C: Leave out subsection (3D).

Lord Falconer of Thoroton (Lab): My Lords, I move my Amendment 1C as an amendment to Amendment 1A. It would leave out subsection (3D) of the Government's proposed amendment. Leaving out the subsection would mean that the power to extend the sunset period could be exercised only once.

I start by welcoming the noble and learned Lord, Lord Stewart of Dirleton. Throughout the process of this Bill, he has been very engaged, incredibly helpful, very courteous and really engaged in the detail, and we are all incredibly grateful for that. I also compliment him on the presentation he has just made, which was persuasive and clear and addressed all the issues. So I really am glad to see him there and I completely support him—as indeed does the whole House—in relation to the bringing into UK domestic law and ratifying the three treaties referred to, and which remain referred to, in Clause 1 of the Bill.

I remain disappointed and believe it to be very much the wrong policy to give the Government the power to introduce private international law treaties by secondary legislation, as in the amendment introduced by the Commons to the Bill that was sent from the Lords. There was an almost universal view in this House when it was last here that that should not be dealt with by secondary legislation, because it would reduce the quality of private international law agreements that were given the force of law by legislation. The question of whether it was legitimate to do it by secondary legislation was considered after the consideration of evidence, both by the Constitution Committee of this House—and I am glad to see the noble Lord, Lord Pannick, here as a distinguished member of the Constitution Committee—and the Delegated Powers Committee of this House as well. Both considered, in detail, evidence put before by them by the Ministry of Justice and rejected the suggestion that secondary legislation was the appropriate way to deal with such treaties.

I did not find the reasons given by the noble and learned Lord convincing. But he, like his distinguished predecessor, the noble and learned Lord, Lord Keen of Elie, did not really engage on the issue of why to use secondary rather than primary legislation. He asserted that secondary legislation had been used in the past, and, like his predecessor, referred to the 1933 and 1920 Acts. What he was referring to was bringing into force the provisions on enforcement of judgments in those two Acts in relation to individual territories or countries. All that happens by that secondary legislation is that additional countries are added, whether they be Commonwealth countries for the 1920 Act, or non-Commonwealth countries for the 1933 Act. I would not have any objections whatever to something like that. But that is not the power taken in this Bill; it is the whole of the private international law agreement. It would not just be the addition of countries; it would be the whole Foreign Judgments (Reciprocal Enforcement) Act 1933 in the examples that have been given. That will lead to this country having a worse network of private international law agreements than it has had previously. That is bad for this country, because one of the things we are incredibly good at is private international law. That is what makes English law so attractive to commercial institutions. I am disappointed that no real additional arguments have been advanced.

I accept the political reality here; this House has almost universally asked the other place to think again, and the noble and learned Lord, Lord Stewart of Dirleton, is right to point out that it had the opportunity to think again and decided to go ahead. We have to accept that in a case such as this.

In relation to the sunset clause, these agreements take a long time to negotiate and introduce—with the possible exception of us adhering to Lugano, because that may have to be done in a hurry, so I can see that there is a case there. I am interested that the noble and learned Lord, Lord Stewart of Dirleton, has said that if one had Hague-Visby or Warsaw, that would not be covered by this Bill and would, therefore, have to be introduced by primary legislation. I am not sure, then, under what circumstances this is ever going to apply in substance, because the nature of these private international agreements is that they will have provisions about jurisdiction and enforcement as well as about substantive law—Hague-Visby and the Warsaw convention.

2.15 pm

If there is anything about substantive law, such as what it would be in relation to the return of children—that comes under the Hague convention—as I understand what the noble and learned Lord is saying, although it does deal with jurisdiction and judgment issues, it also sets out a standard of law like Hague-Visby, and that would not be covered. I am grateful for that, because it means that, in significant private international law agreements, primary legislation will always be used. If that is right, although I can see the arguments in relation to Lugano, after the five years are up, the right predilection for the Government would be to say, "That is enough—let us go back to being the country that really looks at private international law agreements." It would meet the Government's requirement to deal with Lugano, and it would preserve our primary place in relation to the quality of the private international law agreements we make and the quality of the way we introduce them. Yes, you have to introduce what you have agreed, but there are many other things around them as well. I hope that the noble and learned Lord will be able to assure me that the starting point of the Government would be that one is enough and that there would need to be special reasons why there would be an extension for a second time.

I strongly support the amendment of the noble Lord, Lord Marks, which would place in the Bill an obligation to consult with each head of the three judiciaries of the United Kingdom, on the basis that if you put those consultees on the face of the Bill, they will ensure that the right people in the legal community are consulted. I am, at the moment, at a loss to understand how on earth that could be objectionable. I note that it is said that the Lord Chancellor's advisory committee on private international law might change its nature. I can see that, but that could probably be dealt with by a power to change the title, to be given to the Minister under secondary legislation. However, I think it is extremely unlikely that the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland are going to have a significant name change within the next 100 years. If they did, no doubt every piece of legislation would be changed to reflect that. So why not?

The noble and learned Lord has done so much for us; the key thing from this side of the House's point of view is that our quality as a country in this area should continue. There is no politics in this; it is just about getting the right result. I hope that he will reflect and give some assurances that might make the position easier.

Lord Marks of Henley-on-Thames (LD): My Lords, I add my welcome of the noble and learned Lord, Lord Stewart of Dirleton, to his place in taking over this technical but difficult Bill, one that raises issues of principle.

I welcome the government amendments, which have the power to act as safeguards on the power reinserted into the Bill by the Commons amendments. I agree

[Lord Marks of Henley-on-Thames]
with the summary by the noble Lord, Lord Pannick, of the Government's amendments as sensible and constructive. But I share the disappointment of the noble and learned Lord, Lord Falconer of Thoroton, that the Commons amendments reinstate the delegated power that this House so comprehensively rejected.

I also agree with the noble and learned Lord, Lord Stewart, that outlawing the power to create offences punishable by imprisonment is of particular importance. I welcome the fact that the principle of a sunset clause has been accepted, although, for all the reasons mentioned by the noble and learned Lord, Lord Falconer, it should be meaningful and not liable to be endlessly renewed. It is also important that the Government have introduced a requirement for consultation before regulations are made. On that, in particular, I am grateful to the noble and learned Lord for the time he and the Bill team have spent with me and others discussing the government amendments to the Commons amendments and considering suggested changes.

For my part, I support the amendment on the sunset clause in the name of the noble and learned Lord, Lord Falconer, for all the reasons he gave. I understand the Government's concern to ensure that there is sufficient time to bring new private international law agreements into UK law, and I accept that there may possibly, on occasion, be a need for more than five years to achieve that. However, I simply cannot see the need for further extensions beyond 10 years. It is in the nature of these international agreements that they take a long time to be finalised. However, the point about the first five years is that there are a number of international agreements, notably the Lugano Convention 2007, to which the Government wish to accede, which may need to be brought into law in the reasonably short term, and there are others on the horizon that may need more than five years. The problem with allowing for extensions beyond 10 years—that is, more than one extension—is that such a long sunset period may involve permitting the Government to implement in the UK international agreements that are currently unforeseen and unforeseeable. It was partly to address that issue that this House took the view that primary legislation should be required before implementing such agreements in domestic law.

I appreciate that this issue is addressed, in part at least, by the requirement for consultation before regulations are made implementing further private international law agreements. That requirement is, indeed, a welcome safeguard. My amendment to government Amendment 4B is designed to ensure that such consultations are both objective and impartial and seen to be so. The shortcoming of the present proposal is that the choice of those to be consulted lies entirely, in England and Wales, with the Secretary of State and, in Scotland and Northern Ireland, with Scottish Ministers, the relevant Northern Ireland department or the Secretary of State acting with their consent. That means that the power to choose who is to be consulted lies entirely with the Executive.

Of course, we accept that many Ministers can be confidently relied on to exercise that power dispassionately, but that confidence cannot always be assumed, and it has not always been justified by Secretaries of State. The change in the role of the Lord Chancellor may also have had an impact. I understand the Government's concern to ensure that there is flexibility in the choice of those to be consulted. It goes without saying that, for example, a convention concerned with family law matters may call for different experts to be consulted than would a convention concerned with commercial law or contractual matters. That is why my amendment does not seek to impose on the Secretary of State a list of those who must be consulted. It lies behind what the noble and learned Lord said about the Government's reasons for not setting out such a list, but I and others are also concerned to ensure not only that the choice of those to be consulted is clearly objective, impartial and apolitical but that the organisation, management and follow-up of the consultations are thorough and meaningful.

Accordingly, I understood the noble and learned Lord to be offering, on behalf of the Government, assurances to the House in that connection. I invite him to confirm, first, that consultation on the implementation of a private international law agreement will generally be in public, and that the Government will announce their intention to consult and invite people to offer their views. Secondly, will he confirm that if the Government decide that such a consultation will not be in public they will publicly explain that decision and the reasons behind it? Thirdly, will he confirm that the Government will report on the outcome of such consultations, if not in a separate report, then, as he envisaged, in or in a document accompanying the Explanatory Memorandum that comes with any proposed regulations made under the powers in the Bill? Finally, I understood the Minister to be offering an undertaking, which I ask him to confirm, to ensure that the explanations in or accompanying such explanatory memoranda will be thorough and detailed, setting out whom the Government have consulted and a fair and balanced summary of the views expressed in any such consultation.

Such assurances and undertakings, if confirmed in the terms I have set out, would offer reassurance to those of us who are concerned that all such consultations will be the genuine safeguards we need them to be. I beg to move.

The Deputy Speaker (The Earl of Kinnoull) (Non-Afl): The following Members in the Chamber have indicated that they wish to speak: the noble Lords, Lord Pannick and Lord Berkeley. I therefore call the noble Lord, Lord Pannick.

Lord Pannick (CB): My Lords, I echo the words of the noble and learned Lord, Lord Falconer, and the noble Lord, Lord Marks, in welcoming the Advocate-General for Scotland, the noble and learned Lord, Lord Stewart, to his post. I thank him and the Minister in the Commons, Alex Chalk, and their officials for taking the time to discuss with me and many other Members of this House our concerns, the House's concerns and the concerns of the Constitution Committee about the delegated powers in the Bill and how those concerns can be accommodated by amendments. The noble and learned Lord has taken a very welcome constructive approach to these issues and I thank

him sincerely for that. He has tabled amendments that go a significant way, in my view, to meeting those concerns.

Like the noble and learned Lord, Lord Falconer, and the noble Lord, Lord Marks, I would have liked, ideally, to see greater restrictions on the use of delegated powers in this context, but the theme tune that often—not always, but often—accompanies Lords' consideration of Commons amendments is the Rolling Stones song "You Can't Always Get What You Want", and since we will not get exactly what we want today, the next best thing is for the Minister to assure noble Lords of the Government's intentions in this context. Again, he has very helpfully gone a long way to do that this afternoon. I ask him to confirm my understanding on three topics that are raised by paragraph 1A, on consultation, as introduced by government Amendment 4B.

The first of these topics is the purpose of the consultation. There is a mandatory obligation to consult. It is not a discretion; there is a duty to consult. The amendment does not expressly say what the purpose is, but does the Minister agree that it is implicit that one of the purposes of the consultation will be to assist the Secretary of State in deciding whether it is appropriate to implement a particular international agreement by regulations, or whether primary legislation is needed?

Can the Minister confirm that the Government recognise that some international agreements, even when they are in the scope of this Bill, as explained by the Minister, may require changes that are so significant that it would not be appropriate to implement the international agreement other than by primary legislation? I suppose, also, the consultation might assist on whether the international agreement would alter substantive law, albeit incidentally, which I understood the Minister to accept would not be an appropriate subject for delegated legislation. That is the first matter: the purpose of consultation.

2.30 pm

The second matter on which I would welcome assistance from the Minister concerns who is to be consulted. This topic was addressed by the noble Lord, Lord Marks. Does the Minister agree that it is difficult to envisage that there would ever be a case when it would not be appropriate to consult the senior judiciary? I understand that the Minister does not want to write it into the Bill, but it would be helpful if he could acknowledge that it is very difficult to envisage that it would ever be appropriate not to consult the senior judiciary. Does he also recognise that, if the Secretary of State is to be properly informed by this consultation, it will also require—other than possibly in the most exceptional cases—an invitation to the Law Society, the Bar Council and NGOs such as Liberty and Justice to express their views? I am not asking him to give a categorical assurance that this will be done in every case but, in respect of normal cases, I ask him to confirm his understanding that that is what he would expect normally to occur.

The third matter that I hope the Minister will address concerns the publication of the fruits of consultation—a topic that he helpfully mentioned in his opening remarks. Again, the noble Lord, Lord Marks, referred to this. I too understood the Minister to have confirmed that the Government intend to publish a report on the consultation responses when laying regulations before Parliament. It would give the House great reassurance if the Minister could confirm—as the noble Lord, Lord Marks, asked—that this will be a full, detailed report of who has been consulted, what they said, and what the Government's response was if the Government disagreed with them.

The reason why this is so important is because, if regulations are laid, the House will itself want to consider whether the subject matter of the regulations makes it inappropriate for the Government to proceed by way of delegated, rather than primary, legislation. The committees of this House—particularly the Constitution Committee and the Delegated Powers Committee—and the House itself will want to take account of those consultation responses when forming their views. Again, I thank the Minister very warmly. I hope he can confirm my understanding on these issues.

Lord Berkeley (Lab): My Lords, I am grateful to be able to participate in this debate. I join other noble Lords in welcoming the noble and learned Lord, Lord Stewart. I am grateful for the time he spent with me and the Commons Minister Alex Chalk MP discussing what I am about to talk about. I also congratulate my noble and learned friend Lord Falconer of Thoroton on his birthday today.

My interest is in something called the Luxembourg Rail Protocol, which we have all agreed is an item of private international law. The protocol is sponsored, along with the Cape Town convention, by the organisation UNIDROIT—I hope I have the right pronunciation. The UK is a full member of this organisation. The purpose of this rail protocol is very similar to a successful one that has existed for the air sector for many years. It is to do with moveable equipment: the financing, recognition, protection and enforcement of creditor rights in relation to equipment that can move. I spoke briefly about this in Committee on the Trade Bill, which I shall return to, but obviously, if investors want to financially support equipment that can be moved anywhere around the world, they want to have some comfort that they know where it is and will get their due money back or whatever.

I recall, from my experience in the railway industry about 20 or 30 years ago, that there was a time when rail wagons got as far as Italy and sometimes never came back. It is not like that today, but it might be like that in other parts of the world. It is really important for UK businesses—not only those that operate or own the relevant bits of equipment but also the export business that will come. I am advised that this needs to be done before the end of the year to provide continuity.

There has been quite a lot of debate here—and in our discussions with Ministers—as to whether this needs primary or secondary legislation. Other noble Lords with much greater experience than I have been discussing it this afternoon. I originally put down an amendment in Committee on the Trade Bill, and the Minister, the noble Viscount, Lord Younger, said he was very supportive of fitting the Luxembourg Rail Protocol into UK law, but thought that the Trade Bill

[Lord Berkeley]
was not really the right place for it. He said it would be much better if it were done as a statutory instrument under the scope of this Bill, assuming that the text of this Bill allows it to happen. I know that there have been planned discussions between Ministers here and Ministers in the Department for Transport, because obviously they will have to promote some secondary legislation, but the important thing now is for the Minister, when he comes to wind up, to give the strongest assurance that the Government are empowered under this Bill—or Act, as it will be—to adopt the Luxembourg Rail Protocol through secondary legislation, and that he will do all he can to encourage the Department for Transport to get this moving so that we have a statutory instrument by the end of the year. I know there is a big queue of legislation, but it would be really good if that could happen. Given that so many Ministers have said to me that they want this to happen and that it is good for businesses—I have not heard anyone saying that it should not happen—I hope that the Minister will be able to give me the strongest assurance that he can.

The Deputy Speaker (The Earl of Kinnoull) (Non-Afl): Does anybody else in the Chamber wish to speak? I call the noble Lord, Lord Mance.

Lord Mance (CB) [V]: My Lords, I declare an interest as a practitioner in the field of private international law and as joint chair of the Lord Chancellor's advisory committee on private international law, to which reference has been made. I do not, of course, speak in that capacity and, as I mentioned on a previous occasion, that committee was not consulted about this Bill before its original introduction, although we have been very happy to be involved subsequently in relation to machinery under and related to the Bill.

I too welcome the Minister to his place and possibly, in succession to his predecessor the noble and learned Lord, Lord Keen of Elie, to a co-chairing of that committee with me. I would of course welcome that very much. I particularly welcome his measured and very careful consideration of the issues raised by the Bill. Described as "technical", it has happily and rightly also been described as "important". It is promoted as part of the United Kingdom's preparation for the post-Brexit era—I will come back to that. It will certainly introduce into the UK's legal systems three identified and very valuable Hague conventions, which have been mentioned, including the choice of court convention of 2005. As the noble and learned Lord, Lord Falconer of Thoroton, said, what has been controversial is the provision for the introduction by delegated legislative regulations of any number of further private international law measures which might be agreed at international level during an indefinite future.

I hope that I shall not be thought ungrateful in what follows for the mercies which have been granted. Certainly, the amendment relating to offences and the removal of the delegated power to create criminal offences punishable by imprisonment is highly welcome. So too is the Government's agreement to limit the operation of Clause 2 to an operative period of five years. However, that is renewable, as has been pointed out, so that is not as large a change as the House wished —and I think would still wish—to see. The five-year period is capable of being extended by regulations and, moreover, more than once. In that respect, I support what the noble and learned Lord, Lord Falconer of Thoroton, said.

If the Bill is addressing the post-Brexit era, let us truly hope that that at least will be well and truly past within 10 years. In any event, we should be under no illusion that any great volume of instruments is likely to require attention under the Bill. Again, I echo a point that the noble and learned Lord, Lord Falconer, made. We know that the Government have, for better or worse, decided, if permitted by the European Union, to sign up to membership of the Lugano Convention 2007—that paler image of the present Brussels regime, which, as I previously remarked, is well accepted and understood, and popular in the City in particular. The signing up to the Lugano Convention 2007 will, as I have also pointed out, largely undo as regards EU states the potential benefits of signing up to the Hague choice of court convention 2005. That is because Lugano trumps the choice of court convention under the internal terms providing for their priority.

Apart from that, the 2019 Hague convention is a possibility which has been mentioned. It relates to recognition of judgments and one day, but certainly not soon, it may come into play as a possibility. At the moment it has no subscriptions of any significance at all. Then there is the Singapore mediation convention, previously much loved by government speakers here and in another place—but I am glad to see that, I think realistically, it was not mentioned by the noble and learned Lord, Lord Stewart. Its significance in promoting the enforcement of agreements reached as a result of mediation is certainly commendable but hardly earth shattering, those agreements being in any case enforceable at common law.

2.45 pm

The reality is that as a country we do not go around the world trying to reach new ad hoc agreements regarding private international law matters, whether on jurisdiction or on recognition or enforcement of judgments. Such matters are nowadays undertaken at a regional—for example, EU—level or at an international level, such as the Hague conference level, which has produced the three conventions to which we will sign up under Clause 1. The UK is currently playing its part, and the Lord Chancellor's advisory committee has been involved in relation to the discussions in The Hague regarding the possible supplementing of the 2019 convention by a lis pendens and/or forum conveniens convention—in other words, a convention dealing with the plague or problem of concurrent litigation in different countries. However, there never has been and there is unlikely ever to be, at least after the end of this year, any imperative to make immediate decisions about accession to or implementation of private international measures. As has been pointed out previously, they have in the past merited parliamentary consideration on the Floor of this House. Indeed, I consider that the merits or demerits of the Lugano Convention would have been such a matter. It will not get that consideration,

but future measures should. Even if Clause 2 goes through as it is, that, as has been pointed out, does not preclude Ministers from bringing matters to the House in the ordinary, traditional way.

I will not go back at length on the limited number of past measures which have allowed a limited degree of delegated legislation in this field: the Administration of Justice Act 1920, a measure covering other of Her Majesty's jurisdictions overseas, and the Foreign Judgments (Reciprocal Enforcement) Act 1933. These Acts deal with judgments which would anyway have been enforceable by action at common law and were simply given a convenient means of enforcement by statutory delegated legislation. They did not cover jurisdiction but only recognition and enforcement of judgments. I endorse what the noble and learned Lord, Lord Falconer, said on that. I see that reference was made in another place to the Mental Capacity Act 2005, but that is a wholly unpersuasive precedent which simply enabled the bringing into force by regulations of the specific Hague Convention on the International Protection of Adults 2000. In other words, it is a parallel to Clause 1, which brings into force specific Hague conventions, and not a parallel to the present Clause 2 that we are considering.

The appropriate course in private international matters which are important is that wherever possible they should receive full parliamentary attention before international ratification. Looking back over the history of legislation, there is the Civil Jurisdiction and Judgments Act 1982, but it also occurred in relation to legislation which has been mentioned previously: the Carriage by Air Act 1961 and the Carriage of Goods by Road Act 1965, which are hybrid—they have provisions extending outside private international law.

Three committees had no doubt about the inappropriateness of the reinstated clause—two of them have been mentioned—and the Constitution Committee noted the inadequacy of CRaG as a means of scrutiny of matters proceeding at international level. One hopes that will be addressed at some point, but it is a fact at the moment. So my message would be that if Clause 2 is to stay in the Bill, we should welcome the concessions which have very helpfully been made, but we should do all we can still further to limit its presence as an intruder. I therefore support the amendment of the noble and learned Lord, Lord Falconer, in that respect.

The amendment to Amendment 4B tabled by the noble Lord, Lord Marks, which I also support, arises again from another small governmental step, for which I express gratitude. However, it is not a very large one. Under it, before making regulations, the Secretary of State must

"consult such persons as the Secretary of State thinks appropriate."

Well, no doubt that means that he cannot simply consult his own conscience or go into the next room, but I suppose he might go out into Petty France. It is completely open, and of a generality and subjectivity which is not very helpful. Therefore, I welcome the suggestions that have been made and the assurances which the Minister has given today about actual intentions.

The background, as I have said, is that there was no consultation with the Lord Chancellor's advisory committee about the original Bill, so any assurances now are valuable. Those proposed by the noble Lords, Lord Marks of Henley-on-Thames and Lord Pannick, are welcome in the interests of, first, public consultation, which will generally be appropriate; it may not be appropriate in every case but it is generally important. Family and commercial issues arouse great interest around the country. Secondly, there should be an objective process, and thirdly, it should be transparent.

The amendment in the name of the noble Lord, Lord Marks, selects three persons whom he suggests—and I endorse—should be introduced as consultees, at least to identify other consultees. One could, as has been suggested and as the noble Lord, Lord Pannick, mentioned, identify the presence of the Law Society and the Bar as invaluable contributors, as well as the senior judiciary. One way or another, such persons would have the independent task of identifying relevant stakeholders, which would ensure objectivity and completeness in consultation.

The present phrase has a certain bathetic quality about it, which the Minister has done a considerable amount to dispel. I repeat my welcome for that but I ask him to give the assurances requested by the noble Lords, Lord Marks and Lord Pannick. On that basis, the Bill would be on a sounder footing and those of us who had understandable concerns about it would, I hope, find them considerably alleviated.

Lord Thomas of Gresford (LD) [V]: My Lords, it is indeed a privilege to follow the magisterial and extensive exposition of the noble and learned Lord, Lord Mance, whose depth of experience and knowledge I defer to. He referred to the Bill as an intruder, which was an interesting description.

The Second Reading took place on 17 March, just at the beginning of lockdown. The noble and learned Lord, Lord Keen of Elie, outlined the wide scope of the issues raised by the Bill. He said:

"Without private international law agreements, UK businesses, individuals and families would struggle to resolve the challenges they face when dealing with cross-border legal disputes."—[*Official Report*, 17/3/20; col. 1439.]

The Minister echoed that opening today but I was surprised when he suggested that the area of law was narrow. As we have heard from the noble Lord, Lord Berkeley, it may encompass disappearing railway carriages in Italy, which has an Agatha Christie ring about it.

The new clause inserted by the other place reflects that width. The Westminster Government or a devolved Government may, by regulation, implement any international agreement so far as it relates to private international law. Further, the appropriate national authority may, by regulation, apply any agreement between the different jurisdictions within the United Kingdom or give effect to any arrangements between the UK Government and the British Overseas Territories, the Isle of Man or the Channel Islands. The emphasis throughout is on any future agreement of whatever nature that involves private international law anywhere in the world or internally within the United Kingdom.

It would appear that the Government have listened to the many voices suggesting that these clauses are excessively wide. Consequently, in response, the Minister today introduced the outline of a sunset clause, limited in the first instance to five years. He said that the

[Lord Thomas of Gresford]
urgent need is " to update the framework" lost by our leaving the EU. The principle that there should be a temporal limit to the exercise of these wide powers in the uncertainties of the present time is clearly a good one. Unfortunately, the Government have decided that, like the British Empire, the sun shall never set upon these provisions. That is the effect of granting power to extend the operative period, not just for a further period of five years but, under proposed new subsection (3D), to renew the power to extend the period indefinitely. It just keeps rolling along. That makes a mockery of a sunset clause; consequently, I am delighted to support the amendment in the name of the noble and learned Lord, Lord Falconer.

As I said at earlier stages of the Bill, our hugely unsatisfactory procedures for passing secondary legislation by resolution, whether affirmative or negative, may be tempered in the interests of democracy by consultation with interested parties. Amendment 4 pays lip service to that concept but, in effect, gives power to the Minister to choose whomsoever he thinks appropriate to consult. The wording is loose, such that although there is a duty to consult if the Minister thinks subjectively that there is nobody appropriate—as the noble Lord, Lord Pannick, said—he does not have to exercise that choice; or, as the noble and learned Lord, Lord Mance, said a moment ago, he could walk out into the street and consult someone.

The purpose of the amendment in the name of my noble friend Lord Marks of Henley-on-Thames is to bring some objectivity to the exercise. The Minister may be surprised to know that the shelf life of a Minister in this and the previous Government tends to be no more than two years, and that Secretaries of State come and go through the various offices of state without necessarily knowing anything at all about their work. As WS Gilbert put it over 100 years ago, the way to advancement may well be to polish up the brasses on the big front door of No. 10.

Consequently, it is only sensible to have the guiding hand of the head of the judiciary in the various jurisdictions. No doubt the Sir Humphreys of this world can suggest that the Secretary of State rounds up the usual suspects, but that is no substitute for the Lord Chief Justice and his peers, who have a lifetime of experience of the legal world and the whole of the judiciary to draw on for advice as to who the suspects should be. As the noble Lord, Lord Pannick, said, it is inconceivable that they should not be consulted in any event.

I support the amendment in the name of my noble friend Lord Marks and, in particular, his call for a full and transparent report on the fruits of the consultation.

Lord Stewart of Dirleton (Con): My Lords, I begin by thanking noble Lords for their thoughtful and erudite contributions. I thank them also for their courteous and warm words of welcome to me at the Dispatch Box. I echo the words of the noble and learned Lord, Lord Falconer of Thoroton, in a phrase that I think will resonate with the entire House and with which none of us would disagree: our imperative is the preservation of this country's good name and its standing in private international law matters.

The matters raised in the course of our discussions overlapped to some extent but I will, if I may, do my best to treat the contributions to the debate in the order in which they were made. First, I shall address the comments of the noble and learned Lord, Lord Falconer of Thoroton, in relation to Amendment 1C, which omits some text from my Amendment 1A, the effect of which would be to allow the sunset period—which my amendment allows to be extended for five years by affirmative statutory instrument—to be extended only once.

3 pm

The Government have been clear about how we wish to use this power over the next few years. As your Lordships have heard, this includes Lugano or alternatives with Norway, Iceland and Switzerland, should our application be unsuccessful, as well, potentially, as the Singapore convention on mediation and the 2019 Hague judgments project, following consultation. If the Government ask Parliament to extend the power in five years, we will need to make our case again and have regulations approved in both Houses. To make a persuasive case, the Government will provide similar clarity on how we intend to use the power over the next five years and for every five-year period thereafter, should we pursue further extensions. Clearly, I cannot provide that detail now but, by the time such an extension is requested, it will be available and Parliament will be able to consider how the power has previously been used.

Essentially, this reviewable sunset requires the Government to consult on, and obtain parliamentary approval for, our strategy in this area of law every five years. I submit that this gives Parliament more oversight of government policy in private international law than it has ever had before. The need to come back to Parliament at five-year intervals with a plan for how the power will be used will act as a powerful regulator.

I mention the words of the noble and learned Lord, Lord Mance, on the ability of our procedures to properly scrutinise statutory instruments brought before this House and the other place. I respectfully submit that the Bill is not an occasion for a referendum on those powers generally, irrespective of the views that Members of this House have of their efficacy.

I do not know what the situation will be like in nine years. If this power is deemed to have been necessary only in the years following our departure from the European Union, the Government could decide not to extend the power any further or Parliament could refuse to approve such an extension. By then, this power may be widely accepted as proportionate and appropriate. If that is the case, requiring Parliament to pass new primary legislation to extend an existing uncontroversial power seems highly undesirable, especially if the delay while parliamentary time is found for primary legislation leaves, for example, a family who would benefit from a new agreement about child maintenance or custody across borders in a worse position than they would be in if the Government could move quickly to implement such an agreement by secondary legislation.

My view is that the power represents a balanced and proportionate approach to implementing these uncontroversial and technical agreements. The sunset

amendment in my name represents a significant concession by the Government to take account of the concerns of this House, while still retaining some aspect of the flexible approach that we originally sought, so that we balance constitutional concerns with the needs of those who depend on these agreements. I urge the noble and learned Lord to consider withdrawing his amendment.

I turn to the views of the noble Lord, Lord Marks, who tabled Amendment 4F, which adds a requirement for the Secretary of State to consult specified persons. This overlaps with matters raised by the noble Lord, Lord Pannick. It specifies that the Secretary of State should consult the Lord Chief Justice, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland ahead of using the main delegated powers in the Bill. I recognise that the intent behind this is to ensure that the consultation process is robust, and that is clearly important. We consider that the Government would greatly value the opinions of these persons on these matters, but we believe it unnecessary to stipulate in the Bill that they should be consulted. I am concerned, because there are a number of reasons why this may not work in practice.

It is worth making the point that there may be specific subject areas within private international law, such as disputes around child abduction, in which not only the legal profession would have a stake. I fully appreciate this—I see the noble and learned Lord across the Table nodding. To echo the point of the noble Lord, Lord Pannick, it may be difficult to conceive of a situation in which the views of those specified senior judges would not be considered important, so that they were not consulted. But it may be more appropriate for the Lord Chancellor to take the views of third-sector organisations. The original drafting of the amendment allows for flexibility when this is the case.

While private international law is not ordinarily a subject on which the Government undertake a full public consultation, such as was mooted, there could be situations in future where that would be proportionate. There may also be situations when the power is used to bring forward a minor technical statutory instrument to update the terms of an agreement. My colleague Minister Chalk, in his speech in the other place, referred to an Order in Council that the previous Labour Government had made in 2003, simply updating the names of courts captured by an agreement between the United Kingdom and Israel. If such an instrument were brought forth under this power, we would anticipate the level of consultation on it being proportionate, compared to situations when we are implementing a new agreement. It would not require the views of the senior judges specified by the noble Lord, Lord Pannick, and other noble Lords. It remains important that the Lord Chancellor can retain the flexibility to consider whom it is appropriate to consult on a case-by-case basis.

In addition, this amendment would require us to consult the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland in every case. As the delegated power is currently drafted to respect the devolution position and allow for the devolved Administrations to bring forward their own implementing legislation should they wish to, it may be that, in some circumstances, this Parliament and the Secretary of State are concerned only with implementation for England and Wales. In those circumstances, I am not sure that consultation with the judiciary of Scotland and Northern Ireland would be appropriate. In the exercise of their devolved competence, I am not sure that the Scottish Parliament or the Northern Ireland Assembly ought to be bound to consult the judiciary of England and Wales—enlightening and important as such consultation may be.

Further, since the start of this process, the Government have been clear that this power would be used to implement the Lugano Convention. The importance of this has come up several times during debates on the Bill. There is widespread agreement that it needs to be implemented promptly if the United Kingdom's application is to be successful. To that end, we have already discussed the matter at length with the Ministry of Justice's international law committee and have shared a draft of the proposed implementing regulations with, and received views on them from, the Lord Chancellor's advisory committee on private international law, which includes representatives from both Scotland and Northern Ireland, and sitting and former members of the judiciary. This has provided useful feedback. A requirement to go back to these judges would cause unnecessary delay, increasing the gap when the Lugano Convention is not in force—a situation that we all want to avoid. What would happen if, for instance, a consultee suggested by the Lord Chief Justice failed to respond? It is not beyond the realms of conjecture for that to be the case with third-sector organisations or specific learned individuals. Any of that could result in delay.

While I acknowledge that the intent behind the noble Lord's amendment is to ensure that any consultation is robust, and is therefore entirely reasonable, for the reasons I have outlined, I am concerned about how it would work in practice. I consider it to be unnecessary if the objective is simply to ensure that the Government consult in an effective manner, and I therefore respectfully ask him to withdraw his amendment.

I thank the noble Lord, Lord Berkeley, for his comments and for meeting to discuss these issues with me and my ministerial colleague Minister Chalk last week. I endorse the noble Lord's views on the importance of the rail industry and of the Luxembourg protocol. I suggest that the analogy he drew of disappearing railway carriages was an example of him speaking figuratively. The application of the protocol is narrower than that. The Government consider this to be an important issue and are thinking about how best to implement the protocol in the United Kingdom. As we discussed last week, we consider that the power in this Bill is too narrow to fully implement the protocol, although the provisions in applicable law would be within its scope. I acknowledge once again his excellent work in championing this important issue and assure him that the Government are fully seized of his views and of the importance of the matter he has raised. It would provide, as it is intended, things to assist the smooth and seamless flow of trade across borders.

The noble Lord, Lord Pannick, raised a number of issues, and if I overlap in the comments I am making, I apologise to the House. I confirm that the obligation to consult will require us to take account of all the

[Lord Stewart of Dirleton]
views expressed, including where people might express a view that primary legislation is appropriate to deal with a particular issue. The Government's approach throughout on the delegated power has sought to be pragmatic and not dogmatic. We want to be proportionate in our implementation of PIL agreements but, where consultees make strong arguments about the appropriateness of primary legislation for a particular agreement, we would listen and consider them in the proper manner.

I shall go back to a matter raised by the noble Lord that I may have already touched on, which is the identity of consultees. As he does—I think it is universal across the Chambers—I envisage that the views of the senior judiciary would be sought on these matters. We have already shared the draft of a statutory instrument to implement Lugano with the Lord Chancellor's advisory committee on private international law and have discussed the issue at length with the international law committee at the Ministry of Justice, both of which contain representatives of the judiciary. The matter of whether concerns were raised at that stage by those representatives is perhaps neither here nor there, but the consultations took place and in neither case were concerns raised about the use of secondary legislation for the matter. As I think I said earlier, I can envisage a situation where there may be very technical procedural updates to a convention that do not require a senior judicial view on their implementation, such as updating the name of a foreign court that is referred to in an existing agreement. However, where a statutory instrument under the power implements a new agreement or makes material changes to an existing one, I agree that the views of the senior judiciary would be sought. To put the noble Lord's point shortly: why not then simply stipulate in gremio of the Bill that the judiciary should be consulted? I reiterate my point that that might add extra bureaucratic weight to the burdens of its office and would not promote the flexibility in this exercise which the Government seek to accomplish.

3.15 pm

The noble Lord, Lord Pannick, also asked about the terms of a report that would be issued at the conclusion of the consultation process. This matter was raised by other noble Lords as well. While it is not the Government's intention to publish a separate report summarising the consultation responses, we intend to provide Parliament with a detailed explanation of the persons with whom we have consulted and a fair and balanced summary of the views they have expressed within the Explanatory Memorandum that accompanies any statutory instrument made under the power. Of course, were that summary of those views to misrepresent them to any extent, that could immediately be brought to the attention of this House and the other place. That is the right approach. It will give Parliament the opportunity properly to consider the exercise which the Government have undertaken and to scrutinise and hold to account where appropriate. Those remarks also echo the views of the noble Lord, Lord Thomas of Gresford, in his point relating to the effectiveness of the consultation procedure. I respectfully disagree with the proposal that this would permit the Government to make a mockery of the sunset clause. As I have stated, the procedures that I have outlined provide Parliament as a whole with a greater opportunity to scrutinise such measures than has been afforded for many a year.

In spite of my initial remarks, I appreciate that I have taken speakers out of order. I turn finally to the views of the noble and learned Lord, Lord Mance, and the valuable tour of the private international law horizon that he gave, which were most welcome. On the matter of the period of five years, the approach that the Government seek to take and urge on the House will take into account the fact that, notwithstanding that tour of the horizon of private international law, we cannot know precisely what lies ahead. The five-year periods permit the Government to see measures as they arise, to see the approach of conventions as they arise and to act accordingly in relation to formulating what the country's policy ought to be. In those circumstances, we take the view that the five-year sunset period with the renewable extension permitted would give the Government the opportunity to give full and careful consideration to private international law agreements which they may decide would be beneficial for the United Kingdom to join. It would also provide ample time to fulfil our obligation in statute to consult relevant stakeholders.

The Ministry of Justice is in the process of formulating a 10-year strategy for private international law. The five-year renewable sunset would align more closely with our long-term strategy and enable the Government to be more agile in negotiations with our partners around the world. That sunset clause which the Government need to bring back to Parliament every five years would, as I have said, act as a good regulator to ensure that they are achieving their aims of re-establishing an effective framework of private international law agreements in the years to come. It is important that the Government can do this without the current pressures, but it is right that Parliament also has the opportunity to hold the Government to account, should they fall short.

Before I conclude, I remind the House that we need to agree a version of the Bill so that Clause 1 can be enforced before the end of the transition period. This clause provides a clear and simple approach to the implementation of three vital Hague conventions which affect the lives of people in the United Kingdom. Because of this, the Government's priority is to avoid an extended back and forth between here and the other place. That does not mean, however, that we are trying to avoid the valuable scrutiny that the ping-pong process can offer.

I am grateful once again to your Lordships for your time and consideration of the Government's proposals. The approach we have taken in these amendments reflects this. We have engaged with a number of your Lordships ahead of the Bill returning to this Chamber. We have sought to listen and have tabled the suite of amendments that has been considered today. We submit that this is not a paltry offer of the bare minimum which would address on any level at all the principal concerns your Lordships have raised. The amendments are a genuine attempt to reach a meaningful compromise in the areas that have raised most concern. I am grateful to the noble and learned Lord, Lord Falconer

of Thoroton, and to others for their acknowledgement of the importance of removing matter relating to the criminalisation of offences punishable by periods of imprisonment.

The amendments seek to address the particular concerns around appropriate scrutiny, while protecting the Government's core policy objective. We could send this Bill back to the Commons, only to have it come back to us once more to make final tweaks to these amendments, but I urge your Lordships to see the bigger picture. This package of amendments is balanced and proportionate. We must consider not just the constitutional issues but the impact these agreements have on families and businesses. We need to pass this Bill, and time is moving on. This is an opportunity for us to send the Bill back to the other place with a clear signal that this House has balanced pragmatism with principle and found an effective compromise that it should support. I beg to move.

Lord Falconer of Thoroton (Lab): May I express the gratitude of the whole House for the care with which the noble and learned Lord, Lord Stewart of Dirleton, dealt with every single issue that was raised? That I disagree with some of the answers is not the same as saying that he did not deal with them. For a Bill like this, it was an absolute model of going through every issue and putting the Government's argument; I am incredibly grateful for that. There is nobody more disdainful than me when questions are not answered but, my goodness, the noble and learned Lord did a very good job and the whole House is grateful for that.

I will focus on my amendment, which concerns not being able to extend and extend the provision. My reading of what the noble and learned Lord said is that the sunset clause was intended in part to deal with the objections raised by this House. As he knows, the reason for those objections is that we do not consider secondary legislation appropriate. He replied, in effect, that there are good reasons for it—Lugano, primarily. As I read it, he is saying that unless there are good reasons, the sun will set on this Bill. If that is the right approach and what he is indeed saying, my view is that the Lugano provisions that currently apply—we may be only four or five weeks away from wanting them to come into force—mean that it is very unlikely that future circumstances will arise that would justify using secondary legislation. I hope that is what he means.

The noble and learned Lord has acknowledged the reasons why this House did not want the secondary power. In those circumstances, mindful of the need to get the three conventions in Clause 1 on to the statute book 1, I will not be moving my amendment—but only on the basis that I earnestly expect that the Government will not need one, let alone two extensions to the sunset clause. I beg leave to withdraw the amendment standing in my name.

Amendment 1C withdrawn.

Motion on Amendments 1 to 1B agreed.

Motion on Amendments 2 and 3

Moved by ***Lord Stewart of Dirleton***

That this House do agree with the Commons in their Amendments 2 and 3.

2: Clause 2, page 2, line 28, at end insert—

"(2) Regulations under section (*Implementation of other agreements on private international law*) may make provision binding the Crown.

(3) The reference to the Crown in subsection (2) does not include—

(a) Her Majesty in Her private capacity,

(b) Her Majesty in right of the Duchy of Lancaster, or

(c) the Duke of Cornwall."

3: Clause 3, page 2, line 30, at end insert—

"(2) Her Majesty may by Order in Council provide for section (*Implementation of other agreements on private international law*) (including Schedule (*Regulations under section (Implementation of other agreements on private international law*))) and section 2(2) and (3) to extend, with or without modifications, to the Isle of Man."

Motion on Amendments 2 and 3 agreed.

Motion on Amendments 4 to 4E

Moved by ***Lord Stewart of Dirleton***

That this House do agree with the Commons in their Amendment 4, and do propose Amendments 4A, 4B, 4C, 4D and 4E as amendments thereto—

4: After Schedule 5, insert the following new Schedule—

"SCHEDULE

REGULATIONS UNDER SECTION (IMPLEMENTATION OF OTHER AGREEMENTS ON PRIVATE INTERNATIONAL LAW)

Restrictions on power to make regulations

1 (1) Regulations under section (*Implementation of other agreements on private international law*) may not include—

(a) provision that confers power to legislate by means of regulations, orders, rules or other subordinate instrument (other than rules of procedure for courts or tribunals);

(b) provision that creates an offence for which an individual who has reached the age of 18 (or, in relation to Scotland or Northern Ireland, 21) is capable of being sentenced to imprisonment for a term of more than two years (ignoring any enactment prohibiting or restricting the imprisonment of individuals who have no previous convictions).

(2) Sub-paragraph (1)(a) does not prevent the modification of a power to legislate conferred otherwise than under section (*Implementation of other agreements on private international law*), or the extension of any such power to purposes of a similar kind to those for which it was conferred.

(3) A power to give practice directions or other directions regarding matters of administration is not a power to legislate for the purposes of sub- paragraph (1)(a).

Regulations to be made by statutory instrument or statutory rule

2 The power to make regulations under section (*Implementation of other agreements on private international law*)—

(a) is exercisable by statutory instrument, in the case of regulations made by the Secretary of State;

(b) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)), in the case of regulations made by a Northern Ireland department.

Parliamentary or assembly procedure

3 (1) This paragraph applies to a statutory instrument containing regulations made by the Secretary of State under section (*Implementation of other agreements on private international law*).

(2) If the instrument contains (whether alone or with other provision)—

(a) provision made for the purpose of implementing or applying, in relation to the United Kingdom or a particular part of the United Kingdom, any relevant international agreement that has not previously been the subject of any such provision (whether made by regulations under section (*Implementation of other agreements on private international law*) or otherwise),

(b) provision made for the purpose of giving effect, in relation to the United Kingdom or a particular part of the United Kingdom, to any relevant arrangements that relate to a particular territory and have not previously been the subject of any such provision (whether made by regulations under that section or otherwise),

(c) provision that creates or extends, or increases the penalty for, a criminal offence, or

(d) provision that amends primary legislation,

it may not be made unless a draft of the instrument has been laid before each House of Parliament and approved by a resolution of each House.

(3) In this Schedule "relevant arrangements" means arrangements of the kind mentioned in section (Implementation of other agreements on private international law) (3).

(4) If sub-paragraph (2) does not apply to the instrument, it is subject to annulment in pursuance of a resolution of either House of Parliament.

4 (1) This paragraph applies to regulations made by the Scottish Ministers under section (Implementation of other agreements on private international law).

(2) The regulations are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010) (asp 10)) if they contain (whether alone or with other provision)—

(a) provision made for the purpose of implementing or applying, in relation to Scotland, any relevant international agreement that has not previously been the subject of any such provision (whether made by regulations under section (Implementation of other agreements on private international law) or otherwise),

(b) provision made for the purpose of giving effect, in relation to Scotland, to any relevant arrangements that relate to a particular territory and have not previously been the subject of any such provision (whether made by regulations under that section or otherwise),

(c) provision that creates or extends, or increases the penalty for, a criminal offence, or

(d) provision that amends primary legislation.

(3) If sub-paragraph (2) does not apply to the regulations, they are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

5 (1) A Northern Ireland department may not make regulations under section (*Implementation of other agreements on private international law*) that contain (whether alone or with other provision)—

(a) provision made for the purpose of implementing or applying, in relation to Northern Ireland, any relevant international agreement that has not previously been the subject of any such provision (whether made by regulations under section (*Implementation of other agreements on private international law*) or otherwise),

(b) provision made for the purpose of giving effect, in relation to Northern Ireland, to any relevant arrangements that relate to a particular territory and have not previously been the subject of any such provision (whether made by regulations under that section or otherwise),

(c) provision that creates or extends, or increases the penalty for, a criminal offence, or

(d) provision that amends primary legislation,

unless a draft of the regulations has been laid before the Northern Ireland Assembly and approved by a resolution of the Assembly.

(2) Regulations under section (*Implementation of other agreements on private international law*) made by a Northern Ireland department are subject to negative resolution, within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954, if a draft of the regulations was not required to be laid before the Northern Ireland Assembly and approved by a resolution of the Assembly.

(3) Section 41(3) of that Act applies for the purposes of sub-paragraph (1) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.

Interpretation

6 In this Schedule—

"amend" includes repeal or revoke;

"primary legislation" means any provision of—

(a) an Act of Parliament,

(b) an Act of the Scottish Parliament,

(c) an Act or Measure of Senedd Cymru, or

(d) Northern Ireland legislation;

"relevant arrangements" has the meaning given in paragraph 3(3); "relevant international agreement" has the same meaning as in section (*Implementation of other agreements on private international law*)."

4A: In paragraph 1(1), in paragraph (b), leave out from "offence" to end of paragraph

(b) and insert "punishable by imprisonment."

4B: After paragraph 1 insert—

"Consultation

1A Before the Secretary of State makes regulations under section (*Implementation of other agreements on private international law*) the Secretary of State must consult such persons as the Secretary of State thinks appropriate."

4C: In paragraph 3(2), after paragraph (d) insert ", or

(e) provision made under section (*Implementation of other agreements on private international law*) (3C),"

4D: In paragraph 4(2), after paragraph (d) insert ", or

(e) provision made under section (*Implementation of other agreements on private international law*) (3C)."

4E: In paragraph 5(1), after paragraph (d) insert ", or

(e) provision made under section (*Implementation of other agreements on private international law*) (3C),"

Amendment 4F not moved.

Motion on Amendments 4 to 4E agreed.

Motion on Amendment 5

Moved by ***Lord Stewart of Dirleton***

That this House do agree with the Commons in their Amendment 5.

5: In the Title, line 1, at end insert "and to provide for the implementation of other international agreements on private international law."

Motion on Amendment 5 agreed.

3.27 pm

Sitting suspended.

Law Enforcement and Security (Amendment) (EU Exit) Regulations 2020

Motion to Approve

4.31 pm

Moved by ***Viscount Younger of Leckie***

That the draft Regulations laid before the House on 22 October be approved.

Viscount Younger of Leckie (Con): My Lords, these regulations relate only to the niche areas of explosives precursors and firearms. First, the provisions on explosives precursors have no impact on business. They will affect only a small number of members of the public based in Great Britain who also wish to acquire, import, possess or use explosives precursors in Northern Ireland. These are hobbyists who wish to make use of certain substances in both Great Britain and Northern Ireland, largely for leisure pursuits such as fuelling model cars or planes. Secondly, the provisions on firearms impact only on members of the public based in Great Britain who wish to travel to EU countries with their legally owned firearm.

These provisions make no changes to the legal requirements in the application process for the civilian possession of firearms in Northern Ireland or Great Britain, or to the movement of legally owned firearms between Great Britain and Northern Ireland. They do not have any effect on businesses.

I will set out the background as to why this SI is required. Last year, in preparation for the UK's departure from the EU on 31 January 2020, the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 were laid by the Home Office. These regulations covered a wide range of security-related topics. Their purpose was to ensure that a number of existing regulatory regimes continued to operate in substantially the same manner as before exit day.

Your Lordships will be aware that the Northern Ireland protocol was agreed in October 2019. It was designed as a vehicle for implementing the UK's exit from the EU in a way that worked for Northern Ireland—particularly and importantly as a means of maintaining the Belfast/Good Friday agreement, the gains of the peace process and the delicate balance within the community. It sets out arrangements necessary to address the unique circumstances on the island of Ireland, to maintain the conditions necessary for continued north-south co-operation, to avoid a hard land border and to protect the 1998 agreement in all its dimensions. Above all, it seeks to preserve Northern Ireland's place within the UK.

The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2020 are needed in order to implement niche aspects of the protocol. They cover only explosives precursors and firearms and ensure that Northern Ireland continues to implement EU law on these two matters, as required by the protocol. They represent the necessary legislative building blocks to ensure readiness at the end of the transition period.

I turn first to the provisions on explosives precursors. The changes made by these regulations will ensure that domestic law does not contradict the EU regulations to which the Northern Ireland explosives precursors licensing regime will continue to be aligned. In Great Britain, the Home Office issues licences to members of the public to acquire, import, possess or use explosives precursors. This allows them to use these substances for specific hobbies such as propelling a model car or plane. These licences are currently recognised in Northern Ireland.

As a result of these regulations, the licences issued by the Home Office will no longer be valid in Northern Ireland. If a member of the public with a licence issued by the Home Office wishes to acquire, import, possess or use explosives precursors in Northern Ireland, they will require a separate licence, issued by the Northern Ireland Office. I understand that the Home Office intends to write to current Great Britain-based licence holders to make them aware of this change. Public guidance on the www.GOV.UK website will also be updated.

I turn now to explaining the changes brought about by these regulations in relation to firearms. Firearms are largely a devolved matter, responsibility for which sits with the Northern Ireland Department of Justice. Given that the UK Government's priority is to ensure readiness for the end of the transition period, this matter has been included in the regulations. Northern Ireland Office officials have worked closely with officials from the Northern Ireland Department of Justice on the development of the regulations. The Northern Ireland Justice Minister has consented to the devolved aspects being legislated for at Westminster.

The regulations will ensure that Northern Ireland remains aligned with the EU weapons directive, which sets minimum standards for civilian firearms acquisition and possession. The specific impact of the regulations is that Northern Ireland will continue to issue and recognise the European firearms pass—a form of passport allowing lawful travel with a legal firearm across the EU and Northern Ireland. At the end of the transition period, Great Britain will no longer issue or be able to use the European firearms pass. The Home Office has engaged with relevant stakeholders across the UK, making it clear that residents of Great Britain will no longer be able to use or apply for the European firearms pass to travel with their legal firearm. Residents of Northern Ireland will, however, still be able to request a European firearms pass and use it to take a lawfully owned firearm to an EU country, including Ireland, from 1 January 2021.

The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2020 do not introduce any new concept or policy. I therefore trust that the House will view them as uncontroversial. They are required in order to implement the protocol in the already highly regulated areas of explosives precursors and firearms. They are a technical consequence of EU exit and of the protocol, and their introduction will contribute to the UK's readiness for the end of the transition period. I beg to move.

4.38 pm

Lord Addington (LD): My Lords, I thank the noble Viscount for introducing this legislation. I was initially thrown by the language. I shudder to think how much time I spent trying to figure out exactly what an explosives precursor was. Basically, it is a chemical compound that can be used in explosives.

Given that, in the history of Northern Ireland, virtually all terrorists seem, at times, to have resorted to home-made explosives, these regulations seem extremely sensible and I can see no real objection to them. However, it would be good to know how the fertiliser bomb fits into the regulations. Are such chemicals trigger mechanisms or accelerants? A little more detail would be helpful, if the noble Viscount has it. If not, perhaps he would write to me.

[Lord Addington]

The noble Viscount may already have answered my next question—what do you do about weapons such as target rifles, which can be carried around? These weapons are potentially lethal, even if they are not the most efficient way of hurting someone. They fire a projectile at great pace and with great accuracy over a long distance.

I am trying to extract a little more information, which, having listened to what the noble Viscount said, is not quite fair. Nevertheless, how can we make sure that it will be possible to travel with such a weapon between Great Britain and the continent or Ireland? Are there any legal barriers or other stages that have to be gone through if you are competing across the whole of Great Britain and in Europe, for instance, and not just in Ireland? It would be interesting to know that, because it will affect people, especially at the elite end of that sport. The same can be said of sporting guns—shotguns et cetera—that are used for shooting game. How do they fit in, and what hurdles does one have to jump through? I do not dispute the fact that there should be some but it would be nice to hear what they are.

Perhaps I might be allowed to put my toe into slightly more controversial water. Would these weapons be affected if, for instance, the amendments that we passed to the internal market Bill were kept, or would the situation change if we went back to the original Bill? It might be interesting to hear that when the noble Viscount sums up. With that caveat, I give moderate approval to the regulations.

4.40 pm

Lord Loomba (CB) [V]: My Lords, we now have a plethora of legislation on which the protocol on Ireland/Northern Ireland has an effect. Today's regulations are some of the most important ones covered by the protocol, in that they govern the marketing and use of explosive precursors, and control the acquisition and possession of civil firearms.

Previously, when we were a member of the European Union, it was far more straightforward to gain a licence to circulate explosive precursors or firearms between the various European countries, as there was a need to apply in only one country. I understand that it is necessary for someone residing in Great Britain to obtain a separate licence for Northern Ireland, but now, as we take back control, it is becoming more complex for people to understand what is and is not permitted, and how to go about ensuring that they stay within the parameters of the law.

With these regulations, we find that the existing EU regulations regarding explosive precursors and firearms have been amended ahead of the end of the transition period, only for them to become outdated before they come into force due to the later protocol agreement between the UK and the EU. Thus, we have legislation before us today which needs amending once more to ensure that the correct laws apply to Northern Ireland and, crucially, to avoid a so-called hard border between Ireland and Northern Ireland.

It is possible that an individual or business will have a licence for the mainland but not realise that things have changed regarding the circulation of explosive precursors or civil firearms between Northern Ireland and the rest of the UK. Although in the past, one licence was sufficient for the movement of these firearms from one part of the UK to another, now it is not. So, not fully realising the extent of the change, a person might transport items unaware of the conditions that now prevail. In such an act of inadvertence, what would the outcome be and how would people be treated?

Also, it is not clear from the regulations how the governance and issuing of licences relating to either side will be covered so that there are no loopholes and no way in which individuals will be able to carry out nefarious acts due to one licensing authority issuing a licence while another does not. How will both authorities ensure consistency in the issuing of licences and maintain good communication to reassure the public and maintain public safety?

The amendments to the regulations serve only to make the law inaccessible and incomprehensible to ordinary people. It is undeniable that at some point in the future we will need to amend them once more as they become outdated due to some event or another, or due to a change in direction. Does the Minister agree that it would have been better to start afresh with new legislation on these vital rules governing explosive precursors and firearms, instead of having a mish-mash of regulations such as these, which omit provisions of the lens regulations in Northern Ireland but will be in force for the rest of the UK?

4.46 pm

Lord Empey (UUP) [V]: My Lords, I want to ask the Minister a few practical questions before dealing with some of the points that he made in his introduction.

Firearms are of course used for sport, which is quite a significant industry both in Great Britain and in Northern Ireland, and indeed in the Irish Republic. They are also used, for instance, in the Olympics and the Commonwealth Games. What impact would these measures have on the movement of weapons for sport and recreation, such as shooting parties? Would there be an implication for people in possession of personal protection weapons, given that the legal position vis-à-vis Great Britain changes under these regulations?

I want to draw attention to some of the remarks that the Minister made in his introduction. He referred to the requirement to ensure that there was no border on the island of Ireland and said that this was necessary to protect the Belfast/Good Friday agreement. Of course, nobody wants a trade border on the island of Ireland, but nor do we want a border in the Irish Sea. However, that is exactly what we have not only with these but with other regulations.

Earlier today, I drew the attention of the House to the common rules for exports regulations, which were considered in Grand Committee on 10 November. The noble Lord, Lord Grimstone, announced that that law would be implemented in Northern Ireland by the European Commission, thereby establishing that a foreign power would exercise Executive authority in Northern Ireland, despite the fact that we are supposed to have taken back control and are supposed to be maintaining the union. I remind the House that a border in the Irish Sea is anathema to the Belfast/Good

Friday agreement just as much as a border on the island of Ireland. However, that seems to have been largely set aside and ignored, not only in this but in other legislation. In case noble Lords think that it is just me who sees that as the situation, perhaps I may refer the House to the Library note that accompanies these regulations. Under the heading "What would the 2020 regulations do?", there is a section on firearms that says:

"The European Commission has stated that the 'movements of firearms between Northern Ireland and the EU are not considered as imports or exports'. This is because Northern Ireland is generally treated as an EU member state under the Protocol."

That comes from our own Library.

The issue is twofold. There are the practical questions that I put to the Minister, but there is a wider issue of what these regulations and the protocol are doing. The protocol is a disaster for the union; it divides the union between Great Britain and Northern Ireland. Since 2 October last year, the Government have maintained complete denial of the implications of what they are proposing, and these are the downstream consequences of that. When our own Library is printing that in black and white, it gets the point across that what we are seeing here is not a mere technical point. Every one of these regulations—and this pattern is repeated in a number of them—illustrates a significant constitutional and economic change. The economic centre of gravity of Northern Ireland moves from the rest of the United Kingdom to the European Union.

This also means that the European Union can amend regulations and produce new ones. As citizens in Northern Ireland, we will have no say or influence over what those might be, because we have no representation. The Minister might address the question of what somebody is supposed to do. The principle being established in these regulations is that the European Union will make law for us and we have no alternative but to implement it. In pretending that they have not made changes to the constitution, the Government are therefore certainly doing grave damage to the Belfast agreement, which makes it clear that there can be no change in the status of Northern Ireland without the consent of its people. When a Minister of the Crown stands up and tells a Grand Committee on 10 November that the European Commission will exercise those powers in Northern Ireland, that can mean only one thing to any sensible person: that our status has changed. Will the Minister address those points, as well as the practical ones that I made at the beginning of my remarks?

4.52 pm

Lord Bradshaw (LD) [V]: My Lords, I agree with what has been said by my noble friend Lord Addington. I realise that there are all sorts of complications, to which the noble Lord, Lord Empey, has referred, which flow from the protocol and the decision to exit the European Union. Those problems are on the Government's head; this Parliament decided to leave the European Union. In so doing, there will be all sorts of problems that they have to sort out. However, the specific matters under consideration today appear to be fairly peripheral and I do not need to detain the House any longer.

4.53 pm

Lord Dodds of Duncairn (DUP) [V]: My Lords, this legislation is intended to reflect the different regulatory regimes for explosive precursors and acquiring firearms in Northern Ireland and Great Britain from 1 January. As the Minister said, it makes changes on the basis of the list of legislation in annexe 2 of the Northern Ireland protocol, which ties Northern Ireland to EU rules. It is another example of laws being applied to Northern Ireland after 1 January. Although these regulations are, as the Minister described, "niche" and "technical", it is legislation and they are being applied to Northern Ireland without any of its elected representatives at Stormont or Westminster having any say or input. This is clearly contrary to the most basic concepts of democracy and undermines the political agreements reached over many years in Northern Ireland.

I have listened recently to many eloquent, sincere and passionate speeches about the need to protect the Belfast agreement and the peace process in Northern Ireland, but the agreement is three-stranded. It is about Northern Ireland's internal arrangements, about north-south arrangements on the island of Ireland, and about the east-west arrangements between Northern Ireland, the Irish Republic and the rest of the United Kingdom. The emphasis is on north-south borders, but it seems that anything goes as far as the one between Northern Ireland and Great Britain is concerned. That is not acceptable; it is not the basis of the Belfast agreement. I urge noble Lords to read carefully that agreement, not a synopsis of it, and to not reinforce what they think is in it. There must be consent of both unionists and nationalists, which is very important. No matter how technical law may be, it is still legislation and it should be made in the democratically elected bodies—devolved matters at Stormont and reserved ones at Westminster—not in Brussels, to which no one in Northern Ireland sends any elected representatives.

The Government's message on this specific statutory instrument is that these changes will simply reflect the legal position of the protocol, and there is no significant divergence between Great Britain, Northern Ireland and the EU on 1 January 2021. This may well be the case but there is, of course, as in all these situations, the prospect that this will not be a standstill position. The potential for differing standards risks adding complexity and cost for suppliers, gun holders and licensing bodies. In his response, will the Minister set out how these regulations will add to or change, for instance, the workload of the Police Service of Northern Ireland and businesses involved in firearms licensing, and set out clearly, in detail, what consultation there has been with the police and the Department of Justice in Northern Ireland and the Northern Ireland Office?

Has any assessment been made of how the loss of recognition for Great Britain tier 2 explosive precursor licences in Northern Ireland will affect trade with the rest of the United Kingdom? Has any work been done to assess whether the removal of this recognition will add cost and delay to supply chains operating on a UK-wide basis? Will the Home Office retain any authority for, or functional role in, approving some explosive licences for Northern Ireland? How will the changes be communicated to those affected? Finally, is there

[Lord Dodds of Duncairn]
scope to pursue mutual recognition for Great Britain licences, as part of the joint committee negotiations, and indeed to agree overarching mutual recognition agreements between the UK and the European Union?

4.57 pm

Lord Bhatia (Non-Afl) [V]: My Lords, these regulations have been prepared by the Northern Ireland Office and laid before Parliament. They will ensure that Northern Ireland will continue to implement EU law required by the protocol to the withdrawal agreement on Ireland/Northern Ireland relating to explosive precursors and firearms enforcement. These amendments are being made to address deficiencies resulting from EU exit. In relation to explosive precursors, the regulatory regime continues to operate in substantially the same manner as before exit day. The regulation ensures that the UK has a functioning statute book on exit day. This ends the supremacy of EU law in domestic law and preserves laws made in the UK to implement EU obligations.

The purpose of this instrument is to ensure that the UK has a proper law to control firearms and explosives, and I support it. We must never forget the deaths and harm caused in Northern Ireland many years ago. This SI will ensure that such attacks never take place again. Will it also deal with terrorists in the UK or those coming from abroad?

4.59 pm

Lord Thomas of Gresford (LD) [V]: "Uncontroversial" and "niche", the Minister said. I do not think so—more like unclear and opaque. Like my noble friend Lord Addington, I confess that having studied the Explanatory Memorandum for these regulations I am not very much the wiser. I thought the control of firearms and explosives was a devolved matter but since the European firearms directive and the precursors regulation are listed in annexe 2 of the protocol, they will continue to apply in Northern Ireland as at present.

Further, paragraph 7.1 of the Explanatory Memorandum says that the protocol requires continuing compliance with

"EU law in and in relation to Northern Ireland."

The result is that licences issued in Great Britain will not be recognised in Northern Ireland, although presumably the European firearms pass will be recognised in Great Britain. This gives rise to a number of questions and I seek clarification.

First, from the end of the transition period, who will control the licensing and regulation of explosives and firearms in Northern Ireland? Is it the Northern Ireland Office or its officials? Who will issue the European firearms pass? Secondly, how is that control to be exercised? Will it be by the Northern Ireland Executive or by legislation in the Northern Ireland Assembly? The noble Lord, Lord Empey, referred to the European Commission having a role. Is that right? If so, how is its control to be exercised? Thirdly, if changes to the European firearms directive or the precursors regulation are made in Europe—where, as the noble Lord, Lord Dodds, pointed out, we do not have a presence or a role in legislating—would these amended or rewritten regulations apply under the protocol in Northern Ireland? If so, from what point? The noble Lord, Lord Empey, regards that possibility as a breach of the Belfast agreement and the noble Lord, Lord Dodds, agrees. Who am I to disagree? Fourthly, paragraph 7.2 of the Explanatory Memorandum refers to a licensing regime under the precursors regulations

"allowing for explosives precursors to be acquired, imported, possessed or used by the public".

Does this licensing regime exist? Will it exist? If so, how will it operate after the end of the transition period? Fifthly, if licences are issued to manufacturers in Great Britain, under British legislation, to manufacture explosives in Great Britain, will Northern Ireland allow them to be imported? It is clear that these extremely abstruse regulations give rise to points of principle and I hope that the Minister can enlighten us on these issues.

5.03 pm

Lord Murphy of Torfaen (Lab) [V]: My Lords, I rather agree with the noble Lord, Lord Thomas, that this is not an easy regulation to deal with but it is an important one because the order shows that EU law on firearms and explosive precursors will continue to apply in Northern Ireland after the transition period. The Opposition support this as it is required by the Northern Ireland protocol, but I have a question for the Minister: after transition, will there be any greater level of divergence between Great Britain and Northern Ireland once British law no longer reflects the EU directive? I would be grateful for a comment on that.

In more general terms, this debate has been interesting. By the way, it is good to see the noble Lord, Lord Dodds. I have not been in a debate with him since he has become a Member of the House. He and the noble Lord, Lord Empey, both made some interesting points, looking back on the rather unhappy history of firearms in Northern Ireland. We must bear in mind that there are and were personal protection weapons—something that never existed in Britain but did in Northern Ireland—and that the police force in Northern Ireland carry arms. Whatever the technicalities of this statutory instrument, it is important that post-transition discussions should continue with the European Union on firearms in particular, because of the possible supply of illegal firearms into Northern Ireland. The European Scrutiny Committee raised issues such as this, including on sharing information between the EU and Northern Ireland about organised crime across the Irish border. When we talk about discussions and consultations with the EU, we particularly mean discussions with the Irish Government too. After 1 January, there will be no European arrest warrant and no guarantee that we will have data sharing as we had previously. It is so important for there to be proper collaboration between the Governments in the north and south of the island of Ireland.

I take the point made by the noble Lords, Lord Dodds of Duncairn and Lord Empey, about strand three of the Good Friday agreement. I jointly chaired the talks with the Irish Government that led to the recognition of strand three and its inclusion in the Good Friday agreement document. It deals with east-west relations and is a matter of particular importance to the unionist

community in Northern Ireland, in the way that the nationalist community regard strand two—relations between Northern and southern Ireland—as equally important. We must not forget that the protocol and everything surrounding it, including the detail in this statutory instrument, affect how people perceive what is technically called strand three but what we would refer to as east-west relations between Britain and Ireland.

While we must and do support this, there are issues that the Minster needs to address. The European firearms issue is a significant one to pass and we must see how that fits with the post-transition regime. This statutory instrument is complicated but it illustrates the complexity of what will happen in Northern Ireland after 1 January. I look forward to what the Minister has to say about the important issues raised by your Lordships.

5.07 pm

Viscount Younger of Leckie (Con): My Lords, I was going to start by saying I was pleased that the order had been broadly welcomed by the House today. While I think it has, I recognise many of the comments that have been made. The noble Lord, Lord Murphy, pointed out, I think accurately, that while it is to be welcomed, there are complications. Perhaps I should not be too surprised, given all the issues that run alongside and are focused on Northern Ireland. Many questions were raised and I suspect I will be writing quite a detailed letter to all Peers who have taken part in this debate. I will do my best to have a stab at answering some of them at the Dispatch Box today.

This order is reasonably straightforward. I recognise the comments made but I would not go as far as agreeing with the noble Lord, Lord Bradshaw, who described them, I believe, as peripheral.

I say to the noble Lord, Lord Loomba, that the preceding regulations were laid by the Home Office in February 2019. They contain provisions on a wide range of security-related matters in preparation for the UK's departure from the EU, which was then due to take place in March 2019. The protocol was agreed in October 2019 and contains detail in annexe 2 on areas where EU law would continue to apply in Northern Ireland. The regulations before us today are representative of the Government fulfilling their obligations under the protocol in these niche areas relating to explosive precursors. I hope that helps to answer the noble Lord's question about whether the regulations might have been rethought or started from scratch.

Picking up on some points raised by the noble Lord, Lord Addington, on any changes to the UKIM Bill—on which I will touch later—I reassure him and other noble Lords that there are no changes I can mention today. But what I will do is take account of the issues that were raised; I will be sure to check *Hansard* and write a comprehensive letter answering the detailed questions.

The noble Lord, Lord Addington, asked some questions about shooting sports. The noble Lord, Lord Loomba, raised this regarding licences, and the noble Lord, Lord Empey, alluded to it as well. I shall add to what I said earlier. Residents of Great Britain wishing to travel to EU countries to participate in shooting sports with their legal firearm will need to comply with the licensing requirements of all countries they will be in. The Home Office has written to shooting associations to make them aware of this. The EFP will continue to be valid for travel between Northern Ireland and the Republic of Ireland. Those travelling from the Republic of Ireland through Northern Ireland to Great Britain with a legally-owned firearm will not be able to rely on the EFP in Great Britain and will have to comply with the guidance set out, as I mentioned in my opening speech, on GOV.UK. A question was raised earlier about the licence in the UK. To reiterate, it is recognised in Northern Ireland.

I listened carefully to the points raised about the protocol by the noble Lord, Lord Empey—I think a letter is in order for the noble Lord. For the moment, the protocol does not create, nor does it include any provision for creating, any kind of international border in the Irish Sea between Great Britain and Northern Ireland. That is the answer I give today, but I also pick up on the points raised by the noble Lord, Lord Murphy. Again, I owe it to him and the noble Lord, Lord Empey, to write in more detail about that.

To round up, I remind the House—as if the House needed reminding—that the threat from Northern Ireland-related terrorism remains severe. However, this SI makes no changes to the checks and balances already in place to regulate the possession of explosive precursors and firearms in both Great Britain and Northern Ireland. Perhaps this helps to answer a point raised by the noble Lord, Lord Addington.

I was particularly pleased to hear the remarks of the noble Lord, Lord Dodds, and I welcome him to the House—I have not had a chance to do that. I should set out in more detail answers to the points he has raised, but for the moment, I reassure the noble Lord that these regulations have very little impact on business. They relate to very few members of the public, as I said at the beginning. The implications for businesses, trade and the Police Service of Northern Ireland, in terms of resources and costs, are minimal. But let me put some meat on the bones of that answer in a letter to him.

The noble Lord, Lord Dodds, raised a question concerning the Home Office. The Home Office will continue to issue licences in Great Britain; the NIO will continue to issue licences in Northern Ireland. The NIO can expect to receive a small number of further applications.

I know there were some other questions, in particular from the noble Lord, Lord Thomas of Gresford, and I would wish to address these. They came fast and furious from him today. For the moment, though, I say that the changes in this SI will affect only the small number of Great Britain-based licence holders who wish to acquire, import, possess or use explosive precursors in Northern Ireland. The SI has no impact on current Northern Ireland-based licence holders. I know that the noble Lord's questions went wider than this, and that is why I need to add to the letter that I have pledged to write.

Motion agreed.

5.15 pm

Sitting suspended.

Customs Safety, Security and Economic Operators Registration and Identification (Amendment etc.) (EU Exit) Regulations 2020

Motion to Approve

5.30 pm

Moved by ***Lord Agnew of Oulton***

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

Relevant document: 32nd Report of the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

The Minister of State, Cabinet Office and the Treasury (Lord Agnew of Oulton) (Con): My Lords, we are here to talk about a statutory instrument that is part of the Government's package to prepare for the end of the transition period. The instrument relates to safety and security declarations as well as the process for registering for an economic operators registration and identification number, or EORI number. The instrument supports businesses' preparations for the end of the transition period and corrects a deficiency in retained EU law. Noble Lords will be aware that the Secondary Legislation Scrutiny Committee reported the regulations as an instrument of interest in its 32nd report, published on 29 October.

First, I shall set out the context of the amendment that we wish to introduce for managing the safety and security risk of goods entering and leaving the UK. The UK subscribes to the World Customs Organization's SAFE framework of standards, which sets out minimum requirements for participating customs administrations to regulate, monitor and secure the international supply chain. Customs authorities are required to collect and risk assess data on every consignment of imported and exported goods. The UK does this through safety and security declarations, which goods carriers are required to submit. These declarations are currently implemented through the Union customs code and are retained in law in the UK after the end of the transition period by the European Union (Withdrawal) Act 2018.

While part of the EU, the UK required safety and security declarations only for goods leaving or entering the EU. From the end of the transition period, the default position is that carriers will be required to complete safety and security declarations for goods moved into and out of Great Britain where those goods are moving to or from the EU as well as the rest of the world. This SI deals with a temporary waiver for safety and security requirements for imports. The Government are introducing additional secondary legislation—laid this Monday, 16 November—to introduce contingency powers relating to safety and security requirements for exports, should they be needed.

In June, the Government announced the "staging-in" approach to controls at the border after the end of the transition period. As part of this approach, the Government are introducing this SI to waive safety and security entry summary declarations for six months on goods from the EU from 1 January 2021. The temporary waiver is necessary to address the adverse impact of Covid on businesses' ability to prepare for new safety and security requirements. During the waiver period, there will be no requirement for entry summary declarations for goods imported into GB from territories where the UK does not currently require such declarations. Declarations will be required only from 1 July 2021. The waiver introduced by this instrument applies only to imports on which the UK does not currently receive declarations. Border Force will continue to undertake intelligence-led risk assessments of goods movements into this country from the EU, as it does now. Entry summary declarations will continue to be required for goods imported from the rest of the world. As a result, there is no increased security risk to the UK from this approach in the short term.

Secondly, the instrument amends a list of locations currently in the retained legislation that are granted shorter timing requirements for the submission of safety and security declarations for maritime movements. Safety and security declarations are required to be submitted within certain time limits before arrival or departure. These time limits vary by mode of transport.

Within the retained legislation, drafted with the geography of the EU in mind, there is a list of territories for which safety and security declarations can be submitted within a shorter time limit for movements by sea. This is to account for the practicalities of these shorter journeys, where the default time limits are unnecessarily onerous and challenging for carriers to meet. This list currently includes places such as Morocco, with very lengthy timings for journeys to Great Britain. Given the length of journeys from these places to Great Britain, there is no need for these movements to be offered the shorter time limits.

Conversely, this list currently does not include some of our closest neighbours and trading partners. For these journeys, which include channel crossings and goods moved to and from the Atlantic coast of Spain and Portugal, the default timing requirements are impractical for these well-established trade routes. This instrument updates the territory list in the retained legislation, removing territories that border the EU and no longer need the shorter timing requirement and adding to the list those territories that now require this consideration. This change will prevent industry being unnecessarily burdened for the shortest crossings and helps to update retained legislation to reflect our new status as an independent customs regime.

Thirdly, the instrument updates the governance of the economic operators registration identification in retained law. An EORI is a unique registration number given to businesses to interact with customs authorities, so that HMRC can identify them effectively. EORIs are necessary when applying for customs simplifications or facilitations, when making customs declarations or in any other interactions with the customs authority. All existing EORIs issued by the UK, known as UK EORIs, will continue to remain valid for use in Great Britain after 31 December 2020 and will continue to be prefixed with the letters "GB". From 1 January 2021, individuals or businesses established in Great Britain or other territories outside the EU who want to trade

with the EU and do not already have a UK EORI will need to obtain one. Persons that are not established in Great Britain but wish to lodge a declaration or request a customs decision in Great Britain will also require a UK EORI.

This instrument ensures that Great Britain has a functioning EORI system by replacing references and terminology in the retained EU law that will no longer apply to Great Britain. It will also maintain a registration requirement on those where such a requirement is set down in national law. This instrument does not impose any additional requirements to those already imposed under EU law.

The safety and security aspects of this instrument do not apply to movements of goods between Northern Ireland and Great Britain, or Northern Ireland and the rest of the world. Under the Northern Ireland protocol, goods moved between Northern Ireland and the EU will not be subject to safety and security requirements. Goods moved between Northern Ireland and the rest of the world will be subject to safety and security requirements. The EORI aspects of this instrument will not apply to traders in Northern Ireland, who will continue to register under the UCC.

By introducing a temporary entry summary declarations waiver and amending the declaration submission deadlines, this instrument strikes the right balance between giving traders time to prepare for new arrangements with the EU while still maintaining the safety and security of the UK. It also makes technical amendments to allow businesses that will require an EORI to continue to register as they currently do. I beg to move.

5.38 pm

Baroness Altmann (Con): My Lords, I thank my noble friend for his clear explanation of these measures, which I support. I welcome the decision to suspend declarations for at least the first six months, from January to July 2021, to help business by reducing their administration burdens, particularly for roll-on roll-off freight. I understand that there is a proposal to phase in restrictions over the first six months in three stages. Can my noble friend help the House to understand how ready businesses are and whether they are aware of the different time limits that will apply as we move forward with our new system? I also welcome the leeway that is being given to businesses.

Perhaps I may ask my noble friend a few questions. First, how many new customs officers are expected to be required as we move forward with the new system? How many have we already in place, and are we looking to recruit further over the coming months?

On agriculture and agri-foods and the safety and security checks that may be associated with them, what controls or liaison might there be with other countries if issues need to be addressed in terms of the safety of imports?

Will the Minister expand a little on the impact of the Northern Ireland protocol on these measures? If, as is currently possible, there are requirements for traders between Northern Ireland and Great Britain to make customs declarations, what are the arrangements to prepare Northern Ireland businesses for this? What can my noble friend say to help the House understand the implications of the current perception that has been given to Northern Ireland businesses that such declarations are not needed? I recognise that nothing will be required for the first six months, so clearly there is time, but what are the Government's plans in that regard?

Overall, I welcome the leeway being given and the phasing in of the measures that would be required for entry and export summary declarations. Clearly, there will be, as the Secondary Legislation Scrutiny Committee outlined, some significant one-off costs initially and additional administrative burdens at some point, but I believe that my noble friend has indicated that the Government do not expect that to be too onerous. Can he give some clarification of what is expected and how this has been received by different sectors? If he does not have that information now, perhaps he can write to me. Overall, I welcome these regulations.

5.43 pm

Baroness McIntosh of Pickering (Con) [V]: My Lords, I am delighted to support these regulations. Like my noble friend Lady Altmann, I have a couple of questions. In particular, mindful of the fact that the waiver is coming into effect at quite a late stage in the day, and in response to questions from the Secondary Legislation Scrutiny Committee in preparing its report on the regulations before us today, HMRC replied:

> "The NI Protocol requires HMG to implement the Union Customs Code in NI. As a result of this, some movements between GB and NI will attract a Safety & Security requirement, but the full extent of this is the subject of ongoing negotiations between the UK and the EU. Traders will be able to access help from the new Trader Support Service in NI to support them meeting their requirements."

I want to ask in particular when the Trader Support Service will be up and running. Reference has been made twice in proceedings today to how businesses in Northern Ireland can rely on the Trader Support Service. We on the EU Environment Sub-Committee took evidence on the importance of unfettered movement between Northern Ireland and Great Britain under the Northern Ireland protocol, and it is essential that businesses have the best guidance and support that they can get. I therefore hope that my noble friend Lord Agnew will be able to explain to us today what state the Trader Support Service will be in to give them the best possible advice.

Mindful of the fact that the negotiations are still ongoing, I am rather amused by the adverts that the Government have put out. I know they are meant to be helpful and I think they will be in the long run, but they are inviting businesses to log on to a website to prepare for the new arrangements, and it is incredibly frustrating for them because they do not yet know what those arrangements will be. What is the lead time between the negotiations ending and knowing what the new arrangements will be? It was a source of some disappointment to us on the EU Environment Sub-Committee that, until quite recently, there had been no formal discussions between the Northern Ireland Assembly, businesses, the Westminster Parliament, and, I presume, HMRC. Can the Minister confirm today that that is no longer the case?

[Baroness McIntosh of Pickering]

Like my noble friend Baroness Altmann, I note that there will be additional burdens and one-off costs. However, paragraph 7 of the Secondary Legislation Scrutiny Committee report states that

"it will be a new legal obligation and an additional cost to submitting a customs declaration for import and export purposes"—

and that was the response from HMRC to inquiries from that committee. I understood that there are not meant to be any significant checks so I am slightly surprised to learn that there will be a new legal obligation leading to the additional costs and burdens of completing a customs declaration. Does the Minister have any idea how long it would take to fill in such a customs declaration?

I hark back to the days when I was first elected as a Member of the European Parliament in 1989. For the first three years, we were not in the single market, so for import and export all businesses had to complete about 20 pages or more of customs declarations. As the local MEP, on occasion I was phoned up and asked to intervene—through the good offices of government departments—to make sure that these customs declarations could be completed and dispatched to enable the goods to move. Agri-foods are perishable goods, and it could ruin a whole load if there was a delay of longer than the—I think—four hours pre-arrival for one form of declaration and two hours pre-arrival for both. If these time limits were to be exceeded, it could pose serious problems for the transporters and the logistics for these perishable goods.

I am interested to learn how my noble friend will respond to these few remarks in connection with the regulation he has presented today.

5.49 pm

Baroness Wheatcroft (Non-Afl) [V]: My Lords, I thank the Minister for presenting these regulations in such a straightforward manner. In principle, I welcome them. A six-month delay in imposing new and costly obligations on business at this time is clearly a sensible step. I hope that it will help delay Kent turning from the garden of England into the toilet of England, as some fear it will be, as lorries queue up outside the ports. Does the Minister expect those delays to be imminent on the other side of the channel because these agreements are not reciprocal but are being waived only by the UK? We cannot expect the EU to reciprocate.

It seems utterly mad to propose imposing new burdens on our businesses at this stage. It is welcome that HMRC is prepared to spell out that these regulations will be costly and troublesome to business when they come into practice. Already our country has lost a fortune because of Covid. The automobile industry alone reckons that Covid has cost it £27.5 billion so far in lost sales and production. There is no doubt that Brexit will add to those costs when we finally come to the end of the transition period.

Therefore, rather than waiving these regulations for six months, will the Minister consider extending the transition period across the board? That would be a sensible move for the UK and the EU. It might allow time to rethink the way in which businesses are classified. I understand the need for traders to have a registration and identification number but, despite the imminence of our final departure from the EU, many still have not secured one.

Perhaps they struggle with the requirement first to classify their operations in line with the Government's official classifications. There are numerous, different and, in some cases, somewhat obscure categories. Manufacturing of consumer electronics is a sensibly broad and easy to understand category but do we really need businesses to shoehorn themselves into such narrow classifications as "producing oleaginous fruits" or "manufacturing of knitted or crocheted hosiery"? Those categories seem unnecessarily narrow. Will the Minister undertake to consider simplifying classifications to help those applying for EORIs?

5.52 pm

Lord Naseby (Con) [V]: My Lords, I particularly welcome this SI, which is almost certainly one of the most important instruments for our country as Brexit looms. It comes in the time and climate of lockdown, which is extremely difficult for anybody doing business. Perhaps I may highlight what my noble friend Lady McIntosh said about Northern Ireland. I was a junior Minister there in 1979 for a couple of years. I will not repeat her questions because they are absolutely crucial and do not need repeating.

Given our debate on the Internal Market Bill about affirmative resolutions, I am pleased that there is an affirmative resolution in this key area. Paragraph 2.1 of the Explanatory Memorandum clearly explains the purpose and paragraph 2.4 explains that the Union customs code requires pre-arrival and pre-departure collection and the risk assessment of data on goods by customs authorities.

I come to this debate from the point of view of having been the Member of Parliament for Northampton South; there is a large number of hauliers in Northampton because it is a transport hub. They are not happy folk at the moment but they are experienced hauliers. They and I realise that there is to be a temporary waiver for ENS declarations until 30 June, which, it is stated, will particularly help those hauliers who transport goods only in the EU. Is there an estimate of how many hauliers are in that category? It seems likely that they represent the vast majority. Nevertheless, the procedure offered in the six-month waiver is substantial and welcome.

Picking up on what my noble friend Lady Wheatcroft said, I wonder whether it would be wise to do a review after at least three months. Six months will go by very quickly in what will still be difficult period for our country. Can the Minister reflect on that? These poor hauliers will move from a system of 24 hours for the preloading of containers and four hours pre-arrival to just two hours. Is this workable? Has it been tested yet? I imagine the Minister will know the answer to that. If it has not been tested, when will it be? All too often we have seen across many areas of public sector operations that the IT is not robust enough to handle challenges. Has the IT been rigorously tested? Is it robust enough to cope with a huge number of hauliers registering on the two-hour basis for both short-term

material and containers? I can see a situation in which the system crashes from too many people trying to log on at the same time. This is absolutely vital.

Consultation is so important. Paragraph 10.1 of the Explanatory Memorandum refers to HMRC sponsoring the Joint Customs Consultative Committee. That is good, but how many times has it actually met? Were hauliers always represented and what came of its recent meetings? Does contact now rest only with the "virtual reading room" referred to in that paragraph?

I have talked to some of my former constituents in Northampton. They remain deeply concerned. It is not just the Northern Ireland dimension; no one knows whether there is going to be a deal. I am not accusing the Minister of being responsible for that, but they are different scenarios. Against that background, we are asking an important part of our trade, industry and welfare somehow to operate almost instantly, albeit we have this six-month waiver. As the Secondary Legislation Scrutiny Committee states in paragraph 8 of its 32nd report,

"HMRC expects significant one-off costs".

Is the Minister in a position to indicate the scale of those costs and what they are likely to be? Are they software or staff costs, for example?

I can see that my noble friend the Minister faces a huge challenge. I thank him for what he has done so far and what he will need to do in the weeks ahead. Against the background of what my two colleagues and I have raised, I look forward to his response with great interest.

5.58 pm

Baroness Kramer (LD) [V]: My Lords, my colleagues and I do not object to this SI. Given how little prepared this country is to cope with imports from the EU into the UK, the six-month delay in requiring ENS declarations is inevitable. How likely are the Government to hit the July target and the staging posts in between? On the continent, all countries' customs organisations have completed their preparations, and they too have experienced Covid.

To what extent does the Government's expectation that SNS declarations will not apply to goods transported from the GB to Northern Ireland rely on breaking international law? It would be helpful to understand.

I would also like the Minister to help me understand some rather more granular issues, in particular the impact of post-transition customs barriers on the flexibility or loss of flexibility for hauliers in determining their route when crossing the Channel. I particularly have in mind the accompanied roll-on, roll-off traffic which handles most of the perishable and critical just-in-time cargo. For example, car factories in the UK order parts in the morning from EU suppliers that are to be put into the production line in the UK that afternoon and vice versa. The Explanatory Memorandum accepts that it is the norm for drivers on the Continent to decide whether they will use the Calais-Dover ferry or Eurotunnel only as they approach the entrance at Coquelles or Calais. Does the requirement for declarations to be filed even just two hours pre arrival allow flexibility for such decision-making and a change of route to continue in the same way as now? It has been very important in managing issues around congestion through industrial action or, indeed, a change in destination delivery.

Reading the Government website for ro-ro traffic from the UK to the EU, I cannot work out how much flexibility will exist in that direction. Again, drivers decide between the Dover-Calais ferry or Eurotunnel only after leaving the M20. I can see from the website that the process of getting export clearance has multiple steps in which the exporter files details, including the vehicle registration number, often known only at loading, along with customs duty tariffs and presumably rules of origin, also often known only at loading. HMRC then notifies the exporter if more documentation is required or gives permission to progress to port. How flexible is this side of the regime? What happens if the haulier wishes to combine loads at the last minute? Is the entry paperwork different going into France, Belgium and Holland? I believe that it is. Also, have the EU states had time to adapt to the new UK systems? Given that some of them are still a work in progress, it seems quite tough to expect someone else to integrate with systems we have not completed.

Large companies have the resources to cope with these changes, expensive though they are, but the Minister will be aware that 150,000 exporters to the EU have never experienced a customs regime and many of them have been unable to prepare for the change, especially as they are dealing with Covid and because they do not know exactly what the systems are. The NAO notes that the Government's latest reasonable worst-case planning assumption of September 2020 is that 40% to 70% of laden lorries may not be ready for border controls. It has also made clear that the customs intermediary market, which most small exporters rely on and will have to use, is inadequate, despite some recent investment by the Government.

Many of the Government's new IT systems, while welcome, are either unfinished or are still being tested, leaving businesses with only a tiny window to understand what is needed to adapt to them and then to implement the adaptation. Will the Minister update us on the readiness status of NCTS, which is the new computerised transit system, GBS&S, the safety and security system, and GVMS—the Goods Vehicle Movement Service. Where are we on the migration from CHIEF, Customs Handling of Import and Export Freight, which at least is understood, to the Customs Declaration Service, which appears to be a major headache? Indeed, why has the CDS not been delayed, given the trouble it is causing? Further, while some ports are prepared, others are not. Can he comment on BBC reports that Felixstowe is already in chaos with unacceptable delays because of pre-Brexit stockpiling and Covid?

Lastly, I ask the Minister about the Economic Operator Identification and Registration System. As the amendments in this SI make clear, this scheme is a nightmare, and the SI appears to admit to another layer of complication. The Government have been frequently asked to devise and negotiate a proportionate version for small exporters. In the Explanatory Memorandum, the Government proudly declare that no specific action is proposed to minimise regulatory burdens on small businesses. Why have they chosen not to do this?

6.05 pm

Lord Tunnicliffe (Lab) [V]: My Lords, I am grateful to the Minister for introducing this statutory instrument and to other noble Lords for their contributions to this debate. I also express my thanks to the Secondary Legislation Scrutiny Committee for its important comments on this instrument.

The importance of getting customs processes right cannot be overstated. As we all know, we have left the EU and will soon leave the 12-month transition period. It is still possible that there will be a deal that facilitates trade in goods, but we cannot know whether the noble Lord, Lord Frost, and his team will succeed. Had the Government chosen to pursue a different course during the Brexit process, it is possible that we could have avoided the need for a new customs regime to be designed and implemented in record time. However, we are where we are, and it is in everyone's interests—those of businesses and consumers alike—that Ministers get this right.

This instrument introduces a temporary waiver on the entry summary declarations. It also amends requirements in relation to the registration of businesses to ensure there is no major change to the UK's powers at the end of the transition period. On this matter, the measures before us supersede a previous set of regulations. In relation to the first change, the Government present this policy as a favour to businesses, allowing them more time to prepare for our movement to new procedures, particularly in the light of the Covid-19 pandemic. While businesses will undoubtedly welcome the degree of flexibility, I hope the Minister will forgive me for being sceptical about his justification.

The Government set out the bulk of their customs policy proposals earlier this year, promising an array of new IT systems and the recruitment of 50,000 new officials by the end of the year. In recent months, we have seen a number of media reports, supplemented by National Audit Office analysis, suggesting that things were not progressing as hoped. On the IT side, could the Minister give us an estimate, in percentage terms, of our readiness? Is there any link between the ENS postponement and the Government's ability to process the data? On recruitment, the Government have repeatedly refused Labour's requests for information on numbers. Can the Minister confirm today how many of the 50,000 have now been recruited? Of this number, how many have received the necessary training to operate on the ground from January? I am happy for the noble Lord to write if he does not have the information to hand.

The changes to the timing of entry and exit declarations appear, at face value, a sensible step. Over the past four years, the road haulage industry has voiced concerns that the Government have not fully got to grips with the challenge hauliers will face beyond the transition period. I appreciate that Ministers have engaged with industry, but there have sometimes been concerns that such engagement has been half-hearted. With many ports already facing capacity issues, coupled with the well-documented steps being taken in Kent, we need to take any and all steps that will keep vehicles moving and ferries departing on time. I understand the justification for the two-hour deadline but would like to ask the Minister whether this will be kept under review and, if any changes are required, how they will be delivered.

I turn now to the Secondary Legislation Scrutiny Committee's exchange with the department on the lack of impact assessment alongside these regulations. HMRC may be correct that this measure does not require an impact assessment due to its short-term nature. However, the Minister and I have had several exchanges on the quality of Explanatory Memoranda in recent months. Does he accept that, even if a formal assessment was not deemed necessary, the inclusion of relevant facts and figures, including the likely costs to businesses within and after the ENS waiver, was desirable? If he does, will he feed that back to his officials?

Finally, I will make a brief point that goes slightly beyond this instrument. The SI does what it can on the matter of imports but excludes exports for obvious reasons. While I appreciate that the Minister cannot control the protocols put in place by others, I hope he can provide some reassurance that this other, rather large piece of the trade jig-saw is being dealt with through the relevant channels.

6.10 pm

Lord Agnew of Oulton (Con): My Lords, I thank the House for this debate. I will seek to address the questions that have been asked. If I do not give enough detail, I ask noble Lords to feel free to write to me because this is an extremely complicated area and I certainly do not pretend to be across every detail.

I shall start with my noble friend Lady Altmann, who asked about the number of stages of requirements. There are simply two stages, one from 1 January and one from 1 July. It may be that my noble friend has something else in mind, so if she wants to seek clarification, I ask her to write to me. HMRC is standing up approximately 7,000 new customs officers for this process, around 6,000 of whom are already in place. The bulk of the others are either in training or under offer, so I am reasonably confident that we will have enough. I get a weekly report on that information.

A number of noble Lords asked about the Northern Ireland protocol. It is a very complicated international agreement, made more so by the fact that we do not have everything nailed down yet. I share the frustration of many noble Lords who wish to see certainty. However, the Trader Support Service has been established to support traders in Northern Ireland and has already started sending out bulletins to traders in Northern Ireland who have registered. As of last week, 2,800 Northern Ireland businesses had registered and at least 2,000 GB businesses are looking to trade with Northern Ireland. That figure is changing daily and going up quite quickly. They will link into the computer system that will operate in Northern Ireland, the Customs Declaration Service, which will operate only in Northern Ireland initially because it is capable of managing a dual-tariff system. I will talk more about systems later on.

My noble friend Lady Wheatcroft asked about delays on the other side of the channel. She is right that it is not something we can have a great deal of control of, but we are engaging substantially with all

the EU countries that trade with us and we see from surveys that awareness is going up weekly. However, this is of course made more complicated by Covid.

The noble Baroness asked why we could not provide longer-term waivers in this SI. The practical limit is that under the international customs rules one cannot make these things permanent, but we believe that the six-month delay will give businesses a chance to adjust. The noble Baroness also asked about the number of businesses that have registered for an EORI number: it is a bit over 260,000 and they are still coming in.

The noble Baroness expressed concern about complexity. It is absolutely our intention and aspiration to operate the most efficient border in the world by 2025, as we have stated. We are not able to do that straightaway, and I fully accept that there will be complexity and arcane rules that we would like to remove now but cannot necessarily remove in the next few weeks or months. However, we are absolutely committed to improving the system.

My noble friend Lady McIntosh also asked about the Trader Support Service. I assure her that it is standing up at a rapid rate. It is led by Fujitsu, a large computer company that has been working with HMRC on other systems for a number of years. One of its consortium members is the software company Descartes, which is going to link to CDS. I am in very regular contact with the HMRC teams on the implementation of that work.

Businesses have been able to sign up since 28 September and, as I mentioned, those that sign up now receive bulletins. However, we are concerned that not enough Northern Irish traders have registered. We continue to communicate as assertively as we can with trade bodies and hauliers in Northern Ireland. The noble Baroness asked about one-off costs. We expect that importers will face some increase in costs as a result of the declaration requirements, but they are very variable. We do not know how importers will choose to manage the declaration, which is often just one part of a wider customs process. Because of this uncertainty, the estimate on the admin burden is not currently available. As noble Lords will know, the negotiations with the EU on an FTA are ongoing. That is why we cannot be crystal clear for traders. As I have said, it is frustrating, but I have personally pushed HMRC to get out all the decisions that it can as quickly as possible, to remove the uncertainty that traders face.

My noble friend Lord Naseby asks whether trade associations and hauliers were consulted on the changes to the timing of the notification of the ENSs. It is worth clarifying that this change was requested by stakeholders. It gives flexibility to hauliers and carriers to pick the route nearer to the time of departure. They do not have to submit the information on that timescale; they can put it in earlier if they know what route they are taking. We consulted with 40 trade associations and business representatives on this, and that is why we have made these changes. My noble friend also asked about communication with hauliers, referring to his old constituency. We have created 40 advice and information pop-up sites across GB. In the last week or two, 7,000 hauliers have visited them, as they collect information and increase their level of familiarisation.

Many noble Lords asked about IT readiness. There are a lot of systems, so I will not go through each one in detail. The main one, CHIEF, the existing system, is tried and tested, and has been upgraded to take the higher volume of transactions. Regarding congestion, particularly around the short straits, we have created a facility, "Check an HGV", which will enable hauliers to answer a simple questionnaire before they go into Kent, to ensure that their paperwork is in order. That has been in beta testing with a number of hauliers over the last few weeks. Noble Lords have mentioned costs. We have provided support of £80 million to the intermediaries sector—customs intermediaries, freight co-ordinators and so on—to uprate their businesses. That money is still going out. Not all of it has been claimed by grants, and this week we widened the criteria to give more flexibility. Noble Lords will also be aware of the port infrastructure fund which closed on 31 October, and which again was well received by the port sector. It will probably be oversubscribed, but it will provide substantial capital to enhance the sector's facilities.

The noble Baroness, Lady Kramer, asked a number of questions, some of which I hope I have answered. She asked particularly about small business support. We have made efforts to support the small business sector. HMRC has introduced a number of support mechanisms around such things as duty handling, where we have provided an accelerated system for the deferral of duty. That process is under way, but I absolutely accept that this is going to be a period of change and a lot of learning for all parts of the sector.

The noble Lord, Lord Tunnicliffe, asked thoughtful questions, as normal. He asked whether this is a response to Covid or a matter of lack of readiness on the part of the Government. We have listened very carefully to carriers, who have been emphatic that the challenges raised by Covid have required that we make this particular easement. Businesses specialising in cross-border trade have been significantly impacted by the pandemic. This disruption has prevented them preparing the introduction of customs controls at the end of the transition period, and it is really in response to those challenges that we announced the staging in. The introduction of a temporary waiver for entry summary declarations was a necessary measure to address the adverse impact of Covid while balancing the safety and security needs of the country.

The noble Lord asked about the employment of 50,000 customs agents. There may be a misunderstanding of terminology on my part, but I think the number he refers to relates to the customs intermediaries industry, not to civil servants, Border Force or suchlike. That figure was a bit of a finger in the air, to be honest: one simply extrapolated the number of customs forms from the volume increase. The reality is that the grants we have given to the sector—a moment ago I mentioned around £80 million—have been available to increase capacity, not just through hiring more people but covering IT training and innovation, basically. Our intelligence suggests that the sector is ready for the big increase in transaction numbers from January. As I mentioned a moment ago, we have just widened the criteria of the grants facility to give a wider range of eligibility.

[Lord Agnew of Oulton]

The sector is varied, as I mentioned. It includes customs brokers, freight forwarders and fast-parcel operators, and the increase in capacity goes beyond simple increases in the numbers of staff. The Government continue to work closely with industry stakeholders to ensure that they have the capacity required. We will continue carefully to monitor preparations, bearing in mind that there will be a big jump in January and then another jump in July. Therefore, we will keep a careful eye on capacity.

The noble Lord asked about the timing requirements. I hope I dealt with that in an earlier answer, but there is a basic requirement, because Border Force needs time to collect and risk-assess data, with the practical considerations about what information the industry is able to provide and when without being overly burdensome. Of course, this varies by mode of transport, and the shorter timing requirement that this SI extends to the territories list reflects the reality for short sea movements, such as those from Calais to Dover. The change offers a more practical requirement for the submission of these declarations for businesses involved in maritime trade on historic, busy and significant trading routes. We will continue to assess feedback from the industry on how the customs system works for them and keep the requirements under review.

The noble Lord asked about the cost of the impact of the S&S requirements. As I mentioned earlier, we expect there to be some additional costs, but we have not been able to quantify them.

The noble Lord asked whether we can reassure the House that trade requirements are being considered more widely beyond the question of imports. My noble friend Lord Naseby asked a similar question. We continue to work closely with industry to ensure that it is engaging with the new requirements and can take the necessary steps to prepare. We are using a public information campaign. I accept that for some people that might sound irritating but, to a certain extent, it needs to be irritating for people to take notice of it. My right honourable friend the Chancellor of the Duchy of Lancaster is having regular Zoom conferences with stakeholders to hear their issues at first hand, as indeed, am I. I hope that addresses the questions. I think I will be back here again on future SIs and I am sure will be subjected to ongoing scrutiny. If noble Lords want to write to me on any particular issues, they should feel free to do so.

To sum up, the Government are introducing this SI as an important part of the process of updating retained legislation to support our status as an independent customs regime. By providing extra time for businesses affected by Covid to prepare to meet their safety and security requirements, we are listening to businesses and supporting them at this challenging time.

Motion agreed.

House adjourned at 6.25 pm.

Grand Committee

Thursday 19 November 2020

The Grand Committee met in a hybrid proceeding.

Arrangement of Business

Announcement

2.36 pm

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): My Lords, the hybrid Grand Committee will now begin. I am sorry for the delay. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering except when seated at their desk, to speak sitting down and to wipe down their desk, chair and any other touch points before and after use.

The microphone system for physical participants has changed. Microphones will no longer be turned on at all times, to reduce the noise for remote participants. When it is your turn to speak, please press the button on the microphone stand. Once you have done that, wait for the green flashing light to turn red before speaking. The process for unmuting and muting for remote participants remains the same. If the capacity of the Room is exceeded, or other safety requirements are breached, I will adjourn the Committee. If there is a Division in the House—and there will be one or two—the Committee will adjourn for five minutes.

Medicines and Medical Devices Bill

Committee (7th Day)

2.38 pm

Relevant documents: 19th Report from the Delegated Powers Committee, 10th Report from the Constitution Committee

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): A participants' list for today's proceedings has been published by the Government Whips' Office, as have lists of Members who have put their names to the amendments, or expressed an interest in speaking, on each group. I will call Members to speak in the order listed. Members are not permitted to intervene spontaneously; the Chair calls each speaker. Interventions during speeches or "before the noble Lord sits down" are not permitted.

During the debate on each group I will invite Members, including Members in the Grand Committee Room, to email the clerk if they wish to speak after the Minister, using the Grand Committee address. I will call Members to speak in order of request and will call the Minister to reply each time. The groupings are binding and it will not be possible to de-group an amendment for separate debate. A Member intending to move formally an amendment already debated should have given notice in the debate.

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

We will now begin.

Debate on Amendment 119 resumed.

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): I call the noble and learned Lord, Lord Mackay of Clashfern. He is not there. The noble Baroness, Lady Jolly, is not with us either so I call the noble Baroness, Lady Penn.

Baroness Penn (Con): My Lords, before I speak to the helpful debate we had on this group of amendments, I should like to make a correction to my response to an earlier grouping. At the time, I said that all adverse incidents with medical devices are available online on the MHRA's website. I would like to correct this: adverse incidents with medical devices will be published online on the MHRA's website as part of the plans to deliver increased transparency and in line with developing future legislation enabled by the powers in the Bill. However, it is not presently the case.

Turning to our present debate, I thought it might be helpful first to address the current arrangements for the regulation of medicines, veterinary medicines and medical devices in Northern Ireland. Responsibility for medical device regulation is reserved in respect of the whole of the UK. However, Part 1 of the Bill, relating to human medicines, and Part 2, on veterinary medicines, deal with transferred matters in relation to Northern Ireland. Clauses 1 and 8 set out that regulations in relation to Northern Ireland can be made either by the Secretary of State acting jointly with the Northern Ireland department or by the Northern Ireland department. This has always been the case; however, the MHRA and the VMD regulate these areas UK-wide on a day-to-day basis. After the end of the transition period, with regard to both human and veterinary medicines, as well as medical devices, under the terms of the Northern Ireland protocol, Northern Ireland will continue to follow the acquis.

Amendment 119 in the name of the noble Baronesses, Lady Thornton and Lady Ritchie of Downpatrick, seeks to ensure that, in making regulations under the Bill, the Government must minimise and mitigate the potential for regulatory divergence between Great Britain and Northern Ireland. Along with Amendment 120 in the names of the noble Lord, Lord Patel, and my noble and learned friend Lord Mackay of Clashfern, Amendment 119 seeks to establish a requirement for the Secretary of State to report to Parliament on areas of divergence between Great Britain and Northern Ireland.

I completely understand that these probing amendments seek to ensure that Parliament has proper sight of how medicines and medical device regulation develops in the future, particularly in relation to any differences between Great Britain and Northern Ireland. That is right and proper. Noble Lords will be aware,

[Baroness Penn]
however, that the amendment in the name of my noble friend the Minister, on reporting obligations, means that the Government must already provide Parliament with a report every two years. This sits alongside the separate amendment to Clause 41 in my noble friend's name, which requires a public consultation on any regulatory change to be made under the Bill.

That new reporting obligation on the operation of regulations made by the Secretary of State under Clauses 1(1), 8(1) and 12(1) is both forward and backward-looking. It must include any concerns raised or proposals for change made by anyone consulted by the Secretary of State in the preparation of the report, and the response to these. That may include advance notice of further regulatory change that the Secretary of State is proposing to make.

These reports, along with the public consultation on regulations under the Bill, would be the right place to deal with any issues of possible regulatory divergence raised. It would therefore be duplicative to require the Secretary of State to lay additional reports specifically on regulatory divergence for medicines and medical devices.

Noble Lords also asked a number of practical questions on how regulation will operate in Great Britain and Northern Ireland after the end of the transition period, which I will also address. The noble Baroness, Lady Wheeler, asked who would be responsible for any possible divergence between the Great Britain and Northern Ireland regulatory systems. I can reassure her that the MHRA and the VMD, reporting to their respective Secretaries of State, will continue to regulate human and veterinary medicines and medical devices for the whole of the UK, and will continue to ensure that patients and animals in Northern Ireland, just as in Great Britain, receive the safe and effective medicines and devices they need.

The noble Baroness, Lady Ritchie, asked specifically about the interaction between the UK Government and the Northern Ireland Executive on issues relating to future regulation of medicines and medical devices. I can reassure the noble Baroness that officials in the Department of Health and Social Care meet officials in the Northern Ireland Executive every two weeks to discuss the Bill and regulation of medicines and devices, and that a strong working relationship exists.

Robin Swann MLA has also given consent for the medicines day one-readiness statutory instrument, laid on 20 October, to be made by the Secretary of State for Northern Ireland as well as for Great Britain. We will continue to engage with the Northern Ireland Executive as plans for the future regulatory environment for devices and medicines develop.

The noble Lord, Lord Patel, also raised the approach to the day one readiness after the end of the transition period on which the MHRA has based its guidance to industry. I can reassure the noble Lord that, as I have just said, those regulations have been laid before Parliament, and we expect to debate them in early December.

Those regulations also require that from 1 January 2021, marketing authorisation holders must transmit all global serious reports of adverse drug reactions directly to the MHRA, to ensure that the agency has access to the totality of the information, to assess safety issues. This links to the noble Lord's point on pharmacovigilance. I can reassure him that, following the end of the transition period, the MHRA will continue to be responsible for pharmacovigilance across the whole of the UK, and will use common processes for the assessment of safety issues in Northern Ireland and Great Britain.

2.45 pm

The system for medical devices is different. Medical devices placed on the market in Northern Ireland must be registered with the MHRA. If such devices come into Great Britain via unfettered access and there are any safety issues, it will be possible to trace them back to the manufacturer and remove the device from the market. MHRA officials will be able to carry out market surveillance for medical devices that comply with both Great Britain and Northern Ireland rules.

The noble Lord, Lord Patel, also raised the UK's access to EU databases for the purposes of effective regulation of medicines and medical devices. I can reassure the noble Lord that we have been in discussions with the EU on precisely this matter, to enable implementation of the Northern Ireland protocol for medicines and medical devices. We are now in discussion with the EU on the fine operational details to provide clear and detailed guidance for industry.

Where there are concerns about the implementation of the protocol in Northern Ireland, there are formal channels in place. Officials meet regularly in the Ireland/Northern Ireland Specialised Committee. The specialised committee reports to the Withdrawal Agreement Joint Committee and provides advice on decisions to be taken by the joint committee under the protocol.

We have already raised the issue of the falsified medicines directive and regulatory importation requirements for medicines moving from Great Britain to Northern Ireland after the end of the transition period with the EU through the specialised committee, and have agreed with the EU a pragmatic one-year time-limited approach to implementing the regulations that will ensure that there will be no disruption to the flow of medicines to Northern Ireland at the end of the transition period. I say this to reassure noble Lords of the effectiveness of those mechanisms under the protocol.

In closing, I repeat that patient safety and animal safety, and the supply of human and veterinary medicines, as well as medical devices, in Northern Ireland are of primary importance, and the Government's priority will always be to ensure that patients and animals across the UK have access to safe and effective treatments. As we move forward, we will ensure that Northern Ireland patients and animals are not disadvantaged in accessing those treatments. On that basis, I hope that the noble Baroness, Lady Wheeler, has heard enough to withdraw Amendment 119, and that the noble Lord, Lord Patel, is similarly assured so that he need not move his amendment.

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): I think that the noble and learned Lord, Lord Mackay of Clashfern, is now with us. Are you there, Lord Mackay?

Lord Mackay of Clashfern (Con) [V]: Yes, I am here. My internet was turned off on the basis that I was on an aeroplane—which I have not been since March. That shows that some things are not absolutely reliable. Anyway, the noble Lord, Lord Patel, has dealt with the subject, and I do not need to trouble noble Lords any further.

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): I now call the noble Baroness, Lady Wheeler. No? I gather that the noble Lord, Lord Patel, wants to speak. I call Lord Patel.

Lord Patel (CB) [V]: My Lords, I sent in a request to speak after the Minister. I am grateful to her for her lengthy response, but in a way it just shows that there will be considerable areas of divergence once we exit Europe, even after we exit Europe and the agreement with the EU has expired. What the Minister said is correct—that maybe the emergency power regulations will allow us to ask questions—but those are only emergency powers, and this is longer-term.

My amendment asks for an indication, on at least a yearly basis, of where divergences are occurring. It is interesting that the Minister said that the statutory instrument is now available and will be debated in due course. Of course it is available now—although I do not know when it was made available—and we will have an opportunity to debate it. However, the MHRA was already giving guidance on the basis of that instrument before we had seen it or debated it. The Minister's reply did not therefore satisfy the intention behind my amendment—although I will, of course, not move it today—in terms of the necessity for the Government to produce a report of where divergences are occurring and why.

Baroness Penn (Con): To address the noble Lord's question about when the statutory instrument was laid, I believe it was on 20 October. I think the statutory instrument laid on 20 October, which we shall debate, is not the Government's approach to an answer on how we deal with the future issues of regulating medicines, medical devices and vet meds in Northern Ireland and Great Britain. What I was trying to express to the noble Lord is that we have a mechanism that means the Minister will report to Parliament every two years, both looking forward to prospective changes and back at any changes that may have been made. Of course, where new regulations are proposed there will be public consultation on those, but there will also be reports to Parliament ahead of that about the intentions, and those reports will provide a mechanism, which I think the noble Lord wants, to ensure that these issues are discussed properly in Parliament in future.

Baroness Wheeler (Lab): I thank the Minister for her response. Due to the break in the group since Tuesday, we have all had the advantage of being able to have a closer look in *Hansard* at the speeches made by the noble Lord, Lord Patel, and the noble Baroness, Lady Ritchie. If we had managed to squeeze in the Minister's response, that would have been perfect; I could then have responded having read it all very closely.

Anyway, I thank the noble Lord, Lord Patel, both for his support of our amendment and his very detailed considerations and questions on the MHRA guidance on Northern Ireland-Great Britain regulatory diversion on medicines and medical devices. His speech was very much a tour de force on the whole situation, understating how confusing the situation is in relation to the distinction the MHRA guidance makes between the EU market, the GB market and the market for Northern Ireland. We will need to read *Hansard* carefully but, despite the Minister's best endeavours, I cannot see that she has managed to clear up for us exactly how the whole confused system will work in the future.

Moreover, as the Minister and the noble Lord, Lord Patel, mentioned, we do have the draft regulations. My attention has been drawn to them only this week. I thought they were published on 13 November, not in October, but that may be just me not reading them properly. Both regulations deal with Northern Ireland and Great Britain regulatory diversion issues, so this debate will be paused until we have considered those regulations and come back to the main Bill, and while we see what outcome there will be on the adoption of the Northern Ireland protocol.

The noble Baroness, Lady Ritchie, underlined the need for monitoring, oversight and accountability on this issue, and the importance of reporting to Parliament, and we obviously strongly agree with that. I did not specifically hear a response to her question on what internal discussions there have been between the noble Lord, Lord Bethell, and the Minister in the Northern Ireland Executive with responsibility for the NI Department of Health. If the Minister could write to her and put a copy in the Library, so that we can see what progress the discussions have made so far, that would be really helpful.

On the issue of reporting to Parliament annually—as in the amendment in the name of the noble Lord, Lord Patel—and not every two years, as the amended legislation provides for, I think the annual report called for by the noble Lord will be very much needed as all the problems and issues underlined by him and others in this debate are being worked through.

The issue is vital, and many issues are still to be identified, considered, worked through and resolved, which will mitigate and minimise the potential for regulatory divergence in human medicines and medical devices between Northern Ireland and Great Britain. In that expectation, I beg leave to withdraw the amendment.

Amendment 119 withdrawn.

Amendment 120 not moved.

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): We now come to the group consisting of Amendment 121. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate.

Amendment 121

Moved by ***Baroness Cumberlege***

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

"Independent medicines and medical devices safety review: task force for implementation

(1) Within three months of this Act being passed, the Secretary of State must appoint an independent task force.

(2) The task force must—

(a) have an independent Chair;

(b) be accountable to an oversight governance board; and

(c) include representatives of the Independent Medicines and Medical Devices Safety Review, published on 8 July 2020.

(3) The task force's functions are—

(a) to deliver a timeline for the implementation in full of the recommendations of the Review in subsection (2)(c); and

(b) to implement the recommendations of the Review in subsection (2)(c).

(4) Once the task force has fulfilled the functions in subsection (3), it will cease to exist."

Member's explanatory statement

This new clause would establish the task force whose role it would be to implement recommendations set out in the report of the Independent Medicines and Medical Devices Safety Review.

Baroness Cumberlege (Con) [V]: My Lords, as noble Lords are well aware, *First Do No Harm*, the report of my review, was published in July of this year. Our ninth and final recommendation was that the Government should set up a task force to implement the other recommendations and the many actions for improvement contained in the report. That task force has not been set up, and the Government remain silent on whether they will agree to do so and, indeed, on the report as a whole.

This proposed new clause would require the Secretary of State to set up a task force within three months of the Bill becoming law. I would much rather not find myself tabling it; I would much rather the Government saw the urgency and had already set up the task force, because it is designed to help the department and the wider healthcare system to do the thinking, to make sure we get the details right and to set out a pathway and a timeline for implementing the report's recommendations.

I believe it must be a collaborative venture; it should involve not just the department and its arm's-length buddies but also patients. It would be a missed opportunity were it not to include the representatives of my review, because we have the knowledge and the expertise, acquired over two and a half years of work. To inspire confidence among people who have suffered, it needs to be independently chaired and overseen by a government board.

We feel that the task force is the right way to approach the job of implementing the review's recommendations. My noble friend the Minister may well tell us that the Bill is not the right place for this measure—that is as may be—in which case, if he were able to reassure me that the task force would be set up separately by the Government, as we envisage in this proposed new clause, and on a similar or shorter timescale, I would be more than satisfied.

These matters are pressing. Our recommendations need to be implemented if we are to help people who have suffered so much already, many of them for decades. We must try to prevent further avoidable harm to more patients and families in the future. The task force is the key to making this happen, and those of us who have run organisations know that they need some discipline and something like a task force—a body that will ensure that the task set out is actually implemented and that it happens. I beg to move this amendment, and I look forward to the Minister's reply.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, it is a great pleasure to follow the noble Baroness, Lady Cumberlege, and to support what she is saying. At the heart of her argument is the concern that, although the Minister said earlier in Grand Committee that the Government are weighing it up with all "seriousness and intent", the Government are not going to run with the core of the noble Baroness's recommendations. Because the Government have been so reluctant—very unusually—to respond immediately to the thrust of her report, there remains a lot of uncertainty about how far the Government are prepared to implement it.

Of course, the opportunity given to us with the medicines Bill enables us really to press the Government to be more detailed about what they are going to do. On Tuesday, we had a very good debate on the recommendation for the appointment of a patient safety commissioner. The Minister made a very extensive response, which essentially set out the measures that the Government are taking to embed patient safety throughout the NHS. I shall just mention a few: promoting a positive learning culture at the heart of the NHS; taking steps to help staff to speak up when things go wrong; establishing the Healthcare Safety Investigation Branch to examine the more serious patient safety incidents and promote system-wide learning; appointing medical examiners to provide much-needed support to bereaved families and improve patient safety; introducing a duty of candour, so that hospitals tell patients if their safety has been compromised, and apologise; and commissioning the NHS national director of patient safety, Dr Aidan Fowler, to publish a strategy, which, of course, has been done.

3 pm

I do not seek to underestimate in any way the work that the Minister referred to, which has already been undertaken, but two things are missing. First, that is not a system-wide approach. I would like to hear how the Care Quality Commission, instead of making patient safety one of the five criteria by which a trust can get the top rating, will make patient safety the sole criteria for the top rating. I would like to hear much more about how we will ensure that equipment, buildings and services have safety designed into them right from the start. When we set up the NPSA nearly 20 years ago, we knew that one of the best approaches is to design safety in the system. In many hospitals, you could have medical equipment for the same purpose but of different makes and with different controls, leading to confusion. There are many other examples. All that should be driven out by someone at the centre who understands that safety is a system issue above all else. We do not see that; the patient safety strategy talks about a system but does not mention how it is going to be done in a systematic way.

It is the same with the issue of independence. The noble Baroness, Lady Cumberlege, was a Minister in the Department of Health and she has said that the department does not like independence, and I can confirm that as a former Minister. But to have credibility, you have to have an independent approach. The task force is one example, and the patient safety commissioner is another. At heart, we want to hear from the Minister, before the Bill reaches the end of its stages in the House of Lords, what the government response is. I am afraid that we are not going to get it, which of course then leads us to push amendments at Report. But I hope that the Minister, with his colleagues, will reconsider their approach and, before we reach Report, set out what they will do with the noble Baroness's recommendations.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I am delighted to follow the noble Lord, Lord Hunt of Kings Heath, and support the noble Baroness, Lady Cumberlege, in her amendment, to which I have added my name.

The report that the Government commissioned and appointed the noble Baroness, Lady Cumberlege, to do on these issues of medicines and medical devices made nine very clear recommendations in July. One central recommendation in that report, *First Do No Harm*, was the need for a task force to oversee the implementation of the recommendations from the report —hence this amendment today.

If the Government, the Minister and his colleagues, are serious about the recommendations and recognise that there is an issue and a problem in relation to certain medicines and medical devices, they should see fit to implement all nine recommendations. I think back to when I was doing some research on this. An eminent QC, Lauren Sutherland, said that the Government should not ignore these recommendations—they should implement them.

I made the request, along with many other noble Lords, for the implementation of the task force during Second Reading in early September. I said that it should be set up without delay to oversee progress, and I believe that, if the Government are to take this report seriously and ensure that such failures do not happen again, that needs to happen. What better way to have an implementation group than by the task force that is already in existence, because it was independent of government, has worked on these issues for two years and is fully acquainted with all the matters, problems and challenges met by many people, who have suffered indignity and immeasurable pain as a result of the imprecision in relation to medical devices? To ensure proper implementation and oversight of the recommendations, a task force is a necessary prerequisite and needs to be placed in the Bill. The first remit or task of such a task force should be to set a timeline for its work and delivery of the review's recommendations. The only way for that to work is if the implementation task force is put in the Bill.

As the report states, the task force should be made up of representatives of the various arms of the healthcare system that have a recognisable role to play in delivering patient safety—in other words, people acquainted with the issues and who have knowledge and expertise. Those responsible for implementation need to know that their work and progress will be monitored and they will be accountable. Supporting the implementation process should be a reference group made up of a range of patient interests going far wider than the groups the report members dealt with. Yet again, such a reference group would consist of people with direct experience, and ongoing daily experience, of the impact of such medicines that have been specified, as well as other types of medicines, where there have been side effects, and the medical devices that have caused so many problems to so many women and men.

We need a system and task force that listens, hears and acts with speed, compassion and with proportionality to prevent further avoidable harm—hence my support for the amendment in the name of the noble Baroness, Lady Cumberlege, to establish such an implementation task force without delay in the Bill.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I congratulate my noble friend Lady Cumberlege on the work that she and her able team have done on the report, *First Do No Harm*. I entirely support the amendment, and I am delighted to follow in this the noble Baroness, Lady Ritchie, who has pointed out that by definition it will have only a limited life. Its main work will be to ensure that the functions of the report and all the recommendations are followed through. However, I take this opportunity to ask both Ministers if they are minded to support this. Possibly, when my noble friend comes to respond, we might hear what the nature might be of the budget allocated to the task force, as well as to whom, if at all, the oversight governance board in subsection (2)(b) of the proposed new clause might report, and whether it is intended that Parliament might have an overview of the work of the task force.

In establishing the task force, it is absolutely vital that there is a body that has the role, as is intended in this amendment, of implementing the recommendations set out in the report of the Independent Medicines and Medical Devices Safety Review. I would personally favour the mechanism in this amendment that a task force should be set up for this purpose, limited in time with a specific view. I would be interested to know what budget might be allocated, and from which budget this would come, and also if there was a mechanism to keep Parliament informed of the work of the task force for its limited life.

Lord O'Shaughnessy (Con): My Lords, when I was preparing for today's debate and I saw where I was in the speaking list, I anticipated that there would not be much left to say by the time we got to me. I was wondering what I might be able to add to support my noble friend Lady Cumberlege in the very powerful argument she made about the need to set up the task force in recommendation 9 from her review.

I went to look at the latest data on the use of valproate in girls and women in the UK, and I declare my interest as a vice-chair of the APPG that looks at these issues. The MHRA publishes a regular report and its version 4, which tracks the data from 2010 to 2019, was published earlier this year. From that I draw

[Lord O'Shaughnessy]
two lessons that are very germane to this debate. The first—which the noble Lord, Lord Hunt, alluded to—is that there is this fear of independence, but there is also something else that perhaps goes on, which is almost a sense of helplessness: well, harm is going to happen in practice, there are things you can do, but it is something we are always going to have to accept. The positive message that comes from the work of the noble Baroness, Lady Cumberlege, and her review, is that we can make a difference. If you look at the prescribing of valproate in pregnancy, you see that it fell by 78% from 2010 to 2019 on the back of concerted action from many people—clinicians, officials, Ministers, patients of course, patient campaigning groups particularly, and many others. It halved, year on year, from 2018 to 2019. So we can make a difference through concerted action.

The other data point I take out of it is that even now there are still 200 babies exposed each year to valproate and, as we know, half of them will experience physical or mental harm. That is 100 babies whose lives, and whose families' lives, are going to be irreparably changed because of that exposure, when everybody accepts that exposure to valproate in pregnancy should be zero, or as close to that as humanly possible.

It is the point about urgency that I want to get across to my noble friend the Minister. I do believe that he is deeply sympathetic to the findings of the review and the need to move forward, but we cannot wait any longer, because these harms are going on. They are going on every day and we can do something about them—and the recommendations in my noble friend's review are precisely the way we can do something about them. As my noble friend Lady Cumberlege said in her opening remarks, this is not the kind of thing on which you really want an amendment. It is not the kind of thing that should require legislation, but the reason there is such support for it is the sense that nothing is happening when there are harms going on that could be prevented if we took the concerted action that is necessary. That is why I am speaking in support of the amendment today.

3.15 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I will speak briefly in favour of this amendment in the name of the noble Baroness, Lady Cumberlege. Like the preceding speaker, I am aiming to add extra angles and approaches rather than to repeat what has already been said—but I associate myself, essentially, with everything that has already been said.

As I was thinking about this amendment, I was reflecting on a session in the House—I believe it was this week, although it all blurs slightly if one looks at a screen for long enough—when the Minister, the noble Lord, Lord Bethell, was being questioned by one of his noble friends about why a whole series of Written Questions about Covid had not been answered. The fact is, of course, that all aspects of our health system are currently under enormous pressure. The proposition that I put—as I was arguing in another amendment to the Bill earlier this week—is that this is actually an amendment that makes the Government's job easier. It carves off a recognisable, obvious piece of work that does not have to be done by already horribly overworked, stretched systems. It means that something can be done: something can be ticked off and said to be under control, managed and done, in a way that does not draw too heavily on that existing overstretched system. That is the first point I wanted to make.

The second point I want to make—and I feel that I need to apologise to the noble Baroness, Lady Cumberlege, for bringing this up—is that, as a former newspaper editor, when I was thinking about reports and what happens to reports, I had to go back to the Leveson inquiry, conducted by Lord Justice Leveson. I remember, when I first read that report, I thought about how it had been carefully structured to put aside some of the more difficult areas, particularly the issue of media ownership concentration. In the report Lord Justice Leveson had tried very hard to create something that was implementable and manageable, and that had some chance of being delivered. I think we all know that that is not what happened, so I can understand that anyone asked to take on a huge job of work, as the noble Baroness, Lady Cumberlege, did with this, must ask themselves the question, "If I devote so much time, energy and effort to this work, will it actually be delivered?"

I said before that the patient safety commissioner amendment was possibly the most important one. In some ways, this certainly vies with it. This is about delivery. We know that there are three reasons to call an inquiry. One might be to find information, one might be to reassure the public, and another might be to create a plan of action. Those are the three often-stated reasons, but sometimes there is a fourth reason—perhaps "sometimes" is not the right word; perhaps "often" might be a better word—to kick something into the long grass. It is crucial that the issues uncovered by the noble Baroness are not kicked into the long grass, and that the very clear, obvious and important recommendations are not lost. So I support this amendment and, should it need to go further, I will continue to support it.

Lord Sharkey (LD) [V]: My Lords, Amendment 121 is another recommendation, as we have heard, from the Cumberlege review. We would, within three months of the Bill being passed, set up a task force to implement the recommendations of the Independent Medicines and Medical Devices Safety Review. This particular recommendation, like the others in the review, received very widespread support at Second Reading, and a key element of the recommendation contained in this amendment is the appointment of an independent chair of the task force. It is absolutely critical that this independence is real, and perceived as being real. It should be clear to all that the chair is not an establishment place-person, and is an obviously safe pair of hands. It is vital that public confidence in the safety of medical devices be restored, and we very strongly support this amendment. This amendment is the means—and perhaps the only means currently available to us—of making the Cumberlege recommendations a reality. If the Minister is not inclined to accept this amendment, I hope that the noble Baroness, Lady Cumberlege, will bring it back on Report, so that we can test the opinion of the House.

Baroness Thornton (Lab): My Lords, I will be very brief, as it must be clear to the Minister that there is unanimity across the Committee in support of setting

up this safer care task force. My noble friend Lord Hunt was quite right that this is about whether the Government take this report seriously, and for me this is also an issue of accountability. Recommendation 9 of nine states:

"The Government should immediately set up a task force to implement this Review's recommendations."

I hope that the Minister will just say, "Yes, we've done it", so that we can now be told what the timeline for the task force will be and who will be involved. That is my hope from the Minister's remarks, but if that is not to be the case, I hope that it might be the case in two or three weeks' time when we move to the next stage of the Bill.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, again, I thank my noble friend and her team for their work to produce the report and to ensure that patients and their families have been heard. Above all, I pay tribute to all the patients and their families who have so bravely shared their experiences to inform this important report. The report has been impactful and has already served to firmly put patient safety at the top of the agenda for all the healthcare system, and we in the Government are committed to learning from it.

On the amendment, if I may put this delicately, we must please remember that this is not a Bill to respond to the review. The Bill provides the powers needed to be able to update the current regulatory regime for medicines, devices and clinical trials in response to the end of the transition period, although the Bill does have the best interests of patients at its heart.

If it was not for the ongoing impact of Covid-19 on the health and care system, I believe that we would be discussing little else but patient safety. But, as my noble friend Lady Cumberlege has acknowledged in this Grand Committee, Covid has had a challenging impact on all our priorities, including on her own work on the NHS maternity transformation programme —and, of course, on the publication of her report, which was scheduled for the beginning of this year but, because of Covid, happened only 16 weeks ago.

I can assure noble Lords that much activity is already under way. Officials from across the healthcare system have been working together intensely since the report's publication. They have been meeting weekly since August to ensure that we fully understand the report's recommendations and the best way forward.

My noble friend has rightly mentioned the importance of listening to and involving patients in the implementation process. We absolutely recognise the need for effective patient engagement to ensure that we get implementation right. The Minister of State, Nadine Dorries, will provide an update on this and other matters related to the report in December, and I shall be very happy to report likewise to this House.

These debates have been clear, and I can assure noble Lords that, as part of our consideration of the report, we will of course want to be informed by the debates on this Bill before responding in detail to this very important report. I am very sympathetic to the desire of my noble friend and others to see the Government move quickly in responding to her report, but I do not agree that this Bill is a sensible method of delivery for that response. It is a weighty report, and our response will be rightly scrutinised when the Government responds to Parliament, but an amendment in this Bill is not the right mechanism. We should not be making policy through legislation, for that rarely makes for good government policy-making.

Therefore, I hope that this is a probing amendment, seeking some reassurance, rather than a firm request. In that spirit, I welcome the opportunity to update the Grand Committee on some of the progress that we are making to date.

Recommendation 1 has been implemented. The Government have, on behalf of the health and care sector, apologised to those women, their children and their families for the time that the system took to listen and respond.

We debated my noble friend Lady Cumberlege's amendment for a patient safety commissioner just a few days ago, so I shall not repeat all the points raised. It was an insightful discussion, and I will think on it further, as I said during the debate.

We shall shortly be debating Amendments 122 and 123, on establishing a redress agency and redress schemes, so I will not pre-empt those discussions.

On recommendation 5, I know that my noble friend is already aware of work to establish specialist centres for mesh removal, but I would like to say a little more in recognition of its importance. NHS England is working closely with providers to set up the specialist mesh removal centres and is currently working to prepare for launch next April. The service specification for mesh centres describes how all centres must come together in a clinical summit to agree how we can develop the service moving forward, to agree standards that all centres will work to and to share data and outcomes. The first summit will take place tomorrow, 20 November. I am pleased to note that clinicians from the devolved nations are invited to that session too.

On recommendation 6, the MHRA has already begun a substantial programme of work to change the culture of the agency. Key priority areas are: first, listening and responding to patients; secondly, better utilising scientific evidence to strengthen and speed up decision-making on safety; and, thirdly, becoming more open and transparent in everything that the agency does. The MHRA is strengthening its yellow card scheme to make it easier for both patients and healthcare professionals.

On recommendation 7, as my noble friend will also be aware, we have debated Clause 16 of the Bill. Significantly, its provisions will mean that, in future, we can collect surgical implants and devices data from all NHS and private provider organisations, starting with mesh-related procedures and from that agreed next steps.

On recommendation 8, the General Medical Council already has guidance covering financial and commercial arrangements and conflicts of interest, which came into effect on 22 April 2013. In addition, the GMC's updated consent guidance came into effect on 9 November. This reaffirms that any conflicts of interest that a doctor or their organisation may have should be shared with patients where relevant. We are considering whether these arrangements should be strengthened further.

[Lord Bethell]

My noble friend Lord O'Shaughnessy spoke of a worrying attitude of fatalism in the system, but I should also flag the work being done by GPs, universities and the royal colleges on long Covid and the excellent work being done to protect patients. We are listening to patients, who are presenting highly complex symptoms, including mental health, renal, cardiac, respiratory and other issues. I host a weekly round table that has full engagement with representative groups. We have mobilised a whole-system response. We are linking research with guideline writing for primary care in real time. We are using data thoughtfully, and we are mobilising networks of concerned groups around the country and around the world. This reflects the priority that we have already put on the recommendations of the patient safety report.

My noble friend Lady Cumberlege and her team took two and a half years to complete their review and present their findings, and I am intensely grateful for that. It is imperative, for the sake of patients and especially those who have suffered greatly, that we give this independent report the full consideration it deserves. I look forward to updating the House following the Minister's Statement in the other place before recess. I therefore hope that my noble friend Lady Cumberlege feels able to withdraw her amendment.

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): I do not believe that anyone wishes to come in after the Minister, so I call the noble Baroness, Lady Cumberlege.

Baroness Cumberlege (Con) [V]: I thank all those noble Lords who have spoken in this debate. I am extremely grateful to them. I have listened to what the Minister had to say, and I do not deny that meetings are taking place—I understand that they are—but I have no idea what is coming out of those meetings. But we will come to that in a minute.

The noble Lord, Lord Hunt, is quite right that actually implementing policy is the most critical thing and is extremely difficult. The Paterson report was a very interesting report on things that had gone terribly wrong with an individual surgeon who acted inappropriately, and, as I said when we debated the patient safety commissioner amendment on Tuesday, I understand that the Paterson report's recommendations echo what our report said. What has happened to the Paterson recommendations? I do not believe that anything has happened. If things have happened, I would like to know what they are. I can show shelf upon shelf of wonderful reports that have been drawn together by people who have put their heart and soul into them, but, actually, nothing has happened. I am not going to let that happen with my report—I really am not—because there are too many people who have been so badly hurt and who deserve redress, which we will come on to in the next amendment. The noble Lord, Lord Hunt, is right that there is a missing piece in the jigsaw—the most important piece—because safety has to be a system.

3.30 pm

My noble friend Lord Bethell has talked about the different bits that are being discussed. They are being talked about—I will come to that in a minute. The noble Baroness, Lady Ritchie, is absolutely right that the independent chair is critical, as other noble Lords have mentioned. Independence brings huge strengths. When we debated the independent patient safety commissioner we also referred to the Children's Commissioner. When I talked to the Children's Commissioner, she said: "The most important thing that I have is independence".

When we were a review team, I accepted this commission and told Jeremy Hunt, who asked me to take on the task, that there were three reasons I would do it. First, I wanted to choose the people around me and appoint my own team. Secondly, I wanted independence and thirdly, I wanted a budget that I could call upon. The third one really did not happen, but every time I met those in the department I had to remind them that we were an independent review. That independence is precious and gives people the right to say the things that need to be said. The noble Baroness, Lady Ritchie, is absolutely right about that and about the timeline. If you are to implement something, you have to be serious about how long it will take. The timeline is critical.

We have also said that when the report is implemented, we do not want the task force to continue. We said, "It's time they went—they've done their job". In fact, I was responsible for setting up certain task forces as a Minister. I remember that it was terribly difficult to close the one on food down. Those on it loved their task force. They got remuneration for doing it and they were doing some good things, but we said, "No, it's time-limited." That is why I was anxious that this task force should be time-limited.

I thank the noble Baroness, Lady McIntosh, so much for her support. She is absolutely right that the thing about this report is that it links together and makes sense. Some of it is about what is happening now, but most of it is about the future. As a review team, we kept saying to ourselves: what is really important is the future and ensuring that safety will be taken into serious consideration—and we need someone to do it, which is why we have talked a lot about the patient safety commissioner. The governance board, which she also mentioned, is really important. If you are going to implement something, you want some rigour. We tried to put rigour into the idea of having a task force, so the governance board was important in that.

My noble friend Lord O'Shaughnessy, who I know has done a huge amount of work on sodium valproate with the all-party group and beyond, when he was a Minister, is so right that there are lessons to be learned. Independence is the most crucial one, but he is so right on another thing: when you produce such a report there is a sort of hopelessness about it if it is not accepted and people do not say, "Yes, we think you've got some really good ideas, we will implement them". We can make a difference and are determined to do so. We are setting up an all-party parliamentary group because we anticipate that we will not get the task force through today, so we are going to have another body the whole purpose of which is to implement these recommendations. We will launch it very shortly.

The urgency is huge. We cannot underestimate it and my noble friend Lord O'Shaughnessy is so right that as a nation and a society, we cannot expose more babies to being disabled because their mothers are not

told about the sodium valproate that they use to control their epilepsy. We cannot wait any longer and if nothing happens we will all have a terrible burden to carry into the future.

I thank the noble Baroness, Lady Bennett of Manor Castle, very much for the work that she does. I was really interested in what she said about the Leveson inquiry. She is absolutely right: people put all their time and energy into the work of these great reports—you have to start with a very good report—but actually it is delivery that really matters. As I have said, what has happened to the Paterson inquiry? I wonder.

I thank the noble Lord, Lord Sharkey, very much for his contribution. He is absolutely right, again, about having an independent chair for the task force—somebody who is not part of the establishment but will take the position seriously. The independence is critical; we heard all about that when we debated the independent patient safety commissioner in relation to the Children's Commissioner, who has always said that independence is essential. Take other people such as Amanda Spielman, who is doing work in the education field: you can jolly well tell that she is independent by the way that she takes on issues.

I thank the noble Baroness, Lady Thornton, so much. She is so right about accountability. It is no good setting things up that are not accountable. They have to be questioned. We are suggesting that the task force should be questioned and have not only an independent chair but the oversight of a governance board, to which it would be accountable. If we are to spend public money on these things, we must ensure the accountability is there and follow it.

I want to thank my noble friend the Minister for always being very generous about the report. That is true of everybody who we have met and spoken to. Nobody has said to us, "It's not a thorough report" or, "Ah, but you missed this", or, "You didn't do that". Our real worry was about the patient groups. Before we launched the report to the media we gave the patients the report and the weekend to read it. They had all of Monday and then on Tuesday we gathered them all together—virtually, obviously—and said to each of the 15 groups: "Just tell us what you think". They might have said to us, "Sorry, we know that you put a lot of work into this, but actually it's not worth the paper it's written on. It's a whitewash". We had none of that. They were all so pleased with the thoroughness and the work that was done—not mine, but that of the review team, who worked their socks off to get it done.

I say to my noble friend the Minister: I value your generous remarks and your sympathy, which you always explain to us. Your sympathy knows no bounds—it is amazing—but I have to say that it is not enough. Warm words do not cut it. We need action. We need to know what you are doing in all these weekly meetings. How are those weekly meetings actually improving the life of patients? What is this work that is under way? So much of it you have told us; you told us when we were discussing the patient safety commissioner. We know all that, but there is nothing there that is going to implement this report. You are going to do other things—fair enough, you can do those—but there is still a lacuna, a gap, something that needs addressing. As the noble Lord, Lord Hunt, said, we need a system-wide approach. We need somebody who is going to gather the different threads together and ensure that we do have a system where patients are foremost. They are, after all, the reason for our National Health Service, for our regulators, for various bodies and for all the colleges in the Academy of Medical Royal Colleges, all of which support us, but it is the patients first.

I fear that if we do not do anything about this quickly we will not produce what we can do. What we want is not for me or the review team but for the Government's and Ministers' legacy. Their legacy can be coronavirus, but this is a different legacy. The thing about this report is that it really has brought everybody together. That is so important at a time when the country is in such stress. We need to have absolute assurance that we have a real rock-bottom area where people are joined together. They want to see it. They want the implementation. Regarding other things such as specialist centres and so on, we know all that because we were working with them during the review.

I did not want to bring this amendment forward. I had to do it because I have received no ideas or whispers of what the Government think. I really feel that this is the time when the Government must tell us not just warm words but the way forward: "This is what we are going to do". We have given them a chance, which is the task force. They can set up the task force and pass the implementation on to it. The task force can ensure that things happen. It will have to be accountable, as we have set out. That is all there. I am sorry but I had to bring this amendment forward because the Government have been as silent as the grave. They just have not come forward with their ideas on what they intend to do. I find that disappointing.

I do not want to press the amendment now. Whether I will decide to do so later, after thinking about it, is another matter. For now, I beg leave to withdraw the amendment.

Amendment 121 withdrawn.

3.45 pm

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): We now come to the group beginning with Amendment 122, and we will not be interrupted by any Divisions. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate.

Amendment 122

Moved by ***Lord Hunt of Kings Heath***

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

"Medicines and Medical Devices Redress Agency

The Secretary of State must, by the end of the period of 12 months beginning with the day on which this Act is passed, bring proposals before Parliament to establish a Redress Agency for those harmed by medicines and medical devices."

Lord Hunt of Kings Heath (Lab) [V]: My Lords, this is a probing amendment. Although I am a member of the GMC board, I make it clear that I am not speaking on behalf of the GMC.

[Lord Hunt of Kings Heath]

It is very difficult to move on to the nitty-gritty of a redress agency after the hugely eloquent and moving speech made just now by the noble Baroness, Lady Cumberlege. The Minister said in his response to the noble Baroness that this is not the Bill to respond to the report. What I say to him is that this is the only Bill in town. Medicines and medical devices are at the core of patient safety. He promised that the Minister responsible for patient safety would make a Statement on the report in December. My assumption is that that will be made after the Bill has passed through the House of Lords, and therein lies the problem: we will not be told the Government's response before we come to the critical Report stage. We just have to work on the assumption that, as the noble Baroness, Lady Cumberlege, said, the Government are not going to embrace her core recommendations. We will therefore have to take action on Report on that basis. I do not see what other course of action the House of Lords can take, unless the Government are prepared to bring forward their Statement so that we can see it before we reach Report.

I have just one other point. I listened to the Minister, and he has been very helpful in setting out some of the initiatives that the Government are taking. However, as with the patient safety strategy—we have been here before—the department seems to have collected all the examples of good practice it can find, bunged them into a report and called it a strategy. That is the problem, because it ain't a strategy. It does not address the fundamental crunch that the NHS has been run far too hot and is unsafe. When you really tackle that, you have to tackle the issues of resources, work force and targets. That is a huge challenge to the Government, which is why they are so reluctant to go down that course.

What does that have to do with the redress agency? I will try to come to that in a moment. However, I want to ask the Minister whether he can say anything about this recommendation. The noble Baroness, Lady Cumberlege, argued powerfully for a redress agency to be set up on an avoidable-harm basis that looks to systematic failings, rather than blaming individuals, encourages reporting and should provide faster resolution for claimants. She argues that it should be a consensual process rather than a judicial one. Redress would be offered, not awarded, and proceedings under the scheme would be voluntary. She also said that the redress agency would have an important role to play in harm prevention as claims for adverse events would be centralised, enabling data to be provided that would help regulators detect signals earlier.

This is not the first time that a redress scheme has been proposed. Indeed, 17 years ago, an NHS redress scheme was unveiled by the then Chief Medical Officer, Sir Liam Donaldson. It included no-fault compensation for babies born with severe brain damage, and payments of up to £30,000 without litigation for patients whose treatment went wrong. Under the scheme, parents would get a managed medical care package for their child, monthly payments for other care of up to £100,000 a year, lump sums for home adaptations and equipment of up to £50,000, and compensation for pain and suffering capped at £50,000. The other arm of the redress scheme, for smaller negligence claims, would have provided a package including an explanation and apology, remedial treatment, rehabilitation and care where needed and financial compensation up to £30,000 where authorised. Legislation followed in 2006, but 14 years later it has, as I understand it, yet to be implemented. The aim of the Act was to provide a genuine alternative to litigation, but it has languished on the statute book. I would be grateful if the Minister would tell me whether that is it and whether the Government do not think it the appropriate way forward.

I also ask the Minister to say something about the increase in negligence costs to the NHS. The latest annual report from NHS Resolution shows that the total cost of payments made in respect of clinical negligence in 2019-20 was £2.32 billion. Of that figure, a substantial amount was paid in legal costs: nearly £500 million to claimant legal costs and £143 million for NHS legal costs. We know that it often takes years for cases to be resolved.

Is the Minister confident that we are getting this right? Does the noble Baroness's recommendation not deserve examination, at least? I beg to move.

Baroness Cumberlege (Con) [V]: My Lords, it is hard to follow the very well-researched contribution to this whole issue from the noble Lord, Lord Hunt. It was interesting to hear about Sir Liam Donaldson's report, which got on to the statute book but was not implemented. Is that not a disgrace? It is really dreadful.

Very near to where I live is the centre for Chailey Heritage, now the Chailey Heritage Foundation, for children who suffered through their mothers having taken the drug thalidomide. I chaired its governing body for years. It is interesting that that redress system still continues; it is supported by a trust, which inherited the disaster of the medication, and it has honoured that and receives government support. So we have examples where this is working.

The redress agency that we recommend is really about the future. My amendment is about the present. We know that so many patients and their families have suffered such harm, and we need a system that is more compassionate and a much more certain route for obtaining redress to compensate them. We are talking not about compensation as such, but about redress. You have to go to the courts to achieve compensation, and it is a very miserable experience—we have heard that from patients. It also takes a very long time and, as the noble Lord, Lord Hunt, said, very often the people who benefit most are the lawyers.

We are talking about Primodos, sodium valproate and pelvic mesh—the three interventions through which people have suffered avoidable harm. The suffering they endure now is terrible. All three have caused and are causing avoidable psychological and, of course, physical and neurological harm. These families really need a little help with the conditions they are living with. Indeed, some are looking after some very disabled children. We do not believe that their needs are adequately met by the healthcare, social care or benefits systems. Some of these people are actually very elderly—the parents of the children who took Primodos. It would be a scandal if those people were to live their lives unable to access the redress they need and the outcome they deserve. After all, the harm was caused not by them, but by the state.

In the case of these three interventions, there is a moral and ethical responsibility to provide ex gratia payments in respect of the avoidable damage that occurred. That responsibility falls on the state and the manufacturers of the products in question. The schemes that would be established through this proposed new clause would provide discretionary payments, and each of the three schemes would have tailored eligibility criteria.

The payments the schemes make would not be intended to cover the cost of services that are already available free of charge, such as healthcare and social security payments. They would be for other needs—for example, the cost of travel to medical appointments. We have met and talked to many of those people, and they have said that it is a significant cost burden. The payments might be for respite breaks or emergency payments where a parent has had to stop work to cover care. These redress schemes would not be in place of litigation, nor will they be to deliver compensation. People should retain the right to take legal action if they wish to obtain compensation—of course they should; that is in our law. The schemes I am talking about should be set up in such a way that they can be incorporated into the wider redress agency that the noble Lord, Lord Hunt, spoke about, once it is established.

These people have suffered for decades. They have tried to obtain compensation through the courts. That action has failed in the case of valproate and Primodos, although I am aware that a new Primodos action is under way. I have been told by solicitors that, in fact, the report does not in any way affect that action. There have been some awards and settlements in the case of mesh, but legal action takes time, as the noble Lord, Lord Hunt, said. It creates added stress and much more personal cost can be involved.

I believe that a measure of a decent society is how well it looks after those who have suffered harm, especially when that harm was avoidable. From having met many hundreds of people who have suffered and heard from many more, I am clear that help is needed and deserved. People should not be made to wait any longer. I hope my noble friend the Minister will agree with that.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I shall speak to Amendments 122 and 123, to which I attached my name. The first is in the name of the noble Lord, Lord Hunt of Kings Heath, and the second in the name of the noble Baroness, Lady Cumberlege. They have both introduced these very clearly, so I will make only three points to add some extra, different perspectives.

The first point I wish to make is that there is what I can describe only as a heart-rending report in the *Guardian* today about Windrush compensation two years on. The headline talks about

"long waits and 'abysmal' payouts".

The story mentions an agency that talks about five people waiting more than 18 months for compensation. If this—as high-profile a scandal as we can possibly imagine, which attracted far more attention than the issues covered by the report from the noble Baroness, Lady Cumberlege—is going so badly, surely we have to address this issue, which in many ways is smaller, more limited and perhaps much less complicated, to create a situation via Amendment 123 to deal with these three issues. Amendment 122 would create a situation to deal with all cases, so that we would have a system and framework that, I hope, would do better than the Home Office is doing. I hope that such an agency in the health framework would not suffer from the same hostile environment in the Home Office that the Windrush compensation scheme has to act within.

4 pm

My second point comes partly from the fact that I spent part of this morning at the All-Party Parliamentary Group on Legal Aid's inquiry into the current condition of legal aid. If one were to apply a medical term to it, a fair description would be "in critical condition in intensive care". Legal aid is enormously overstretched and our courts are enormously overstretched. Ideally, we should be in a situation where very few people who are victims of medical malpractice or medical misadventure, or of commercial interests overweighing the medical, have to go to court. We need an automatic system. If we just look at the practical point, putting philosophy to one side, we have a court system that is in no position at the moment to deal with these situations. We want to take them out of the court system to take the pressure off.

My third point picks up on the point made by the noble Lord, Lord Hunt of Kings Heath, in response to the Minister's answer on the previous amendment. I think it can be summed up as—this may indeed be a direct quote—"If not now, when?" I believe Parliament gets through, on average, 30 Bills a year. If we do not do this now, with all the pressures of Brexit, the climate emergency, the nature crisis and the economic struggles we face, when will we find the space and time to do this again within that 30-Bill limit? This has to be the time—this is the place and this is now the opportunity. This has been thought through and worked through by the noble Baroness and her team. Let us just do it.

That is my contribution on these amendments. I want to take a second, if I may, because this is my final contribution on the Bill, to say that, particularly due to the clashes with the internal market Bill, we have been a very small group of people carrying an enormous load. I attempted to make my very small part a contribution towards that with my particular interest coming from the environmental side, the feminist side and a concern about patients and patient safety that reflects my personal experiences and my family background. I thank all noble Lords for their contributions and for their patience with me. I am aware that I have been in your Lordships' House for only about a year, so I still very much feel as though I have my learner plates on. I am working my way through and trying to work out the best way to contribute. I thank all noble Lords. I would love to say that we will not need to be back again, but I fear we will.

Lord O'Shaughnessy (Con): I shall speak to the amendments in reverse order, starting with Amendment 123 in the name of my noble friend Lady Cumberlege. As she said, these amendments deal with the here and now and with the future, and it is important that we start with the here and now. The perspective I bring to

[Lord O'Shaughnessy]
this is again informed by my work with valproate charities through the all-party group and by reflecting on the evidence compiled by charities such as INFACT and others and presented in my noble friend's report. Historically, some 20,000 babies were exposed to valproate in the UK and half suffered harm. The disorder recognising those harms, foetal valproate spectrum disorder, was fully recognised only in 2019, although the drug was known for decades to have effects of that kind.

It must now be the case that for those families and others we put in place a proper redress scheme. They have had to battle to be recognised. They have had to battle to change clinical behaviour. They have had to battle red tape and a lack of understanding in personal impact payment schemes and in the education and health assessments carried out for young children. This is not only a historical problem; it is true today. We need a solution in the here and now. We do not need to spend huge amounts of time creating a new agency or anything else—I will come to that in a moment—but we need to address that and their harms today. I hope my noble friend will be sympathetic to that spirit.

Amendment 122 is in the name of the noble Lord, Lord Hunt. He is quite right to want to look at this structurally, given all the scandals over the years, including thalidomide, contaminated blood, which I dealt with briefly when I was a Minister, breast implants and many others. It was quite right that my noble friend Lady Cumberlege talked in her report about creating an agency and a proper redress scheme for clinical negligence. Indeed, she has been promoting such an idea since her work on maternity safety, where, as we know, are the largest financial claims and some of the most heart-breaking. I do not think any of us can deny that the system is currently broken. The noble Lord, Lord Hunt, talked about some of the data points from NHS Resolution's annual report. The annual cost is now nearly £2.5 billion and there are total liabilities of £84 billion because of clinical negligence. A lot of that is the cost of care for people who have been harmed, but a lot of it is the frictional cost—the legal and other costs of going through the process—let alone the uncounted cost to families, especially as the average number of days to settle claims has been increasing over the past decade. There is a very strong case for acting in a big structural way to do something about this.

Having said all that, and having been responsible for this policy area as a Minister, it is a very complex situation. There is undoubtedly a case for moving to a less confrontational and swifter approach. This is not a new idea, as the noble Lord, Lord Hunt, pointed out. We have been thinking about this and legislating for this purpose for at least the past 15 years. There are good examples of no-fault compensation schemes that work in New Zealand and across Scandinavia, which generally satisfy all the participants and, importantly, change clinical behaviour, which is so important in reducing the cost. However, the truth is that this is tied up in broader tort reform, which I am definitely not expert enough to discuss, and in considerations attached to other legislation. A good example is Section 2(4) of Law Reform (Personal Injuries) Act 1948, which has been discussed in this House before and concerns the entitlements of people who have suffered from clinical negligence, but inevitably affects other people who have been harmed.

It is also true that these kinds of schemes do not necessarily save money. Indeed, the modelling I saw when I was a Minister suggested that they could end up being more expensive. That is the challenge and we have to be realistic. It might be deserved, but it is a challenge in moving from one scheme to another.

I am definitely a supporter of action on this front, and I would very much like to hear from my noble friend that work is going on. I worked closely with my noble and learned friend Lord Keen, when he was at the Ministry of Justice, on this programme, and I hope it has continued. I am not sure that this can be dealt with in the way suggested, with a clause dropped into the Bill, because of all the consequential changes and the very difficult issues that it raises, but it is unbelievably important. The cost—that liability of £80 billion—is two-thirds of annual spending on the NHS and we simply cannot go on taking on these liabilities to future taxpayers, let alone to those people who have been harmed. We need to see a more robust policy response from the Government in general on this.

The Deputy Chairman of Committees (Lord Lexden) (Con): The next speaker on the list, the noble Baroness, Lady McIntosh of Pickering, has withdrawn, so I call the noble Lord, Lord Lansley.

Lord Lansley (Con): My Lords, I am in the position that my noble friend Lord O'Shaughnessy was in earlier, as much of what needs to be said has been said, but I want to add a few remarks on the two amendments.

I echo what my noble friend Lord O'Shaughnessy said. In the light of the *First Do No Harm* report, we have to be careful to address ourselves to the issues before us and put in place schemes of redress on the three causes. I am not an expert on those, but when I was Secretary of State for Health I was only too aware, when dealing with the Thalidomide Trust or infected blood payments, for example, that when we reviewed and made payments that were more generous, we were working in what was, in effect, an administrative structure that did not necessarily have coherence or consistency. We were making what we thought were the right decisions at the time, but those who had been harmed all suffered, from their point of view, from two problems. The first was the relative lack of generosity of the payments, which were made to reflect specific needs but were not representative of the overall harm that had been done. Secondly, there was no admission of liability, which is always an issue. Liability matters. Those who are harmed want to see liability determined and accepted.

I am sympathetic to the view that not only should redress schemes be considered for the three causes in the report, but the Government should take the opportunity to think about what a redress scheme might look like more generally. My noble friend Lady Cumberlege and her colleagues looked carefully at a number or international examples. They might well have thought, with some justification, that the French

scheme—I will not attempt its title in French, but it is a national office for indemnity in relation to medical accidents—is an interesting basis on which to examine the issue. We might include not only the redress schemes from previous years but the present schemes that need to be established. This is something that Ministers might want to say in relation to the continuing review into infected blood accidents.

Again, like my noble friend Lord O'Shaughnessy, I do not want to confuse what are related but distinct issues. The schemes relate to what are, in effect, systemic failures. Recommendation 3 of my noble friend Lady Cumberlege's report appropriately says that the schemes are to provide redress in relation to avoidable harm resulting from systemic failures. There is a question, which is not entirely resolved in the report, about which test should be applied. The Government should look carefully at where liability genuinely lies. Where there is harm as a result of systemic failings, the Government have a responsibility. That is fairly straightforward. However, that is not the same as assuming that such a scheme should encompass all the many other cases that give rise to most of the clinical negligence claims against the NHS, which result not from systemic failings but from the failings of medical practice in particular circumstances. Those are different and separate. This debate is not the right place to go on about that at length.

I was interested to hear the noble Lord, Lord Hunt of Kings Heath, talk about the NHS Redress Act 2006. The noble Baroness, Lady Thornton, will recall that in 2009 she was not able to bring that Act into force. I was the shadow Secretary of State during the passage of that Act and Secretary of State after 2010. One reason for not bringing it into force, to which my noble friend referred, was the Government's intention to undertake tort law reform in general and this was a tort-based liability scheme.

4.15 pm

The second reason was that, in Opposition, we argued for the reduction of costs through the establishment of an independent fact-finding phase rather than adversarial engagement where clinical negligence was claimed. The idea was to reduce the cost of expert witnesses and legal fees, which consume—I think that this is probably still true—as much in public expenditure from the NHS Litigation Authority as the compensation payments. It used to be pretty much half. There were reasons why we did not bring the NHS Redress Act into force. I do not share my noble friend Lady Cumberlege's view that it is a matter of regret that we did not.

The *First Do No Harm* report did not undertake what one could regard as a systematic analysis of the NHS redress scheme, the NHS Litigation Authority or how we should deal with the thousands of clinical cases of accident, negligence or malpractice. I do not think that those involved would claim to have done that. In my view, it would be quite wrong for us to put into this legislation something that might be held to represent such a scheme. I want to distinguish between those two things. If we come back to this on Report, I hope that we do so—I say this to my noble friends—on the basis of an amendment that is explicit about creating schemes in relation to the Government's responsibility for systemic failings, for which the Government take liability. We should not try to reform the whole NHS redress system in the space of a few weeks in the absence of any consultation with the great majority of the people affected and without any systematic consultation with the organisations most responsible.

I look to my noble friend the Minister to say that the Government will consider Amendment 123 and see what they can say in response to it in particular. That is for the Government to take away and continue the process of finding a basis for consultation on policy on the reform of redress. I know that it is nearly 14 years on, but I still think that a reduction in cost in the NHS Litigation Authority's responsibilities is the main way of proceeding. We can pursue that through non-adversarial fact-finding and arbitration mechanisms to try to reduce the number of occasions on which people go to court to litigate for compensation to be provided.

Lord Sharkey (LD) [V]: My Lords, I can be very brief. Amendment 122, in the names of the noble Lord, Lord Hunt of Kings Heath, and the noble Baronesses, Lady Cumberlege and Lady Bennett of Manor Castle, would require the Secretary of State to bring proposals before Parliament to establish a redress agency for those harmed by medicines and medical devices.

The arguments advanced for this by the noble Lord, Lord Hunt, the noble Baroness, Lady Cumberlege, and others, seem completely and obviously convincing, and we strongly support this amendment. We have not spoken to its proposers about this, but we wonder whether this redress agency might be hosted by the patient safety commissioner. We also wonder whether the amendment perhaps ought to be reworked into a revised task force amendment for Report, as we discussed in the previous set of amendments.

I know that the Government are in resistance mode about the patient safety commissioner but, when he responds, could the Minister tell the Committee what coherent arrangements there currently are for NHS patient redress, and whether he believes these arrangements are satisfactory?

Baroness Thornton (Lab): I think this has been one of those really rather good and unexpectedly deep House of Lords discussions, going back into the mists of time. Until the noble Baroness, Lady Cumberlege, mentioned the redress Act, I had completely forgotten about it—it all came flooding back.

We have two quite different amendments in this group, and my noble friend Lord Hunt said at the outset that his Amendment 122 was a probing amendment. This is about opening up the discussion, which it certainly did—a discussion that has long needed resolving. The noble Lords, Lord Lansley and Lord O'Shaughnessy, were quite right in that it is an issue of the future; this group has one probing amendment about the future—what it should look like and how you create an agency that can address the issue of those harmed by medicines and medical devices. It is a very legitimate discussion, which needs to be had.

The second amendment, in the name of the noble Baroness, Lady Cumberlege, is about the future, what happens now and what happens about the harms that

[Baroness Thornton]
were done—the avoidable harms, in the case of hormone pregnancy tests, sodium valproate and pelvic mesh. That is very important indeed, and the noble Baroness is right to say that those harms must be specifically addressed by the Government and to push that. I think that is what we would be looking for—how the Government would implement those recommendations. I see the noble Baroness, and the noble Baroness, Lady Bennett, whose comments we very much welcomed and valued, but I do not think that was the last word. I hope she will involve herself in the next stage of the Bill. In fact, I am depending on it.

The Government have to address Amendment 123 in particular, because that is urgent and needs to be done now. I look forward to hearing what the Minister has to say about that in particular.

Lord Bethell (Con): My Lords, I thank the noble Lord, Lord Hunt of Kings Heath, and the noble Baroness, Lady Bennett of Manor Castle—who indicated her interest in this along with my noble friend Lady Cumberlege—for raising the important issue of redress for those harmed by medicines and medical devices.

I share the review's concern that patient voices were not heard, and I reiterate that we are committed to ensuring that the healthcare system does better at listening, learning and acting on patient concerns. Furthermore, we recognise that patients need to be at the centre of decision-making to ensure that their perspectives are built in.

Our focus is on improving the safety of medicines and medical devices so that in future there should be less need for redress. We are determined to increase patient safety and drive additional pre-market scrutiny and post-market surveillance of medical devices. For example, the yellow card scheme plays a vital role in providing an early warning that the safety of a product may require further investigation, and the MHRA is transforming and strengthening the system to make it easier for patients and healthcare professionals in the UK to directly report adverse incidents involving all medicines and medical devices. The UK has one of the safest medicines systems in the world and we will continue to make sure that patients and the public have access to the best and most innovative medicines.

Amendment 122, in the name of the noble Lord, Lord Hunt, would require the Secretary of State to bring forward proposals to establish a redress agency within 12 months of the Royal Assent of this Bill. Committing now to such an agency would short-cut the in-depth policy consideration that the review's recommendation of a redress agency deserves, as a number of noble Lords have reasonably recognised. I understand that my noble friend Lady Cumberlege herself undertook substantial engagement with the affected patients and other parties as part of her review. Listening and consultation is a vital part of how we take forward any policy change, and it is even more important given the significance of this issue.

A redress agency would represent a significant addition to the current landscape for all stakeholders, and we need to give them time to contribute their perspectives and think through the implications for them. In particular, there is a need to work through what the determinations and parameters of such arrangements would be and how they would interface with current legal remedies—already complex—before we could agree to take forward this proposal. This would help us explore how that would affect the patient journey through different potential approaches, the costs and their value for money. We also need to be mindful of the potential impact on industry.

With regard to Amendment 123, tabled by my noble friend Lady Cumberlege, given that legal action is pending over hormone pregnancy tests, and as is usual when matters are sub judice, I am restricted in what I can say on this aspect of the amendment.

I know that the establishment of a specific redress scheme was my noble friend's fourth recommendation in the report of the Independent Medicines and Medical Devices Safety Review. While I am very sympathetic to the desire of my noble friend and others to see the Government respond to her report and take forward her recommendations, I do not agree that policy should be made and deadlines set through primary legislation. Indeed, her report itself was sadly delayed during the current situation we find ourselves in.

I reassure the noble Lord, Lord Hunt, that we will respond to the issues raised in the amendment as part of our formal response to the Independent Medicines and Medical Devices Safety Review. The Government are considering all recommendations made in that review and will provide an update before the Christmas Recess. I hope that the noble Lord, Lord Hunt, has heard enough that is reassuring and feels able to withdraw Amendment 122, and that my noble friend Lady Cumberlege is similarly reassured not to move hers.

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, I have received no requests to speak after the Minister, so I call the noble Lord, Lord Hunt of Kings Heath, to conclude the debate on his amendment.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, I think this has been an excellent debate. I fully accept, as my noble friend Lady Thornton said, that my Amendment 122 covers a much wider area than Amendment 123, which focuses on the specific issues relating to the report of the noble Baroness, Lady Cumberlege.

My Amendment 122 was definitely a probing amendment, because the current situation in relation to clinical negligence is wholly unsatisfactory. It combines the bureaucracy and slowness which the noble Baroness, Lady Bennett, referred to in relation to Windrush and she is absolutely right to draw parallels. It combines a hugely frustrating process for patients and their relatives with a system that increasingly becomes ever more expensive for the NHS. The noble Lord, Lord Bethell, was not going to be drawn on these wider considerations, but the noble Lords, Lord Lansley and Lord O'Shaughnessy, have both dealt with these—we know that it is a very complex issue, but surely, at the end of the day, we have to recognise that the current system simply is not working.

4.30 pm

I fully accept that the noble Baroness, Lady Cumberlege, did not go into the wider issues of clinical negligence, nor do I think it is easy. It lends itself to work by the Law Commission perhaps, or even a royal commission, because those issues go much wider and are very complex and there are lots of different matters to be considered. However, from this debate, the Minister can take it that there is wholesale dissatisfaction with the clinical negligence situation as a whole. He might just reflect on that, in thinking through where the Government might go. I know that this view is shared by almost all participants in the clinical negligence field.

The noble Baroness's recommendations are related to the specific patient groups covered by her report. As she said, she wants to look forward, but the people who she met and reviewed deserve redress as a moral responsibility. At the end of the day, that is right. Where harm has been done, especially when it is difficult to pin absolute responsibility on any particular individual or institution, there is systemic responsibility, which the Government have to bear. Before withdrawing my amendment, I ask the Government to look at this matter sympathetically, within the confines of the report by the noble Baroness, Lady Cumberlege, but also in the wider area of clinical negligence. This has been an excellent debate, and I beg leave to withdraw the amendment.

Amendment 122 withdrawn.

Amendments 123 to 125 not moved.

Clauses 39 and 40 agreed.

The Deputy Chairman of Committees (Lord Lexden) (Con): We now come to Amendment 126. I should inform the Committee that if this amendment is agreed to, I cannot call Amendments 127, 128 or 129.

Clause 41: Consultation

Amendment 126

Moved by ***Lord Bethell***

126: Clause 41, page 24, line 9, leave out "consult such persons as the authority considers appropriate" and insert "carry out a public consultation.

(1A) In relation to proposed regulations under section 16(1), the Secretary of State must specifically consult—

(a) the Welsh Ministers,

(b) the Scottish Ministers, and

(c) the Department of Health in Northern Ireland.

(1B) In relation to proposed regulations under section 1(1), 8(1) or 12(1), the consultation document must include a summary of the relevant authority's assessment of the matters mentioned in section 1(1A) and (2), 8(1A) and (2) or 12(1A) and (2)(as the case may be)."

Member's explanatory statement

This amendment requires a relevant authority to carry out a public consultation before making regulations under any provision of Part 1, 2 or 3, and to set out the authority's assessment of any matter to which the authority must have regard in making the regulations, as well as requiring the Secretary of State to consult the devolved administrations in relation to regulations under clause 16(1).

Amendment 126 agreed.

Amendments 127 to 130 not moved.

Clause 41, as amended, agreed.

Amendment 131

Moved by ***Lord Bethell***

131: After Clause 41, insert the following new Clause—

"Reporting requirements

(1) As soon as reasonably practicable after the end of each reporting period, the Secretary of State must lay before Parliament a report on the operation of any regulations made by the Secretary of State under sections 1(1), 8(1) and 12(1) that were in force at any time during the reporting period.

(2) In preparing a report, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(3) A report must include a summary of—

(a) any concerns raised, or proposals for change made, by a person consulted in accordance with subsection (2), and

(b) the Secretary of State's response to those concerns or proposals, including any plan the Secretary of State may have to make further regulations under section 1(1), 8(1) or 12(1).

(4) The reporting periods are—

(a) the period of 24 months beginning with the day on which the first set of regulations under section 1(1), 8(1) or 12(1) comes into force, and

(b) each successive period of 24 months."

Member's explanatory statement

This new Clause imposes reporting requirements on the Secretary of State in relation to the operation of regulations made under Clauses 1(1), 8(1) and 12(1).

Amendment 131 agreed.

Amendment 132 not moved.

Clause 42: Procedure

Amendment 133

Moved by ***Lord Bethell***

133: Page 24, line 36, leave out subsections (3) to (9) and insert—

"(3) The procedure for making regulations under Part 1, 2 or 3 is to be determined in accordance with this table and subsection (4)—

If the regulations contain provision made in reliance on	the regulations are subject to
section 5(1)(a)	the negative procedure
section 10(1)(a)	the negative procedure
section 14(1)(a)	the negative procedure
paragraph 9 of Schedule 1	the negative procedure
section 6	(a) the made affirmative procedure, where the regulations contain a declaration that the person making them considers that they need to be made urgently to protect the public from an imminent risk of serious harm to health (b) the draft affirmative procedure in any other case

section 15	(a) the made affirmative procedure, where the regulations contain a declaration that the Secretary of State considers that they need to be made urgently to protect the public from an imminent risk of serious harm to health (b) the draft affirmative procedure in any other case
any other provision in Part 1, 2 or 3	the draft affirmative procedure

(4) Provision that may be made by regulations subject to the negative procedure may be made by regulations subject to the draft affirmative procedure.

(5) Where regulations are subject to "the negative procedure"—

(a) in the case of regulations made by the Secretary of State acting alone, the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament,

(b) in the case of regulations made by a Northern Ireland department acting alone, they are subject to negative resolution within the meaning given by section 41(6) of the Interpretation Act (Northern Ireland) 1954, and

(c) in the case of regulations made by the Secretary of State and a Northern Ireland department acting jointly, the statutory instrument containing the regulations is subject to—

(i) annulment in pursuance of a resolution of either House of Parliament, and

(ii) negative resolution within the meaning given by section 41(6) of the Interpretation Act (Northern Ireland) 1954.

(6) Where regulations are subject to the "draft affirmative procedure"—

(a) in the case of regulations made by the Secretary of State acting alone, the statutory instrument containing the regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament,

(b) in the case of regulations made by a Northern Ireland department acting alone, they may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly, and

(c) in the case of regulations made by the Secretary of State and a Northern Ireland department acting jointly, the statutory instrument containing the regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of—

(i) each House of Parliament, and

(ii) the Northern Ireland Assembly.

(7) Where regulations are subject to the "made affirmative procedure"—

(a) in the case of regulations made by the Secretary of State acting alone, the statutory instrument containing the regulations—

(i) must be laid before Parliament after being made, and

(ii) ceases to have effect at the end of the period of 40 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament,

(b) in the case of regulations made by the Department of Health in Northern Ireland acting alone, they—

(i) must be laid before the Northern Ireland Assembly after being made, and

(ii) cease to have effect at the end of the period of 40 days beginning with the day on which they are made unless, during that period, the regulations are approved by a resolution of the Assembly, and

(c) in the case of regulations made by the Secretary of State and the Department of Health in Northern Ireland acting jointly, the statutory instrument containing the regulations—

(i) must be laid before Parliament and the Northern Ireland Assembly after being made, and

(ii) ceases to have effect at the end of the period of 40 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament and by a resolution of the Assembly.

(8) In calculating the period of 40 days for the purposes of subsection (7)(a)(ii) or (c)(ii) in relation to Parliament, no account is to be taken of any time during which—

(a) Parliament is dissolved or prorogued, or

(b) either House of Parliament is adjourned for more than 4 days.

(9) In calculating the period of 40 days for the purposes of subsection (7)(b)(ii) or (c)(ii) in relation to the Northern Ireland Assembly, no account is to be taken of any time during which the Assembly is—

(a) dissolved,

(b) in recess for more than 4 days, or

(c) adjourned for more than 6 days.

(10) If regulations cease to have effect as a result of subsection (7) that—

(a) does not affect the validity of anything previously done under the regulations, and

(b) does not prevent the making of new regulations."

Member's explanatory statement

This amendment provides for urgent regulations made in reliance on clauses 6 and 15 (emergencies) to be subject to the made affirmative procedure rather than the negative procedure and for regulations under clauses 2(1)(j), (k) or (n) and 9(1)(f), (k) or (l) to be subject to the draft affirmative procedure rather than the negative procedure.

Amendment 133 agreed.

The Deputy Chairman of Committees (Lord Lexden) (Con): Amendments 134 to 138 have been pre-empted.

Amendments 134 to 138 not moved.

Clause 42, as amended, agreed.

Amendments 139 to 144 not moved.

Clause 43 agreed.

The Deputy Chairman of Committees (Lord Lexden) (Con): We now come to Amendment 145. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate.

Clause 44: Commencement

Amendment 145

Moved by ***Lord Sharkey***

145: Clause 44, leave out Clause 44 and insert the following new Clause—

"Commencement

This Act comes into force on the day on which it is passed."

Lord Sharkey (LD) [V]: My Lords, this is a probing amendment; its purpose is to allow the Minister to explain why Clause 44 contains four different commencement provisions for different parts of the Bill. The Explanatory Memorandum is silent about the reasons for that. I would be grateful if the Minister could explain on what basis the paragraphs in subsection (1) were chosen, why the coming into force of the items in subsection (2)

is delayed by two months, and, in subsection (3), why Chapters 3 and 4 of Part 3 come into force at the absolute discretion of the Secretary of State. I think that I may understand subsection (4), but it would be helpful if the Minister could explain that to us too for the record. I beg to move.

Baroness Thornton (Lab): The only question I want to ask is the question the noble Lord, Lord Sharkey, has just asked. Can the Minister give a rational explanation about why certain parts of the Bill come into force at different times? The key question on commencement is whether the commencement schedule as drafted risks holding up any of the work that needs to be done or allows the Government to move too slowly on anything.

My colleagues in the Commons drew attention to this provision as essentially a means of saying, "at some point in the future". Can the Minister give an indication of the timeframe in which the Government expect to get these regimes consulted on, regulated for and up and running? As the Bill is drafted, the timing is left rather open-ended.

Lord Bethell (Con): My Lords, I thank the noble Baroness, Lady Thornton, for her amendment, which would require the Secretary of State to act in accordance with the guidance on the use of civil sanctions—I am sorry, I am on the wrong amendment.

Amendment 145, in the name of the noble Lord, Lord Sharkey, seeks to amend the commencement clause, Clause 44, so that all provisions would come into force on the day the Bill receives Royal Assent. I am confident that the amendment is not necessary. Clause 44(1) provides that the clauses needed to make emergency amending regulations will come into force the day the Bill receives Royal Assent.

Under Clause 44(2), a significant number of clauses come into force after the customary two-month commencement period. Chapters 3 and 4 of Part 3 come into force on a day the Secretary of State appoints which is specified in regulations. This combination of commencement provisions is for a good reason. Patients, stakeholders and Parliament must know what the law is before the law is made. The two-month commencement period allows the Government to continue to engage with industry and the relevant stakeholders properly before provisions come into force.

Importantly, Clause 44 provides for the necessary powers and provisions to come into force on Royal Assent should it be necessary, within that two-month period, to make regulations urgently in order to protect the public from an imminent risk of serious harm to health.

I understand that there may be concern about Clause 44(3), which allows the Secretary of State to determine when Chapters 3 and 4 of Part 3 come into force, but I assure the noble Lord that, again, this is for a good reason. Chapter 3 of Part 3 is concerned with enforcement and included in that is the introduction of a civil sanctions regime. Civil sanctions will act as a flexible, proportionate enforcement mechanism, enhancing the MHRA's ability to incentivise compliance. The new civil sanctions regime requires supplementary regulations to be made under paragraph 9 of Schedule 1 before it can be fully operational. It is important that the MHRA engages with industry and stakeholders on these regulations and the accompanying guidance. Indeed, the Bill requires a consultation to be carried out before they are made. If these provisions came into force on the day the Bill achieved Royal Assent, we would have no time to make the necessary regulations. Our time to consult in advance on those regulations and the guidance would be severely condensed.

It is absolutely right that we consider the views of stakeholders and the public before making the supplementary regulations and bringing the new civil sanctions regime into force. I assure noble Lords that the Government are committed to bringing the enforcement and data and disclosure chapters into force as soon as is appropriate in order to enhance the safety of the medical devices regime. I hope the noble Lord, Lord Sharkey, understands the reasoning behind the clause and feels able to withdraw his amendment.

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, I have received no request to speak after the Minister, so I call Lord Sharkey—

Lord Lansley (Con): I sent an email.

The Deputy Chairman of Committees (Lord Lexden) (Con): With apologies to the noble Lord, Lord Lansley, who does wish to speak after the Minister, I now ask him to do so.

Lord Lansley (Con): I thank the Deputy Chairman. I sent the email only about 30 seconds ago so I suppose, strictly speaking, that apologies on his part are not required. I should have anticipated the need to ask a question, but I am afraid I was prompted by listening to the noble Lord, Lord Sharkey, and the Minister's reply. I want to ask one question: how can what will become Section 1 be brought into force without Section 2? I do not understand. If a power is to be used under Section 1, it must surely make provision about some of the long list of relevant areas in what will be Section 2. In the absence of Section 2 being in force, I cannot see how Section 1 works.

Lord Bethell (Con): My Lords, I will seek to provide an answer to my noble friend. Should it not be quite the right answer I will endeavour to write to him. It is my understanding that no substantive provision of an Act should be brought into operation earlier than two months after Royal Assent. However, some sections of the Act can be brought into force on Royal Assent, typically those setting out how the Act is to be cited and what the procedure is for making regulations or commencing them. It is under those arrangements that the sequencing which he describes can be undertaken.

Lord Sharkey (LD) [V]: I thank the noble Lord, Lord Lansley, for his intervention. I will read *Hansard* carefully tomorrow to make sure that I understand not only his question but the Minister's reply. I thank the Minister for his explanations—they were useful—and for the brief preview of his next speech.

Amendment 145 withdrawn.

Clause 44 agreed.

Clauses 45 and 46 agreed.

The Deputy Chairman of Committees (Lord Lexden) (Con): We now come to Amendment 146. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate.

Schedule 1: Medical devices: civil sanctions

Amendment 146

Moved by ***Baroness Thornton***

146: Schedule 1, page 34, line 10, leave out "have regard to" and insert "act in accordance with"

Member's explanatory statement

This amendment places a duty on the Secretary of State to follow, rather than have regard to, guidance.

Baroness Thornton (Lab): My Lords, we have reached the final amendment so I will be as brief as I can. The first thing I need to clarify, and I do not know if other noble Lords have spotted this, is that my amendment is actually to page 32 not page 34, otherwise it makes no sense at all. It is to amend line 10 on page 32—of the Bill that I have in front of me, anyway. But maybe I have an old copy of the Bill. Paragraph 13(7) of Schedule 1 says:

"The Secretary of State must have regard to the guidance or revised guidance published under this paragraph in exercising functions under this Schedule."

That is the point of this tightening-up amendment, which would require the Secretary of State to "act in accordance with" the guidance.

Amendment 146 is about the planned civil sanctions regime for medical devices. Part 5 of Schedule 1 provides that the Secretary of State must "prepare and publish guidance" on

"the sanctions that may be imposed on"

someone who commits an offence,

"the action that the Secretary of State may take",

and the circumstances in which they may take such action. This could be, for example, when a penalty may or may not be imposed, the amount of such a penalty, what the Secretary of State will take into account in determining that amount and so on. Before publishing the guidance the Secretary of State will, of course, consult devolved Administrations and anyone else they consider appropriate. Where necessary, should changes be needed, the Secretary of State must revise the guidance and publish the revised version.

Once published, this guidance is the information that will be in the public domain on the operation of this regime. Yet after all that preparation, as currently drafted, the Bill says the Secretary of State must only "have regard to the guidance" when "exercising functions under this Schedule". The amendment would simply tighten this up, so that the Secretary of State must "act in accordance with" the guidance. I look forward to the Minister's response, and I hope we can locate it in the right place—I obviously have an old version of the Bill in front of me.

The Deputy Chairman of Committees (Lord Lexden) (Con): The amendment proposed is to page 34, possibly corrected by the noble Baroness, Lady Thornton, to page 32.

4.45 pm

Lord Hunt of Kings Heath (Lab) [V]: My Lords, I hesitate to disagree with my noble friend, but I think it is on page 34—but then, of course, I might have an old edition of the Bill as well, just to confuse things.

The reason for supporting this is the unease about provisions in Clause 27 and Schedule 1. The Delegated Powers Committee concluded that

"in the absence of a full justification … allowing the ingredients of criminal offences … and … the penalties for existing offences to be set by delegated legislation"

amounts to "inappropriate delegations of power". The Constitution Committee said:

"We have concluded previously that 'the creation of criminal offences through delegated powers is constitutionally unacceptable', save for exceptional circumstances. The delegated powers to create and adjust criminal offences in this Bill are constitutionally unacceptable."

The Minister has made certain modifications, but I think the general principle still holds good.

The guidance to be issued under paragraph 13 of the schedule is likely to be extensive, including: the imposition of a monetary penalty; the notices to the person it is proposed to fine and the grounds for so doing; the representations that have been made; the appeals process; and the consequences of non-payment. As my noble friend said, lines 9 and 10 on page 34 provides that

"The Secretary of State must have regard to the guidance or revised guidance published under this paragraph".

Given that the Secretary of State is the person publishing the guidance, it is puzzling that he or she is required only to "have regard to" the very guidance that he or she has published—hence my noble friend's amendment to require the Secretary of State to "act in accordance with" the guidance. I look forward to hearing from the Minister as to why the Bill is drafted to give the Secretary of State wider discretion on that.

Lord Patel (CB) [V]: My Lords, I speak very briefly to support this amendment. The noble Baroness, Lady Thornton, and the noble Lord, Lord Hunt of Kings Heath, have covered the argument extremely well. As the noble Lord said just now, the guidance is produced by the Secretary of State but, when you look at it in practice, it says that the Secretary of State "must have regard to" the guidance—that is, can take note of it but does not have to follow it.

I am a doctor and am used to following guidelines. If I do not follow the guidelines, I am liable to be reported; if I do not follow them for any reason in the management of a patient, I am expected to write down as to why I did not follow them. I am not expected to take note of it or have regard to it—I am expected to follow it. The amendment proposed by the noble Baroness, Lady Thornton, addresses exactly that point: why is the Secretary of State not asked to follow the guidelines which he or she drafted?

Lord Sharkey (LD) [V]: We all know that the words "have regard to" create no real obligations, whereas the words "act in accordance with" do create real obligations. Clause 13 seems to contain important restrictions on the actions of the Secretary of State, but it does so via guidance. As the Bill stands, with its "have regard to" wording, that guidance has no statutory force. If the

restrictions are to have any reality—and I assume that the Government would like them to, or they would not have written them into the Bill—we must replace "have regard to" with "act in accordance with" as the amendment proposes. We support the amendment.

Lord Bethell (Con): My Lords, I thank the noble Baroness, Lady Thornton, for her amendment, which is designed to require that the Secretary of State must "act in accordance with" the guidance on the use of civil sanctions that he is required to publish under paragraph 13 of Schedule 1, as opposed to having regard to the guidance. Paragraph 13 requires the Secretary of State to prepare and publish guidance about the use of civil sanctions. More specifically, this guidance must cover the sanctions that may be imposed if a person commits an offence, the action the Secretary of State may take, and the circumstances in which action is likely to be taken.

I understand the intention behind Amendment 146 and recognise that it is crucial that civil sanctions are imposed in a transparent and consistent manner to ensure that the regime operates effectively. However, the current drafting of Schedule 1, including the obligation on the Secretary of State to publish and have regard to guidance on the civil sanctions regime, will ensure this transparency and consistency.

The guidance will be prepared after consultation with the devolved Administrations and others. The purpose of any guidance is to provide clarity to the civil sanctions regime and detail the circumstances in which different civil sanctions may be pursued. However, instances of non-compliance or criminal activity, where the medical device regulations are concerned, need to be dealt with on a case-by-case basis. The scale, complexity and severity of non-compliance can vary significantly. As such, any resultant enforcement activity needs to be proportionate, effective and commensurate with the non-compliance or criminal activity.

The amendment in the name of the noble Baroness, Lady Thornton, would bind the Secretary of State, acting through the MRHA, to act in accordance with guidance in every instance. This would limit the regulator's ability to arrive at and undertake the most appropriate course of enforcement action commensurate to the multifaceted nature of the case at hand. The MHRA cannot set out every circumstance where it may be appropriate to impose civil sanctions. However, by preparing, consulting and publishing a clear set of guidance we can be clear on the framework and illustrate circumstances on how and why a civil sanction might be imposed without being exhaustive.

The regulator needs civil sanction guidance that is flexible enough to appropriately address all forms of non-compliance. To mandate following the guidance to the letter could potentially mean that no action can be taken if the MHRA encounters a new example of non-compliance that has not been explicitly catered for in the guidance but clearly warrants a civil sanction. Under such circumstances, the Secretary of State will, of course, comply with obligation to publish revised guidance as required in paragraph 13 of Schedule 1.

I remind noble Lords that recipients of civil sanctions can contest the imposition of a civil sanction before it takes effect by appealing to the First-tier Tribunal. It is also worth highlighting that, as currently provided, the guidance will be statutory guidance and the regulator must have regard to it when carrying out enforcement activity.

Furthermore, this type of provision is standard across the statute book. For instance, provisions requiring regulators and statutory bodies to "have regard" to statutory guidance can be found in a wide range of legislation, from Section 2 of the Higher Education and Research Act 2017 to Section 5 of the Business and Planning Act 2020. In a civil sanctions context, Section 63 of the Regulatory Enforcement and Sanctions Act 2008 provides that provisions conferring a power on a regulator to impose a civil sanction must also make provision relating to guidance—in particular, that the regulator "must publish guidance" about its use of a sanction and

"have regard to the guidance … in exercising its functions."

The Ecodesign for Energy-Related Products Regulations 2010 has a similar civil sanctions regime. These regulations are concerned with the establishment of a framework for the setting of ecodesign requirements for energy-related products. In paragraph 28 of Schedule 5 to those regulations the market surveillance authority

"must have regard to guidance"

while exercising his or her functions with regard to the imposition of civil sanctions. I hope that the reassurance we seek is not unusual but in line with how civil sanction and, indeed, other regimes operate domestically. For that reason, I therefore ask the noble Baroness to withdraw Amendment 146.

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, I think that I have received no requests to speak after the Minister so, hoping that I have not overlooked the noble Lord, Lord Lansley, once again, I call the noble Baroness, Lady Thornton, to conclude this debate.

Baroness Thornton (Lab): First, I need to say that I do have an old version of the Bill which I picked up from my desk on my way here, so I apologise to the Committee for that. I will read the Minister's comments, but if the schedule already has, as I understand it, the ability to be flexible written into it—I think the Minister said that it was there in Clause 13—it seems to mean that one does not need to have regard to it. One would need to act in accordance with it, because the Bill already has built into it the flexibility needed under the circumstances that he was describing. However, I will read his comments and reflect on them. I beg leave to withdraw the amendment.

Amendment 146 withdrawn.

Schedule 1 agreed.

Schedule 2 agreed.

Bill reported with amendments.

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, that concludes the Committee's proceedings on the Bill. I remind Members to wipe their desks and chairs before leaving the Room.

Committee adjourned at 4.56 pm.