Vol. 808
No. 154

Tuesday
1 December 2020

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

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

House of Lords

Tuesday 1 December 2020

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Carlisle.

Retirements of Members

Announcement

12.08 pm

The Lord Speaker (Lord Fowler): My Lords, I should like to notify the House of the retirements, with effect from today, of the noble and gallant Lord, Lord Guthrie of Craigiebank, and of the noble Lord, Lord Haskins, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I should like to thank both of them for their much-valued service to the House.

Arrangement of Business

Announcement

12.09 pm

The Lord Speaker (Lord Fowler): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, others are participating remotely, but all Members will be treated equally. Oral Questions will now commence. Can those asking supplementary questions keep them short and confined to two points? I ask that Ministers' answers are also brief.

HIV: Ending Transmissions

Question

12.09 pm

Asked by ***Baroness Barker***

To ask Her Majesty's Government what progress they have made towards ending HIV transmissions by 2030.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, the Government remain fully committed to achieving zero new HIV transmissions in England by 2030. This is why we endorsed the HIV Commission, which was established by the Terrence Higgins Trust, the National AIDS Trust and the Elton John AIDS Foundation, and we welcome its report, published today. I reassure noble Lords that we will consider all the recommendations carefully, including an interim milestone of an 80% reduction in new HIV transmissions by 2025, and how we can expand testing. We will use the insights of the report to shape our upcoming sexual and reproductive health strategy and HIV plan.

Baroness Barker (LD): I thank the Minister for that reply. I am very proud to a member of the party which, before anybody else, advocated that there be services for people with HIV and AIDS, and we will be there until this report is fully implemented and the fight against AIDS is won. Will the Government move to introduce a system of opt-out testing so that all people, including men and women from black and minority ethnic communities, can know their status, and we can get sooner to the point where they can get treatment and stop transmission?

Lord Bethell (Con): The noble Baroness refers to one of the most interesting of the recommendations of the commission's report. I took a briefing from the commission yesterday; members made that point very clearly, and their arguments were extremely persuasive. We have learned a lot during the Covid pandemic about opt-out testing; I completely understand the value of it, and I will take that recommendation to the department to look at it very closely.

Lord Herbert of South Downs (Con): My Lords, I pay tribute to the long-standing work of the Lord Speaker on HIV and AIDS. I have campaigned beside him in South Africa and have seen the passion with which he devoted himself to this role over many years.

Does my noble friend the Minister agree that the HIV Commission's recommendation for a plan that the Government should commit themselves to is a wise one which they should adopt? After all, it is D minus 10 now—10 years before AIDS should be beaten, according to the SDG. We have the tools, now we need to implement them.

Lord Bethell (Con): I reiterate the tribute of my noble friend to the Lord Speaker. Over three decades, he has campaigned tirelessly on these issues, and was instrumental as Secretary of State for Health and Social Security in launching the ground-breaking "Don't Die of Ignorance" campaign, which made an indelible mark—its impact is remembered today. The tenacity that he has shown in making evidence-based decisions in the fight against HIV is a model for us today.

My noble friend makes a very valid point on the need for a plan. We will issue a sexual health and an AIDS plan in short order; they have been delayed by Covid. He reminds us that it is D minus 10, a goal that we take extremely seriously.

Baroness Clark of Kilwinning (Lab): We know that stigma, even fear, can often prevent people going for tests. What does the Minister think we can do to improve the uptake of testing, particularly from those who are at the highest risk of contracting HIV? What does he think we can do to improve the training of those who provide testing to make sure that in future people are more likely to take tests?

Lord Bethell (Con): My Lords, we have made great progress in the area of tests, hitting the UNAIDS 90-90-90 target for the third consecutive year, with 94% of those living with HIV diagnosed, 98% of those diagnosed getting treatment and 97% of those undergoing treatment having an undetectable viral load. The noble Baroness is entirely right: one of the greatest challenges is those who are not tested because they do not know that they should be tested. Part of that is stigma and part of it is encouraging people to step up to get tested. That is the focus of the recommendations in the HIV Commission's report, which we take very seriously. It has clear recommendations on marketing, which we will be looking at very carefully.

Baroness Sheehan (LD): The Global Fund to Fight AIDS, Tuberculosis and Malaria warns that additional support is badly needed to prevent a reversal in "hard-won gains". Will we, as a lead funder, join Germany, Italy, Canada and South Africa to increase our contribution to the fund as a matter of urgency? A Written Answer will suffice if that is not in the Minister's briefing notes.

Lord Bethell (Con): The noble Baroness makes a very good point. The UK Government will continue to be a world leader in our HIV response through our considerable investment in the Global Fund to Fight AIDS, Tuberculosis and Malaria as well as through supporting the Robert Carr Fund to advocate for the rights and needs of the most marginalised groups, such as LGBTQ people and sex workers. In relation to reassurance on the point she asks about, I cannot provide that from the Dispatch Box, but I reassure her that our commitment to these international causes remains robust.

Lord Collins of Highbury (Lab): My Lords, this is a global fight, and, as the noble Lord mentioned, this target is for the SDGs that apply throughout. If we are to meet the global agenda of no new transmissions of HIV by 2030, how will the Government work with all major funders, as he mentioned, to collectively invest the £36.49 billion needed for HIV programming for key populations over the next decade?

Lord Bethell (Con): My Lords, I have already precisely outlined some of our commitments to international funding. Two other areas where we contribute are, first, through our example: by marching resolutely towards the zero transmissions target, we set an important global example, which should not be underestimated. The second is the contribution of our science community, which has been profound and has contributed huge medical insights to the scientific progress on antiviral drugs and in the fight against AIDS.

Lord Black of Brentwood (Con) [V]: Does my noble friend agree that one of the biggest barriers to meeting the 2030 target is the stubbornly high rate of late diagnosis, which not only has serious repercussions for the individuals concerned but contributes significantly to health inequality? Does he support the following recommendation in the HIV Commission's report:

"Every late diagnosis must be viewed as a serious incident requiring investigation … and a report produced to drive change in local health systems"?

Lord Bethell (Con): My Lords, I noticed the recommendation that every late diagnosis should be regarded as a major contagion, reported and followed up by an authority such as PHE. This is something for PHE to consider for itself, but I will certainly write to it to raise the recommendation and ask it to respond to me.

Lord McConnell of Glenscorrodale (Lab): My Lords, the doubling of mother-to-child transmissions around the world is just one of the implications of this year of instability in health services around the world caused by the Covid-19 pandemic. In my experience around the world, one of the greatest fears of those living with HIV is instability, whether that is caused by climate change, conflict or pandemics. What are the Government going to achieve by cutting £4 billion in overseas development assistance when these great crises need so much attention at this time?

Lord Bethell (Con): The noble Lord speaks with great humanity and compassion, but I perhaps need to give a bit of perspective. I am not sure if our UK aid budget is enough to solve all the problems that he describes. The UK remains extremely committed to international aid. In the Covid epidemic and recession, we have reduced our commitment in a small way and have promised to revisit it at a later date. That commitment is very clear, and we will do that in due time.

Baroness Tyler of Enfield (LD) [V]: My Lords, cuts to local authority public health budgets of some £700 million in real terms over the last five years have led to sexual health budgets being cut by 25% in this period. The King's Fund has estimated that restoring spending to the former level

"would require additional investment of £1 billion."

Given the Government's commitment to zero new HIV transmissions by 2030, will the Minister tell the House what plans they have to increase investment in HIV preventive services delivered by local authorities? Can the Minister also confirm that there will still be national funding for a prevention programme?

Lord Bethell (Con): The Covid epidemic has disrupted things, but I reassure the noble Baroness that in the spending review 2020 we have confirmed that the public health grant will be maintained into next year, enabling local authorities to meet pressures and continue to deliver important public services. DHSC will confirm final allocations in the coming week, including the position on HIV PrEP. I reassure the noble Baroness that PrEP has proved to be an enormously valuable contribution to our fight against transmissions, and we continue to back it.

The Lord Speaker (Lord Fowler): My Lords, I fear the time allowed for that Question has elapsed.

HIV: Pre-exposure Prophylaxis

Question

12.20 pm

Asked by ***Lord Cashman***

To ask Her Majesty's Government what assessment they have made of the impact pre-exposure prophylaxis is having on new HIV transmissions; and what steps they are taking to ensure that there is sufficient access to that treatment.

Lord Cashman (Non-Afl) [V]: My Lords, I beg leave to ask the Question standing in my name on the order paper. In so doing, I refer to my entry in the register of interests.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, the Government recognise the huge impact that HIV pre-exposure prophylaxis plays, as part of a combination of prevention interventions, in reducing HIV transmission. That is why we have provided £11 million to local authorities during this financial year for routine commissioning of PrEP. We are continuing to work closely with local authorities and other stakeholders to support the rollout, which will benefit tens of thousands of people.

Lord Cashman (Non-Afl): *[Inaudible]*—study has shown that they are 100% effective when taken properly and there is no difference in reports of condom use. More importantly, contradicting the claim that access to PrEP would somehow encourage an increase in risky sexual behaviour, there are no other STIs. Therefore, given that one of the key barriers to increasing access to PrEP is it being delivered exclusively through sexual health clinics, what discussions have the Government had about expanding access to PrEP to other healthcare settings such as gender clinics, maternity units, GPs and pharmacies?

Lord Bethell (Con): My Lords, the noble Lord makes a completely fair point. There is absolutely no question of there being a social stigma associated with taking PrEP or any kind of moral cloud over those wishing to take this important therapy. That is not in any way our purpose. He makes a valid point that there are good arguments for the supply of PrEP to be not just through GUM units but also through GPs and perhaps pharmacists. These are arguments that we hear and that we are looking at very closely. I hope that, at some point, I will be able to update the noble Lord on our progress on this matter.

Baroness Thornton (Lab): I remind the Minister, with regard to his last answer about funding, that just because you cannot solve all the world's problems does not mean that you should not try to solve some of them. On that basis, can the Government provide an update on the rollout of PrEP in England? Is the Minister aware that there are local authorities that are still not providing the drug? When the ring-fenced funding for PrEP runs out in March 2021, will the Government commit to at least the £16 million per annum to make this happen for the future?

Lord Bethell (Con): The noble Baroness makes a fair point. The rollout of PrEP has reached a great many local authorities but not all of them. The funding for it, at £11 million, has made a big impact but it has not covered all the ground. We are aware that this funding package runs out next year and we are in active engagement with local authorities in order to find a new mechanism going forward before July, when the funding will change. That said, our commitment, as I said earlier, to the principle of PrEP and its impact on reaching our targets for transmission remains resolute. I look forward to being able to announce a resolution of this funding formula.

Baroness Jolly (LD)[V]: My Lords, access to sexual health services has always been more difficult in far-flung areas such as Cumbria and Cornwall. Often, young gay men do not like approaching the GPs they have known since childhood. The Minister referred in an earlier answer to PrEP. Is he confident that there are adequate alternative opportunities to get local access to PrEP? Will he commit to talking to those in the department who deal with the plan, and will he write to me with a date when PrEP might be easily accessible all across England and put the response in the Library?

Lord Bethell (Con): The noble Baroness makes an entirely fair point. Access to PrEP is not as even as it could or should be. It is a very important tool in our fight against the transmission of HIV, and it is a programme that we support wholeheartedly. However, it takes time to roll out a therapeutic such as this through the entire healthcare system. We have focused its supply through sexual health units because they are the most thoughtful and reliable places for the kind of consultation and expertise needed for a delicate new therapeutic like PrEP. However, she raises a good point that perhaps this should be and could be updated.

Lord Scriven (LD): My Lords, since 2017, both Scotland and Wales have supplied uncapped access to PrEP, so will the Minister tell us what is stopping uncapped access to PrEP in England, so that we do not have a postcode lottery for access?

Lord Bethell (Con): The noble Lord will be aware that there is a detailed conversation with local authorities about ensuring that we get exactly the right balance for funding. As the noble Baroness rightly pointed out, we need to make sure that the supply of PrEP is conducted in a way where there is good consultation and where those who are applying for the therapy are given good advice. That is best done with help from local authorities, and we are trying to hammer out a deal to ensure that that is done thoughtfully. That deal has been delayed by Covid, but we are looking forward to announcing a resolution of that before the next funding round finishes.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, can the Minister confirm that the Government are collecting information on who is accessing PrEP in England? It is obviously crucial to ensure that there is equity among the groups given the currently limited supply, unlike the situation in Scotland and Wales, to which the noble Lord, Lord Scriven, has just referred. Will the Government commit to publishing the data on who is accessing PrEP?

Lord Bethell (Con): I am not sure that I can give the reassurances that the noble Baroness is looking for. These are very delicate and private matters. I am not sure if it is right that the details of who is accessing PrEP are necessarily for are public domain, but I would welcome any suggestion that she might have in correspondence about what exactly she is looking for.

Lord Paddick (LD): My Lords, in January 2016, the results of the PROUD study, in which I was a participant, showed a 90% reduction in HIV infections in those who took PrEP and no increase in other sexually transmitted infections. Why did it take the Government four years from the publication of these results to make

[Lord Paddick]
PrEP available in England? What are the Government doing to increase the awareness of PrEP among women and the black community?

Lord Bethell (Con): I am afraid that I was not a Minister in the period that the noble Lord is talking about, so I cannot account for that. However, I agree with him that, on the point he raised about access to PrEP among women and the black community, we have a case to answer. I completely acknowledge that, particularly among the black community, this is one of the most difficult areas that we have to tackle in order to hit our objective of zero transmissions by 2030. We are working extremely hard to try to reassure those who are hesitant about taking on such therapies that they are safe, accessible, private and relevant. We need to win that battle in order to hit our target.

The Lord Speaker (Lord Fowler): All supplementary questions have now been asked and we will therefore move on to the next Question.

Covid-19: Domestic Abuse of Older People

Question

12.28 pm

Asked by ***Baroness Gale***

To ask Her Majesty's Government what steps they are taking to support older people at risk from domestic abuse while restrictions are in place to address the COVID-19 pandemic.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Government are committed to supporting all victims of domestic abuse. The You Are Not Alone campaign signposts support to all victims, and the Government have allocated more than £116,000 this year to the charity Hourglass, which supports the elderly. The Government are working closely with domestic abuse organisations, including those representing elderly victims, to assess ongoing needs.

Baroness Gale (Lab) [V]: Is the Minister aware that the situation facing older victims has deteriorated significantly since the pandemic, as they are faced with an impossibly cruel situation in which they are afraid to go out for fear of contracting Covid and afraid to stay at home for fear of being abused? Will the Minister ensure that the needs of older victims are recognised in the Domestic Abuse Bill, especially those over the age of 74, about whom no data is collected? There is an urgent need for support for that age group.

Baroness Williams of Trafford (Con): My Lords, we are acutely aware of the issues the noble Baroness points out, and we are trying to assist older people, in particular, as this pandemic goes on. We talked about the over-74s recently in Oral Questions, and we need to work with the ONS to get a true picture of what they are facing in, as the noble Baroness says, neither wanting to go out nor wanting to stay in their homes for fear of abuse.

The Lord Bishop of London [V]: My Lords, as the Minister has commented, at present, we only collect data on those aged between 60 and 74. While she is making a commitment to work with the ONS to collect data on those aged over 74, will she commit to removing this age limit so we can highlight the experience of this older demographic?

Baroness Williams of Trafford (Con): To correct the right reverend Prelate's assertion that we only collect data on those from the ages of 60 to 74: it is up to the age of 74. The issue we need to get to the heart of is robust data. There is no attempt to exclude that age group; there is a lack of statistically significant data. I commit to working with the ONS so we may provide, perhaps in another way, the robust data we need.

Baroness Fall (Con) [V]: My Lords, Covid has taken lives and inflicted havoc on many. For some, this tragically means becoming victims of a destructive, and sometimes dangerous, domestic environment. While this affects the young as well as the old, I think we would all agree that the risks are intensified for older people due to lockdown, as others have said. Does the Minister agree that we should seek to build a support structure around them? A good place to start is with the policy championed by the former Health Secretary Jeremy Hunt when he committed to named GPs for frail patients to ensure that help was just a phone call away to someone they trusted and knew. Are the Government still committed to that worthwhile policy?

Baroness Williams of Trafford (Con): It is sheer happenstance, but I was talking to a GP's wife yesterday, particularly about elderly people's access to their GP—a need acutely enhanced by the pandemic. She said to me, and I am sure it is true throughout the country, that she was happy to ring or email her GP, but older people really value face-to-face support for all sorts of reasons, whether they are victims of domestic violence or not. It certainly is one good way for GPs to ascertain whether somebody is vulnerable. I also point to the troubled families programme, in which agencies work together to spot signs of problems within family situations.

Lord Singh of Wimbledon (CB) [V]: My Lords, domestic abuse, including that of the elderly, is on the increase due to the pressures of Covid-19, in all communities, including—[*Inaudible*]. Would the Minister agree that a simple, broad-brush approach to tackling domestic violence is not enough, and that close, informed co-operation between the Government and movers and shakers in these communities is needed in addition to the less productive, routine, round-table meetings?

Baroness Williams of Trafford (Con): A bit of the noble Lord's question was missed out but I heard him saying that we could not just adopt a "one approach fits all" method in terms of domestic abuse. I heard him say that it is on the increase during lockdown, and we certainly have had more calls to helplines. I agree that we need to think carefully about certain sections of our communities—those who might be isolated because of age or other reasons—and stand ready to support them. I hope that the Domestic Abuse Bill will be that landmark occasion that changes the lives of many people.

Baroness Pitkeathley (Lab) [V]: Does the noble Baroness agree that in order to prevent abuse, we must provide as much support as possible in caring situations? Social care services are already under huge pressure, with many curtailed or withdrawn due to the pandemic. Many of the care staff employed to provide these services are from the European Union and will not be available in the new year. What provision is the noble Baroness's department making to replace these vital workers?

Baroness Williams of Trafford (Con): The noble Baroness points to a situation which has gone on for far too long where we have imported some of our domestic labour at lower wages. We—and certainly providers of social care services—need to think about paying decent wages to do what is an incredibly valuable job.

Baroness Hussein-Ece (LD) [V]: The Home Office's You Are Not Alone initiative, which the Minister referred to, failed to include the needs of older victims of abuse. The message encouraging victims to leave home and seek refuge, despite lockdown rules for over-70s, did not take into account the complexity of leaving home and an abusive environment for older people, which is a solution only if there is appropriate alternative accommodation and their care and support needs can be met. Given the shocking figures, will the Minister ensure that the Home Office works with charities to include and develop targeted activity and awareness for older people as part of the "You are not alone" campaign and ensure the inclusion of the needs of older people in the Domestic Abuse Bill?

Baroness Williams of Trafford (Con): The Domestic Abuse Bill in fact includes domestic abuse against anyone regardless of age or sex. The noble Baroness is absolutely right about considering the needs of older people. Even without the data, we know that people of all ages face domestic abuse within their homes. Therefore, on that basis, it is paramount that that support is available.

Baroness Sanderson of Welton (Con): My Lords, as the Minister pointed out last week, older people do not tend to fill in the self-completion module of the National Crime Survey, as it is done on a tablet. In agreeing to find a solution with the ONS, might the Government consider something as simple as a written questionnaire?

Baroness Williams of Trafford (Con): I think it might come to that, because there is definitely a problem when we have data for only a certain section of the population. Since my noble friend asked that last time, I have brought it back to the department. We need to find a way through for this problem, because we simply do not have the database from which to provide that support. We know it happens; we just do not know how many people it happens to.

Baroness Wilcox of Newport (Lab) [V]: My Lords, the Older People's Commissioner for Wales has launched a strategy with 27 organisations to identify gaps in data collection across organisations to analyse and identify trends and key issues for older people. It means the Welsh Government's performance data collection on safeguarding will be shared with Public Health Wales's data collection on the experiences of older people. This will lead to direct action and a more co-ordinated response from services. Would the Minister agree that a strategy that gathers robust, clear and age-disaggregated data can be used to better understand the experiences of older people who are at risk of experiencing abuse at this time?

Baroness Williams of Trafford (Con): The noble Baroness makes a valid point, and I would be interested to see the outcome of that analysis. In working together, we can help alleviate some of the problems older people are facing in this area.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed. We now come to the fourth Oral Question.

Universal Credit

Question

12.40 pm

Asked by ***Baroness Donaghy***

To ask Her Majesty's Government what assessment they have made of the impact on families of not maintaining the £1,000 uplift of Universal Credit.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): My Lords, the Government have introduced a raft of temporary measures to support those hardest hit, including the furlough scheme, the Self-employment Income Support Scheme and the £20 UC uplift. With the uplift confirmed until the end of March 2021, my right honourable friend the Chancellor of the Exchequer set out last week why it is right that we wait for more clarity on the national economic and social picture before he decides on the best way to support low- income families from 1 April. I stress to the House that discussions are very much ongoing with Her Majesty's Treasury.

Baroness Donaghy (Lab) [V]: If those who lost their jobs last April could not be expected to live on £73 a week, will the Minister explain why it is enough for people losing their jobs next April? There is overwhelming support for the £20 uplift for the poorest families in the country. Why are the Government changing the rules in the middle of a pandemic and a recession? How will they address children going hungry?

Baroness Stedman-Scott (Con): I understand the noble Baroness's concern over those hardest hit by the pandemic, especially their income, but it is not right to say that we are changing course. All we are confirming at the moment, as the Chancellor of the Exchequer set out last week, is that we wait for more clarity on the national economic and social picture before making the decision on the best way to support low-income families.

The Lord Speaker (Lord Fowler): I call the noble Lord, Lord Monks. No? Then I call the noble Lord, Lord Taylor of Goss Moor.

Lord Taylor of Goss Moor (LD) [V]: I welcome the fact that the Minister has stressed that this is under current review, because if these payments are not maintained at a time when we can see what is happening in many low-paid jobs—even today in retail in particular—the evidence is that half a million more people will go into deep poverty and more than that will be brought into poverty. There is some urgency though, because people need to know where they stand as they see debts building up and struggle to take themselves through Christmas, so I hope that Ministers will take an early decision on this and not wait till the last minute.

Baroness Stedman-Scott (Con): I note the point about the timing of any decision, but that is with my friend in the other place, the Chancellor of the Exchequer. The Government are redoubling and trebling our efforts for those people who have found themselves in difficulty, including the people from Debenhams and Arcadia who are concerned for their futures, to get people back to work. We are completely focused on it. We have doubled the number of work coaches; we have Kickstart; we have the youth offer; we have sector-based work academies; and the Jobcentre Plus staff, the work coaches and the employment teams are engaging with employers to make sure that we have every vacancy we can get and we get people back to work as quickly as we can.

Lord Farmer (Con) [V]: My Lords, we should keep at the forefront of our thinking that universal credit was designed not to trap people in benefits dependency but to give them every help and incentive to get back into work. This has perhaps never been more important, both for individual morale and to enable economic recovery. What is the DWP doing to support people to get back into employment and enable the economy to recover from the financial impact of Covid?

Baroness Stedman-Scott (Con): I thank my noble friend for reminding us about the principles of universal credit and, at the same time, of the difficult circumstances that people find themselves in. I stress again that we are providing help through dedicated work coaches and engagement with employers. We are supporting people back into work in a whole host of ways, not least the 250,000 green jobs that we want to create. We do not want to trap people on benefits; we want to help them.

Baroness Boycott (CB): My Lords, I declare my interest as the chair of Feeding Britain. We estimate that if this £20-a-week lifeline is pulled, up to 700,000 people will be pushed into poverty, including 300,000 kids. The NHS is creaking at the seams, but so is the food bank system that has become so endemic in our country. If the Government are taking this money away, what plan do they have to ensure that hungry kids get enough to eat?

Baroness Stedman-Scott (Con): At the risk of repeating myself, I say that we are waiting for the Chancellor to assess the situation before making a decision about how best to support low-income families. As for what we are doing for children, there are free school meal vouchers and we are providing £16 million for food charities to get food to those who are struggling and 4.5 million food boxes for vulnerable people. We are expanding free school meals, establishing a new £1 billion fund to create more high-quality, affordable childcare and putting £35 million into the national school breakfast programme. We are not taking our foot off the accelerator on any support we give.

Baroness Sherlock (Lab) [V]: My Lords, I watched the BBC news report from Burnley last night and I am not ashamed to say that I cried through it. It showed children so hungry that they were ripping open bags of donated food before they hit the floor. There was a vicar sobbing at the level of need around him. People are desperate, so I ask the Minister: has the DWP modelled the impact of cutting £1,000 from the incomes of 6 million families in the middle of a pandemic and a recession, when unemployment is still rising? Will she join me in meeting people who are providing food on the front line to poor communities, so that we can both hear what they really need from their Government?

Baroness Stedman-Scott (Con): First, I affirm that, as always, I am very happy to meet people, as the noble Baroness suggested. The Chancellor has said that, once we have a better understanding of the impact of the £20 uplift on the social and economic situation, he will make his assessment and decide what to do.

Baroness Fookes (Con): My Lords, given that people with disabilities have had a particularly tough time during the pandemic, can my noble friend say whether any additional support is given to that group?

Baroness Stedman-Scott (Con): I can confirm that the DWP continues to support vulnerable groups, such as people with disabilities, through a series of safeguards and easements aimed at simplifying and improving their interaction with the benefits system. For ESA claimants, we have launched the New Style ESA online portal, which allows the majority of people who need to claim to do so online. Everyone infected with Covid-19 or required to self-isolate in line with government guidelines will be treated as having limited capability for work in ESA, without the requirement for fit notes or a work capability assessment.

Baroness Meacher (CB) [V]: My Lords, will the Minister consider the plight of families thrown into unemployment because of the pandemic who are subject to the cap? My understanding is that these families have not benefited from the £20 uplift to universal credit. They have very little—perhaps a few pounds a week—once they have paid their rent. Would it not be fair to raise the level of the cap by £20 a week to try to help these desperately needy families?

Baroness Stedman-Scott (Con): The Government believe that the benefit cap restores fairness between those receiving out-of-work benefits and taxpayers in employment. The noble Baroness raises an important issue that we should continue to consider, but we ought also to consider that the benefit cap statistics that have come out and show an increase in the number of people impacted are unacceptable, but also not surprising when we have a 600% increase in the number of those who have gone on to universal credit. We have also increased the local housing allowance rates.

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

12.50 pm

Sitting suspended.

Arrangement of Business

Announcement

1 pm

The Deputy Speaker (Baroness Fookes) (Con): My Lords, the Hybrid Sitting of the House will now resume. I ask Members to respect social distancing.

Nutrition (Amendment etc.) (EU Exit) Regulations 2020

Coronavirus Act 2020 (Expiry of Mental Health Provisions) (England and Wales) Regulations 2020

Motions to Approve

1.01 pm

Moved by ***Lord Bethell***

That the draft Regulations laid before the House on 29 September and 21 October be approved.

Relevant document: 33rd Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 25 November.

Motions agreed.

European Union (Withdrawal) Act 2018 (Relevant Court) (Retained EU Case Law) Regulations 2020

Motion to Approve

1.02 pm

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

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

Relevant document: 32nd Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 25 November.

Motion agreed.

Scheduled Mass Deportation: Jamaica

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Monday 30 November.

"This charter flight to Jamaica is specifically to remove foreign criminals. The offences committed by the individuals on this flight include sexual assault against children, murder, rape, drug dealing and violent crime. Those are serious offences, which have a real and lasting impact on the victims and on our communities. This flight is about criminality, not nationality. Let me emphasise: it has nothing to do with the terrible wrongs faced by the Windrush generation. Despite the extensive lobbying by some, who claim that the flight is about the Windrush generation, it is not. Not a single individual on the flight is eligible for the Windrush scheme. They are all Jamaican citizens and no one on the flight was born in the United Kingdom. They are all foreign national offenders who between them have served 228 years plus a life sentence in prison.

It is a long-standing government policy that any foreign national offender will be considered for deportation. Under the UK Borders Act 2007, which was introduced and passed by a Labour Government with the votes of a number of honourable Members who are present today, a deportation order must be made where a foreign national offender has been convicted of an offence and received a custodial sentence of 12 months or more. Under the Immigration Act 1971, FNOs who have caused serious harm or are persistent offenders are also eligible for consideration.

Let me put this flight in context. In the year ending June 2020, there were 5,208 enforced returns, of which 2,630, or over half, were to European Union countries, and only 33 out of over 5,000 were to Jamaica—less than 1%. During the pandemic, we have continued with returns and deportations on scheduled flights and on over 30 charter flights to countries including Albania, France, Germany, Ghana, Lithuania, Nigeria, Poland and Spain, none of which, I notice, provoked an Urgent Question. The clear majority of the charter flights this year have been to European countries.

Those being deported have ample opportunity to raise reasons why they should not be. We are, however, already seeing a number of last-minute legal claims, including, in the last few days, by a convicted murderer, who has now been removed from the flight.

This Government's priority is keeping the people of this country safe, and we make no apology for seeking to remove dangerous foreign criminals. Any Member of this House with the safety of their constituents at heart would do exactly the same."

1.02 pm

Lord Rosser (Lab) [V]: My Lords, the Government have said that this charter flight to Jamaica is specifically to remove relevant foreign national offenders. What assurances can the Government give that the mandatory duty to safeguard and promote the welfare of the children left behind—who are innocent in this—has been considered? How many such children will be left behind as a result of the imminent deportations to Jamaica? It has also been reported that some sort of understanding has been reached between the Home Office and Jamaica that people who came to the UK as children under the age of 12 will not be removed on this flight. Is that report correct, or partially correct, and if so does it apply only to the imminent flight or also to all future deportation flights to Jamaica?

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): The noble Lord will understand that I cannot discuss details of the individuals deported. I cannot, therefore, tell the noble Lord how many children will be left behind, but I can assure him that the welfare of children is of paramount concern to this Government. As for an understanding that might have been reached on under-12s born here, the provisions of the UK Borders Act 2007 have not changed.

Lord Roberts of Llandudno (LD) [V]: My Lords, 50% of decisions on immigration matters have been overturned on appeal. What can we do to restore confidence in decisions taken by the Home Office, and how can we make sure that those facing deportation have sound legal advice? Secondly, what arrangements are made to meet these folk who have been deported to their home country—or what is considered their home country? Are they supported in any way, or are they just left to their own devices, so that they can easily resume a life of crime?

Baroness Williams of Trafford (Con): In answer to the question on immigration, the noble Lord is absolutely right about the high rate of appeal success. Quite often, people bring successful last-minute claims; we are trying to get those figures down. This Urgent Question is, however, about the deportation of some pretty serious criminals. On the noble Lord's other question, people who face deportation have legal advice whenever they need it and arrangements are made for them when they arrive back in their countries of origin.

Lord Woolley of Woodford (CB) [V]: My Lords, can the Minister assure me that on this flight to Jamaica tomorrow there are no individuals who were brought to this country as children, and nobody with a non-serious, non-violent offence?

Baroness Williams of Trafford (Con): The noble Lord will understand that I cannot talk about individuals, but I assure him that everybody on that flight has served a sentence of 12 months or more, some for very serious crimes indeed.

Lord Lancaster of Kimbolton (Con): My Lords, either we believe and trust in our legal system or we do not. We should beware of Parliament being seen as out of touch. I am delighted that the welfare of children will be paramount in this Government's eyes, but what message does my noble friend think it sends to the general public if we are seen to be putting the rights of murderers, rapists, sex offenders and drug dealers ahead of delivering justice for their victims?

Baroness Williams of Trafford (Con): I could not agree more with my noble friend. The types of crime that these individuals are being deported for have had a devastating impact on the victims, and of course on their families, which have been left without sons, daughters, mothers and fathers. The trauma of a violent sexual assault is hard for the victim and their family to recover from, and it has a long-lasting impact on communities. The Home Office's priority will always be to keep our communities safe for everyone, and one of its key objectives, when legislation permits, is to protect the public by removing foreign national offenders who commit dangerous crimes. That is what we are doing by deporting these foreign criminals.

Baroness Blackstone (Ind Lab): My Lords, I want to press the Minister a little further on her answer to my noble friend Lord Rosser; she was a little evasive, if I may say so. Can she confirm that her department agreed a request from the Jamaican high commissioner that no one on the flight was under 12 when they first arrived in the UK? Is that true or not? If it is true, can she tell the House what is to happen in future? Does she agree that it should really apply to all those who arrived as children, regardless of their country of origin?

Baroness Williams of Trafford (Con): I am sorry if the answer was woolly, but I can tell the noble Baroness that the provisions of the UK Borders Act 2007 still stand, that any criminal who has served a custodial sentence of more than 12 months will be considered for deportation and that they are considered for deportation regardless of their country of origin.

The Deputy Speaker (Baroness Fookes) (Con): Do we have the noble and learned Lord, Lord Woolf? If not, I call the noble Lord, Lord Vaizey of Didcot.

Lord Vaizey of Didcot (Con) [V]: My Lords, I wonder whether my noble friend the Minister could confirm a number of things regarding this case: first, that these deportations are taking place under legislation passed by the last Labour Government; secondly, that the deportation of foreign criminals to Jamaica makes up a very small percentage of the deportations undertaken every year; and, thirdly, that it is wholly wrong to conflate the scandal of Windrush with this case. The Government are dealing with the fallout from the Windrush scandal but this case has nothing to do with it.

Baroness Williams of Trafford (Con): Perhaps I can turn to my noble friend's last question first, because he is absolutely right; my noble friend Lord Lancaster also alluded to this point. To conflate this flight, which contains some pretty serious criminals, with the people of the Windrush generation who came to this country to rebuild it after the war is an absolute insult to the Windrush generation, so I absolutely agree with my noble friend.

On the second point about the percentage of deportations, he is absolutely right. It is tiny: in terms of deportations to Jamaica, it is some 1%. Thirdly, he is absolutely right about the legislation: the UK Borders Act was passed in 2007 under a Labour Government.

Lord Clark of Windermere (Lab) [V]: My Lords, the noble Baroness was unusually unforthcoming about the age of people coming to this country and their deportation. Will she look into this, because it does seem very fair to the Windrush generation that it applies to anyone who came to the UK before they were 12? That seems a very decent thing to do. Will she look into this and see if it can be put in a more formal arrangement?

Baroness Williams of Trafford (Con): I would say to the noble Lord that nobody due to be on that flight is of the Windrush generation—that is number one. In terms of the age of people coming to the UK, I keep saying that the provisions of the UK Borders Act 2007 still stand; I hope that that answers that question. I will go back and confirm that those provisions still stand and that, no matter what age someone came to this country, if they have committed a serious crime and have been jailed for more than 12 months, they will be under the provisions of the UK Borders Act 2007.

The Deputy Speaker (Baroness Fookes) (Con): The time allowed for this Question has now elapsed.

1.13 pm

Sitting suspended.

Arrangement of Business

Announcement

1.30 pm

The Deputy Speaker (Baroness Fookes) (Con): My Lords, hybrid proceedings will now resume. Some Members are here in the Chamber, respecting social distancing, others are participating remotely, but all Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

I will call Members to speak in the order listed in the annexe to today's list. 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 invite Members, including Members in the Chamber, to email the clerk if they wish to speak after the Minister. I will call Members to speak in order of request and will call the Minister to reply each time.

The groups are binding and it will not be possible to degroup an amendment for separate debate. A Member intending to press an amendment already debated to a Division should have given notice in the debate. Leave should be given to withdraw amendments. When putting the Question, I will collect voices in the Chamber only. If a Member taking part remotely intends to trigger a Division, they should make this clear when speaking on the group.

Covert Human Intelligence Sources (Criminal Conduct) Bill

Committee (2nd Day)

1.32 pm

Relevant documents: 10th Report from the Joint Committee on Human Rights, 19th Report from the Constitution Committee

Clause 1: Authorisation of criminal conduct

Debate on Amendment 11 resumed.

Baroness Whitaker (Lab): My Lords, in speaking to Amendment 77, I should first declare that my daughter wrote on this subject in a book on powers of investigation and human rights. I should also add that the noble Lord, Lord Marlesford, very much regrets that he is unable to speak to this amendment, which he warmly supports.

I do not have much to add to the expert introduction of my noble friend Lady Clark of Kilwinning. I simply emphasise, as a former member of the NUJ, that this amendment bears particularly on investigative journalism and the exposure of illegal, exploitative or anti-social activity: writing that could arguably impact on economic well-being or disorder and which we need to protect, in the public interest, as a keystone of democracy. The confidentiality of journalists' sources is protected by Article 10 of the ECHR's guarantee of freedom of expression, as my noble friend Lady Clark said. Further, any statutory provision allowing the circumvention of the existing legal protection of journalists' sources is also dangerous because it will deter those sources from coming forward.

The Secretary of State for Justice, when Solicitor-General, said that the ability of sources to provide anonymous information to journalists needed to be protected and preserved. This will not happen if those sources are at the mercy of the wide range of covert intelligence agents that the Bill would casually authorise with no judicial oversight.

As my noble friend Lady Clark said, the Investigatory Powers Act requires prior judicial authorisation as essential when any application is made to identify confidential journalistic sources. When he was a Home Office Minister, Nick Hurd MP confirmed that these protections were necessary to comply with the Government's obligations under Article 10, that the police require a production order from a circuit judge, under the Police and Criminal Evidence Act, and that they must, in addition, satisfy the conditions of confidentiality. We should not dilute this kind of obligation. I hope that the current provisions are not yet another attempt by this Government to muzzle, challenge and undermine one of the democratic pillars of freedom.

Baroness Jones of Moulsecoomb (GP): My Lords, it is a pleasure to follow the noble Baroness, Lady Whitaker. I agree with everything she said. I also have a daughter who is a journalist so, for me, this is quite personal. I also care very much about the truth, and journalists are often the people who give us the truth in any particular situation.

I have signed Amendment 77, and I thank the noble Baroness, Lady Clark of Kilwinning, for it. It is slightly awkwardly included in this group, but it addresses the specific issue of protecting journalism and journalistic sources. We need that in the Bill. We have put it into other Bills, such as counterintelligence or counterterrorism Bills, and it would easily go into this one as well. It would make sure that we have a clear commitment to journalism. I realise that this is not particularly comfortable for this Government, which have criticised a lot of lefty journalists—as well as lawyers—but it is incredibly important.

This group generally shows broad support across your Lordships' House for the principle that judicial authorisation must be built into the Bill. It must not be arbitrary or a rubber-stamping exercise; it has to be the real stuff. In many ways, comparing it with search warrants issued by a magistrates' court is much too weak a comparison. High-level crimes can be authorised in the Bill, with deep and lasting consequences. There must be high-tier judicial oversight and approval to match.

The question is whether we can build consensus around a way forward. Amendment 61 in the name of the noble Baroness, Lady Kennedy of The Shaws, is perhaps the easiest solution to this problem. It sets up the judicial commissioner as the proper overseer and

[Baroness Jones of Moulsecoomb]
sets out the legal test that must be met to grant an authorisation. In particular, it tests the reasonableness of granting authorisation and explicitly protects against breaches of human rights, which we will come to later. Overall, the Government are being offered a selection of solutions to a problem. I hope that they take one of them.

Baroness McIntosh of Pickering (Con): I will speak to Amendments 12 and 61 in my name and that of the noble Baroness, Lady Kennedy of The Shaws. I am grateful to the Law Society of Scotland for its briefing. I am not particularly well qualified to speak on these issues, as many who have already spoken have direct experience in this regard, but I believe in due process and natural justice. I am concerned that we are reversing activity that was criminal and making it legal.

As the Law Society of Scotland has pointed out, scrutiny of the exercise of these powers lies with the Investigatory Powers Commissioner, who is required to produce an annual report. However, this is scrutiny after the event. It will be limited and may not provide us in Parliament with the robustness that the exercise of these powers commands. Therefore, given the nature of the policy, there should be checks and balances to ensure the effective operation of these organisations to ensure that there is public confidence in the use of these powers by providing limits on their use and adequate scrutiny.

I am attracted to Amendments 12 and 61, which the noble Baroness, Lady Jones of Moulsecoomb, referred to, as well as to Amendments 46 and 73 in the name of the noble Lord, Lord Anderson of Ipswich, which have many elements that commend themselves. Amendments 12 and 61 ensure that criminal conduct authorisations receive prior approval from a judicial commissioner. In the debate last week—which seems a long time ago—there was a great coalition of views around whether approval should be given by a judge, a judicial commissioner or a member of the Investigatory Powers Commissioner's Office. I would be guided by those with much greater experience than I have in that regard.

However, it is important for there to be greater scrutiny before criminal conduct authorisation is granted, rather than after the event. In terms of due process, it should not be for the organisations, in the words of the noble Baroness, Lady Kennedy of the Shaws, to mark their own homework. The issue should not be simply for a senior official in the departments—I am particularly concerned about the Food Standards Agency and the Environment Agency—and we will come on to explore those in greater detail. In the words of the Law Society of Scotland,

"The Bill authorises persons within the relevant organisations to act with impunity where authorised by indicating that the criminal law will not apply to them in undertaking acts which would otherwise result in prosecution and conviction. In most circumstances, what will happen is that justification of the criminal conduct will be sought after the event".

I put it to the House this afternoon that that is unacceptable, and authorisation should be granted—preferably judicial authorisation, in the best format possible—before the act that would otherwise deemed to be criminal actually takes place.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I understand that the noble Lord, Lord Judd, has withdrawn, so the next speaker will be the noble Lord, Lord Naseby.

Lord Naseby (Con): My Lords, in many ways, subsection (5) of Clause 1 could well be the most important part of the Bill. I should make it clear that I support MI5. Its focus and dedication to working in the national interest is second to none.

Criminal activity has to be limited and defined, but the most difficult area is defining the methodology. Who should give clearance? I am not convinced that a judge, however senior, necessarily has the right experience. In my judgment, we need someone with specific experience in this challenging area. In reviewing this matter, we should look at what other countries do, particularly the USA and Canada, as other noble Lords have mentioned. Both appear to be pretty successful in this area. I am not qualified to make a judgment on that, but I should be interested, too, in what Australia does. Reference has been made to a close friend of mine, the late Desmond de Silva, who carried out marvellous work for the UN in Northern Ireland. In that context, he produced a framework of control, which needs to be looked at because it includes areas that merit serious consideration.

Part of what we are considering is the future security of our country, which brings me to the integrated review of foreign defence, security and development policy announced recently in the other place. I shall quote from the penultimate paragraph, which states:

"I can announce that we have established a National Cyber Force, combining our intelligence agencies and service personnel, which is already operating in cyberspace against terrorism, organised crime and hostile state activity. "—[*Official Report*, Commons, 19/11/20; col. 489.]

It is clear to me and, I imagine, your Lordships that life in the 21st century will be quite different from anything we have yet experienced.

Against that background, the control proposed in Amendments 46 and 73 may be the way forward. They need refining and the contributions of my friends, the noble Lords, Lord Butler and Lord Carlile, should be considered. Noble Lords should make no mistake: this is a crucial area for the future security of our country.

1.45 pm

Lord Blunkett (Lab): My Lords, it is a pity, although entirely understandable, that we had to break the debate last week because not only were the contributions extremely informative and, in some cases, profound, they set the context as we continue the debate on this group.

I want to pick up a point made by the noble Baroness, Lady McIntosh, in relation to making the illegal legal. We are here because we want to provide a regulatory framework and powers to ensure that what was undertaken previously is set in the context of legal and authorised actions. Phone tapping, interception and surveillance were all illegal until they were authorised in a regulatory framework, which happened only in recent decades. What we are trying to do here is fill a hole to ensure that we have a grip on this and know what is being done on our behalf and that it is being done in an acceptable fashion.

That is why I want to speak to Amendment 15 in the name of my noble friend Lord Hain, who spoke powerfully and from the heart last week about his experience. I also support the concepts in Amendments 46 and 73, ably spoken to by the noble Lords, Lord Anderson and Lord Butler, and the noble Baroness, Lady Manningham-Buller, who I worked closely with when she was head of the Security Service. When I was Home Secretary, the noble Lord, Lord Carlile, was surprised to receive a phone call from me asking him to have oversight on terrorism, which I was pleased to do. In a non-partisan way, I say to the Minister, who does not carry responsibility for this matter, that she might take the message back to her colleagues in the Cabinet that it sometimes helps not to be seen to give your friends all the jobs. I just lay that on the table.

There is also a great deal of merit in the amendment tabled by my noble friend Lady Clark, and spoken to by my noble friend Lady Whitaker. We have seen important exposés by people embedded in homes for people with learning disabilities, children's homes and retirement homes. We must be careful not to infringe on legitimate investigations.

However, I want to return to the debate on Amendments 15, 46 and 73. I thought that some very good points were made in relation to the proposals put forward by my noble friend Lady Kennedy. I understand why, but there is a real contradiction in putting a judge up front in charge of legalising something rather than having them act as a commissioner in reviewing a decision that has been taken. As was said last week, it misunderstands the role of the judiciary—even barristers can sometimes misunderstand the role of the judiciary—not only in terms of its profound and important role in our legal, criminal justice and constitutional life, but in terms of the skills and experience that members of the judiciary gain in building to the point where they take on the job, and the experience that they have in the job. It is worth looking at the role of the Home Secretary or, in the case of my noble friend Lord Hain, the equivalent in Northern Ireland. Their important role is legitimised by their being elected and they are accountable in the sense that they can be held to account if they report back to the two Houses of Parliament. Perhaps this proposal could be integrated with those in Amendments 46 and 73.

As the noble Lord, Lord Cormack, said last week, a behind-the-scenes, behind-the-Chair discussion before Report might be a way forward. The Minister would be able to seek agreement from her colleagues so that there was sufficient movement to enable us to agree and to provide the legitimacy and accountability that everyone is seeking in this group of amendments. If we could do that, we could move forward with some confidence that we will put right something that should have been put right. Although the issue was not prevalent at the time, I accept my part in not having filled every hole in the process of ensuring that we scrutinise and have a mechanism to review, and therefore legitimise, what has taken place. I am really pleased that we have been able to continue the debate this afternoon. I hope the Minister will be able to pick up not only on the comments this afternoon but on the very substantive issues raised last week.

Lord Thomas of Cwmgiedd (CB) [V]: My Lords, it is a great privilege to follow the noble Lord, Lord Blunkett, who has brought to bear his own experience on this issue. I would like very briefly to speak in favour of all these amendments. In essence, there are five main proposals before the House, some with variance. They are as follows: first, leave it as it is and rely on the discretion of the prosecutor; secondly, have authorisation in all cases either by the secret services or by the Competition and Markets Authority, or any of the authorities, and, in due course, review by the Investigatory Powers Commissioner; thirdly, pre-authorisation either by a judge or by the Investigatory Powers Commissioner or a Secretary of State; fourthly, pre-authorisation, except in an emergency, by the same people; and, fifthly, real-time notification.

I agree with the noble Lord, Lord Blunkett, about the comment made last week by the noble Lord, Lord Cormack—who spoke very wisely, as he often does, in saying that we should attempt to find the best solution. The difficulty is knowing how to do that without evidence as to the pros and cons. None of this is easy and getting it wrong will be very damaging to all concerned. Perhaps I may illustrate that by taking one of the alternatives and saying what it would be helpful to know. I shall take the example of real-time notification.

The first question I would like answered is: if the authorities can tell the Investigatory Powers Commissioner within seven days, why is it not possible in most cases to notify in advance? It would certainly be far safer to do that. Secondly, if this course is adopted, will each change have to be notified? Thirdly—this is the most serious question—what will happen if the Investigatory Powers Commissioner says that the authority should not have been granted? Will the authorisation cease immediately; and if it did not, what would the consequences be under the Human Rights Act, for example, for those affected? Presumably, any disallowance or contrary views by the IPC would not be retrospective. Fourthly, would not the report at the end of the year identifying that authority should not have been granted be more damaging than trying to stop that mistake in the first place by pre-authorisation?

Should this real-time notification apply to everyone? Like the noble Lord, Lord Naseby, and many others who have spoken, I have the greatest admiration for the security and secret services. But is the same true of the Competition and Markets Authority and the Food Standards Agency? We have to be careful of what can happen on people's coat-tails.

Finally, I really do think it would be useful to have the views of the Investigatory Powers Commissioner himself on this idea. He has to operate it; does he think it practicable, and what is to happen?

I could, drawing on my own experience, try to give some more details in respect of these matters, but I fear that in doing so I might be at risk of transgressing, as would other noble Lords, by inadvertently saying something very sensitive. That is why in our previous sitting, in the debate on the second group of amendments, I suggested finding a means of ensuring that there is

[Lord Thomas of Cwmgiedd]
evidence before the House to enable it to understand the deficiencies in the present law which need to be corrected, and to scrutinise the proposals for reform and try to ensure that the proposals, if necessary as amended, will work well for the future. My general experience has been, in relation to both the police and the security services, that they are rightly reticent about putting matters into the public domain. But it is often possible to put sufficient into the public domain without damage to security and methods of operation. However, you cannot do that unless you know enough about the issues and the evidence.

It is also my experience that subjecting issues of this kind to independent scrutiny and not relying on conclusions that are put forward is in the overwhelming interest of the security services, the police and the other bodies. That is because these are difficult issues of judgment that need to be scrutinised externally and independently and then addressed so that the risk of future errors is minimised and confidence maintained. That is why I would hope that means can be found to enable the House to carry out the constitutional function I have outlined. I have suggested referring either the Bill or specific issues to a Select Committee, under Standing Order 8.118, which can take evidence in private and publish a report, or—an alternative as suggested by my noble friend Lord Anderson of Ipswich—to seek a report from an individual. I would hope that the report would enable us to do our constitutional duty, find the right answer and be able to reassure everyone that we had, on this extraordinarily difficult issue, made a decision where the safeguards were right and that was practicable. I have written to the Minister and discussed this with her. I very much hope that a way forward can be found.

Lord King of Bridgwater (Con) [V]: I am very pleased to follow the noble and learned Lord, who ended by saying that he wanted to ensure that the solution was practicable and workable. I strongly agree. This is the first time that I have had a chance to speak on the Bill. I straightaway echo very strongly the comments of the Joint Committee on Human Rights, which recognised that, in an increasingly dangerous and unstable world, covert intelligence has a vital role to play in protecting our country from terrorism, organised crime and the growing threats to our national well-being. I was very impressed by the information that James Brokenshire, the Minister for Security, gave on Second Reading in another place. In the year to November 2019, in London alone, covert intelligence led to 3,500 arrests and the recovery of 100 firearms and 400 other weapons, half a ton of drugs and £2.5 million in cash. I note also the evidence given that, in 2017, covert intelligence foiled an attack on No. 10 Downing Street. Having myself been a victim of the mortar attack 30 years ago on No. 10, I am sorry that we did not have better covert intelligence then.

I also recognise that this vital tool must be put on a proper statutory basis. I have to say again that it is not before time, because it was 26 years ago that the Secret Intelligence Service and the Intelligence and Security Committee, which I had the privilege to lead in its early years, was put on a statutory basis.

2 pm

My concern is that in giving this vital aid to law enforcement and putting it on a statutory basis, we so surround it with a host of additional conditions that seriously limit its effectiveness. The Minister was challenged earlier by the noble Lord, Lord Paddick, about the number of covert agents and whether there were more than in earlier years or fewer. If we do not produce a good, workable and safe basis for such sources to operate, there will certainly be fewer, and the country will be much more exposed to the risks that covert intelligences sometimes prevent us from.

This is why I do not support Amendments 11, 12, 14 and 15, which propose prior approval by a judge or even—my goodness—a Secretary of State. In many of these cases, the covert intelligence source risks his own life to pass vital information to his handler. His willingness to do this has depended on his confidence that his identity will be totally protected and that he would be able to behave as a normal member of a gang or terrorist unit in which he is involved. He must have total confidence in his handler and be able to turn to him if sudden changes arise and nobody can get a quick response from him. If he and others find that they cannot get that support, then the willingness of people to come forward will be seriously undermined, and there will be fewer and fewer covert sources. If when he calls for help, his handler has to turn to the Investigatory Powers Commissioner, who in turn has to apply to a judge or the Secretary of State, how many more people will become privy to his existence, and how much greater will the risk that he faces be?

It has been suggested that judges are always available at short notice, and that if the one who gave the original authority is not available, there are plenty others able to step in who are good at mastering a brief quickly. However, that ignores the point that someone who had no previous knowledge of the matter would now have some knowledge of the agent's existence and activity. How many others would too? That is why I support Amendments 46 and 73, in the names of the noble Lords, Lord Butler, Lord Anderson and Lord Carlile of Berriew, and the noble Baroness, Lady Manningham-Buller, a quartet exceptionally qualified to advise your Lordships on this issue. They do not propose prior authorisation by a judge or by the Secretary of State, but that when a properly authorised handler issues a criminal conduct authorisation, he should be required to pass it at the earliest possible moment to the Investigatory Powers Commissioner—incidentally, a distinguished judge—who, together with the handler, operates under the code of practice, which will be approved by Parliament.

Obviously, this puts a very heavy responsibility on handlers, and their selection and training is a crucial ingredient, but provided that it is successfully achieved, it is much the safest and best way to ensure that the vital source of intelligence that has protected our country in so many different ways over the years is not lost.

Lord Campbell-Savours (Lab) [V]: My Lords, I will confine my remarks on this Bill to the thrust of Amendment 46. I declare an interest as a former member of the ISC from 1997 to 2001, under the

excellent chairmanship of the noble Lord, Lord King of Bridgwater, who has just spoken and who equally supports Amendment 46. I am not a lawyer, but I ran with the hounds in the Commons during the Peter Wright affair of the 1980s. In doing so, I developed an interest in authorisation procedures, which I followed up as a member of the ISC.

As I read it, it is uncertainty over compliance with the Human Rights Act, the ECHR and the implied powers therein that is driving legislative reform. The problem is only aggravated by the inclusion of a raft of new bodies, some presumably with marginal quasi-professional experience of covert action. My problem is the inadequacy of post-event assessment. An annual report from the Investigatory Powers Commissioner is not enough. An onerous system of prior authorisation is too much. We need a robust, uncomplicated procedure of prior scrutiny, not authorisation, where the rights of individuals and the state are fully recognised.

I place on record the statement from Andy Erlam, the principal complainant in the Tower Hamlets v Rahman case, which exposes deficiencies in the current CHIS-bases system: "An attempt was made to recruit me as a CHIS some time ago. I had taken a successful election petition against the Mayor of Tower Hamlets, Lutfur Rahman. The police officer who met me was from the Metropolitan Police. He said he was employed by the Department for Professional Standards but that he had a national role in supervising CHISs. He asked me to recruit CHISs, and documentation exists to confirm that this meeting took place. I learned that the officer who had authorised the approach to me was the same officer in charge of the two Metropolitan Police criminal inquiries into Mr Rahman, and that the commission and the City of London Police inquiry all found insufficient evidence. Yet the campaign in Tower Hamlets which I led exposed extensive corruption. I suspect that the police were compromised in some way. I experienced police harassment and an attempted arrest in the middle of the election High Court trial, an election case which I later won. If the use of undercover operations can be justified in some cases, I do not think they should ever pervert the course of justice. I believe this approach was an attempt to compromise me. Police officers who I know informally state that the use of CHISs leads to lazy policing, and it is never clear whether the police are using the CHIS or the CHIS is using the police. The current proposal to extend legal immunity to cover CHISs carrying out criminal activities is a matter of considerable concern."

Erlam is questioning a whole CHIS-based system. I do not, but on accountability he is right. We need a far more robust system of prior evaluation and scrutiny. In this debate, we have heard demands for prior judicial authorisation, judicial commissioners, the use of prosecutors and judges, and a prosecutorial approach with warrants, and the Government are saying no—although there was a slight movement from the Government in last week's debate, a hint at reconsideration. Anyhow, whatever the position, the Government will have their way, with their 70-seat Commons majority, so a compromise must be found, and I propose a compromise.

I have two alternatives. First, I propose that the remit of the chairman of the ISC be extended in the way that I have previously suggested during ISC debates, to give him or her prior access to intelligence-based CHIS operational activity—a prior scrutiny role, not an authorising role—in the handling of all CHIS. It would mean restoration of the prime-ministerial lock on ISC chairmanship appointments. Under this proposal, the chairman would be able to release CHIS information to the ISC only where it is agreed to do so with the agency heads, including the wider list of agencies currently being proposed.

It could be argued that to include the Food Standards Agency et al could be stretching the duties placed on the ISC chairman, and potentially in a much limited form on the committee, far too far. I say that as we simply do not know the volume of CCAs. If that was a problem, the Speakers of both Houses could be asked to nominate an agreed alterative person or persons, depending on the volume of CCAs, to carry out the function. I suggest a Member of this House, their role being prior scrutiny of CHIS operational activity, not authorisation. I believe that we have people in Parliament who, as former chairmen of the ISC or other respected Members of this House, are as worthy of access to information in the deepest recesses of the various intelligence communities et al as any agency head.

Another way forward could be to appoint a scrutiny group comprising either two or three persons as part of the same prior scrutiny process. Such a group should comprise at least one member of a legislature of high standing—again, appointed by the Prime Minister but ratified by Parliament. In my mind, a member of a legislature must—I repeat "must"—be party in one form or another to whatever process is selected. In the USA, the defense appropriations subcommittee is, by law, according to Wikipedia, "fully and currently informed" of intelligence activities. This includes being kept informed of covert actions and any significant intelligence failure. I am not even asking for that. Wikipedia goes on to say that, under certain circumstances, the President may restrict access to covert activities to only the chairman and vice-chairman of the committee. I will settle for that. I am asking, in compromise, for a lesser form of accountability under a less onerous arrangement.

Under my second way forward, the second and third persons could be judiciary-drawn and/or departmental accounting officers. To me, the appointments under both options are particularly important in this new world of heightened tension, international trafficking, greater sophistication in fraud and organised crime. We cannot underestimate these dangers.

Equally, we need a commensurate increase in accountability. After over 40 years in public life, I have learned that transparency, by its very nature, influences conduct and thereby, to some extent, control to varying degrees. I support the thrust of the amendments that extend accountability, if not the detail, as proposed in the Committee today.

Lord Bach (Lab) [V]: My Lords, it is a privilege to follow my noble friend Lord Campbell-Savours, whose expertise in this area is well known and has been for many years.

[LORD BACH]

There are many profound constitutional issues in the Bill, and many of them have been debated in this long group of amendments. I speak in support of Amendment 76, in the name of my noble friend Lord Hunt of Kings Heath. My noble friend and I agree that this is not a profound constitutional amendment but we argue that it is important none the less.

Noble Lords will recall the highly effective speech of my noble friend Lord Hunt last week in which he argued that police and crime commissioners should have some standing in relation to the annual inspection of police forces by the Investigatory Powers Commissioner and not just be excluded from playing any part. Of course, I must declare my interest as the elected and full-time police and crime commissioner for Leicester, Leicestershire and Rutland. I will try not to repeat my noble friend's arguments but will attempt to persuade the Committee to reach the conclusion that, as with all inspections of a police force, it is essential that a police and crime commissioner plays some part.

Why do I say "essential"? Many noble Lords will remember the passage through Parliament of the Police Reform and Social Responsibility Act 2011. The then coalition Government, in setting up elected police and crime commissioners in place of appointed police committees, were clear that the role of a police and crime commissioner was to represent the public and hold the force to account for its effectiveness, its efficiency and, importantly, its legitimacy.

2.15 pm

How wide is that obligation? The protocol to the legislation said that police and crime commissioners were responsible for "the totality of policing"—a phrase that by any definition is not narrow or confined but self-evidently broad and large in scope. So, for example, where police operations of course remain a matter for the chief constable, a police and crime commissioner is duty-bound to examine and ask questions about their success or otherwise.

Similarly, legislation insists that, following an inspection report by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, the chief constable must submit to the police and crime commissioner his or her comments on the report, and the police and crime commissioner must then prepare to publish his or her own comments alongside the chief constable's comments within 56 days and must produce a copy to Her Majesty's inspectorate and the Home Secretary. This obligation is exactly what Parliament intended and is an accepted part of every police and crime commissioner's responsibilities.

All my noble friend's amendment asks is for Her Majesty's Government to consider allowing police and crime commissioners to have a role in regard to the Investigatory Powers Commissioner's annual report regarding CHIS. As my noble friend pointed out, all that is asked for is some strategic oversight role in the IPCO inspections of local police forces. It would have to be strategic, obviously, because of sensitivities, and there would have to be a debrief to understand urgent issues and how the force needs to address them. Otherwise, who holds the chief constable to account? What happens if the inspection is unsatisfactory? This would be appropriate for the accountability role of the police and crime commissioner, instead of what is, I would argue, a pretty glaring lacuna in that area. The Bill represents an opportunity to deal sensibly with that issue.

Some role in this area as part of the totality of policing is surely appropriate. If it is not appropriate, it might be legitimate to ask whether Her Majesty's Government remain committed to their much-repeated claim that they support the wide powers deliberately given to police and crime commissioners on behalf of the people they represent who live in their force area. I know that the noble Baroness the Minister who will respond to this group is a friend of police and crime commissioners. She made a very successful visit to me in Leicester some time ago. I hope that she will be equally sympathetic today and I look forward to her response.

Lord Janvrin (CB) [V]: My Lords, I support the case for strengthening oversight as put forward in Amendments 46 and 73, and I add my voice to those questioning the case for prior judicial approval of criminal conduct authorisations.

I speak not as a lawyer or practitioner but as another former member of the Intelligence and Security Committee, where we had plenty of evidence of the importance of covert human intelligence sources. I share the view that we need to get the balance right between, on the one hand, constructing a rigorous legal framework to support the activities of our intelligence and security agencies while, at the same time, still giving them the practical operational flexibility to carry out their difficult work effectively.

I have listened carefully to the strong arguments in favour of prior judicial authorisation. It is, as has been pointed out, what is required for other activities of the intelligence services and police. Should we not follow the practice of communications interception or search warrants? There are important differences. The person authorised to tap a phone or search a premises will be a public servant: an agent of the state. The person being given a criminal conduct authorisation may be a private citizen—possibly but not necessarily—from the margins of society, acting almost certainly from a complex set of motives and probably knowing that they are putting themselves in danger.

In the first case, authorisation seems to be essentially a judgment about compliance with the law. However, a criminal conduct authorisation requires, in addition, personal knowledge of the agent concerned and human relationships involved in complex circumstances. It is about making a judgment, possibly urgently, on human motivation, limitations and behaviour, and about operational context and risk. Therefore, on balance, I share the view that the handler or controller is better placed than a judicial commissioner to make that judgment call on what should and should not be authorised. Obviously, I am in no way against judicial authorisation in principle; it is about getting the best decision.

I would add a small point. For the handler to know that he or she is the authorising officer makes him or her more clearly accountable. It concentrates the mind to sign something off. As my noble friend Lord Anderson observed, it also concentrates the mind to know that

your decision will be scrutinised immediately and rigorously. I therefore strongly share the view the present oversight arrangements should be significantly strengthened in the ways put forward in Amendments 46 and 73 to allow immediate scrutiny by the Investigatory Powers Commissioner. My noble friend Lord Anderson and colleagues from the Cross Benches have spoken with much greater experience than me on the need for real-time oversight. I find the arguments persuasive. Indeed, there may be a case for giving judicial oversight powers more teeth—perhaps along the lines of Amendment 47 or something similar.

Finally, I said at the outset that we are looking to get the balance right between a robust legal framework and operational flexibility. Obviously, this applies across the Bill. I ask the Minister to consider whether, by strengthening significantly the oversight arrangements, she will mitigate some of our other concerns around, for example, immunity or the serious crimes threshold in this important Bill.

Lord Morris of Aberavon (Lab) [V]: My Lords, I support Amendment 14. I was sorry that I was unable to attend Second Reading. I was sitting on a sub-committee of the EU Select Committee and was therefore unable to welcome the noble and learned Lord, Lord Stewart of Dirleton, and congratulate him on an impressive maiden speech. He gave the impression that he had been introducing Bills in your Lordships' House all his life.

I welcome the Bill, which provides for authorising offers to be given express powers to authorise criminal conduct that would otherwise be illegal. They carry a heavy responsibility, hence the need for supervision. Given the history of direct government intervention in coal mining disputes many years ago, I look forward to debating amendments in the names of my noble friends dealing with trade unions. Powers given

"in the interests of the economic well-being"

of the state will need close scrutiny. I am proud that, in a small way, I was able to give a little legal advice to the south Wales miners during the miners' strike—for the most part, pro bono—many years ago. During my time as a law officer for England and Wales, and separately as Attorney-General for Northern Ireland, although the Attorney-General has general oversight and appropriate clearance, I was not troubled on any issue arising from the Bill. As the House will know, law officers have general oversight and supervision of the offices of state concerning both the rule of law and other matters.

I wish to endorse and reinforce the points made by my noble friend Lord Rosser in his Second Reading speech about the need for judicial oversight prior—I emphasise "prior"—to the event. There is no argument that there should be supervision. The only issues are, first, who should supervise, and secondly, whether it should be post or prior the event. I believe that the arguments for proper prior supervision are fundamental. In our legal processes, we have judges available 24 hours a day. This particularly includes the long vacation—indeed, any time, any place, throughout the year. They can adjudicate from home if necessary; I am told that that is not unusual. Provided a judge is given the right information, a proper judgment can be given. The same applies down the line to the magistracy, which performs a very vital role. Before a warrant is issued, evidence in one form or another is given and judicial authority is given.

I was never involved as counsel on these procedures during my time as a criminal practitioner, but I can give a personal example of the availability of magistrates on family matters. My wife sat for 18 years in the London juvenile courts. Part of her duties involved the care of children who were, or might be, vulnerable. I recall many occasions when I had to leave the sitting room of our London house at the request of a welfare officer so that she could hear evidence, hear witnesses sworn in and adjudicate, pending the following morning when a proper courtroom could be convened. It was vital that there was availability. My point is that there has never been an issue with non-availability of a court sitting at any level. The Minister is not very persuasive in his brief comment in Column 1046. I need to be persuaded why you can have judicial intervention and a judicial decision in so many other fields but not in this one.

We are dealing with very serious matters. Authorising criminal conduct is important and a departure from the ordinary rules of law. If there is any problem about the security clearance of a particular judge, I would be surprised if that could not be achieved. If a High Court judge cannot be trusted, who can? It would not be beyond the administration of justice to have a panel of designated judges with experience in this field who adjudicate from time to time and can authorise the necessary activities.

This brings me back to the key question: who is to guard the guardians? This is not to denigrate the experience of the highly trained authorising officers, nor the retrospective—I emphasise "retrospective"—oversight of the Investigatory Powers Commissioner. Prior judicial authority is the best safeguard to ensure that, where there is a departure from the rule of law in ordinary circumstances, there is proper supervision of the activities.

2.30 pm

Lord Rooker (Lab) [V]: My Lords, I too regret the split in this debate and certainly hope that it does not happen again. Members were left high and dry with no knowledge of what was happening on the evening concerned. However, that is in the past.

One minor caveat is that I served briefly as Minister of State both in the Northern Ireland Office and the Home Office, but I was involved purely in domestic matters—never in anything remotely regarding security or policing.

I applied to speak to this group of amendments only for the specific purpose of supporting Amendments 46 and 73 in the name of the noble Lord, Lord Anderson of Ipswich. I would have considerable difficulty supporting other amendments in this group, as I will if they come back on Report.

We have heard some powerful speeches about events of the past; in no way do I denigrate these, but this Bill is about the future. We have also heard much about the current inquiry into undercover policing. While I share the concern, and am quite appalled at some of the activities that have been disclosed, I do not see a massive connection with this Bill.

[LORD ROOKER]

At Second Reading I said that, in the main, I think of a CHIS—a covert human intelligence source—as

"someone who is not an employee of the police or security services, but an outside, undercover informer or agent."—[*Official Report*, 11/11/20; Col. 1079.]

No one is seeking a free-for-all. Some years ago, I spent a day in Thames House. Much to my surprise, I came away with the impression of liberal—with a small L—attitudes and, above all, a desire to serve and be accountable to Parliament and the rule of law.

The noble Lord, Lord Anderson, said at one point in his speech that, in the past, he was converted to prior judicial review. I took this to be in respect of the issues he was dealing with at that time, and that has, in the main, been accomplished on other issues. I was also struck by the point he made about the FBI and Canada not using judges for prior approval. This point does not come across in some of the briefings received on the Bill.

Handling a covert human intelligence source is real, practical, person-to-person work, and Amendment 46 is a much better alternative than the others in the current circumstances. The noble Lord, Lord King of Bridgwater, reinforced that, making the point that other alternatives do not seem practical. This was reinforced again by the noble Lord, Lord Butler of Brockwell, who spoke about the work of a CHIS as a specific form of intrusion that required a specialist overseer as it was not a specific one-off act. The work of the CHIS is different from other intrusions such as telephone intercepts or surveillance. It involves fast-changing situations and sometimes volatile, or possibly unpleasant, personalities. In such circumstances, a clear duty of care rests with the handler of the covert human intelligence source. Too little attention has been paid to this aspect.

The noble Lord, Lord Carlile of Berriew, speaking in support last week, said that, to date in the debate, there had been some gross distortions of the position of the police. I too think some of the language has been extravagant, and it does not fit the here and now.

This brings me to the speech of the noble Baroness, Lady Manningham-Buller. While earlier speeches in the debate drew on practical experience—in particular, that of the noble Lord, Lord Paddick, as a police officer—we can now draw on the personal practical experience of someone who spent 33 years inside MI5 actually running agents in the field and who accepts that there is a life-long duty of care for the agents. Quite correctly, we do not hear much about this, but it is an important point to appreciate. The noble Baroness made a rather telling point, repeated today by my noble friend Lord Campbell-Savours, about MI5 seeking such legislative accountability for running CHIS 27 years ago, before it was a statutory body. Given what I said at the start about what I consider a CHIS to be, it is clear to me that the noble Baroness made a powerful case for Amendment 46, adding to what the noble Lord, Lord Anderson, said in moving it.

Yes, of course, I accept in principle that prior judicial consent could be supported, but it is simply not practical. We need to think of the position of the agents and their handlers in the current circumstances—of those who are making such decisions today. We need to be supportive of change, accept that the situation is not comparable to telephone intercepts and other aspects of surveillance, and be wholly practical in a way that supports those doing this valuable work for the country. I support Amendment 46, unlike many of the other amendments in this group which are simply not practical.

Baroness Chakrabarti (Lab) [V]: My Lords, it is a great pleasure to follow so many distinguished Members of your Lordships' House—not least my noble friend Lord Rooker. The fact that this group has taken so long, has had by necessity to be split over two days and has contained so many distinguished contributions, merely highlights the gravity of the step taken in this Bill to create advanced and complete civil and criminal immunity for criminal conduct by CHIS, rather than putting CHIS itself on a statutory footing; I remind noble Lords of this. It also serves as a reminder of the care with which noble Lords approach this kind of dramatic constitutional exercise.

It would be remiss of me not to mention that this is the first sitting of this Committee since the Government announced yesterday that, once more, the Finucane family will not get the independent inquiry that they have sought for so long into the murder of the lawyer Pat Finucane. This seems highly pertinent to consideration of this Bill.

If after so long, and if after acceptance—even by a UK Prime Minister—that illegal collusion by state agents took place in that murder, and after so much criticism, including at international level, it is still not considered appropriate to have an independent judicial inquiry, that really does beg the question for the future as to whether any Government, of any stripe, at any moment in history, should be trusted with the ability to authorise a whole host of state agencies to subdelegate the power to grant immunities in relation to criminal conduct to a whole host of currently unspecified levels of authoriser or handler, and to do so without some kind of prior authorisation process. The sheer gravity of that new immunity from civil and criminal suit—which has not been the case up to now—is what I believe has caused such a plethora of alternative suggested safeguards, many of which arise in the group of amendments that we have been discussing in recent hours.

It would be invidious to cite particular interventions, because there have been so many; all have been incredibly expert and thoughtful, coming at the problem of safeguards from a great deal of alternative experience. We have heard from the retired judiciary. We have heard from the noble Baroness, Lady Manningham-Buller, a very distinguished former director of MI5, who of course famously made her maiden speech in your Lordships' House in defence of civil liberties and against the notion of 42 days' detention without charge or trial. We have heard from a number of noble Lords who have served at Cabinet level, including my noble friend Lord Hain, who has authorised intrusive activity—necessarily, as a Northern Ireland Secretary—but has also, as he told us quite poignantly last week, been the victim of political manipulation of intrusive power.

My noble friend's story particularly highlights how a covert human intelligence source is different from other kinds of intrusive power, as has been put eloquently

by a great number of noble Lords. A human intelligence source is different because that human is at risk and, as a human, is therefore more precious than a bugging device when at risk. A human intelligence source is also more intrusive and dangerous to those being spied on, because that human will affect behaviour, not just monitor or record it.

In this group, there is a number of alternative authorisation processes and safeguards pre- and post-criminal activity, judicial and political—which, of course, makes me wince slightly. That menu is comparable to the other powers catered for in the Regulation of Investigatory Powers Act 2000.

I remind noble Lords that the scheme of this Bill has essentially been grafted on to a pre-existing scheme in the 2000 Act. Any suggestion that there is currently no regulatory framework for CHIS is not the case—there is. Undercover operatives or agents are authorised under RIPA. However, they are not subject to external authorisation. That may be one problem at the heart of this debate—it is actually human intrusive surveillance or CHIS per se, before we even enter the territory of criminal conduct, which ought to be subject to greater safeguards. However, that is outside the scope of this Bill. It is unfortunate that, in this case, the Government have grafted something as drastic as granting advanced immunity to agents on to a pre-existing scheme without allowing legislators the opportunity to look at that wider scheme itself—because, of course, the Long Title of this Bill is so narrow in just being concerned with criminal conduct and not the authorisation of CHIS. That is unfortunate.

I hope that, in future, at the earliest possible opportunity, the Government will consider having another look at what safeguards should be applied to the authorisation or post-authorisation scrutiny of these undercover operatives and agents. That would help to deal with some of the complex arguments about whether it is appropriate for a judge or judicial commissioner to give a pre- or post- or real-time authorisation or scrutiny of actions that, ultimately, lie in the hands of the CHIS themselves. It is very difficult indeed, because of the fast-moving situations that were described by a great many noble Lords, properly to regulate such activity without regulating the operating mind, drive and ethic of the undercover person.

That brings me to my final point: it would be a great deal simpler if, ultimately, as is the status quo and the mechanism that has been so successful and has saved so many lives, we did not leave open what should be a remote possibility that an undercover operative will have their conduct examined after the fact, when it is criminal conduct, by an independent prosecutor and judge in the normal way, with all the defences that public interest will allow.

2.45 pm

Lord Paddick (LD): My Lords, this has been a lengthy and complex debate, and I blame the noble Lord, Lord Anderson of Ipswich, for that; we tried to split this group to make it more manageable, but his will prevailed.

As the noble and learned Lord, Lord Thomas, said, amendments in this group are on prior authorisation by a judge; by an investigatory powers commissioner; by an investigatory powers commissioner unless it is urgent; by an investigatory powers commissioner if a criminal conduct authority is to be used to identify a journalistic source; and by a Secretary of State. Another amendment requires that an investigatory powers commissioner be notified

"as soon as … practicable, and in any event within seven days"

and that the police authority be involved in holding the chief constable to account as a result of the investigatory powers commissioner's annual report on the use of CCAs.

It is understandable that noble Lords want prior notification—and why the police should not, as the noble Baroness, Lady Kennedy of The Shaws, said, mark their own homework. On the advice of one noble Lord, I read the code of practice that goes with this Bill. I have held both ranks that could grant a criminal conduct authority under this Bill. In urgent cases, that is an inspector, who can not only grant a criminal conduct authority but also grant immunity from prosecution. I was an inspector at the age of 24. I was also, subsequently, a controller of covert human intelligence sources. I spent 18 years as a uniformed officer. On the Friday I left the office as a uniformed chief inspector and on the Monday morning I was a detective chief inspector in the role of a controller. The Government may say that all the people involved in the matters considered by this Bill will be experienced and highly trained, but that is not always the case in my experience.

We should listen very carefully to the noble Baroness, Lady Manningham-Buller, who articulated why prior authorisation is not practical, a point also made by the Minister for Security in another place and by the noble Lord, Lord Anderson of Ipswich. From my experience I agree, although the description of MI5 handlers and agents as beyond reproach is not, in my experience, universally applicable to police handlers and informants.

Any prior authorisation would instruct CHIS to operate within strict parameters, which may no longer be necessary or proportionate once they are deployed, or may not be adequate once they are deployed, because they are being deployed into rapidly changing scenarios in an uncontrolled environment, often involving chaotic individuals. The most common use of CHIS in policing, for example, is to counter drug dealing. As the noble Baroness, Lady Manningham-Buller, has said, you cannot turn an agent on and off like you can a listening device.

Even the most experienced undercover officer may have to necessarily and proportionately go beyond the strict parameters of a CCA because the situation has dramatically changed in ways unforeseen by the handler. If he were to strictly adhere precisely to a CCA, he could put himself in danger of losing his life. As we will hear in later groups, children are increasingly being used as covert human intelligence sources, some of whom have chaotic lifestyles. Sometimes they are drug users or drug dealers. To expect such people to operate within the strict and precise boundaries of a CCA in such turbulent situations is not only unfair

[Lord Paddick]
and unreasonable but completely unrealistic. To determine the strict parameters of a CCA to cover every possible scenario, in the middle of a rapidly changing situation, and when the legal immunity of both handler and CHIS depends on it, is unfair and unreasonable to both handler and CHIS.

Those proposing prior authorisation by judges, Investigatory Powers Commissioners and government Ministers may say that any conduct outside the strict parameters of a CCA will be looked at by the prosecuting authorities and a decision made whether to prosecute using the public interest test. In that case, why can the prosecuting authorities not look at all the actions of the CHIS and the handler and decide whether to prosecute?

Amendment 46, for which there seems to be a good deal of support around the House, suggests that the Investigatory Powers Commissioner should be given notice where a person grants a criminal conduct authorisation as soon as practicable and, in any event, within seven days—but, as my noble friend Lady Hamwee and the noble and learned Lord, Lord Thomas, said, so what? What power does the Investigatory Powers Commissioner have to intervene? What happens if the handler corruptly tasks an informant to commit crime? As the authority has already been granted, both CHIS and handler have legal immunity, even if the handler informs the Investigatory Powers Commissioner six days later. A wronged party may be able to claim compensation from an Investigatory Powers Tribunal but criminal offences may have been committed for which the perpetrators should be prosecuted. That is why we have added to Amendment 46, to the effect that legal immunity is dependent on the CCA being approved by the Investigatory Powers Commissioner. If the actions of the handler or the CHIS are not within the limits set out in the Bill, neither are immune from criminal prosecution or from being sued.

I understand completely why noble Lords do not want a criminal conduct authority to be granted without prior judicial or ministerial authorisation because of the potential for abuse. However, as others have said, it is not practical. We believe there is a way to prevent abuse without prior authorisation of a CCA, including protecting journalistic sources, which we will come to in a future group. We have listened very carefully to this debate and have come up with a new amendment; because we were part way through this debate we cannot debate that amendment in this group, but we will come to it in a couple of groups' time. What must not happen in any circumstances is the granting of legal immunity without judicial oversight. That is what our Amendment 47 attempts to do.

Lord Rosser (Lab) [V]: Amendments 14 and 75 in my name and the name of my noble friend Lord Kennedy of Southwark provide that authorisations may not be granted under this section until a warrant has been issued by a judge. An application to a judge must be made in writing and provide details, including the reasons why it is required, who it covers, the length of time it will be active for, and previous applications covering the same individual. Our amendments also provide that a person who grants a criminal conduct authorisation must inform the Investigatory Powers Commissioner within seven days of granting the authorisation. We seek to strengthen both prior and post-authorisation oversight.

Amendment 77 in the name of my noble friends Lady Clark of Kilwinning and Lady Whitaker and the noble Baroness, Lady Jones of Moulsecoomb, calls for prior judicial approval before an authorisation can be granted

"for the purposes of identifying or confirming a source of journalistic information",

and is in line with our amendment providing that authorisations may not be granted until a warrant has been issued by a judge. Amendment 46 in the names of the noble Lords, Lord Anderson of Ipswich, Lord Butler of Brockwell, Lord Carlile of Berriew, and the noble Baroness, Lady Manningham-Buller, is very similar to our Amendment 75 requiring a person who grants a criminal conduct authorisation to inform the Investigatory Powers Commissioner within seven days of granting the authorisation. However, all the amendments we have been discussing in this group reflect a strong feeling that the oversight arrangements set out in the Bill for the statutory power by public authorities to grant criminal conduct authorisations are inadequate and do not provide reassurance that the likelihood of this power being misused or exceeded is reduced to a minimum.

What exactly has been happening under the present arrangements is far from clear, although we are assured that they have enabled threatened terrorist atrocities and other serious crimes to be thwarted and our safety to be secured. We have no reason at all to doubt that. However, we do not know the extent to which powers have or have not been misused or exceeded since there is no means of that information consistently coming to light. Without proper oversight to act as a firm check there is a risk that some may become somewhat overzealous in how they exercise and interpret the powers they are given under the Bill, including what might be regarded as acceptable covert human intelligence activity, and against what and whom.

We believe there should be prior judicial authorisation, with authorisations not being granted until a warrant has been issued by a judge. Having to obtain a warrant before action can be taken is nothing new. Bearing in mind the potential gravity of the decision to authorise criminal conduct, the necessity to obtain a warrant beforehand seems even greater than it is in relation to other existing actions or activities requiring a warrant at present. It is a prior safeguard and check to minimise the likelihood, in what is self-authorisation by an agency or other body, of a potentially ill-judged or just plain wrong authorisation of criminal conduct, with all the consequences that might have.

Objections have been raised that sometimes authorisations are needed in a hurry but equally, access to a judge, as happens in some other spheres, can be arranged in a hurry—a point made by my noble friend Lady Kennedy of The Shaws. Urgency can arise because of a rapidly developing situation that could not have reasonably been foreseen, but it can also arise because a public authority has left things later than it should have done before seeking the criminal conduct authorisation.

Perhaps the Government can, in their response, give some indication of roughly how many such authorisations are currently granted on average each year, how many are needed urgently and what the definition is of urgently. Can the Government also give a general indication of the extent to which authority to commit criminal conduct is given, in a typical year, to those who have been previously involved in or who are currently engaged in unauthorised—[*Inaudible*]—said that all authorisations

"are granted by an experienced and highly trained authorising officer, who will ensure that the authorisation has strict parameters and is clearly communicated to the",—[*Official Report*, 11/11/20; col. 1045.]

covert human intelligence source. The phrase "experienced and highly trained" sounds fine, but what do the Government intend it to mean in practice in relation to the granting of criminal conduct authorisations under the Bill? What is the definition of an

"experienced and highly trained authorising officer",

a description the Government were happy to use at Second Reading? How much experience is meant, and in what? How much training is meant, and in what? How many experienced and highly trained authorising officers will there be in each authority that will have the power to grant criminal conduct authorisations, and how frequently are they likely to determine whether to grant such authorisations?

3 pm

At Second Reading, the Government also said that authorisations would be subject to

"robust, independent oversight by the Investigatory Powers Commissioner".—[*Official Report*, 11/11/20; col. 1045.]

"Robust" is a frequently used word in politics. Can the Government explain what the words "robust, independent oversight" in relation to oversight of authorisations actually mean in practice? How soon after an authorisation has been given will this "robust, independent" authorisation by the Investigatory Powers Commissioner take place? What form will it take? Will it involve the Investigatory Powers Commissioner or his or her staff speaking to the authorising officer about the reasons for their decision, or will it be a paper exercise?

What will happen if the Investigatory Powers Commissioner does not agree with a decision to grant an authorisation? Will the Commissioner take any action beyond reporting it in the annual report? Will such an authorisation then become invalid, with no protection for the covert human intelligence source committing the criminal conduct that has been authorised? What would be the position of the "experienced and highly trained authorising officer" if the Commissioner disagreed with a decision to grant an authorisation or felt it had given excessive scope for committing criminal offences? Would the authorising officer be open to prosecution by the prosecuting authority, or would the public authority concerned be open to prosecution by the prosecuting authority?

There have been many questions raised and points made during the debate on this group of amendments, which relate to the oversight arrangements that should be in place for the authorisation of criminal conduct by covert human intelligence sources, not to whether these should exist. I hope that the Government, in their response or subsequently in writing, will give their answers to all those points and questions, as well as giving careful consideration to the concerns expressed, and then move from their current position, as set out in the Bill, on this key issue of the necessary oversight arrangements.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank all noble Lords for contributing to what has been quite a lengthy debate on this very important group of amendments. I agree with the noble Lord, Lord Blunkett: it is a shame that we had to break the debate last time. Of course, these things are agreed through the usual channels, and it may well be the case that we have to do so again, but it did slightly break the flow, so I will refer back to what was said at the end of last week as well. I begin by saying to the noble Lord, Lord Rosser, that I was slightly confused; it felt like the noble Baroness, Lady Chakrabarti, was making the points from the Front Bench, but I think it was the noble Lord, Lord Rosser. If one or both of them could confirm that, that would be fantastic.

I start with the comments that my noble friend Lord King started with, which were echoed by the noble Lord, Lord Rooker. Basically, they asked how covert intelligence has stopped terrorism, stopped serious and organised crime and led to thousands of people being arrested who would otherwise do this country harm. I first thank noble Lords for the debate on the role of judicial commissioners in providing that independent oversight of criminal conduct authorisations. The Government's priority with this legislation is to provide public authorities with an operationally workable regime to help to keep the public safe. We recognise that this needs to be subject to robust—I will go on to the meaning of that word later—and appropriate safeguards, and that is the balance that the Bill seeks to provide. During this debate, I have been pleased to hear noble Lords unite in recognising the importance of this balance.

The amendments of the noble Lords, Lord Rosser and Lord Dubs, and the noble Baroness, Lady Kennedy of The Shaws, all require the prior approval of a judicial commissioner before an authorisation can be granted. We do not think—and other noble Lords have articulated why—that prior judicial approval strikes the balance between safeguards, which my noble friend Lord Naseby talked about, and an operationally workable power, as it risks the effective operation of this vital capability. My noble friend Lord King and the noble Lords, Lord Janvrin, Lord Rooker and Lord Paddick, all concurred. I do not think that any noble Lord would argue that this is not a vital capability, but prior judicial approval is not the only way to provide effective oversight of investigatory powers.

Noble Lords might find it helpful if I set out in more detail why this capability is unique. As the noble Lord, Lord Anderson, outlined, the use of a covert human intelligence source is different from other powers, such as interception or equipment interference. The noble Lord, Lord Paddick, made that point, and the noble Lord, Lord Janvrin, pointed out that human beings are more complex than phones or cameras. Any decision on how to use a covert human intelligence

[Baroness Williams of Trafford]
source has immediate real-world consequences for that CHIS, as we call them, and the people around them.

Every one of these decisions that impacts on the safe deployment of the CHIS is made by experienced, highly trained professionals, guided by the code of practice, which, as the noble Lord, Lord Carlile, keeps telling us, is very good supplementary reading to the Bill. The use of a CHIS requires deep expertise and close consideration of the personal strengths and weaknesses of that CHIS, which then enables very precise and safe tasking. These are not decisions that have the luxury of being remade; we are dealing with people's lives, very often, and it is critical that these decisions are right and made at the right time.

The Bill's current clarity of responsibility and resulting operational control are the best method for protecting the covert human intelligence source, officers and the public. Even with provision for urgent cases, as proposed by the noble Lord, Lord Dubs, which would reduce one operational challenge of this model, as the noble Lord, Lord Butler, has said, it is best that the authorising officer considers the necessity and proportionality of conduct alongside the operational specifics and safety of the CHIS. That is why deep and retrospective oversight is the most appropriate way to provide oversight of this power.

I have listened to remarks, including by the noble Lord, Lord Thomas of Gresford, that retrospective oversight lacks "teeth", to use his word. I reassure him that the IPC will pay particular attention to criminal conduct authorisations, and that his oversight role includes ensuring that public authorities comply with the law and follow good practice. The Bill is clear on this, but it further underpins this in the code of practice. Public authorities must report relevant errors to the Investigatory Powers Commissioner's Office—for example, where activity has taken place without lawful authorisation or there has been a failure to adhere to the required safeguards. These will be investigated by IPCO, and rightly so.

The IPC will then make recommendations to public authorities in areas that fall short of the required standard. A public authority must take steps to implement recommendations made by the IPC. The IPC could also advise the public authority that it ought to refer matters to the appropriate authorities, or ultimately report it themselves, subject to the statutory process set out in the Regulation of Investigatory Powers Act. I hope that the noble Lord, Lord Rosser, will agree that that is a robust process.

The amendment of the noble Lord, Lord Hain, to which the noble Lord, Lord Blunkett, referred, is similar to those requiring prior approval by a judicial commissioner but requires prior approval by the Secretary of State. It creates the same challenges as prior judicial approval and, equally, cannot be accepted.

I also want to address concerns that the authorising officer cannot be trusted to undertake these duties without independent approval and the examples that noble Lords raised around the conduct subject to the Undercover Policing Inquiry and the appalling murder of Pat Finucane. We also heard reference to events at Orgreave and personal accounts from the noble Lord, Lord Hain, and the noble Baroness, Lady Jones of Moulsecoomb. I note—the noble Baroness, Lady Chakrabarti, mentioned this—the update that the Secretary of State for Northern Ireland provided in the other place yesterday on Mr Finucane's murder. These are difficult and utterly unacceptable cases and it is right that they continue to be scrutinised. However, as the noble Lord, Lord Carlile, so clearly articulated and the noble Lord, Lord Rooker, echoed today, they are examples from the past.

The situation and framework within which CHIS operate today is not the same environment as it was then. There is stringent internal and external oversight in place and robust training to ensure that this activity is handled and managed properly. The policies and procedures used to authorise and handle covert human intelligence sources are subject to regular review and external scrutiny.

We now have the Human Rights Act 1998; authorising officers are trained in its application and how to communicate the tight limits of an authorisation to CHIS. We have also been clear that CHIS will never be authorised to form an intimate sexual relationship and the relevant sources regime places additional safeguards to protect against this in future. The Investigatory Powers Commissioner has oversight of authorisations; he will identify any misconduct by a public authority and take action accordingly.

Noble Lords have spoken about some of the horror stories from the past in the absence of a clear and robust framework. The situation is now different, and the Bill provides further clarity. As the noble Baroness, Lady Manningham-Buller, my noble friend Lord King and the noble Lord, Lord Blunkett, mentioned, this is a long-overdue piece of legislation that places this activity in a clear and consistent framework.

I understand the concerns that have been raised on judicial oversight of journalistic material and sources in Amendment 77. I reassure the noble Baronesses, Lady Jones of Moulsecoomb, Lady Clark and Lady Whitaker, that additional safeguards already exist in the CHIS code of practice for the protection of confidential journalistic material. To echo again the noble Lord, Lord Carlile, I ask noble Lords to please read the code of practice to understand the detail that sits underneath the Bill. These protections will apply to criminal conduct authorisations as well as the wider use and conduct of a CHIS.

The safeguards include a requirement for authorisation at a more senior level than that required for other CHIS activity, reflecting the sensitive nature of such information. Confidential journalistic material, or that which identifies a source of journalistic information, must also be reported to the IPC as soon as reasonably practicable, if it has been obtained or retained other than for purposes of destruction.

The amendments in the names of the noble Lords, Lord Rosser and Lord Anderson, would require an authorisation to be notified to the Investigatory Powers Commissioner within seven days. I listened very carefully to the points made on notification to the IPC. The Bill as drafted replicates the current oversight role of the IPC in ensuring that he has unfettered access to

information and documents that enable him to inspect any public authority at any frequency of his choosing. However, it is clear that providing for independent oversight which is closer to real time—I think most noble Lords mentioned this—would strengthen the oversight regime for criminal conduct authorisations by providing independent review of every authorisation soon after it has taken place.

3.15 pm

The fact that the judicial commissioner will see all forms would provide reassurance on what is being authorised. However, it would still maintain the important balance of keeping the decision-making role with the authorising officer, who, as I have already outlined, is best placed to consider not only the necessity and proportionality assessment, on which they will be highly trained, but the duty of care to the CHIS and the specific personal circumstances of a live operational or investigative environment.

We have been consistently clear that we want this important legislation to command the confidence of Parliament and the public and are thus willing to consider proposals which provide greater reassurance on oversight but do not impact operational effectiveness. An amendment providing for judicial notification appears to do this. I would like to work with the noble Lords, Lord Anderson, Lord Rosser, Lord Carlile and Lord Butler, the noble Baroness, Lady Manningham-Buller, and other noble Lords on this.

Amendment 47 seeks to add additional requirements to the notification amendment from the noble Lord, Lord Anderson. The Government cannot support these requirements as they seem akin to prior judicial approval, for which I have already set out the associated challenges.

Finally, Amendment 76 would require the Investigatory Powers Commissioner to provide relevant information to local policing bodies. I reassure the noble Lords, Lord Hunt of Kings Heath and Lord Bach, that—as he describes is the case in the West Midlands—police and crime commissioners should already be able to arrange access to such material by consultation with their respective chief officer. The information contained in the commissioner's annual report is published and available for the relevant bodies to view. The noble Lord, Lord Rosser, asked about numbers. In previous reports from the IPC, he talked about numbers where he felt they would be relevant.

With that explanation, I hope that the noble Lord, Lord Dubs, will withdraw his amendment.

The Deputy Chairman of Committees (Lord Haskel) (Lab): My Lords, I have had six requests to speak after the Minister, from the noble Lords, Lord Hain and Lord Blunkett, the noble Baroness, Lady Manningham-Buller, the noble Lord, Lord Marlesford, the noble Baroness, Lady Whitaker, and the noble Lord, Lord Paddick. I call the noble Lord, Lord Hain.

Lord Hain (Lab) [V]: My Lords, I thank the Minister for her typically courteous and thoughtful response, particularly her offer to talk to a number of my noble friends and other noble Lords about possible oversight that would be acceptable to the Government. Could she look again at Amendment 15? I and my noble friend Lord Blunkett worked very closely with the Security Service, in my case when I was Secretary of State for Northern Ireland—including with the noble Baroness, Lady Manningham-Buller—GCHQ, and, when I was in the Foreign Office, with MI6. I have authorised warrants, as I have explained, for vital work in surveillance and interception, and worked with undercover officers.

I appeal to the noble Baroness to meet my noble friend Lord Blunkett and myself informally to discuss the terms of Amendment 15, because it is very practical. It can happen in real time; I have been involved in authorising warrants in real time, including one on Islamist bombers planning to attack London when the operation was live. So, it does deal with her point. It is practical; in some respects, it is the most practical of all these oversight measures. It would give greater legitimacy to and authority for the deployment of undercover officers for the purposes that she is quite properly seeking. They can play vital roles in combating terrorism, for example. I ask her to look again at this and perhaps meet us to discuss it.

Baroness Williams of Trafford (Con): The noble Lord knows how I operate, so he can be absolutely sure I would be happy to meet noble Lords to discuss some of these amendments. I was particularly attracted to the post-facto oversight, because operationally —I do not know whether the noble Baroness, Lady Manningham-Buller, is going to say something about this—prior authorisation could be very difficult. To get that notification as close to real time as possible is, I think, what we are all seeking.

Lord Blunkett (Lab): In the light of the answer the Minister has given, including her willingness to talk with my noble friend Lord Hain, I am happy to withdraw.

Baroness Manningham-Buller (CB) [V]: My Lords, I am not going to repeat what I said in my speech, but I want to make three small points—[*Inaudible*.] The first is to correct an impression that the noble Lord, Lord Paddick, largely corrected: that the decision to authorise is made by a handler. It is not. In MI5, it is made by a senior manager who may be several grades above the handler, so it is a twofold process.

Secondly, there has been a certain amount of reference to training. I am out of date but the training in MI5 for someone to be permitted to run covert human intelligence sources certainly involved extensive residential courses and frequent refresher training.

Thirdly, I just hope that, as we come to look in the amendments in more detail at later stages of the Bill, noble Lords will bear in mind that the details and numbers of this activity must remain top secret and cannot be revealed, because the lives of covert intelligence sources are at risk. If sufficient information can be pieced together to point to their existence or encourage people to look for them, they will be exposed and potentially killed. I know that noble Lords understand that; I hope that they will forgive me for repeating it. I am not going to engage with other points at this stage because the Minister has summed up well and I know that there will be further discussions between her and Members of your Lordships' House.

Baroness Williams of Trafford (Con): Try as I might, that was very difficult to hear. I think that the noble Baroness—I know that she will intervene on me again—made the following three points. In fact, I meant to pull out from the speech of the noble Lord, Lord Paddick, her first point: that authorising is done not by the handler but by a senior authorising officer. The second point was that training for CHIS handlers is extensive. She may have said "expensive" but I think she said "extensive," because it would have to be extensive for this serious an operation.

I think the noble Baroness's third point was that details of numbers have to be top secret to maintain and protect the welfare of the CHIS. I referred to the IPC report because I think that the noble Lord, either last year or the year before, gave numbers on juvenile CHIS, which gave a flavour of the numbers that we were talking about.

Lord Marlesford (Con) [V]: My Lords, I want to make a point on Amendment 77 on journalistic sources, in the name of the noble Baroness, Lady Whitaker. As I mentioned to my noble friend last week, Parliament already has an effective equivalent to judicial review. I referred to the *Economist* case of 1975, when the House of Commons Committee of Privileges imposed a personal penalty on the editor and a journalist—who happened to be me—of the *Economist* due to the premature publication of the draft report of the Select Committee on a Wealth Tax and our refusal to reveal our sources. The House of Commons debated this on the Floor of the Chamber for more than two hours and voted not to impose the penalty.

Baroness Williams of Trafford (Con): I think the only response to that is to thank my noble friend for taking the time to explain it to noble Lords.

Baroness Whitaker (Lab): In thanking the noble Baroness for her characteristically thoughtful response and her offer to meet noble Lords, I ask her also to include a discussion of journalistic sources, because the code of practice left me with some questions. I assume that the meeting will be before Report.

Baroness Williams of Trafford (Con): I am very happy either to write to the noble Baroness and outline what I said in more detail or meet with her before Report.

Lord Paddick (LD): My Lords, I thank the Minister for what she has said. I accept what she and the noble Baroness, Lady Manningham-Buller, said about it being a senior officer. In urgent cases, however, the police officer who actually grants the criminal conduct authority would be only at inspector level, which is not very senior. Criminal or civil liability would probably rest with the handler because the handler is the one who made the request to the senior officer—but I am glad that that has been clarified.

The Minister dismissed our Amendment 47 on the basis that it looked like prior judicial approval. It is not prior judicial approval at all and it deserves to be looked at. The Minister said that retrospective oversight is the best solution, but once a criminal conduct authority has been granted, so has legal immunity. So what if the CHIS has been corruptly tasked to commit a crime and commits a crime that should not have been committed? With only retrospective oversight, that CHIS and that handler are still immune from prosecution. How can that be right?

Baroness Williams of Trafford (Con): If I understand the point from the noble Lord, Lord Paddick, that the CHIS is authorised to commit something that is later deemed unlawful, my understanding of it—I will stand corrected if officials tell me differently—is that the person who authorised the unlawful conduct would themselves be liable for the deployment of the CHIS. Clearly, what the CHIS did would also be looked into post facto, but the person who authorised the deployment would be liable for that conduct in the deployment, I think.

3.30 pm

Lord Dubs (Lab) [V]: My Lords, I am grateful for the way in which the Minister so helpfully explained the Government's position and made a concession on one of the amendments. Like everyone else, I regret that the debate was split over two days. It gave me the slight advantage that I could read the whole transcript of the first day's discussion on this amendment, but I am not sure that it has helped me very much in the short contribution I want to make.

We have heard some very impressive contributions indeed to this debate, and I cannot match for a second the enormous legal experience or the experience of our security services, as evidenced by my noble friend Lord Hain, former Secretary of State, and other senior Ministers. All I can do is say that my Amendment 11 stems from the Joint Committee on Human Rights report, which I still believe is a very helpful background to this debate and points the way forward, in ways that are not entirely in line with the speech that the Minister just made.

It seems to me that the nub of the issue in this group of amendments is still whether approval should be prior or after the event, or in real time, as has been said. I cannot help feeling that the argument for prior approval has not been put forward as widely as I would have hoped. We are told that prior approval would prejudice an effective operation. I am really not convinced by that argument—or at least I do not have the experience to understand it fully.

My noble friend Lord Rooker said we are not talking about history. There is a reason some of us mentioned the investigation by the police into the Lawrence family after the racist murder of their son Stephen, and why we are concerned, as my noble friend Lady Chakrabarti said, about the lack of an inquiry into the Finucane case, as announced by the Northern Ireland Secretary yesterday. The reason we cite those two is because they are the two that are in the public domain and that we know about. Other Members of this House have experience of a wider range of cases that, for obvious reasons, they cannot talk about in any detail. I make no apology for saying that, if any one of us in this House had had prior oversight of the investigation into the Lawrence family following the murder of their son, we would all have said, "No, that is unacceptable". After all, the only point of prior oversight is that it can

stop something in its tracks; otherwise, it is no better than after the event. Everybody would have said that that was wrong, and yet it happened.

We all owe a great debt to the security services—they have saved many lives—but now and again, something goes wrong and things are not right. It is because that might happen—very rarely, but it might just happen—that we are concerned about the method of approving this type of activity. That is the argument.

Similarly, with the Pat Finucane case, clearly any of us would have said no. The way that appears to have happened was wrong, and it would not have been allowed. Now we are told that there cannot even be an inquiry into it, for reasons which we will have to look into on another occasion. So I am still worried.

We are dealing with incredibly serious powers: powers to permit criminal activity, which we do not do with any other legislation, as far as I am aware. We are told that this prior approval cannot be given by judges, because judges do not have the insight into human nature that some of the more experienced people would. I do not know very much about judges, although I have had the pleasure of meeting some as colleagues in the House, but I think that, particularly those in criminal law, they have had a great deal of experience of human nature. I would have thought they would be in a good position to make the judgment, as indeed could Secretaries of State, as evidenced by the amendment put forward by my noble friend Lord Hain.

I am not convinced by the arguments against what the human rights committee proposed. I am not convinced that prior approval is not a good idea, whether it is done on the Lord Hain model, the Joint Committee's model or the Joint Committee's model as amended by my noble friend Lady Kennedy. All of these are ways of doing it, and I am not convinced that these are not better alternatives than having approval only retrospectively. However, we have had a long debate, and I want to reflect on what has been said before we get to Report. I beg leave to withdraw my amendment.

Amendment 11 withdrawn.

Amendments 12 to 15 not moved.

The Deputy Chairman of Committees (Lord Haskel) (Lab): We now come to the group beginning with Amendment 16. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate, and anyone wishing to press this or anything else in the group to a Division should make that clear in the debate. I inform the House that if Amendment 16 is agreed to, I cannot call Amendment 17.

Amendment 16

Moved by ***Baroness Hamwee***

16: Clause 1, page 2, line 16, leave out "the person believes—

(a) that"

Member's explanatory statement

This amendment ensures that there is an objective test rather than a subjective test for granting a criminal conduct authorisation.

Baroness Hamwee (LD) [V]: My Lords, my noble friend Lord Paddick and I have Amendments 16, 18, 20, 32 and 33 in this group, which is concerned with the test—the standard or threshold, if noble Lords prefer—for granting a criminal conduct authorisation.

The JCHR made the very good point in the conclusion of its report that

"it would be more effective for a test of objective reasonableness to be applied in the course of an independent judicial approval process".

It also made the important point:

"If a test of 'reasonable belief' were applied to the making of an authorisation, a CCA made without objective justification would be invalid. However, the CHIS acting under the CCA would not know this. This could result in the CHIS being exposed to criminal prosecution or a civil claim, despite the fault being with the individual making the authorisation."

The Minister has just reminded us of the duty of care to a CHIS.

New Section 29B(4) requires belief as to three matters listed on the part of the person granting the CCA. I am always keen to follow the noble Lord, Lord Anderson, and we go a long way together on this group and then part company a little towards the end. Is a simple belief that something is necessary and proportionate an adequate test, or is a simple belief—to read from new Section 29B(4)(c)—that "arrangements exist that satisfy" the Secretary of State's requirements? We will come later to what those arrangements might be, but it is the same issue. I acknowledge that subsection (4)(c) is probably more procedural than substantive.

A person might honestly believe in all these things but be mistaken. But he could still assert that belief, hence the need for objectivity—at least, an objectively reasonable belief. As the JCHR said, that is a

"standard requirement for the exercise of police powers—from stop and search, to arrest, to applying for a search warrant. This prevents these powers being lawfully exercised without reasonable justification. It is a vital protection against overzealous or misguided officers."

That is what is in the guidance. Although I of course welcome that, it is worrying that the term is not included in the Bill. I am not clear whether that is a deliberate omission. Certainly, the legislation and the guidance should be consistent.

The amendment in the name of the noble Lord, Lord Anderson, which was moved by my right honourable friend Alistair Carmichael in the Commons, imports objectivity. We are going further by asking whether the Government should justify why something is not actually necessary or proportionate, or satisfying the Secretary of State's requirements.

New Section 29B(6) is a gloss on Section 29B(4) and tells us what is to be taken into account in authorising the conduct—

"whether what is sought to be achieved by the authorised conduct could reasonably be achieved by other conduct which would not constitute crime."

We would take out "reasonably".

The Government might say that its inclusion is a safeguard for what the noble Lord, Lord Anderson, and I are seeking in our respective amendments. What concerns us, however, is that anything that spells out how you reach a belief or conclusion is in danger of

[Baroness Hamwee]
weakening what is central to authorising a CCA: the necessity and proportionality of it. Both of those contain an element of judgment and we do not want to weaken subsections (4)(a) and (b), hence our Amendment 32.

Amendment 33 is in the same family. It would remove "reasonably" from subsection (6) of proposed new Clause 29B, which I just quoted. That subsection lends itself more to being tested, so I am less concerned about it than other amendments. Perhaps, however, I should make it clear that we are not in the business of trading one "reasonably" for another. Our other amendments are consequential.

On the amendment from the noble Lord, Lord Rosser —I think that it will be spoken to by the noble Lord, Lord Kennedy—we think it preferable not to go down the route of listing matters to be taken into account, as that amendment does. I am sure that the noble Lord, Lord Anderson, could tell us about the case law. Simply, I would not be surprised if the Minister says this too, since she and I have had this discussion on many occasions: a list is bound not to be complete, and the more you list, the less scope there is to take into account something that is not spelled out. With that, I beg to move Amendment 16.

Lord Anderson of Ipswich (CB) [V]: My Lords, it is a pleasure to follow the noble Baroness for at least part of her journey, as she says. I will speak to Amendment 17 and its Scottish equivalent, Amendment 72. They would require that the authorising officer's

"belief in the necessity and proportionality of a criminal conduct authorisation, and in the existence of satisfactory arrangements, be reasonably held."

In paragraph 67 of its report, the Joint Committee on Human Rights rightly said:

"It cannot be acceptable for CCAs to be made on the basis of an unreasonable belief in their necessity and proportionality."

Despite the wording of the Bill, which makes no reference to reasonableness, the Government appear to agree with the Joint Committee. We know this from Second Reading in the House of Commons, when the Solicitor-General stated, in answer to Jeremy Wright MP, that

"the code of practice sets out that there does need to be a reasonable belief that an authorisation is necessary and proportionate."—[*Official Report*, Commons, 5/10/20; col. 707].

Is that a sufficient answer? I am afraid not—for two reasons. First, the draft code of practice, as I read it, does not plainly provide that belief be reasonable. Section 6.1 of the draft code, issued alongside the Bill, provides that a criminal conduct authorisation

"may be granted by the authorising officer where they believe that the authorisation is necessary".

Section 6.3 states:

"The authorising officer must also believe that the authorised criminal conduct is proportionate".

The requirement that belief be reasonable is not clear, even in the code of practice. Those sections of the code appear quite consistent with the requirement of a merely subjective belief. Secondly, and more fundamentally, the notion of reasonableness is—as I think the Government acknowledge—completely absent from the Bill itself, which the courts will of course treat as the authoritative source.

My point is very simple: why is the position rightly endorsed by the Solicitor-General—that belief should be reasonable—not reflected in the Bill?

3.45 pm

Baroness Jones of Moulsecoomb (GP): My Lords, it is a pleasure to follow the noble Baroness, Lady Hamwee, and the noble Lord, Lord Anderson. I do not have their legal expertise but even I, a civilian, can understand that the legal tests in this Bill are absolutely inadequate.

I had the pleasure of being on the Metropolitan Police Authority for 12 years when I was a member of the London Assembly. In that time, I met a large number of police officers—some of whom spied on me—so I can understand the sort of people who become police officers. They are incredibly hard-working and very brave, but they are human and make mistakes. They certainly made a mistake when they decided to report on my activities, which were all on Twitter—my own Twitter. In any case, I have no experience of the security services—that I know of—yet but I imagine that they, too, are human. We are all prone to error.

The big problem with this Bill is that the legal tests are too wishy-washy. They give the authorising bodies free rein. If we do not contract those processes in some way, there will be mistakes—there are bound to be. It will become very difficult to challenge even the most obviously wrong authorisations. The crimes will have been committed, the damage will have been done and harm will have been caused—possibly to entirely innocent people, as has happened in the past. The reasonableness test should be included in the Bill; the Government will struggle to argue against that.

We should, however, go beyond reasonableness. That is why I have signed Amendment 19 in the name of the noble Lord, Lord Rosser. The decision-maker should consider, and show evidence, that they have thought about the alternatives to authorising criminal conduct. Where criminality can be avoided, it should be. I took the point that the noble Lord, Lord Paddick, made about the fact that, as an inspector aged 24, he was not what I would consider a necessarily appropriate person to authorise immunity from criminal conduct. I am sure that the noble Lord was an incredibly competent police officer but, even so, that is an incredibly young age to understand the impact of what you are doing.

The decision-maker should also demonstrate that they are not using this legislation to bypass other, more appropriate, legal routes to achieving their objectives. They should not be able to authorise criminal conduct where a legal route exists. For example, the legislation must not create loopholes and back doors for the authorities to conduct black ops. They must not be able to recruit a burglar where they should have used a search warrant, or a hacker where they should have obtained a RIPA authorisation. It is not sufficient for such critical issues to be left to the code of practice. It must go in the Bill. I really hope that the Government listen to the noble Lords who understand these processes and accept that we are all human and make mistakes.

Baroness McIntosh of Pickering (Con): My Lords, I am pleased to follow the noble Baroness, Lady Jones of Moulsecoomb. I support and will speak to Amendments 17 and 72 in the name of the noble Lord, Lord Anderson of Ipswich.

I am sure that my noble and learned friend will be taken back to his law school days, as I have been, by the discussion of what is reasonable and what is the test of reasonableness in any given circumstances. I prefer Amendments 17 and 72 to Amendment 16 and others; I hope that, if they are pre-empted, this can be resolved on Report.

I entirely support what the noble Lord, Lord Anderson of Ipswich, said. He has gone through the draft code of practice, as he was invited to do by the Minister. I especially support his argument that the code is missing from the Bill. It is not sufficient as an understanding: I want to see it in the Bill in the circumstances that the noble Lord set out, in both the English and Scottish versions.

The Deputy Chairman of Committees (Lord Haskel) (Lab): The noble Lord, Lord Judd, has withdrawn so I call the noble Lord, Lord Thomas of Gresford.

Lord Thomas of Gresford (LD) [V]: My Lords, the first issue to consider is the identity of the person who grants the prior authorisation. The starting point is Section 30 of RIPA, now to be amended by Clause 2 of the Bill. It is for the Secretary of State, by regulation, to specify the persons holding such offices, ranks or position within the relevant public authority as to who will exercise the power to authorise. In addition to the police forces, the National Crime Agency and the intelligence services, the public authorities designated already include the Home Office, the Ministry of Justice and a variety of other authorities, as we have discussed.

The list of designated authorities, however, is not final since Clause 2(8) gives power to the Secretary of State to add more public authorities—subject, of course, to the approval of Parliament by the affirmative procedure. It is clear, therefore, that authorisations may be given by people with varying backgrounds and experience, with varying or no training in matters of this kind. If the subjective belief of one of a large number of unidentified people is sufficient to authorise an individual to commit crime, that places in the hands of the authorities an unusual and dangerous power.

What is it that the authoriser has to believe? They have to believe that the authorisation is necessary and proportionate in the interest of three things: national security, preventing or detecting crime or preventing disorder, or the economic well-being of the United Kingdom. There are varying views as to what is in the interests of the economic well-being of the United Kingdom. I have no doubt that the individuals who authorised events during the miners' strike—the unions, as advised by the noble and learned Lord, Lord Morris of Aberavon, as he told us, on the one hand, and the Home Secretary on the other—had diametrically opposed opinions on where the economic well-being of the country lay and on what was necessary and proportionate. The noble and learned Lord, Lord Morris, was on one side; I myself was engaged in the prosecution of the two miners who killed a taxi driver with a concrete block.

One of the dangers we must bear in mind is that the Bill might solely conjure up a picture that it applies only where well-trained operatives are under the control of senior security officers to go out and fight the baddies. That is the picture painted by the noble Baroness, Lady Manningham-Buller. However, as my noble friend Lord Paddick made clear from his considerable experience, these authorisations are much more frequently to be given by a middle-ranked police officer—an authoriser, if you like—or perhaps an authoriser from the Inland Revenue or one of the other designated authorities. These authorisations are given to criminals with a chaotic life who are seeking for their own purposes to ingratiate themselves with authority either for personal gain or to avoid the consequences of their own criminal activity. That is why it is essential that the test of necessity and proportionality should be objective. If it is subjective, it allows an irresponsible official to follow their own course, perhaps—as my noble friend Lord Paddick suggested—corruptly or, through an excess of zeal, to chase their own hobbyhorse or their own dislike, for example, of striking miners or protestors against road or rail development, squatting up in trees. Indeed, they might dislike members of the Green Party, as the noble Baroness, Lady Jones, has reminded us. An objective test is a check that encourages systems of scrutiny, of consultation and of records—the recording of the reasons for the authorisation being given.

Amendments 17 and 71 in the name of the noble Lord, Lord Anderson, introduce the concept of reasonableness, which is certainly consonant with an objective test. Amendment 19, in the name of the noble Lord, Lord Rosser, deems the test set out in the code of practice, lauded by both my noble friend Lord Carlile and the noble Baroness, Lady Williams, to be necessary reading. Why should the public not read it in the Bill? Why should it not be in the Bill from the point of view of the courts and the juries that might try cases arising under it?

Amendments 32 and 33, in the names of my noble friends Lady Hamwee and Lord Paddick, insist that these tests should not be in any way weakened. This group of amendments conveys the same message that necessity and proportionality are not to be judged by the inclination and values of a shadowy and undefined figure. I hope that on Report, we can consolidate in order to improve this Bill.

The Deputy Chairman of Committees (Lord Haskel) (Lab): The noble Lord, Lord Cormack, and the noble and learned Lord, Lord Morris of Aberavon, have withdrawn, so I now call the noble Lord, Lord Rooker.

As the noble Lord is not responding, I call the noble Lord, Lord Mann.

Lord Mann (Non-Afl): My Lords, I will speak to a number of these amendments simultaneously, using a different word to the thematics that have come through, but with the same purpose. The word that I refer to is "competence": the competence of decision-making, and whether the legislation, in the view of the Minister as well as the Committee, is sufficiently precise in ensuring it. We have heard words such as corruption—that is very important—and concepts of reasonableness, which are also important.

[Lord Mann]

I can recall when I and other trade union colleagues had suspicions about an individual who we thought was acting rather strangely over a period of time. He was observed selling Nazi memorabilia in London Bridge Station on a Saturday morning—not a normal activity for trade unionists, even in those days. We were suspicious, and he suddenly moved on. I had a sharp thought that I would handle his pension because it was an accrued pension entitlement that was to be transferred. Rather than leave it to the finance people, who would have handled it in a very financial way, I made the calls myself. I was fairly certain that he was not who he said he was, and that for some reason he decided to look into the heart of moderate trade unionism. The question that it begged to me, rather than being a question of principle, was what a waste of resources it was—what incompetence.

I found later that I was on the Economic League blacklist. I found out why by a fair amount of research. I looked into the case of the—I think it is fair to say—loud-mouthed communist, the very good actor Ricky Tomlinson, whom I got to know over the years. He was stitched up for being an industrial activist for no good democratic reason. He was a communist without any question and he was loud-mouthed, but he was participating in a perfectly normal way in our civil society, and yet he was stitched up.

4 pm

Mine was much less serious, but I was stitched up by being put on that Economic League blacklist. I know that I was put on it because I was one of the organisers of the national anti-apartheid demonstrations. My role was not very political in that context. It was not glamorous; it was organising stewards and stewarding. I had to have an intricate knowledge of extreme-left groups, because my tasking by the Anti-Apartheid Movement—and through them from the African National Congress—was to ensure that Trotskyist groups did not take over the march to divert from the general messaging of the Anti-Apartheid Movement.

It was very mundane and matter of fact but it was actually quite a complex operation—knowing exactly who the extreme Trotskyists were, what their agenda was, how they would operate and what they would try to do within the march. As part of that, I had to liaise with the Metropolitan Police—one of a small number—on how the march would operate, how it would be stewarded and where it would go. For my pleasure, I ended up a few years later on the Economic League blacklist. I know that only because Ciba-Geigy chemicals in Manchester told me that when it had given me a job, and then had to embarrassingly withdraw it.

The truth of the matter, which was self-evident to anyone around at the time, was that I was not an extremist. But not only was I not an extremist, I was one of the people most active within the Labour Party and the unions in combatting extremism, to such an extent that I was personally responsible for the exposure of the far-left infiltration of the ANC in 1985. The Labour Party, under my report, took action and helped crack that particular problem.

I am looking and thinking about what was going on at the time not in terms of my rights, or anything like that, although those can be important, because it can have—as it did for Ricky Tomlinson—very detrimental effects on your economic well-being, your family and so on. I am not even thinking particularly of principle but of competence. If that resource is being employed in that way, it is not being employed in another way to deal with people who want to cause problems within the state and usurp our democracy.

To jump forward to the more recent scandals we have seen, not least in Nottinghamshire, where so-called green groups were infiltrated by police officers and horrendous sexual abuse took place, there ought to be the right of remedy for those women. That right should be there now, and that scandal is certainly not in any sense a closed chapter. Let me look at it from an angle which has not been discussed: the competence of infiltrating some obscure green group with hardly any members.

When I was an MP at the time, they targeted the two power stations in my area, and they were just an irritation. Do your Lordships know the biggest problem that created? It was me arguing with the power station owners, the police and the local authorities about toilet facilities and the problems of the workers on site if such a group of people are there. Those people—I think I called them "woollybacks" at the time—were not a danger to the state or society but a bit of a danger to themselves, climbing up cooling towers without toilet facilities available. They were a little bit of a public health risk and were hypocrites, turning up not on their bikes or walking but in motorised vehicles, polluting the local area that I live in. I gave them the full whack in terms of the political welcome that they wanted. However, that is not how you disrupt a power station. It is an aggravation, an irritation and a cost, and we should not allow such criminality. But, frankly, that is easy and simple to deal with. In fact, if it had been left to the local people, I could have got a few people to deal with it very easily: trade unionists working inside the power stations, who did not want their economic lives threatened by some eco-protest.

In fact, if you were an eco-warrior of some kind and you wanted to create an economic problem, you would attempt to get employed inside the power station, get in charge, run the trade union and bring it out on some kind of prolonged strike. That is how you do economic damage. Of course, that is not possible, because trade unions have always been the bulwark against such kinds of extremism. That is the whole point of trade unions. They exist to complement capitalism, not to overthrow it, and to battle and share the products of capitalism. Therefore, the whole mindset that would infiltrate trade unions was an absurdity. However, the whole mindset that would put resource for an extraordinary length of time into a tiny group of people who are so obscure and irrelevant that when they come to power stations—as they came to West Burton, near my house—they are only a threat to themselves and not to anybody else, begs the question of competence.

When we talk about reasonableness, I hope the Minister can address that, because that resource ought to have been used at that time in trying to root out the future terrorists and encouragers of terrorism—the ones who are a threat to our society and people's lives

in our society. Therefore, on this question of this competence, the problem or dilemma that we and the Government have is that we are leaving it to people whose mindset may not understand, and certainly did not in the past, what is a threat and what is an irrelevant irritation that a simple bit of policing can handle.

If you look at the groups that were infiltrated, frankly it is a comedian's hotchpotch of the irrelevancies of the far left—extremist groups where they are all flooding now, back out of the Labour Party, spending most of their time battling with each other about some dead theorist whose view on Libya or something over the last 30 or 50 years is the right one, or whose analysis of the Russian Revolution was the right one. They are back into that. They are easily identified, because they like to publish everything. It used to be newspapers, but now it is online. Frankly, that irrelevance could go on forever—about who they were, where they were and how many have ended up in here. I will not embarrass anyone like that, because they are on all sides of the House; I am not going to do that.

My point on competence is absolutely fundamental to the powers that are there. I hope that the Minister will address that, because it is fundamental and it is the problem of the past, alongside the abuses that took place. It must not be a problem in the future, because that will put us all at risk.

Lord Thomas of Cwmgiedd (CB) [V]: I can be very brief in support of Amendment 17 and its Scottish equivalent. The intention appears to be clear: that the belief of the person has to be reasonably held on an objective basis. It would, in fact, be quite exceptional to have any other provision. It seems to me that the Bill ought to be clear and, on such an important point as this, there should be no room for ambiguity or argument if this matter ever comes before a court.

Lord Naseby (Con): My Lords, I listened to my noble friend opposite and his detailed, and quite persuasive, contribution. I mentioned competence in the previous group. It is absolutely vital, but I do not need to say anything further on it, because the noble Lord has covered that in great depth.

The other two amendments—Amendments 16 and 17—both claim to be more objective, and there is a powerful case for clarity. My only other comment is on Amendment 19. I do not want to be too hurtful but frankly, all it does is complicate the whole issue by a huge margin. For anybody to balance

"the size and scope of the proposed activity against the gravity and extent of the perceived crime or harm",

they really need to be very experienced in the whole of this market. That is not at all possible.

It is difficult for my noble friend on the Front Bench. I can see that there is a need to get more bite into it, if possible, but it is not an easy issue. The contribution on competence from the noble Lord needs to be taken very seriously.

Baroness Chakrabarti (Lab) [V]: My Lords, during this sitting of the Committee, I have just discovered about the passing of Lord Kerr of Tonaghmore, one of the first members of our Supreme Court and a former Lord Chief Justice of Northern Ireland. I am sure that all noble Lords will join me in mourning him and sending our condolences to his family. He was a great judge and human being. Being a senior judge in Northern Ireland when he was created a great deal of risk for him and his family, but I will remember him for his humanity and sense of humour just as much as for his courage and intellect.

On a small preliminary manner, the Minister made a comment on the previous group. Our hybrid proceedings are amazing in so many ways, but they may create confusion on occasion. I apologise to her if I contributed to that because, when we are on Zoom from home, there is no Dispatch Box. There is a metaphorical one but not an actual one. To be clear, in the last group my noble friend Lord Rosser spoke for the Opposition and I spoke for myself. Last time, you heard from my noble and learned friend Lord Falconer of Thoroton and my noble friend Lord Rosser for the Opposition. Shortly, you will hear from my noble friend Lord Kennedy of Southwark, who will speak for the Opposition. That may be easier, because I can see him in the distance via my Zoom; he is physically in the Chamber. I apologise for that—or if the Minister was making a joke at my expense and I have just wasted your Lordships' time for a couple of minutes.

The amendments in this group are important, not least because of the Minister's response to the previous group, and particularly to what I will call the Paddick question. Noble Lords will remember a hypothetical put by the noble Lord, Lord Paddick, essentially about what happens when things go wrong. The noble Baroness, Lady Hamwee, has spoken of everyone's human frailty, and legislators need to consider, despite all the expertise, brilliance and public service principles of those operating legislation, what happens when things go wrong. The noble Lord put the hypothetical of a criminal conduct authorisation that had been corruptly given, but executed by an undercover agent in good faith. What would happen then? The Bill has a three-way relationship at its heart—a triangle, if you like—between the person who authorises criminal conduct, the person who executes it and any victim of that criminality. Your Lordships are considering a crucial legal relationship.

If I am right, the Minister responded to the noble Lord, Lord Paddick, with an answer akin to saying that the person who issued the authorisation—in this example corruptly—would be liable. I think she suggested that there would still be no liability for the undercover agent, because they had acted in good faith, be it on a corrupt authorisation. They had been used, if you like, as the tool of the corrupt authoriser. They would continue to have criminal and civil immunity, but there would be an unspecified liability for the person who issued the authorisation.

4.15 pm

In the case of corruption that may be clear enough, because there are independent criminal offences in relation to it. One would certainly hope that the corrupt bad-faith authoriser would be liable for offences—misconduct in public office, corruption, et cetera—but what of the authoriser who is not corrupt but is just plain wrong? They may be negligent or they may just be wrong—in good faith, but wrong. They have a belief,

[Baroness Chakrabarti]
but it would not satisfy the European Court of Human Rights. It is not a completely inaccurate or unreasonable belief. Perhaps it would be reasonable in certain circumstances. Perhaps it was formed based on the best information before them, because there is a chain of information in fast-moving criminal operations. None the less, it will not meet the convention tests of necessity and proportionality, because the information was wrong and the criminal conduct authorisation should never have been issued.

The language of "necessity and proportionality" comes from Article 8 of the European Convention on Human Rights on privacy. But this is not just surveillance. We are now in the territory of potentially quite serious criminal offences against property and the person, and the language of privacy may not be enough. Criminal conduct may have been authorised mistakenly or incorrectly, which will never satisfy a test of necessity and proportionality, because it was just plain wrong. The conduct was serious and possibly had serious consequences for innocent members of the public. The agent of the state, who committed the crime, will now be immune from civil liability and criminal prosecution. Where is the redress for victims of crime? The Minister spoke powerfully in the debate on the importance of tackling criminals—in that case, foreign criminals—but what will be the redress for members of the public when things go wrong with criminal conduct authorisations? Where will the buck stop and the redress come from?

This is incredibly important, because Article 6 of the European Convention on Human Rights allows people access to justice and is a particularly jealous protection of rights in the context of criminal activity. Noble Lords will remember the awful case of Osman v United Kingdom, where an immunity from serious crime was found to be in violation of the convention. I look forward to the noble and learned Lord's response, if he has time, and some detail on what the consequences will be for criminal and civil immunity when and if—let us hope it never happens, but we have to consider it—things go wrong.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I have looked carefully at the amendments in this group. Amendment 16 moved by the noble Baroness, Lady Hamwee, and consequential Amendments 18 and 20, all seek to remove the reference to "belief" in relation to a criminal conduct authorisation to make clear that it must be necessary and proportionate. I understand the point that she is making, including on consistency in the Bill and accompanying guidance; I know what she is seeking to do and have sympathy with it. However, I looked carefully also at Amendment 17 from the noble Lord, Lord Anderson of Ipswich, which seeks to insert "reasonably". I concluded that that is probably a better way to achieve what the noble Baroness seeks.

These are matters of judgment at the end of the day, and we have all been careful in our consideration. However, in this case, I found the amendments of the noble Lord, Lord Anderson, more persuasive and likely to find more favour with the Government, if, as they say they are—and I have no reason to doubt them—they are seeking to reach agreement with the Committee on these very difficult issues and ways in which we can all improve the Bill. For me, reasonable belief would be a belief that an ordinary and prudent person would hold in the circumstances, judging the situation in the light of the law and the information before them. That is the right way forward.

Amendment 19 in the names of my noble friend Lord Rosser, myself and the noble Baroness, Lady Jones of Moulsecoomb, simply seeks to place in the Bill the proposals advised in the code of practice, including determination of proportionality. It is important to provide that certainty in order to allay concerns raised across the Committee. I take on board the concerns of the noble Baroness, Lady Hamwee, on this matter but they are covered in the guidance, and placing those matters in the Bill is the right way to go. I hope that that provides the reassurance noble Lords are looking for. We would be interested to hear from the noble and learned Lord, Lord Stewart, where he thinks he can go on these issues if he cannot accept the amendments in their present form.

In his response, will the noble and learned Lord address the point made by the noble Lord, Lord Thomas of Gresford, on the motivation and experience of those authorising such activity? There has been some suggestion that although it may be very senior officers, in some cases, in the heat of the moment, those involved perhaps would not be so experienced. That is a fair point and we need to address who is authorising this conduct.

Amendments 32 and 33 from the noble Lord, Lord Paddick, and the noble Baroness, Lady Hamwee, have been tabled to ensure that the necessity and proportionality tests are not weakened. I understand the points being made, and we deserve a full explanation from the noble and learned Lord, Lord Stewart.

It was good to hear from my old and dear friend, the noble Lord, Lord Mann, who made some very effective points about trade unions, following his work in the trade union movement, to which I can attest. He referred to the nonsense of infiltrating groups that are no threat to the national security of our country but are a bit of a nuisance. There are plenty of those about, but they are not a threat to national security and, frankly, are probably more a threat to themselves than anyone else. They can be a bit of a nuisance around the factory gate or power station gate, but investing time and money on these people is a complete and utter waste of time. Who would authorise activity in relation to those groups? That is worrying. Some senior people have authorised others to waste their time going into those organisations.

On the other side of the coin are the appalling and disgraceful abuses that have taken place. Equally, we need to ensure that that will never happen again. We need reassurance on those matters. The inquiry will have to consider how we deal with them in the future.

My noble friend Lady Chakrabarti asked the important question of where people go to when their rights have been abused. We of course hope that that never happens again, but where would people go if it did? We need to know that people will be protected when they find

themselves in a situation that has gone wrong. If there has been proper authorisation but an offence has been carried out, how do people seek redress?

I look forward to the Minister answering those points and others raised in the debate.

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, perhaps I may begin by discussing the question of the test of necessity and proportionality. That test is well recognised and understood in investigatory powers legislation. The drafting in the Bill is consistent with the existing legal framework within which it will be incorporated. I thank the noble Lord, Lord Anderson of Ipswich, for his amendment which seeks to add a requirement for the authorising officer's belief in the necessity of proportionality for an authorisation to be a reasonable one.

New Section 29B, which provides for criminal conduct authorisations, has been drafted to align with the existing Section 29 of the Regulation of Investigatory Powers Act, which provides the underlying authorisation for the use and conduct of a covert human intelligence source. In setting out that a belief must be reasonable only for criminal conduct authorisations, the amendment would risk creating inconsistency and cast doubt on the test to be applied for other authorisations. I refer your Lordships to section 3.10 of the updated CHIS code of practice, which sets out that the person granting the authorisation should hold a reasonable belief that it is necessary and proportionate.

Amendment 16 from the noble Lord, Lord Paddick, seeks to change the test set out in the Bill for considering whether conduct is necessary and proportionate. Again, the drafting of the Bill is in keeping with the rest of RIPA, where the test for authorisation is that the person granting it holds the belief that the activity is both necessary and proportionate. To remove the reference to "belief" risks introducing inconsistency and casting doubt as to how other provisions should be interpreted.

It would also be wrong if the necessity and proportionality test were not based on the belief of the authorising officer. A number of contributions have been made in the debate today, and on the previous occasion when we discussed this matter, regarding these decisions being taken in the context of live environments, affecting real people, often in dangerous situations. Decisions will need to be taken based around the particular and specific facts of a case at a particular time, and the specific environment in which covert human intelligence sources find themselves. I seek to reassure the Committee that the authorisation process is intended to be, and has been designed to be, robust—I appreciate that the adjective "robust" has come in for some scrutiny in your Lordships' House today—and to support those involved in the decision-making process in making the right assessment.

Your Lordships were concerned with the level of training of CHIS handlers. They and their authorising officers are experienced and must be highly trained. I defer to the personal experience of the noble Lord, Lord Paddick. However, to anticipate what I will say shortly, it is important to bear in mind that we are taking matters forward from today, as opposed to dwelling on the failings of the past. CHIS handlers and authorising officers will have clear and detailed guidance that they must follow in deciding whether to grant an authorisation for criminal conduct. The test for necessity and proportionality is well documented and understood by authorising officers. In addition, the material setting out the rationale of the authorising officer will also be available to the Investigatory Powers Commissioner as part of his oversight function.

I turn to Amendment 32. The Bill sets out that, in deciding whether an authorisation is both necessary for a defined purpose and proportionate to what it seeks to achieve, the authorising officer must consider whether the intended outcome could be achieved by some other non-criminal conduct. The amendment seeks to ensure that this does not undermine the requirements of the necessity and proportionality test contained in the Bill. It does not. In fact, it enhances the rigour with which the proportionality test will be applied by specifying a factor that must be taken into consideration when proportionality is assessed.

4.30 pm

Amendment 33 seeks to amend the necessity and proportionality test so that an authorising officer must consider all alternative non-criminal options that are available to achieve the same outcome, even if those options are not reasonable. Suggesting that the authorising officer cannot grant a criminal conduct authorisation because an unreasonable non-criminal option is available does not seem practical or feasible. We must ensure that these judgments are based on fact and actualities, not unrealistic possibilities. Of course, an authorising officer will need to consider alternatives, and the Bill is clear on that, but I submit that those alternatives need to be feasible and should not cause unintended consequences elsewhere.

In response to Amendment 19 from the noble Lord, Lord Rosser, the Bill is clear on the need for any criminal conduct authorisation to be both necessary and proportionate. The code of practice sits under this legislation and, as we were reminded previously, has legal force. It provides greater detail and guidance on the considerations that authorising officers need to take into account when granting a criminal conduct authorisation.

I listened with care to submissions from your Lordships about the value of placing matters on the face of the Bill. However, I am reminded that that can sometimes be difficult in that, as I think the noble Baroness, Lady Hamwee, acknowledged, the mere act of making a list means that something is often left out. The tighter the legislator tries to grasp the matters to be taken into account, the greater the possibility that something will slip through the fingers, like trying to grasp sea-water as tightly as one can.

As I said, the presence of the code of practice sitting underneath the legislation provides the greater detail and guidance that I hope will be a security and offer reassurance to your Lordships. We have included in the updated code additional wording on the proportionality test, but we think it appropriate that that remains within the code of practice rather than being embodied in the Bill,

I re-emphasise the need to ensure that the Bill is consistent with the existing statutory framework within which it will sit. To include here detail that is not

[LORD STEWART OF DIRLETON]
present for powers in legislation elsewhere risks casting doubt on the application of, in this case, the test that needs to be applied when considering proportionality.

The noble Baroness, Lady Jones of Moulsecoomb, referred to the undeniable fact that human beings make mistakes and that persons acting as handlers or granting criminal conduct authorisations will inevitably make mistakes. It is not so much a matter of arguing with the noble Baroness as accepting the point that she makes and seeking to defend the protections that the Bill seeks to offer, building on those that already exist and advancing them to your Lordships' House as sufficient and proper.

There was discussion from my noble friend Lady McIntosh of Pickering and the noble Lord, Lord Thomas of Gresford, about the authorities that will obtain CCAs and their varying backgrounds. They will indeed have varying backgrounds in relation to the matters that they seek to police, reflecting the very different circumstances in which they might be called upon to act. There will also inevitably be varying degrees and types of training for CHIS handlers and those giving authorisations, which, again, will be specific to the work of the authority in question. The noble Lord, Lord Thomas of Gresford, also spoke about the practice of applying CHIS operations in different contexts.

The noble Lord, Lord Mann, spoke as powerfully on this occasion as he did previously about the competence of directing finite resources and skills towards matters that, ultimately, are of little moment. He also spoke powerfully about the role of trade unions in combating extremism and working together as part of society as a whole—something that I wholeheartedly endorse. I am sure that my noble friend Lord McLoughlin will have followed his words and will nod along when he reads them in *Hansard*.

The noble Lord, Lord Mann, spoke of the abhorrent practice of blacklisting, to which he was subject. This, again, called to mind the personal accounts of others in the House, including the noble Lord, Lord Hain, who spoke not only of his experience of granting authorisations of this sort but of being the subject of authorisations himself. We on this side acknowledge, as I am sure the whole House does, that the actions of the past were occasionally imperfect and caused a great deal of suffering. However, to acknowledge the failings of the past is not of itself to call into question the tests and oversight regime that the Government seek to place over such operations in the Bill.

My noble friend Lord Naseby spoke about competence and the practicalities of such operations. I urge your Lordships to bear in mind once again what has been touched on at other times in the debate concerning the dynamic quality of the environment against which decisions such as these are taken.

The noble Baroness, Lady Chakrabarti, began by informing your Lordships of the death of Lord Kerr of Tonaghmore. Although I never had the pleasure either of meeting him in a personal capacity or of appearing before him in court, I am sure that I speak for the whole House in endorsing the warm tribute that the noble Baroness paid to his memory.

The noble Baroness also discussed what happens when things go wrong—a point that she introduced as the "Paddick question". The noble Lord, Lord Kennedy, on the Bench opposite, picked up that point. I am not altogether sure that I am able to address the broad matter of redress, and I therefore propose to write to noble Lords about it. It seems to me that to address it from the Dispatch Box now would be to presume on your Lordships' patience, because it would be necessary to take into account a series of matters and to present, and provide answers to, a series of hypotheticals.

In response to the noble Lord, Lord Kennedy, on his discussion of Amendment 19, as I said earlier, the position which on reflection we have adopted and urge on the Committee is that placing matters contained in the code of practice on the face of the Bill is not an efficient way of going about things. They are better left where they are.

Finally, and in conclusion, I note that the noble Lord opposite also endorsed the views of the noble Lord, Lord Mann, on the nonsense of infiltrating fringe groups that pose no harm to society. The question of how different people and bodies in society can reach quite opposite views about some matters, such as the economic well-being of the country, was raised on a previous occasion in relation to strike activity. That question is a profound and important one. In answer to that, we lay before the House the presence of this independent oversight regime, under the Investigatory Powers Commissioner.

I am grateful to all noble Lords for their contributions.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I have received two requests to speak after the Minister, from the noble Lord, Lord Anderson of Ipswich, who I will call first, and the noble Lord, Lord Kennedy of Southwark. I call the noble Lord, Lord Anderson.

Lord Anderson of Ipswich (CB) [V]: My Lords, I am grateful to the Minister for his courteous and measured response, but can I press him for clarity on the Government's position on my Amendments 17 and 72, so that I can work out where to go next?

First of all, as I understood it, the Minister asserted the importance of making the new Section 29B consistent with the existing Section 29 of RIPA, which he said did not require belief to be reasonable. But he then relied on section 3.10 of the code of practice, which in contrast to sections 6.1 and 6.3, which I cited earlier, does, as the Minister put it, imply a requirement of reasonableness. The Minister first pleads for consistency and then identifies an inconsistency between part of the code and the Bill, without undertaking to amend either. I may, of course, be missing something. Could the Minister please explain whether the Government support a requirement of reasonableness, as the Solicitor-General appeared to do in the Commons, in which case will he undertake to amend both the Bill and section 6.1 and 6.3 of the code of practice to bring them into line with section 3.10 of the code of practice, to which he referred? Or are the Government against a requirement of reasonableness, in which case could he explain why?

Lord Stewart of Dirleton (Con): My Lords, I am grateful to the noble Lord for his supplementary question. I apologise for having omitted to answer specifically the detailed point that he made in the course of his submission earlier—something I have been guilty of in the past in my appearances in your Lordships' House.

Amendments 17 and 72 would insert a requirement for the authorising officer to hold a reasonable belief that conduct is both necessary and proportionate. As the noble Lord has identified, the position is that the amendment cannot be accepted as the Bill has been drafted in line with the requirements of the rest of RIPA, including that for the underlying Section 29 use and conduct authorisation. The noble Lord, Lord Anderson, identifies a conflict between the terms of the code of practice that I quoted, at 3.10, and the terms of the Bill, and, more to the point, I think, identifies a potential conflict in what was said in the other place in debating these subjects. In those circumstances, I would be very happy to engage with the noble Lord and write to him on the matter.

I am being reminded just now that we have already included wording in the updated code of practice to set out that it is expected that the belief should be a reasonable one, and that the Security Minister confirmed this during the debate in the Commons.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I am not sure we want exchanges in this manner. Minister, are you complete or are you continuing?

Lord Stewart of Dirleton (Con): With your leave, I was about to indicate that I think it better in the circumstances—and where there has been an exchange across the floor of the House—if I were to clarify my remarks in writing to the noble Lord

4.45 pm

Lord Kennedy of Southwark (Lab Co-op): I want to make just a couple of points. I do not accept the noble and learned Lord's point that, if you put things in the Bill, you risk leaving things out. It is possible to craft an amendment, to go on the face of the Bill, that covers those eventualities. There is always a concern that, when things are left to guidance and codes, sometimes they do not have the certainty and force of legislation. I think that an amendment can be crafted that covers both: you get the certainty of the main things but leave the door open, accepting that things can change. Both can be done, and that is a better way forward rather than leaving it all to guidance.

The noble and learned Lord also made the point that we should be looking forward and not back. I get the point of looking forward, and I accept it, but, equally, in looking forward, we are informed by what has happened previously. It is important that we take that on board as well. We need to ensure that the Bill is doing the job it needs to do, and that is addressing issues that happened in the past; not just the issues mentioned by the noble Lord, Lord Mann—which were, frankly, ridiculous—but, more importantly, the real issues of wrong-doing, abuse and great hurt that have taken place. We need to ensure that the Bill stops that in the future.

The other point that we will keep coming back to is the whole issue of what will happen if the CHIS has immunity and someone has something wrong done to them. Where do they get redress? That is a fundamental issue: how do they get redress if the person who has done something wrong has immunity? That is a question we need to answer in the next few days.

Lord Stewart of Dirleton (Con): I am obliged to the noble Lord for that final submission. We do, I acknowledge, need to address these matters over the next period of time, as the Bill moves forward. I acknowledge to the noble Lord, and others who have contributed, that mistakes were made in the past around blacklisting and the penetration of bodies that need never have been penetrated, or of bodies that were engaging in legitimate activities. Acceptance of that will inform the manner in which we proceed further.

Baroness Hamwee (LD) [V]: My noble friend Lord Paddick has been using his experience of the past—experience is, by definition, the past—to inform and improve the future. That was rather what my noble friend Lord Thomas of Gresford was talking about, with his reference to the range of organisations from which authorisations for criminal conduct may come. He mentioned people entitled to give authorisations who will not have the same experience as those in the police and intelligence services.

I hope noble Lords will forgive me if I do not refer to every contribution that has been made, though I am grateful for all of them. However, I want to pick up the point about considering the position if things go wrong. That is a very large part of our task in this House, in scrutinising legislation, and it will necessarily mean positing hypotheticals. I will certainly want to pick up the points made by the noble Lord, Lord Mann, when we come to consider the term "economic well-being".

I remain concerned about Section 29B(6). We have the test of necessity; you cannot really strengthen necessity but you could weaken it. If subsection (6) is to have any meaning, then I am worried that it must weaken it.

To go to the heart of all this, the argument from the noble and learned Lord is that we should be consistent with Section 29 of RIPA, which is about the authorisation of covert human intelligence sources. New Section 29B is about criminal conduct authorisations. I would regard that, as other noble Lords have said during the Bill's passage, as much more serious than what is covered by the current provisions of RIPA in terms of covert intelligence and intrusive investigation as well. Yes, it will be a fast-moving, live environment, but I do not think that that is an excuse not to act reasonably. I really feel that we have to get the Bill right, and that means importing objectivity.

I have still not understood the points made in response to the noble Lord, Lord Anderson, about why we should not have the term on the face of the Bill. I think that the noble and learned Lord said that it would not be appropriate, but I might not have noted that down correctly. He did say that it would not be efficient. I hoped that he might develop that point, but we will have to pursue that after this afternoon's debate. We are clearly gathering round Amendment 17

[Baroness Hamwee]
in the name of the noble Lord, Lord Anderson, and I think that Amendment 72 is its Scottish equivalent. My noble friend and I are very happy to cede the ground to those amendments; we went a bit far, but I cannot conceive of an answer to the points made by the noble Lord, Lord Anderson. We have not heard one so far, so would be delighted to support him if he pursues the matter at the next stage of the Bill, which we very much hope that he will. It will soon be 5 pm, so I beg leave to withdraw Amendment 16.

Amendment 16 withdrawn.

Amendments 17 to 19 not moved.

Lord Parkinson of Whitley Bay (Con): My Lords, we need to halt our proceedings before too long so that we can move on to the coronavirus regulations, but the next group of amendments is very small with only a small number of speakers. If noble Lords are willing to keep their contributions as brief as possible, that would assist us in finishing this group before we break for the coronavirus regulations.

The Deputy Chairman of Committees (Baroness Fookes) (Con): We now come to the group beginning with Amendment 19A. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in this group to a Division should make that clear in debate. I should inform the House that if Amendment 19A is agreed to, I cannot call Amendments 20 and 21 by reason of pre-emption.

Amendment 19A

Moved by ***Baroness Jones of Moulsecoomb***

19A: Clause 1, page 2, leave out lines 22 and 23

Baroness Jones of Moulsecoomb (GP): My Lords, I have written a very long speech, so I hope I will not hold people up for too long.

There are a lot of things in this Bill that I absolutely loathe. In fact, I probably loathe it in its entirety and I wish the Government had never brought it forward. However, my Amendment 19A is about changing the rules for criminal conduct authorisation by statutory instruments. What we have seen again and again with this Government is little power grabs—little bits of erosion of our democracy—through various statutory instruments that they have consistently brought over the past few months. Their majority of 80-plus in the Commons has simply gone to their heads and they feel that they can run the country without your Lordships' House, which is absolutely ridiculous.

It is a pleasure to introduce the amendments in this group, and I look forward to all the important points that other noble Lords are going to put. The amendment is quite simple—just that the Government should not be able to change the rules without proper parliamentary scrutiny; and let us face it, statutory instruments are not proper scrutiny. We are talking here about the state being able to authorise people, quite possibly criminals, to commit crimes. Even I will accept that that sometimes has legitimate applications, such as taking down terrorist cells or breaking up organised crime. But let us face it, that will not be all that this is about. It creates a set of extreme ethical, moral and legal dilemmas, so much so that it must be Parliament—not the Government, whom I do not trust anyway—that makes the decisions on when and why this is allowed.

I think that proposed new clause 29B(4)(c) in Clause 1(5) is a tacit admission by the Government that there are insufficient safeguards built into the Bill and that they want to backfill that with secondary legislation and a code of practice. That just is not good enough for something of this magnitude. I want a clear confirmation from the Minister that that is not what is intended and that the Government will in some way accept that and make it clear.

When speaking to an earlier group of amendments, the Minister talked about not dwelling on the failures of the past. That is all well and good, but if you do not dwell a little on the failures of the past you are doomed to repeat them. That is exactly what I have been saying all through our consideration. We have seen repetitions of failures and somehow the police, the Government and the security services do not learn fast enough. I am hoping for a very positive response from the Minister, please. I beg to move.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I understand that the noble Baroness, Lady McIntosh, has withdrawn, so I now call the noble Lord, Lord Naseby.

Lord Naseby (Con): I have two short comments. First, Amendment 21 sounds wonderful on the surface, but who will determine who is appropriate, or is it just the Secretary of State? Would it not have happened in any case? Secondly, on Amendment 81, I share the view of the noble Lord, Lord Paddick. There is nothing worse than having a situation where the rules of the game—or the provisions or the instructions—are changed in one area without understanding that it has a knock-on effect in another area. As I understand this amendment, it is basically saying that they must all take place at the same time and not at different times. If that is so then I am totally in support of it.

Baroness Chakrabarti (Lab) [V]: To be short, my Lords, I agree with the noble Baroness, Lady Jones. Matters as grave as criminal conduct authorisations for state agents should be regulated in primary legislation and not be subject to delegated powers thereafter.

Baroness Hamwee (LD): My Lords, I am afraid that we have a number of amendments in this group. I have quite a lot of sympathy with Amendment 19A, tabled by the noble Baroness, Lady Jones, but it seems to me that proposed new subsection (4)(c) is not anything like of the same order as proposed new subsection (4)(a) and (b). I read it as being procedural and think that it would not make it more difficult to satisfy the necessity and proportionality requirements. I hope the Minister can confirm that.

Amendment 21 deals with proposed new Clause 29B(4)(c), which provides that the Secretary of State can make an order imposing requirements for the CCA to be authorised, and the person authorising

it must believe that there are arrangements which satisfy those requirements. If the Secretary of State believes—if that is an appropriate use of the word, given our last discussion—that further requirements are necessary and would be of wide interest, in the fullest sense of that word, consultation ought to play a part.

5 pm

I say to the noble Lord, Lord Naseby, that the wording that I have used is pretty standard. Civil society, civil liberties organisations and the organisations involved in giving authorisation ought to be consulted. The noble Lord said, "Well, wouldn't it happen anyway?", but I think he can guess my answer to that, since it is why we have included the amendment.

Amendment 58 would apply something similar to a proposal for an order prohibiting particular conduct.

Amendment 62 would mean that orders under Section 29B would be subject to the affirmative procedure, for much the same reasons as we have proposed for consultation. The Member's explanatory statement as drafted refers to "section 29B(4)(c)", but the amendment would apply to Section 29B(10) as well, so I apologise for that.

Amendment 81 in part anticipates that different relevant authorities will need to consider different matters, and that different things will need to apply to them. I appreciate that it is normal to provide for parts of an Act to come into force at different times, applying to different areas. I can see that it could be necessary to commence the Act at different times for different authorities, but I hope that we end up with fewer in the schedule than we have at the moment, and that, for instance, the Food Standards Agency might need procedures which already exist for the police. Is it right for any provisions to be separated out, provisions which affect the justification for criminal conduct authorisations? Surely this should all be read as a single provision. I could go on, but I will not, in view of the time. Amendment 83 makes the same point applying to transitional and saving provisions.

In short, I hope that the Minister can give us examples justifying Clause 6(2) and Section 29B(4).

Lord Rosser (Lab) [V]: My Lords, the amendments in this group would variously remove the power for the Secretary of State to impose requirements restricting when a criminal conduct authorisation can be granted, require the Secretary of State to consult with such persons as are appropriate before imposing requirements, and require regulations in which the Secretary of State imposes additional requirements that must be satisfied before a criminal conduct authorisation is granted to be subject to the affirmative procedure. There is also an amendment in this group which would restrict the power of the Secretary of State to bring different provisions of the Bill into force at different times and in different areas, to ensure that all the safeguards provided in the Bill always apply.

We will await with interest more detail from the Government in their response as to the nature, extent, purpose, reasons for and frequency of the requirements that the Secretary of State might wish to impose by order before a criminal conduct authorisation can be granted, and why it would not have been possible to include this greater detail on the face of the Bill to reduce the possibility of this power being exercised at any time in the future in an inappropriate manner. We also want to hear the Government's response to the concern about safeguards always being applicable, which has led to the amendment restricting the power to bring different provisions into force at different times.

Lord Stewart of Dirleton (Con): My Lords, turning first to the order-making powers, addressed first by the noble Baroness, Lady Jones of Moulsecoomb, the ability of Parliament to scrutinise statutory instruments is a broader topic than this debate permits me to go into. As to the order-making powers in this Bill, these powers allow for additional requirements to be imposed before a criminal conduct authorisation may be granted, or for the authorisation of certain conduct to be prohibited. I assure the Committee that they can only be used to further strengthen the safeguards that are attached to the use of criminal conduct authorisations. They could not be used to remove any of the existing safeguards. I particularly seek to assure the noble Baroness, Lady Jones of Moulsecoomb, and the noble Lord, Lord Rosser, on that point. The requirements that can be imposed under these powers concern matters of practicality and detail, and therefore it is appropriate that they be contained in secondary legislation.

The noble Baroness, Lady Hamwee, asked whether there was a precedent for such powers to be subject to the negative procedure. The equivalent powers in Section 29 of RIPA are both subject to the negative procedure. Taking similar powers in respect of criminal conduct authorisations to those already contained in Section 29 will allow the Secretary of State to make equivalent provision for Section 29 authorisations and criminal conduct authorisations, where appropriate, so that similar arrangements are in place for both. There is a high degree of interrelationship between the two provisions. While the Government do not have any particular safeguards or limits in mind, such requirements may arise in the future that will need to be legislated for.

An example of the past use of the Section 29 powers is the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Matters Subject to Legal Privilege) Order 2010, which imposes specific additional requirements that must be met regarding the authorisation of a CHIS in connection with material subject to legal professional privilege. Were any changes proposed in the future, the relevant persons would of course be consulted prior to those changes being made. Amendments 21 and 58 are therefore not considered necessary.

Turning to Amendment 81, the Bill contains provision to commence the Act for different areas on different days, to allow time to make any necessary secondary legislation, issue guidance, undertake appropriate training and put the necessary systems and procedures in place, as appropriate. I assure the Committee that this power will not be used to delay commencing those sections relating to safeguards. The power could not lawfully be used to frustrate the will of Parliament in this way.

Baroness Jones of Moulsecoomb (GP): My Lords, I thank all noble Lords who have contributed to this debate, even those who did not agree with me. It was

[Baroness Jones of Moulsecoomb]
lovely and very heart-warming to hear the noble Lord, Lord Naseby, agree with a Lib Dem Peer, the noble Lord, Lord Paddick. I thank the noble Baroness, Lady Chakrabarti, for her support, and the noble Baroness, Lady Hamwee, for her sympathy and exposition of the whole group, which I perhaps should have done myself. I felt that the noble Lord, Lord Rosser, made an extremely good point in asking why there should not be greater detail in the Bill now.

The Minister made a very nice and emollient response, but there is always the problem, not in distrusting the Ministers we have here, in your Lordships' House—we trust them to have good will and be ethical—but in distrusting the Government, as many of us do. I imagine that possibly a majority in the country distrust the Government at the moment. So I do not feel completely reassured, and will think about bringing this back on Report. In the meantime, I beg leave to withdraw the amendment.

Amendment 19A withdrawn.

Lord Parkinson of Whitley Bay (Con): My Lords, I am very grateful to noble Lords for their assistance.

5.09 pm

Sitting suspended.

Arrangement of Business

Announcement

5.15 pm

The Lord Speaker (Lord Fowler): My Lords, the Hybrid Sitting of the House will now resume. I ask Members to respect social distancing. For the debate on the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, and one other instrument, the time limit is four hours.

Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020

Motion to Approve

5.16 pm

Moved by ***Lord Bethell***

That the Regulations laid before the House on 30 November be approved. *Instrument not yet reported by the Joint Committee on Statutory Instruments.*

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, we know this virus well enough now to know that it is not an inconsequential enemy. It has taken loved ones from us, including my godfather, Alan Williams, who some in this House may know. It has separated us from our friends and families and has left people suffering from its ill effects months after first falling ill. This country has made a great collective sacrifice throughout this year, but it has been integral to combating the virus. Regretfully, much as we would wish it were true, this virus cannot be ignored. It has not mutated into a gentler version of itself or blown itself out in the wind. Instead, it remains on the rampage, highly contagious, malicious and mortal, with the old and vulnerable square in its sights, and anyone potentially affected.

While I know that these measures have been hard, this is the reason why we have taken this course. They have always been proportionate to the threat that we face. However, I reassure noble Lords who might be in any doubt that we do not want to leave them in place for one day longer than we have to. We now judge this to be the right time to come out of the national lockdown and revert to a localised approach to managing the virus. Why is that? It is because coronavirus cases are down by 19% in England and hospital admissions have fallen by 7% compared to a week ago. The data tells us that, after many false peaks, the virus curve is finally flattening. The latest assessment from SAGE is that, having reached the summit, we are now walking down the other side, with the R for the UK between 0.9 and 1. Indeed, in its most recent survey, Imperial College London placed its estimate for England at an impressive 0.88.

This is a monumental achievement. After more than three months of growth, this is the first time the R has been estimated at or below 1 for the United Kingdom since mid-August, so at last we can be confident that the virus is coming into check. Only at that point is the danger of our hospitals being overrun starting to pass.

While this drop in the infection rate is encouraging, and confirmation that our national sacrifice has proved successful over the last few weeks, the picture remains varied across the country. That is why we are introducing a framework of regional tiers so that interventions are suited to the situation in any given area. There will be three tiers that apply to the whole country—but, before I go on to them in more detail, I want to spend a moment on the principles that underpin all three.

First, I reassure noble Lords that schools will remain open to protect children's education and development. Secondly, we will seek to keep as many businesses open and trading as is reasonably possible, to support the people who work within them and the wider economy.

Beyond these core principles, as the winter plan sets out, there are the five key factors in determining the tier of any region: case rates in all age groups, cases among the over-60s in particular, the rate at which cases are rising or falling, the positivity rate and the pressure on the local NHS. When setting boundaries for these tiers, we have looked not only at the human and physical geographies that determine how the virus spreads but at travel patterns and the epidemiological situation in neighbouring areas. We have listened to the public voice, and noble Lords in this Chamber, to fine-tune the system. As a result, people can practise their faith in places of worship, gyms will remain open, outdoor leisure will be permitted and we are doing everything reasonable to allow businesses to remain open.

I turn to the details of each tier. The aim of tier 3 is simple: to bring down the rate of infection when rates are rising too fast. That requires considerable collective effort. Tier 3 will be used only when necessary, in order to protect the NHS and save lives where the virus is threatening to get out of control. Tier 2 is intended rigorously to manage the spread of the virus, restricting indoor mixing outside your household or bubble, although the rule of six will apply outdoors. Hospitality will be open but with restrictions on opening hours and serving alcohol. We want to help all local authorities to move down to tier 1, the least restrictive tier. It has been designed to contain the virus and limit new potential outbreaks. It will apply in areas where efforts to suppress the infection have been successful, and represents a relative return to normality, including for the hospitality sector, although the rule of six for social contact must be maintained.

I reassure noble Lords that the decision to put areas in these tiers was made according to the best possible data and clinical advice. This system offers a sustainable and enduring framework for controlling the virus, as well as offering consistency, stability and clarity on the steps people should take to control the virus. On the effects of these measures, I draw noble Lords' attention to the evidence paper on the health, economic and social effects of our approach that was published by the Government yesterday. This analysis recognised that:

"The impacts of COVID-19 to date have been significant on health, the economy and society."

However, it makes clear that:

"Allowing the virus to grow exponentially would lead to"

worse

"impacts, in terms of loss of life and ill health"

and the economy, and

"that would be considered intolerable for society."

The analysis provided in our paper has been informed by evidence from SAGE and its sub-groups, the ONS, forecasts from the OBR and data on the epidemiology of the virus. As the paper sets out, the balance of evidence supports the need for our tiered approach.

However, the tiers are not the only weapon in our arsenal. We are launching a major community testing programme targeted on the tier 3 areas with the greatest rate of infection. Test and trace will work with local authorities on a plan to get tests to where they are needed most, using military support where helpful and designing their own incentives to attract the right groups. The tier regulations are supported by an increased focus on enforcement and compliance, which is what the local authority enforcement powers regulations are all about.

Throughout, we have listened to and engaged with local authorities to understand how we can support our partners in local government and make sure that they have the right tools in place to ensure that rules are being followed. We know that these are the right tools because our partners in local government helped us to design and build them. The coronavirus improvement notices allow businesses to be given a clear and consistent notice, outlining what changes must be made to meet specific requirements set out in named regulations.

Local authorities will be able to use the notices as an effective tool to communicate with businesses before a fixed penalty notice is issued. These regulations reflect feedback from business and others, who are doing their utmost to support NHS Test and Trace. The changes will support businesses to comply with the legislation while ensuring that NHS Test and Trace has the information it needs to contact people who may have been exposed to the virus.

Finally, by keeping the virus under control through December, the Government can enable everyone to see more of their family and friends over the upcoming festive season. These regulations make provision for extended Christmas bubbles that will allow three households to mix between 23 and 27 December. When following these new rules, it is vital that we continue to take personal responsibility to limit the spread of the virus and protect loved ones, particularly if they are vulnerable. The year 2020 has proved to be an extraordinary one that has brought a lot of hardship and heartache for everyone. With the winter bank holidays on the horizon, we believe it is important that people are able to see some of their family and friends during this time. We have been living with this virus for too long.

As we go into winter, our emphasis is on reducing the pressure on the NHS at a time when hospital admissions are already considerable. Our approach is guided by the need to mitigate the virus as much as possible. We have considered the needs of the British people and are seeking approval here to implement a system that remains uniform and clear, wherever in England you might be. It also provides a proportionate and measured response to the continuing threat of the virus. The tier system is not just a government policy; it is a national endeavour that we must all continue to be active players in, because this virus threatens us all, so we must all play our part in keeping it under control.

I know that these are tough sacrifices at the end of a year of sacrifices but, to continue to be able to protect education and the economy, we must continue to limit our social contact with other people where possible. I commend the hard work and dedication shown by the British public through these trying times. Hope is on the horizon, with new scientific advances being made every day, but we still have further to go. Until science can make us safe, we must put in place these new rules, which will help us to keep the virus under control. I commend these regulations to the House.

Amendment to the Motion

Moved by ***Lord Robathan***

Leave out from "that" to the end and insert "this House declines to approve the draft Regulations because no adequate impact analysis of the social, economic and health costs of the restrictions to address the COVID-19 pandemic, compared to the benefits of those restrictions, has been laid before Parliament."

5.27 pm

Lord Robathan (Con): My Lords, this is arguably the worst crisis—certainly the worst economic crisis—of my lifetime. Yesterday, as my noble friend referred to,

[Lord Robathan]
we had, I am afraid, a totally inadequate government benefit analysis, belatedly produced at very short notice to persuade MPs to back these latest measures. It is a very poor document, and, if anyone does not believe me, they should read it.

However, there are some costs that we know about, and all these decisions regarding the crisis should be based on evidence and facts, not fear or conjecture. The costs were listed by the Chancellor of the Exchequer last week in an excellent speech, and I shall not repeat his detailed points. His main point was that the

"economic emergency has only just begun"

and that this will be

"the largest fall in output for more than 300 years"—[*Official Report*, Commons, 25/11/20; col. 827.]

since the Great Frost of 1709, which even I do not recall.

There are pubs and restaurants in particular, as well as innumerable other businesses, large and small, that are closed now and will never reopen. Unemployment will rocket and the young will find fewer vacancies and opportunities for employment. The economy may recover relatively quickly, but future generations—our children and grandchildren—will be saddled with huge debts for decades. In brief, that is the cost: billions and billions. The restrictions we are discussing today are really another lockdown in all but name, and, as Dr Nabarro of the WHO said, lockdowns make

"poor people an awful lot poorer".

What about the benefits? On 1 October, the Health Secretary said that restrictions were necessary to prevent

"hundreds of thousands of deaths"—[*Official Report*, Commons, 1/10/20; col. 503.]

Some were sceptical. If it were true, it would be a ghastly scenario and a consequence of not locking down. Last year, there were 623,000 deaths in the UK—hundreds of thousands; on average, 1,700 deaths each day, each of which is tragic and causes immense pain to family and friends who remain. I suspect that most of us have suffered similar pain.

According to the NHS and ONS statistics, a total of 3,123 people under the age of 60 have died from coronavirus in English hospitals. Of these, 349 did not have known pre-existing conditions. Among the under-40s, a total of 247 people have died from the virus in English hospitals, of whom 46 had no known comorbidities. All these deaths are tragic but, every day, an average of 450 people in the UK die of cancer, approximately half of whom are under 75. Suicide is the biggest killer among men under 45. In England and Wales last year, 2,135 men of that cohort killed themselves. Admittedly, coronavirus has only been recognised for some nine months, but younger people under 40 or 45 seem more likely to die from suicide or cancer than from coronavirus. Indeed, the total deaths attributed to coronavirus are dwarfed by deaths from cancer. To make matters worse, cancer-screening and treatment have been curtailed, suicides appear to be on the rise because of isolation, and mental health problems are certainly an increasing concern. If we are destroying our economy to save lives, we should look at all these facts—not vague assertions—and note that the total deaths in England in October were only eight more than in October 2019, which statisticians would call negligible.

Do lockdowns work? Many people suggest not; I do not know. I would imagine that total isolation must surely stop the transmission of infection, but in Leicester, which has been under stringent restrictions similar to lockdown for about five months, it is only now that positive cases are dropping. Why is that? I wonder whether my noble friend the Minister can enlighten me and the House. We were told that hospitals may be overwhelmed without these restrictions. Can the Minister tell us how many hospitals are completely full, and how many beds are occupied above the seasonal norm? Also, how many beds are occupied in the excellent Nightingale hospitals? I have been told that none are.

How many people have actually been infected? I would think that that is a critical statistic in determining policy to combat the virus. The Government's figure for those who have tested positive is just over 1.6 million, but most people would accept that it must be a lot higher—what with Prince Charles, Prince William, the Prime Minister, half the Cabinet, both my children, et cetera, having had it. Can my noble friend give us any government estimate of the real numbers?

I saw media reports that the average age for Covid deaths in the UK was higher than average life expectancy. This had to be fake news, I thought, but I checked the ONS figures and, indeed, the average age for Covid deaths is 82.4, while average life expectancy is at 81.4. Can my noble friend confirm these figures, and that those dying from coronavirus will actually have lived longer on average than those dying for other reasons?

The Government are in a very difficult position. I understand. This unpleasant virus is highly contagious and killing many people prematurely. I am sorry to hear about my noble friend's godfather. However, we do not know enough about the virus, so we have to go on the facts. I would be grateful for clear and prompt answers to my questions so that we can see whether there has been any weighing up of costs and benefits.

In the debate on 4 November, it was said that some Peers were putting down amendments to double their speaking times, which seemed "a bit iffy". It was suggested that some were playing games. I was accused of "having form" in that regard and of disregarding the science. Those of us who really care about our country's future are not playing games and resent such insulting accusations. Long-standing Members of this House tell me that we should be courteous to each other even when we disagree, so I avoid personal attacks. I just counsel the Member concerned that I have experience of robust comments and can give every bit as good as I get.

The Chancellor of the Exchequer said that we must learn to live with the virus and not fear it. My young female dentist, who I saw in early November, described the second lockdown as "nuts". I will listen to the Minister's response, but currently I intend to divide the House, since it seems to me that there has been no adequate analysis of the costs and benefits of this policy.

The Lord Speaker (Lord Fowler): I should inform the House that, if this amendment is agreed to, I cannot call any of the other amendments by reason of pre-emption. I call the next speaker, the noble Lord, Lord Hunt of Kings Heath.

5.34 pm

Lord Hunt of Kings Heath (Lab): My Lords, this promises to be a very important debate, going to the heart of how we are handling this terrible epidemic. I do not support the noble Lord, Lord Robathan, but he is right to pose challenges about the Government's management of the pandemic, which has been less than consistent. In fact, when one thinks of the Prime Minister's ducking and weaving, the half promises and the hopes that relaxation will be lifted, it is not surprising that it has not inspired confidence among members of the public; I do not think the impact assessment published yesterday inspired confidence either. It looks very much like a cut-and-paste job, strewn with errors.

A much more accurate assessment of where we are was given in the *Financial Times* yesterday. It was a very sober analysis, which showed that the UK was spending proportionately more money than any other country in fighting the pandemic, and that we were languishing at the bottom of the league table of economic performance and virus deaths. The conclusion of that analysis is that, essentially, our poor performance came about because we allowed the virus to become prevalent in the spring before enforcing social distancing. That meant that the Government were ultimately forced to impose the more draconian restrictions that undermined the economy so grievously.

The noble Lord referred to the economic difficulties that we will face in generations to come. Noble Lords will know that the OBR said in its central forecast last week that the UK economy was set to shrink by 11.3% in 2020 with a deficit set to hit £394 billion. We are spending more than most G7 countries yet suffering a deeper decline in economic output than any of them —and, sadly, this does not seem to have saved lives, as the current total number of deaths per 100,000 people from coronavirus puts us at the bottom of the international league table. When reviewing the data, Jonathan Portes, professor of economics and public policy at King's College, said the errors came in locking down too late in March, allowing the virus to spread in care homes and then delaying a second set of national restrictions well after most scientists had realised this was inevitable.

It is unforgiveable that the Government repeated their error in the autumn. At the 58th meeting of SAGE on 21 September, it was noted that Covid-19 instances were increasing, even though the effects of schools and universities reopening were only just beginning to come through. At that meeting, SAGE asked for a package of interventions including a circuit breaker. As in the spring, however, the Government resisted decisive action.

The advice from SAGE in the run-up to Christmas has once again been clear. It points to the potential threat of substantial mixing of people over a short period of time, representing a significant risk for widespread transmission. This is not the time to relax our guard or underestimate the pressures on the National Health Service.

I would like to suggest an answer to the questions raised by the noble Lord, Lord Robathan, about the NHS. I understand there have been a series of comments from Conservative MPs that the NHS is now under less pressure than it was a year ago and, essentially, has the capacity to cope with more patients from a relaxation of social-distancing rules. The analysis published over the weekend by Chris Hopson from NHS Providers offered a very strong refutation. As he said, the NHS is actually at full stretch, juggling the demands from Covid-related care with urgent and emergency treatment for other conditions. Stringent infection controls are required, so every hospital has to be divided into three areas. That has reduced their capacity from between 5% and 20% depending on the conditions in each local hospital. We know that demand for theatre space is hugely outstripping supply and that trusts in areas of high infection rates are losing large numbers of staff because of self-isolation, family responsibilities and staff falling ill with Covid.

Much of this would not show up in hospital demand and bed occupancy data, but the best guess is that today's 85% total bed occupancy is the equivalent of the normal 95% rate when the NHS is probably overoccupied and going at full pelt. Similarly, ICU capacity is not a good indicator of hospital provision because it accounts for only a small proportion of a hospital's total bed capacity, with many more Covid patients now being treated in general wards. As for the Nightingale hospitals, it would be fair to say that they were always intended as a last resort. Also, they do not have the staff there; staff would have to be diverted from our other hospitals, which would reduce the standard of care there, so it really is a last resort.

Frankly, the NHS is at full stretch. It has not yet hit the real winter pressures. Vaccines, more testing and new drugs offer us the way out. This is the last moment we should relax our guard. I should also say that a semblance of competence from the Government might help.

5.40 pm

Baroness Brinton (LD) [V]: My Lords, we are debating more than 70 pages of changes to the Covid regulations with only 24 hours' notice of the detailed impact statement that many sought and with which, as we have already heard from both sides of your Lordships' Chamber, people are not happy; we heard from the noble Lord, Lord Robathan, that he is particularly unhappy.

From these Benches, we have some differing concerns. Ever since the pandemic made its presence known, we have pushed to follow the best scientific advice. We have pushed Ministers to lock down earlier and have not been heard. We have pushed Ministers to set up an effective test, trace and isolate system locally and fund it right from the start, following the excellent examples set in South Korea, Taiwan and Germany, all of which had a steadier path with Covid-19. Test, trace and isolate, to be kind to the Minster, is still a work in progress. Above all, we have asked for clarity and consistency of message to the public so that each and every one of us can play our part as citizens in the fight against the pandemic.

Despite the apparent reduction in cases because of the lockdown finishing tomorrow, we now face these tougher tiering arrangements. We agree that we have not yet got control of Covid. Perhaps these new arrangements would not have been necessary if the

[Baroness Brinton]
Prime Minister had approved a lockdown three weeks earlier when it was obvious to most of us that we were entering a second wave. People are confused about what they should be doing. A poll a couple of days ago showed that two-thirds of people are worried about how safe they feel under these arrangements.

Although we remain concerned that the Government still have not got a grip on the pandemic, we firmly reject the proposals from others who say that there should be no lockdown arrangements at all. Data yesterday showed a worrying rise in excess deaths. Those with disabilities and learning disabilities still face a particularly tough journey in the pandemic. Can the Minister confirm that those with learning disabilities, many of whom are clinically or extremely clinically vulnerable and appear to fall through the testing net, can now access regular testing?

More worryingly, we are picking up reports that young people with learning disabilities at school and college are being charged by their GPs for a letter to set out their specific category to their education institution. The Down's Syndrome Association told me today that this is not about one or two cases; it is getting reports from all over the country. Shockingly, one young man was charged £38 for a letter to his college. This is disgraceful. Can the Minister take this up urgently and immediately instruct CCGs and GPs not to charge vulnerable young people?

I am afraid that the same is happening to adults with disabilities, who have been asked by their employers to produce evidence that they should work at home. Can the Minister ensure that there is no charge for letters relating to the pandemic for anyone in the clinically vulnerable group?

Finally, I return to one of my regular topics. The Minister knows that I am on the shielding list—now known as the extremely clinically vulnerable list—along with a million other people. Last Thursday, I looked up the new guidance mentioned in passing by the Prime Minister in his announcement a couple of days before about the new tiers. I wanted specifically to look at the advice about Christmas. I have said in your Lordships' Chamber before that the previous iterations of advice to shielders were verbose—two-page letters with four pages of detailed explanations as an appendix—but they were short memos compared to the new guidance. It is 16 pages long and full of complex advice about tier 1, tier 2, tier 3 and Christmas. Even my eyes, used to reading formal guidance, glazed over. Therefore, I focused on the Christmas advice. As with previous advice, the message was "Please do not mix with people" and the greater risks were repeatedly evident.

Here I have sympathy with the scientists and civil servants writing this document. The Prime Minster wants families to get together. However, the advice is much more cautious. It says:

"If you do decide to form a Christmas bubble it is advised that you maintain social distance from those you don't normally live with at all times, avoiding physical contact. Everyone should wash their hands regularly and it is important to keep the space where you spend time with those you don't normally live with well ventilated and to clean touch points regularly, such as door handles and surfaces. You may want to think about who you sit next to, including during meals, and also consider wearing a face covering indoors where social distancing may be difficult as well as encouraging others to do the same."

Grandma is going to be really popular, going around the house opening windows, wiping doors, wearing her mask and asking to be moved at the table because she is not convinced that Uncle John understands, or cares about, social distancing.

Will any letter to those shielding be made easier to understand and considerably briefer? Will it be available in all accessible forms, including an easy-to-read version for those with learning difficulties, so that everyone shielding can make informed decisions? If the real advice is not to visit family, please can it say so? Just do not show it to the Prime Minister.

5.46 pm

Baroness Hayman (CB) [V]: My Lords, first, I apologise to the Minister because IT problems meant that I could not hear some of his introductory speech. What I did hear, earlier this afternoon, was some of the debate in another place on these regulations. No one listening could be left in doubt about the divisiveness of the proposals before us today, especially in relation to boundaries for the new tiers. These have created a deep sense of injustice and division between regions, areas and communities within regions.

For a variety of understandable reasons, the Government abandoned the clarity and sense of the whole nation being subject to the same constraints that we have had since early November. However, they have patently failed to convince people that the variants in restrictions are properly tailored and appropriate to the situations in the communities in which they live and with which they identify. A lack of respect for local leadership, knowledge and capacity has, I fear, been a recurring feature of the response to Covid, particularly in relation to test, trace and isolate. We must not make the same mistakes when it comes to the rollout of vaccinations.

When the tiers are reviewed on 16 December, I would urge a review of the basis of the boundaries so that they are seen to be more justifiable and fairer, which would engender better compliance. Data is available at the district and borough level on incidents, hospital admissions and all the issues that the Government say they will take into account. This data should be used to produce boundaries based much more on social geography and local conditions than on administrative areas. I recognise that, even if there is greater granularity and that reduces the sense of injustice, it will not eliminate it. The Government need fundamentally to improve the information and communication that they present.

For example, as others have said, the impact statement for today's debate hardly engenders confidence in the very difficult, nuanced judgments the Minister and his colleagues are making, although I have huge sympathy for them. They can afford to be honest with the population. At the beginning of this pandemic, maybe there were many people who thought there would be an answer—that if they followed "The Science", we would know what to do. We know that is not the case. We know that we must weigh up a number of factors and balance a number of different harms to try to find the

least bad solutions to working our way through this. It is a complex and contested field, and the public are grown up enough to understand that.

I urge that in assessing what boundaries we use and the immediate effects on health—the dangers of Covid and how we protect people from it, as against the longer-term and indirect effects on health and well-being from unemployment and lack of access to normal health services—we respect individuals in our society enough to be frank about how those judgments are made and assessed.

Before I finish, I will say two things. First, most people want to do the right thing; they want to protect themselves and those they love. The Government need to help us do that. They need to empower us with access to testing, by ensuring that the test, trace and isolate systems are effective and working, and by making sure that people do not suffer from being good citizens and obeying what they are asked to do if they have been in contact with others.

Lastly, I was struck by what Dame Sally Davies said yesterday. We ask ourselves all the time why we have seen so many deaths and so much difficulty in coping with this as a country. She pinpointed the underlying public health issues this country faces: deprivation, obesity, dependence on alcohol and the issues that lead to social disadvantage and all that bundle of disadvantages that create ill health and vulnerability. When we review what has happened, I hope we will recognise social injustice as an underlying cause. [*Inaudible*.] This is not just about PPE but about reversing some of the social injustices in our society.

Baroness Penn (Con): My Lords, now is a good moment to remind speakers of the time limit for this debate, which is six minutes for Back-Bench contributions.

The Lord Speaker (Lord Fowler): The noble Lords, Lord Forsyth of Drumlean and Lord Hutton of Furness, have withdrawn, so I call the noble Lord, Lord Cormack.

5.54 pm

Lord Cormack (Con): My Lords, it is a pleasure and honour to follow the noble Baroness, Lady Hayman, who was the first occupant of the Woolsack when we decided to have a Lord Speaker in your Lordships' House. She made some incredibly important points. I was sorry we missed part of her peroration; that is a good reason for being in the Chamber rather than Zooming in. I also thought that the noble Baroness, Lady Brinton, spoke very movingly and sensitively about those like her who are shielded. She graphically illustrated what a confusing situation we face at the moment.

The noble Baroness referred to the 75-page document we have. Just before I left my office, there came up on the computer a list of things we should do—including read a 79-page description of the 75-page document. It also contained some rather interesting information. It told us who are here that we should not use the restaurants in the House of Lords, where the staff are working so very hard to ensure that we are given sustenance. It also told me that, living in London in tier 2, I can do various things; I can go to a gym—I do not normally—I can go to shops, I can get a tattoo—I do not want one of those—and I can stay in the pub until 11 pm so that I can leave in a staggered way.

That is all from the guidance that came via Conservative Central Office, which also made the point that the Labour Party was playing politics. That is a puerile and stupid accusation. I do not believe the Opposition are playing politics; if the Government think that, the best thing to do is to invite to a COBRA-style regular meeting the leader of the Opposition and the admirable John Ashworth, who has been a very good shadow Secretary of State.

It is exceptionally confusing. I can do all those things in London. I can summon a mechanic if some appliance goes wrong in my flat but I cannot allow either of my sons—one of whom lives in London—to enter it. When I go back to Lincoln, where we are in tier 3, I will be able—I am delighted and grateful for this—to go to the cathedral for services, but there are many other things I cannot do. I can go to a pub only for a takeaway. My son who lives in London will be breaking the law if he delivers Christmas presents to our home in Lincoln on 18 December, but on 22 December he can descend with his whole family for five days.

There is confusion worse confounded wherever you look. It is time the Government trusted the people by giving clear and simple advice. I called for clarity and simplicity four weeks ago as we entered this second lockdown, but we have not had it. We need not the vast number of pages that I and the noble Baroness, Lady Brinton, referred to but simple, clear guidance. If the guidance is that it is rather unwise for people to mix together as we normally do at Christmas, then say so clearly and sensibly and trust the people. That is a slogan our party used to have; I do not know what has happened to it.

We are now, as I have said before, living in a benign police state. Indeed, it is not all that benign when the police can issue fines for £10,000 without anybody being on trial. That is, frankly, disgraceful. The police could go into homes—I am sure they will have the good sense not to—and separate families until 22 December and then again on 28 December. We must have clear, simple, unambiguous guidance. Libby Purves wrote a good piece in the *Times* yesterday in which she said that

"99 per cent of us may not let a friend, relative or neighbour cross our threshold",

apart from during those five days. It is more than sad—it is tragic—that we have come to this pass.

The Government take our most basic freedoms and demand trust, but they offer none in return. That is why I have tabled a regret Motion calling attention to the contrasts, the lack of simplicity and the lack of clarity. I shall listen to what the Minister says before I decide whether I move that or not, but, frankly, this will not do.

6 pm

Lord Scriven (LD): My Lords, when government Ministers have to spend two days explaining when and how you can eat a Scotch egg to help slow down the transmission of a deadly virus, you know the simplicity of the rules and the clarity of the message, so vital to the task, have been lost. It is an indication of the confusion that has been created by constantly changing the rules that both individuals and businesses must adhere to. This is not helped when the former senior

[Lord Scriven]
adviser to the Prime Minister clearly broke the rules and the full weight of the Prime Minister's office was used to defend breaking the law.

People want to do the right thing to protect their loved ones, businesses, jobs and the community they live in. However, listening to people, you get a real sense that they do not understand what they are being asked to do anymore. The Government have complicated not only the message but the rules people must abide by. These regulations, 70 pages long, with nuanced rule after nuanced rule depending on which tier you live in, will cause further confusion.

The next four weeks highlight how this is not about creating a sensible, calm, strategic set of rules to slow the transmission of the virus but a bureaucrat's dream and Ministers trying to control things from a Whitehall office. On 2 December, we are into tiers and a new set of rules; on 16 December, the tiers are reviewed, and we could have a new set of rules to live and work by; on 23 December, we throw the tiers out, and we can have Christmas; on 27 December, we are back to the tier rules of 16 December; on 30 December, the tiers are reviewed again, and we could have to contend with a further set of rules. In all reality, can the Minister say that potentially having to live under five sets of rules within one month is going to create trust, stability and clarity and give people and businesses the platform to be able to plan their everyday lives as well as fully understand what they are being asked to do to slow the transmission of this deadly virus?

The country requires richer, deeper understanding of the triggers that put an area into a set of restrictions and, just as importantly, the trigger points that release them from the most restrictive rules. The analysis that the Government have provided is not a serious attempt to explain. It is a commentary without the clear evidence that is required for people to understand and plan their lives. I asked the Minister: rather than a broad-brush approach, what empirical evidence will the Government bring forward to show how the triggers are adopted for an area going into and out of a tier?

In Sheffield, we are bewildered as to why we are in tier 3. The latest set of figures indicate we had, on 25 November, 185 cases per 100,000 people. Hospitals are moderately busy but in no way full to capacity. The local Nightingale hospital for Yorkshire and the Humber sits empty; our case rates are falling. Meanwhile, some areas with greater hospital activity, less ICU capacity, higher case rates per head and rising cases have been put in tier 2.

It is also worth noting that the department of the director of public health for Sheffield City Council has written to local care homes suggesting that lateral flow tests are not specific enough and that it is seeking government data and assurance. I ask the Minister: are the Government totally confident that lateral flow tests are safe and reliable enough to be used in care homes so people can visit?

The country has had a £20 billion failing national system. The Government highlight the number of tests, not their quality or the speed of the results. There is a very poor record on tracing and almost a laissez-faire isolation system that keeps leading us back to these types of regulations.

Dealing with this virus does not have to be like this, with ream after ream of confusing emergency law. Some of us have been saying since February that, to minimise disruption, a localised test, trace and isolate system is required. It is now time to do things differently. We need to localise the test, trace and isolate system within a national framework that supports local areas with the expertise and resources to deal with real hard tracing and have proper and resourced community teams supporting people who need to isolate. It needs to be underpinned by a government commitment to reward people for doing their civic and national duty of isolating, like they do in Taiwan, by paying people their full income while they isolate. I ask the Minister if and when this could be done.

The Government need to listen and refocus test, trace and isolate. They need to understand the results that local test, trace and isolate can bring, support that and underpin it with an income guarantee for those who isolate. If this is not done, we will be back here, fortnight after fortnight, confusing people, with the Government taking knee-jerk powers that affect businesses and individuals, causing debt, strain and worry.

We are reaching the end of the path of just nodding through emergency regulations; it is time to review the whole strategic approach of how the country deals with slowing the transmission of the virus, taking from international examples, such as South Korea and Taiwan, about how to minimise disruption by getting a proper local test, trace and isolate system. The Government need to understand that they are now on warning to radically change the way they manage this virus, or future regulations will not be nodded through so easily.

6.07 pm

Baroness Watkins of Tavistock (CB): My Lords, I appreciate that the issue of reducing the spread of the Covid-19 virus is essential for the health of our population. However, while I broadly support the regulations before us today, I am extremely concerned that people in England are finding difficulty in understanding the correlation between the R rate in their local community and the tier in which those communities are being placed. Can the Minister explain why London should be in tier 2 when some parts of the north and the Midlands that have been placed in tier 3 seem to have similar R rates per 100,000 people in the population? We have been told that in many situations this is because of the pressure on hospitals. Is it the case, therefore, that there are sufficient empty ITU and vacant hospital beds to allow for an increase in the R rate that may occur associated with the social mixing allowed under tier 2 regulations in London compared to hospital bed availability in other parts of the country?

It is reported in the media that Ministers believe the adoption of the new tier system will enable a re-evaluation of tier allocation, depending, presumably, on the R rate, in as little as a fortnight. Members of the public might be in tier 3 from tomorrow, might move to tier 2 restrictions rapidly and might then enter the national relaxation in restrictions over the Christmas holidays. This concept suggests that if people adhere to the rules in tier 3, a rapid move to tier 2 is likely. Can the Minister confirm that, in the event of the R rate

increasing in tier 2 areas over the next fortnight, these communities will be moved into tier 3 level restrictions prior to moving to the rules that are associated with the Christmas period?

We are told that these tiers are necessary to protect the NHS. In fact, the NHS is not just acute hospitals. Rather, the NHS involves public health, primary care and the long-term support of people with chronic health problems, in their own homes and in residential care settings, where there is inevitably close liaison with social care. Will the Minister inform the House what estimates have been made of the pressures on community mental health and learning disability services as a result of the pandemic, and what further interventions are being planned to support community-based services in tier 3 areas? Unless we intervene to tackle the effects of the pandemic on the most vulnerable in our society who do not require hospitalisation, we are in danger of doing more harm to the health of the population than we realise. The BBC "News at Ten" last night focused on the isolation and poverty that has been exacerbated as a result of the pandemic. It was a harsh reminder to anybody who watched it of the wider effect of the virus.

Finally, I remain concerned that, as the amendment to this Motion tabled by the noble Baroness, Lady Neville-Rolfe, states, "the restrictions being introduced" are not sufficiently

"informed by a wide and detailed analysis"

of other factors. The UK continues to reduce inbound travel restrictions from a range of countries using a methodology endorsed by the four CNOs in the UK. It states:

"As UK infection rates rise, the relative risk to public health from imported cases decreases".

The latest changes were agreed at the sixth statutory review on 16 November when incidence was high in the UK. As the Minister has said, UK rates are now already reducing. How long will it be before we review again the travel restrictions? I ask this question because the methodology also states that:

"The rationale for this is that the impact of travel restrictions is expected to be greatest when UK infection rates are relatively low."

Therefore, if we succeed in reducing the rates before Christmas, is the Department of Health and Social Care confident that the transmission of Covid-19 within the UK from people arriving in this country with asymptomatic disease is highly unlikely?

As a healthcare worker myself, I remain concerned that we have to face high levels of restrictions on social interaction to contain the disease and protect healthcare workers. The public do not wish to comply with our community's restrictions only to have their own investment in disease reduction wasted as a result of people travelling from other parts of the world and unwittingly increasing infection rates in the UK again over the Christmas period.

6.11 pm

Baroness Neville-Rolfe (Con): My Lords, it is a pleasure to follow the noble Baroness, Lady Watkins of Tavistock, with her nursing expertise and her kind reference to my regret amendment on the Order Paper. This is concerned with SI 1374, which imposes restrictions on gatherings and businesses in England in tiers 1 to 3. I have an interest, living in Wiltshire and working in London, both of which should probably not be in tier 2 at all.

However, my main interest and the focus of my amendment is in cost-benefit analysis as a powerful driver of good public policy. I first learnt of its merits while at university, studying the case for the Victoria line, which turned out to be so much more beneficial than we expected. I am dismayed that the regulations did not include a regulatory impact assessment outlining, as a minimum, the economic impact of each of the tiers and hence explaining the choices that the Government are proposing. This is apparently because they are "temporary measures". This is a disappointing claim. Inaction on such grounds may have been just about excusable in March, but not now. Worse, the analysis belatedly published yesterday of the health, economic and social effects of Covid-19 and the approach to tiering barely helps at all. A proper cost-benefit analysis—impact assessment, call it what you will—should be guiding the Government's decisions and should not be cobbled together to placate Parliament after the event.

All policy decisions in government need to be informed by an analysis of the costs and benefits, which necessarily involves giving both numerical values. Sometimes this is a challenge, but with ingenuity we can ascribe values or a range of values to outcomes based on real-life analogy or widely accepted decisions. We need to measure not only the immediate, first-level effects, but those of a second order. To give an example, if hospital appointments are cancelled because of our Covid policy, we know that there will be problems, including extra deaths from diseases such as cancer and heart disease. This needs to be quantified. The responsible approach is not to ignore or downplay such inevitable consequences of our policy, but to put the costs into the equation.

Although the Government have not produced a proper analysis of the costs and benefits of their policy, others—distinguished others—have done so. I refer to the paper of August 2020 by Miles, Stedman and Heald. I shall summarise and simplify: they find that the costs of the Government's policy on lockdown 1 probably amount to between three and 10 times the value of the benefits. Does that not give us some cause to reflect?

One problem is that the Government have not even claimed to seek the optimum overall outcome. Instead they have, from the start, been fixated on Covid only—the illnesses and deaths it causes, and the impact on bed capacity in the NHS. Of course analysis of the kind I advocate is difficult, but those of us in business or involved in regulation know that it is always worth making estimates and perhaps giving ranges, as the ONS has done for the economy. Its work is summarised in section 7 of the government analysis. It is terrifying: we are looking forward to, at best, flat output by 2025-26 and, at worst, minus 6% compared to the outlook in March. The adverse effects include the destruction of capital and knowledge from business failure, loss of human capital from unemployment and so on.

[Baroness Neville-Rolfe]

Take restaurants and pubs: they have invested hugely to allow groups of people to dine together, with social distancing, ventilation and contact tracing, yet a cost-benefit analysis appears not to have been done weighing the slight increase in infection in tiers 2 and 3 against the risk of their financial failure. In that case, the response to criticism has been to promise the businesses more money, but that could be a road to fiscal ruin.

The next category of loss is health outcomes, addressed in part 5 of the analysis. There is much talk of the health system being overwhelmed over the winter but, if true, why have hospitals not been preparing for this since April, building extra capacity, taking on extra staff—as promised in our manifesto—and serving as a beacon of good practice?

We also need to look at the social effects of Covid policy. There have been some positives in the Government's approach, such as bubbles for single relatives and the continuation of schools and childcare, which the Minister rightly emphasised. But the list of negatives, all of which need to be costed, gets longer: care home rules leaving desperate children unable to connect with their parents; partners of pregnant women banned from scans; grandparents unable to see their children and grandchildren; the bankrupting of small businessmen in their 50s who are unlikely ever to get work elsewhere; and the special problems for the disabled, as was explained by the noble Baroness, Lady Brinton.

Finally, we need to consider the money that has been misspent and add that. Top of my list is test, track and trace, and that is £22 billion according to the Treasury spending review and another £15 billion next year. The Government should reflect on the fact that a loyal and committed supporter of theirs is so disappointed in their policies on this vital matter of proper cost-benefit analysis. It is my present intention to divide the House on an amendment with which I think a majority of the House will privately agree.

6.17 pm

Lord Shipley (LD) [V]: My Lords, a vaccine against Covid-19 is about to be rolled out to millions of people, so I was surprised by one or two of the arguments we heard this afternoon. I cannot, in particular, support the fatal amendment in the name of the noble Lord, Lord Robathan, because the consequence would be that England would have no restrictions at all after today. Having got this close to a vaccine, that would be irresponsible. I am doubtful too about the regret amendment in the name of the noble Baroness, Lady Neville-Rolfe, about which we have just heard. That is because restrictions are necessary to stop unnecessary deaths and pressures on the NHS this winter. She is right about the importance of impact assessments, however.

The R number may have gone under 1.0, and there may have been a drop in the level of new cases—about a third since the national lockdown began—but numbers are still far too high. In the week 15 to 21 November, the ONS estimated that 633,000 people in private households had the virus. That figure seems far too high.

My noble friends Lady Brinton and Lord Scriven said a number of things with which I strongly agree. There is a need for consistency of message. It is now time to do things differently, and we need an end to chopping and changing rules that the public cannot understand.

For me, this is all about the timing of the vaccine rollout. A lot of people are very frightened by the virus, want to get the vaccine as soon as they can, and are prepared to have their freedoms restricted a bit to achieve that. Those who object to restrictions during the pandemic should think carefully about the potential impact of no restrictions on other people. The fact that they themselves have not had coronavirus or, if they do get it, are not at significant risk from it, is secondary to the rights of other people, who may be more vulnerable, to be protected from it. We should add to that principle the very obvious fact that the winter period is when the NHS is busiest, so any action which knowingly weakens the ability of the NHS to cope with the virus in the winter and early spring would make things worse.

I cannot support the amendment tabled by the noble Lord, Lord Cormack, because the Christmas relaxation rules are actually quite strict, and a Christmas celebration would be good for many people's morale. People will need to be sensible and avoid risks, but beating the virus still needs a degree of trust with the public.

What I have said so far should not be taken as support for the Government. This is because we need to know the strategy to roll out vaccines. We need a test, trace and isolate system that does not fail to make contact with 40% of close contacts. We need the full scientific evidence on which the tier system is based and a clearer exit route from a tier designation. I hope that the Minister might be able to commit to decisions on tiers and local rules being made jointly with local authorities, and that all decisions on tiers will be subject to parliamentary scrutiny.

I come to two further matters. First, community testing was supposed to be the way of moving out of tier 3, as in Liverpool, yet today we have heard that some areas may not get access to this testing until the end of January. Is that true? It does seem a long time.

Secondly, an improved package of financial support for retail, leisure and hospitality businesses is needed in the tier 3 areas—and I should say that I live in one of them. Many such businesses have one-third of their annual turnover in December. If they do not get more help, very many will not now survive. I suggest to the Minister that this should include a further payment holiday for business rates through 2021-22, with a one-off grant system based on rateable value to enable businesses to survive through the winter.

This week, we have heard that nearly one-third of England's hospital trusts have now exceeded their first-wave peak. We owe it to NHS workers to reduce the stress placed on them over the winter period. The position that we are in today results from failures in the Government's management of the pandemic over the last year, with constant changes to strategy and to lockdown rules, overcentralised structures and a tendency to act too late. That having been said, we must avoid

another national lockdown in the new year. For that reason, further restrictions now are essential, and they do have broad public support.

6.23 pm

Baroness Noakes (Con): My Lords, I am angry about the main instrument before us today. I am particularly angry—and hereby declare my personal interest—that the whole of my home county of Kent has been placed in tier 3.

Last Tuesday, the chairman of the Science and Technology Committee in the other place asked the Secretary of State for Health whether real patterns of community and movement, including the fact that in Kent movement is typically east-west and not north-south, would be reflected rigorously in decisions made on tiering. Three times in formal evidence he said, "Yes." Two days later, the decision announced clearly did not reflect that. If that does not amount to misleading Parliament, I do not know what does.

The Government continue to take Parliament and the country for fools. Before the last lockdown, they used some graphs to scare us into submission. The basis of those graphs disintegrated once the underlying models and assumptions were forced into the public domain. It was so bad that the Office for Statistics Regulation issued a strongly worded rebuke. This time we have again been told that, unless the new tiered version of lockdown hell is voted through, NHS hospitals will be overwhelmed. This is clearly not a fact, as our hospitals are not currently overwhelmed. They are operating much as usual for this time of year, and the Nightingale capacity remains unused.

I was not surprised to hear the noble Lord, Lord Hunt of Kings Heath, telling a different story, but I just say to him that the NHS never says that it is not under pressure: it is almost a badge of honour to be under pressure at all times. Not only is it not a fact, it is not even a reasonable forecast, because when the R rate is already below 1 and cases are falling and not rising, nobody could forecast an overwhelming. The Chancellor of the Duchy of Lancaster tried an elaborate defence of that over the weekend, but it has already unravelled.

It looks quite likely that infections were already falling before the last lockdown, and they are certainly falling now. We were promised that if we complied with the current lockdown and got the R rate down below 1, things would be better from this week. That was a false prospectus. The vast majority of the population of the country from tomorrow will be in a worse position than at the end of October because of the indiscriminate use of tiers 2 and 3.

Many of us have complained, as my noble friend Lady Neville-Rolfe has elaborated, about the lack of a proper impact assessment for the various Covid measures. This impedes Parliament's ability to decide whether the Government are making the right decisions. Late yesterday afternoon, the Government released a document which was supposed to provide this analysis. It is difficult to find the right words to describe that document.

A noble Lord: Try!

Baroness Noakes (Con): "Uninformed" and "superficial" are the most polite that I could find. The document does not even scratch the surface of what Parliament ought to be given. It ducks the question of whether alternative policies would have resulted in better or worse outcomes. It proceeds on the basis that the only alternative is one of no action, which is a deeply flawed counterfactual advocated by no one. There is nothing concrete on costs and benefits in terms of health, the economy or the wider societal impacts. The lack of economic analysis, apart from a bit of lift and shift from the OBR last week, is really frightening. We learned from the *Times* this morning that further analysis does exist in Whitehall on the impact on business sectors, but that has been suppressed.

The hospitality sector has been brutalised by the various lockdowns and restrictions since March. Those still standing wonder whether they can survive tier 2 or 3, which will wholly or partly kill the profitable Christmas trading period. This morning the Government have promised £1,000 for pubs forced to close—but it would be a Christmas miracle if that had more than a marginal impact.

Nobody is pretending that it is easy to decide on the trade-offs between Covid and non-Covid health outcomes, the economy and wider impacts. The Government have a difficult task. But they are letting everyone down by constantly framing the arguments in terms of modelled extremes, such as overwhelming the NHS or exaggerated numbers of Covid deaths. We need a grown-up conversation. Society may well be better served by outcomes which increase short-term Covid deaths but do less long-term harm to the economy and to non-Covid health outcomes.

I wanted to be able to support the Government, as I normally do with enthusiasm, but I cannot do so in this case and will support my noble friend Lady Neville-Rolfe if she chooses to divide the House.

6.29 pm

Lord Birt (CB) [V]: My Lords, I support the regulations. We understand well that neither this Government nor their predecessors prepared adequately for a pandemic of this nature, and initially the Government responded to the threat in slow motion. The result is one of the world's highest death rates. However, I shall be more generous than others. In the last month or so, there has been a surer touch, with less bombast, more measured decision-making and a sense, at last, that the many cogs of the public sector—public health, local authorities, the Armed Forces and the NHS—are now finally meshing. As one who has been responsible for many challenging projects in the course of my career in both the public and private sectors, I do not underestimate this achievement.

There are those who bridle at the constraints that the Government impose on their freedom, like the man I encountered last Friday evening, who joined me in an orderly, rules-compliant takeaway queue and stood two feet away from me, breathing squarely in my face, defiantly maskless. To him and others like him, I say that we all value our freedom and, thankfully, we live in a country that over centuries fought for it and won it, but we also agree to constrain our freedoms when their exercise harms others.

The maskless man threatened my health. We do not allow cars to drive fast in pedestrian areas, we constrain freedom of expression with libel laws and we do not

[Lord Birt]
allow people into crowded pubs with loaded guns—and, for some, this virus can be as deadly as any gun. If you are over 75 and catch Covid, you have a one in 10 chance of dying: not great odds.

Infection rates have increased again since the summer because insufficient people have observed the rules. Swale in Kent is an area marked by lovely countryside, picturesque villages and handsome market towns, yet in November it had the second-highest infection rate in England, with 565 cases per 100,000—more than one in 20 of its population. The council's leader, understandably, bemoaned that the rules in Swale were being "wilfully disregarded".

The Prime Minister has acknowledged—I applaud his bluntness—that pre-lockdown tiers 1 and 2 failed to reverse the pace of growth of the virus and that even tier 3 did not succeed in reducing cases in all areas. So we must, with relief, welcome the fact that this second lockdown has put a foot on the brake and that across the country the R rate is probably now below one. But beware, my Lords: the ONS estimates that something close to 650,000 people currently have the virus, and they will not all be self-isolating.

I well understand why the Prime Minister did not want to be the Grinch that stole Christmas, but we will surely pay a price for this relaxation of holiday rules, for most certainly the virus itself will not observe a Christmas truce. Public Health England has warned that subsequently we will need five days of belt tightening for each day of Christmas loosening.

My parents lived through the Second World War—my father in the RAF, my mother working in a Liverpool Docklands canteen, bombed out of her home four times. But my mum and dad never complained. Like almost all their generation, they were stoics. With vaccines now in clear sight, we need to rekindle some of that wartime stoicism. Let us be tolerant of the inevitable anomalies created by blanket rules, and let us accept that, until a vaccine kicks in, we can surely endure a period of limited social interaction, for that short-term sacrifice will mean fewer victims of Covid, fewer deaths and fewer threats to the NHS.

If we can keep the lid on the pandemic until the vaccines ride to the rescue, more of the economy can continue to function, as we see in Asian countries. Those parts of the economy adversely affected by limiting social interaction, such as hospitality, deserve, and should receive, adequate and sufficient support to enable them to bounce back once the new normal returns, which it will.

Let us give thanks in this debate for the brilliance of our and the world's scientists. Let us hold our nerve. There is every reason to be hopeful.

6.35 pm

Lord Howard of Rising (Con) [V]: My Lords, the analysis of the effects of Covid-19 produced yesterday is, to say the least, disappointing. It does not add much to our knowledge and it gives the impression of a document written to justify a decision already taken, rather than an objective appraisal on which to make a considered judgment.

Given that the report was issued only yesterday, it begs the question as to whether the Government used this report to base their decision on what action to take post-lockdown 2. Certainly, it would have been helpful to have had earlier sight of the report and slightly longer to consider it. The review of the tiers in the middle of December is very welcome. Can the Minister reassure the House that further and better particulars of the information on which the review will be decided will be laid in the House in good time? That would enable noble Lords to properly consider the facts and if necessary to raise the matter in this House and hold the Government to account.

One aspect that the report highlights is the comparison of death rates by age. It shows that under the age of 44 there is virtually no risk of death, and under the age of 64 the risk is minimal—probably no worse than it would be in any event. Can the Minister explain why the Government do not allow life to go on as normal for younger people, and business and commerce to continue, as my noble friend Lady Noakes mentioned earlier?

The Government can advise the elderly to take precautions, and even go as far as offering them assistance if they cannot lead their lives properly if such assistance is required. It is worth noting that even someone of my age is five to one on to survive should I get the disease. That is what the table says; there are more optimistic figures.

I would be grateful if the Minister answered the questions put by me and other noble Lords. On occasions he has been noticeably reticent about giving answers. I remind the noble Lord, in a gentle way, that the purpose of debate in this House is for Her Majesty's Government to provide answers to questions. It is what democratic government is about: sharing the reasons for taking decisions so that proper debate and scrutiny can take place.

6.38 pm

Lord Lilley (Con): My Lords, it is a pleasure to follow my noble friends Lord Howard of Rising and Lady Neville-Rolfe, whose regret Motion I am minded to support.

The Prime Minister has an unenviable task—that of balancing not just health and economic impacts, but conflicting evidence and views, the majority of which, I suspect, are opposed, within Cabinet and among his advisers, to his own instincts. He has been criticised for not imposing those well-known libertarian views on the majority in Cabinet. Prime Ministers are not, however, dictators. I remember Mrs Thatcher, after spelling out her support for a proposal, asking her Cabinet Ministers for their views, all of whom dissented, turning to Nigel Lawson and saying, "Am I alone in supporting this policy?". To which he replied: "Yes, Prime Minister, but you are not without influence". I am glad that some of the Prime Minister's influence has been brought to bear, otherwise these regulations would be even worse.

But there are reasons we should be sceptical about these latest proposals. First, the Government claim to be "following the science", but there is no such thing as "the science"—there are scientists, who have opinions, and there is the scientific method. That was explained

by the great scientist Richard Feynman, who said: "You make predictions on the basis of your theory or model, you compare them with the facts; it doesn't matter how beautiful your model is, or it doesn't matter how smart you are, if the model doesn't agree with the facts, it's wrong".

We know that the original assumption that coronavirus would behave like flu was wrong. We know that the Imperial model predictions of half a million deaths here and 85,000 deaths in Sweden were wrong. We know that Sir Patrick Vallance's prediction of 50,000 cases by the end of October was wrong. We know that on the chart used to frighten us into lockdown on 5 November, every single forecast of deaths over the coming months—not just that of 4,000 a day—has proved wrong. We know that half the graphs used during that extraordinary press conference ahead of the second lockdown turned out to be mistaken or used outdated forecasts, which had subsequently been revised down—which was wrong. We know that the chart leaked to Laura Kuenssberg, showing hospital capacity being overwhelmed, was never issued and has proved wrong. It is reasonable to be sceptical about the projections of what will happen if we do not adopt the measures before us today.

Of course, we all make mistakes, but the second reason for being sceptical is that these mistakes have not been random errors. There have not been some too low, some too high, some too alarmist, some too complacent. All of them have been in the same direction: exaggerating the risks and dangers. I am sure that has not been deliberate, but when errors all point in one direction, it is a sure and certain sign of groupthink. Groupthink is a mindset which can grip any of us, especially if we are convinced that we are in the right and others are in the wrong. Those in the grip of groupthink tend to accept without questioning too closely any evidence which supports their beliefs and discount anything which casts doubt on them, and they tend to ignore the costs of their actions and exaggerate the benefits.

That brings me to the third reason for scepticism, which is that these proposals were not based on any systematic, quantitative analysis of their impact—positive or negative—nor of their costs and benefits. It is not just that the document the Government rushed out yesterday is, to put it mildly, less than convincing; it is because the Government did not even have such an analysis themselves when they reached their decision.

There is an underlying problem which lies behind the Government's explanations. They seem to believe that R is a constant, and that consequently infections will double every X days—after X days there will be twice as many, after 2X days there will be four times as many, after 3X days there will be eight times as many, and so on. They seem to believe that infections, deaths and the numbers of people in hospital will slow down or decline only as a result of government restrictions, hence the official claim that national and regional peaks occurred after the new measures were introduced. It is simply not true: the peak occurred before these measures were introduced, and there are only two possible reasons for that. One is that R declines as the virus spreads, because the natural spreaders get it and cease to spread it thereafter, and because there is more natural immunity in the population than anything like herd immunity was expected to be. The second reason is that people began voluntarily to restrict their social interactions before they were compelled to.

Whichever of these reasons—and I expect both are the case—they are reasons for not relying on the Government's projections, not relying on the restrictions being introduced in these measures and asking the Government to think again, which is why I am minded to support the amendment to the Motion in the name of the noble Baroness, Lady Neville-Rolfe.

6.44 pm

Lord Dobbs (Con) [V]: Parliament: a word whose very definition means "to talk, to discuss". It has come to mean, over the years, to take responsibility. Not so long ago, we fought a referendum on the basis that we wanted to return more powers to our Parliament. That is what the Prime Minister said then, and I want to take him at his word.

In a war, you are confronted by an enemy. You send in the drones and missiles, you decide to take the swine out using lethal force but, before you do it, do you not first stop to consider the potential unintended consequences and collateral damage? Will innocents suffer? How many will suffer? How long will they suffer? This is pretty basic stuff. The question behind every such decision is simple: is it worth it? Yes, we are told, we have to save the NHS, but we have not; we have sent the NHS into a spiral of inadequacy. We are infringing personal liberties on a massive scale, as sometimes has to be done in war. Then there is the massive economic and social damage, long-term mental health issues, the undermining of democracy and of Parliament itself. Again, is it all worth it? Perhaps it is, but that is why we have asked for a cost-benefit analysis, so that we can respond to the question, is it worth it. We know the cost of Covid; what we want to know is the cost of the cure.

Apparently, the oil lamps have been burning late inside the Treasury: officials have been running around with scissors and paste pots, and what they have come up with is a 48-page document, hurled so untimely and ill-formed into the streets during the dark hours of yesterday. It is filled with very pretty graphs and bar charts, lots of wiggly lines and wandering statistics, but, for a cost-benefit analysis, it is remarkably lacking in costs or benefits. It is a thing of shreds and tatters. We had been promised crystal clarity; instead, what we have is Ministers squabbling over whether people should eat Scotch eggs. I think Marie Antoinette said much the same thing.

We need information in order to do our duty as parliamentarians, and we do not have it, or not enough of it. I am not suggesting that the Government are trying to drag us like lambs to the slaughter but, at times, it feels a little as if they are trying to pull our own wool over our own eyes. In another world, at another time, the Treasury rushed forward to offer all sorts of terrifying predictions, stretching years into the future, about the monsters that would leap out and devour us if we dared vote for Brexit. So, today, we ask—and it is our duty to ask—what is the expected

[Lord Dobbs]
rise in unemployment? How many pubs and other businesses will close? How many non-Covid patients will die because they can no longer get prompt treatment? If Ministers cannot answer those basic questions, is it because the work simply has not been done, which would be astonishing, or because they do not want us to know the answers, which would be frightening?

This morning's *Times* newspaper said that, indeed, there is an assessment—let us not call it a forecast, let us call it an assessment—that has been circulated within government, not for sharing with the public, in which a dozen different sectors are rated red: the disaster zones. So, I ask my noble friend: is there any truth whatever in that report on the front page of the *Times*? Does any such dossier exist?

I try to be a loyal Tory Back-Bencher; really, I do. I desperately want this Government to defeat this disease and move on with all their glorious ambitions for post-Brexit Britain. This is not the way to do it. We are not properly informed, we are not adequately consulted and it is clear that we are not trusted. Indeed, we are accused of shirking our responsibilities and wanting to let the disease rip. Those remarks are unworthy of any reasoned debate.

We are curtailing fundamental civil liberties in a way that is simply unprecedented in peacetime. We are damaging innocent lives on a massive scale. We are demanding sacrifices. We are starving our economy and our society for years to come. All I want to know is: is it worth it? I want to support the Government, but if I cannot wholeheartedly support them, I can at least encourage them. So, this evening, in order to do just that, I hope to have the opportunity to vote for the amendment in the name of my noble friend Lady Neville-Rolfe.

6.51 pm

Lord Greaves (LD): My Lords, I, too, try to be a loyal Back-Bencher in my party. I am not supposed to agree with dreadful right-wing Tories such as the noble Lord, Lord Dobbs, but I agree with a great deal of what he just said—in particular, that there are no costs or benefits in the analysis that the Government have produced. There is absolutely no analysis in it; that is the real problem. However, I told our Whips that I might vote for one of these amendments if I agreed with them, but none of them pass muster so I shall be a loyal Back-Bencher and abstain, which I do not like doing.

It has been amusing in a fairly horrible way to see people in the south of England get all upset about the fact that their areas have been put into tier 2, or even tier 3 in one or two places. Where I live, in east Lancashire, we have effectively been under strict restrictions, save a few weeks in the middle of summer, for more than eight months. It is getting very wearing indeed. The damage it is doing not just to the economy but to people's mental health and social relationships really is dreadful. We were fairly low in the spring, then it all started up in August to a degree, then we had a huge increase in September and we became leaders in these dreadful national league tables. Now the rate is going down again. Despite what the Government say and the way that they try to match their policies and actions to the way it goes up and down and varies from region to region, I do not think that they have any clear idea of what is happening.

There was a wonderful article about Liverpool in the *Manchester Evening News* by Jennifer Williams, who knows more about this than most people, which I recommend everybody reads. It is 2,000 or 3,000 words long. The Government say that the restrictions and policies in Liverpool resulted in it all going down, which is why they can go down to tier 2, and it is all to do with the mass testing that has been taking place. However, the same trends have been happening in other boroughs in Merseyside, such as Knowsley and St Helens, as in Liverpool, and they did not have any of this mass testing. They certainly did not have the Army in the same way that Liverpool did. Jennifer Williams points out that the impression is being given to a lot of people that they are going to have a lot of soldiers in to organise this, but she quotes one of the directors of public health in the north-west saying that if that was going to happen across the north-west,

"we'd need an army the size of China's."

What will actually happen is more selective testing of people who need to be mass tested but not everybody. So, there is some hope there.

However, testing is no good unless it leads to tracing, isolating and support. Support is still not being given to people at an adequate level. An article in the *Guardian* today points out that a large number of people who are self-isolating are unable to access the £500 that the Government promised them for technical reasons, because of why they are isolating and, in some cases, because the councils are running out of money. In my own authority —where, as noble Lords will know, I am a councillor— there have been 538 applications for self-isolation grants. Some 217 have been paid but 321 were rejected because they do not fit the Government's criteria, despite the fact that people are self-isolating, perhaps with their children too. In many cases, it is because they were told by the app to self-isolate but that does not guarantee the money or qualify them for it. My authority has already spent more money on the £500 grants than it is getting from the Government.

I could go on at great length but do not know how much time I have left. My problem is that I can never see the time. I have been told that I have a bit longer so I will say one more thing. If there is to be proper testing and tracing, we must not only forward-trace people's contacts but back-trace them. In particular, if the numbers are going down, you have to stop new centres of infection or hot spots developing. You do that by finding out where people got infected. If there is a group of people all getting the infection from the same school, factory, supermarket or whatever, you go back to the source of infection and stamp it out. Local environmental health and public health inspectors are experts at that but this is not what they are being told to do by the Government. Unless the Government tell them that, it will all go down again then start to go up again. Where? We do not know because it will all depend on local circumstances.

6.57 pm

Viscount Ridley (Con) [V]: My Lords, this is not an argument between tackling the virus and ignoring it, as my noble friend the Minister put it in his opening remarks. It is about whether, if one wants to change people's behaviour, one chooses persuasion or compulsion. In this country, the theme behind our long migration from royal dictatorship to parliamentary democracy is that we think it possible to persuade people to do socially responsible things—not just because we recognise the rights and liberties of individuals but because it works better. Compulsion is often inefficient and counterproductive as well as cruel.

Why have we suddenly abandoned this for a purely authoritarian approach? Command and control, whether in the Ming Empire or in modern North Korea, always lead to misery, not because the commissars were not clever enough or not paid enough but because it is an impossible task to encompass in detail the complexities of deciding how society should be organised from the top down.

I fear that the current approach is taking away people's agency, undermining their sense of responsibility and preventing them facing up to the challenge of stopping the epidemic through their own actions. As my noble friend Lady Neville-Rolfe said, all the hard work that firms did to make their workplaces safe has effectively been snubbed. We have Ministers and officials trying to devise minutely prescriptive rules about whether a scotch egg is a meal, whether Monopoly is safe to play, how long one can linger over a pint or whether one should take one's own serving spoons to Christmas lunch with one's relatives. I quote paragraph 14 of the legislation published yesterday:

"For the purposes of this paragraph, a 'table meal' is a meal eaten by a person seated at a table, or at a counter or other structure which serves the purposes of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure serving the purposes of a table."

That is reminiscent of the sumptuary laws of the Middle Ages on who was allowed to wear what.

Konstantin Kisin, a comedian, said yesterday,

"I followed the rules during Lockdown 1.0 to the letter. I followed rules that made sense to me during Lockdown 2.0. I will openly disobey any further attempt at lockdown".

Command and control stirs bloody minded recalcitrance, alienates people from the police and officials, foments conspiracy theories, fuels quack beliefs and boosts anti-vax nonsense. We need evidence that this authoritarian approach does more good than harm. SAGE published a document on 22 October to justify the closure of most pubs and restaurants. Christopher Snowdon of the Institute of Economic Affairs went through the eight footnotes in the section on epidemiology and found that each referred to a study that gave little or no support, directly or indirectly, to the argument that pubs are a problem. One of them is about traditional markets, religious gatherings and wedding parties in Indonesia, for example—it is not about pubs at all. The new legislation for tiers ends with this line on page 75:

"No impact assessment has been prepared for these Regulations."

As my noble friend Lady Noakes said, the impact statement rushed out this weekend erects a ridiculous straw man that the only alternative is chaos: an exponential increase in infection and the overwhelming of the health service. Yet the increase has not been exponential since early October at the latest. Just four hospitals are currently busier than they were this week last year. That is partly because many of the Covid cases in hospitals are being caught in hospitals. It need not be this way. There are lots of places in the world that are controlling this virus with moderate, pragmatic and flexible initiatives that focus on what matters and do not try to define scotch eggs. To quote this week's *Spectator*:

"Sweden believes that people, if treated like adults, tend to heed advice—so compulsion and lockdowns are not needed to control a virus in a mature democracy."

Sweden has had no more death than Britain per head of population, and a far less severe economic shock, a far smaller increase in debt, and a far less brutal impact on the physical and mental health of people. Other Scandinavian countries have been almost as flexible. The Danish people have rejected a dictatorial law. A new study in *Frontiers in Public Health* has concluded that neither lockdowns, nor lockdown stringency, achieve lower death rates. It analysed data from 160 countries over the first eight months of the epidemic.

The pattern of excess deaths this autumn, occurring in precisely those areas that largely escaped the virus in the spring, points to an obvious explanation: that the virus naturally depletes the more susceptible population and then fades with very little help from lockdown. I have great respect for my noble friend the Minister, and for this Government's brilliant work on securing vaccines, but I think he and his colleagues have been badly let down by their advisers who, as my noble friend Lord Lilley said, bounced them into this second lockdown with the most misleading and outdated set of charts ever used to influence policy. Unless the Minister shows us clear evidence that these new tier restrictions will do more good than harm, I will be voting for a regret amendment tonight because I think there is a better way. As the young journalist Tom Harwood put it yesterday,

"We mustn't forget all that makes life worth living. After this the govt must repay a debt of liberty—with interest."

The Deputy Speaker (Baroness Garden of Frognal) (LD): The noble Lord, Lord Farmer, has withdrawn so I now call the noble Baroness, Lady Fox of Buckley.

7.03 pm

Baroness Fox of Buckley (Non-Afl): My Lords, I will indeed consider voting for either the fatal or a regret amendment. Despite this, I want the Minister to note that many of us here understand that he and the Government are under huge pressures. I also appreciate that in a period where "gotcha" blame games are the way we go in politics, politicians can become terrified, defensive and reactive. They often will not admit mistakes and therefore cannot learn from them. They make every pronouncement black and white, delivered with a definitive certainty with no nuance and certainly no room for disagreement. One tactic is to avoid blame by attempting to hide behind the science, and the reliance on what passes for irrefutable evidence. As we all get bamboozled by data, graphs, charts, forecasts and infection rates, no mention is made of the wider

[Baroness Fox of Buckley]
principles undermining decision-making. When evidence substitutes for judgments, policies are ring-fenced off from accountability and it can create a fatalistic mood in society where people are told that there is no choice.

It was not ever thus, even in this Covid period. Remember that, at the start of all this, hundreds of thousands of people were mobilised as NHS volunteers, eager to help to take on Covid. Even if lots of them never received an email, they showed that there was a willingness to actively create a shield around the vulnerable and act in social solidarity. Contrast that with now, when people are at the end of their tether. The Government's policies have demobilised people, demanded passivity and compliance. People are told, "Shut up and put up—we know best", but is that true? Surely in an emergency more than ever, politicians could do with a hand. I urge Ministers to draw on the resources, intellect, intuition, common sense and intelligent criticisms of millions of people in order to move forward.

I want noble Lords to imagine, for a minute, what it feels like to be in Wales at the moment. The people have endured a lockdown, and their reward from Welsh Labour is a 6 pm curfew—more puritan prohibition than science—with utter indifference to the destruction of hospitality jobs. By the way, I give a shout-out to the 100 north Wales publicans who banned the First Minister from pubs for 18 months—hear, hear to them. This illustrates the infuriating way that citizens are treated: they are victims of arbitrary diktats from on high and never involved in any debate—

Lord Foulkes of Cumnock (Lab Co-op): This woman is mad—totally mad.

Baroness Fox of Buckley (Non-Afl): You might disagree with me, my Lord—

Lord Foulkes of Cumnock (Lab Co-op): No, I just think you are mad.

Baroness Fox of Buckley (Non-Afl): You think I am mad? That is a good start to a civilised debate. Anyway, all this is unnecessary and not the way we should move forward, because I think that the technocratic approach is bad for science and democracy. Science is in danger of being turned into a dogma set in a stone tablet; the very strength of the scientific method is challenging and testing hypotheses, and it is being corrupted by an adherence to "the science".

Those scientists who raise concerns about the official narrative have their professional reputations traduced as fake experts and shills, have their interviews censored and dubbed misinformation—and are heckled as "mad". Surely with a new virus, we need to hear all scientific views, not just those of SAGE. All scientists, pro and anti lockdown, should be prepared to have their work rigorously scrutinised and critiqued. None should be silenced, or important questions will not even be asked, let alone answered.

The technocratic approach is also bad for democracy because it narrows down the debate to solely assessing responses to Covid through quantifiable measures. I confess that we all get dragged into reducing the debate to its most narrow parameters. We have all wasted hours on the minutiae of the differences between tiers 2 and 3 and what they allow. That crude, utilitarian approach even means that we are all tempted to parade death figures to make our case: pro-lockdowners state Covid deaths while anti-lockdowners emphasise neglected cancer patients, heart disease victims and suicides.

This counting-the-bodies approach is available only if the Government allow us to think of health, longevity and safety as the only value in this debate, but it means that we miss the bigger picture. Yes, we can count the horrifying number of job losses due to lockdowns, not Covid, but there are more immeasurable aspects to this: unemployment, losing one's savings and bankruptcy. It is not just about money; it robs people of dignity, agency and sense of worth. It demoralises people: they feel useless.

Yes, we can count the number of elderly and vulnerable lives allegedly protected by lockdowns, but how do you measure the cruelty of locking up so many people in, effectively, solitary confinement, deprived of love and stimulation? You can count the rising number of Covid cases, but it is not a sign of libertine recklessness that millions are bereft because they are denied conviviality, civil society and time with their mates in the pub, football and so on—it is called civil society; it is called society.

However, the greatest value sacrificed is our attack on freedom: it is not just the frightening number of new laws, micromanaging our lives, or the relentless attacks on freedom of association in churches, our own homes or on protests; it is worse than that. It is political leaders behaving like little emperors, throwing the public scraps of freedom for good behaviour, expecting them to be grateful and then grasping them back for misdemeanours. Citizens are rendered helpless, expected to be happy that they have been given a mere five days as a Christmas dispensation. Do you know how demeaning and frustrating it is to feel that one's destiny is in the hands of SAGE behavioural psychologists who believe that board games and Christmas shopping are an existential threat to society?

All this seems so counterproductive—that is my point. Remember, politicians are asking society to do something historically unprecedented.

Baroness Penn (Con): My Lords, I need to remind the noble Baroness of the time limit.

Baroness Fox of Buckley (Non-Afl): I am sorry; I lost track of time. I got distracted. Noble Lords have got the gist. Some people say I am mad; I appeal to the Government to turn back to the people—the citizens—to trust them and not be distracted by the opposition.

7.10 pm

Baroness Altmann (Con) [V]: My Lords, I thank my noble friend for his opening remarks, and for his passion for and dedication to his role. I understand that none of these decisions is easy and that nobody would have wished us to be in the position in which we currently find ourselves. Of course the Government must protect their citizens as best they can. They must make tough choices on behalf of the wider public and lead the country responsibly.

However, to make those choices it is vital to have the best information from a wide range of sources, not just one perspective. We all want to see success in our stewardship of the health, well-being, prosperity and security of our citizens. I want to see the Government make the right choices. However, while I have listened to the reasons given for the detailed measures we are debating, and the dramatic intrusions into people's most personal lives contained in this 75-page document, we have still not been provided with any proper analysis to justify them.

My problem revolves around the lack of clear evidence for such confusing, seemingly illogical and draconian measures. I hope the Government can be persuaded to do better to ensure that measures are based on solid evidence, rather than apparently continuously erring on the side of caution with respect to one illness and its possible impact on the NHS, while risking many more lives that have already been and will continue to be lost from other illnesses, whether strokes, heart problems, suicide or cancer. We simply do not have the numbers to show how many people are forecast to die of, for example, undetected or untreated cancers that have already occurred since March 2020, as well as those yet to occur, but which are directly or indirectly attributable to the ongoing interruption of normal NHS services. I deeply regret the position we are in, but we need to be satisfied that the costs of these measures do not outweigh any benefits we are likely to see. Thus far, we simply have not been provided with such evidence.

I would understand that these measures could potentially be justified if we were dealing with a disease that killed 50% or 80% of those infected, but this unprecedented deprivation of liberty and intrusion into people's everyday lives and family relationships, as well as the destruction of good people's livelihoods, which will leave permanent scarring on our future growth, seems to be based on conjecture and warnings about future scenarios from people whose previous forecasts have been shown to be inaccurate. The quantitative modelling and analysis is simply nowhere to be found. How can we properly assess these measures without such evidence? Cost-benefit analysis is normally essential, yet the so-called *Analysis of the Health, Economic and Social Effects of COVID-19 and the Approach to Tiering*, published last night, contains no rigorous cost-benefit analysis in any formal, recognisable sense. My noble friend Lady Neville-Rolfe is absolutely right. Yet this omission seems to be excused by the statement that,

"it is not possible to forecast the precise economic impact of a specific change to a specific restriction with confidence".

So, none is provided.

Figure 2 of last night's document shows that, thankfully, the numbers of weekly deaths, each one of which is a tragedy, are way below the numbers in April this year. Yes, the numbers of deaths are rising but, as we go into winter, that is not surprising. Where is the context? What is the normal number of deaths from all causes at this time of year?

The document states that,

"the alternative of allowing COVID-19 to grow exponentially is much worse for public health."

However, as other noble Lords have said, no one is suggesting that this is the only alternative. We have treatments for this illness. We also have a population that could decide for itself what is needed to be able to live with this illness. Most of the population is trying hard to be cautious and is keeping social distancing, and I believe we should trust them. There is significant behavioural evidence that compulsion and draconian restrictions are not the best way to control people's behaviour. I also understand the sentiments of my noble friend Lady Noakes about the inconsistency of areas such as Kent, with its different tier restrictions that seem to bear no relation to the underlying data.

My feelings are of regret rather than of anger. I agree with the amendments in the names of my noble friends Lord Cormack and Lady Neville-Rolfe. Indeed, I have some sympathy with my noble friend Lord Robathan's amendment. Without an analysis that quantifies the costs and impacts of the measures we are debating tonight rather than just bold statements that they will save lives and stop the NHS being overwhelmed, I do not believe we are in any position to judge these serious measures.

7.17 pm

Baroness Meyer (Con): My Lords, I welcome the changes that the Government have made to Part 4 of the Bill, reducing the duration of the proposed regulation to 3 February. I also welcome the frequency with which the imposition of tiers 2 and 3 is to be reviewed, but the Government have come far too late to the notion that they must take Parliament and the people with them. The three tiers are not the 10 commandments, to be handed down on tablets of stone by Matt Hancock in the role of Moses. Surely, the Government should try hard on the impact assessment. After eight months of lockdowns, circuit breakers and tiers, anxiety has inevitably spread about the impact of these restrictions, not just on Covid but on the very nature of social life.

I remember a time when my generation could aspire to a higher standard of living than our parents. Now, we have to ask whether, with the debt already incurred, not only our children but our grandchildren will be able to enjoy a prosperity greater than ours. The rise in unemployment, family breakdown, child abuse, loneliness, mental health problems, leaving aside the damage to the economy and to education, increasingly poses the question of whether the cure is worse than the disease. We must approach the answer with humanity and humility. Science takes us only so far. The answer does not lie in statistics, data or graphs when the experts themselves cannot agree on their interpretation.

There are profound ethical and philosophical judgments to be made on the value of personal liberty, freedom of choice and the quality of life. Some fear, not without reason, that the draconian nature of lockdowns and tiers is taking us down the slippery slope to an authoritarian state from which we will never return. These value judgments go well beyond the realm of government—any Government. It is all too easy for commentators to say, from the rigid and unrealistic certitudes of their views, that the Government have no strategy, but name one nation that has a strategy.

[Baroness Meyer]
All over Europe, Presidents, Prime Ministers and Parliaments wrestle with the same problems and come up with the same answers.

The simple truth is that Covid-19 has a life of its own. It therefore holds the initiative. It is the fate of all of us to have to react to the unpredictable twists and turns of Covid. Mankind can turn the tables on the virus only with a vaccine that works. With the advent of such a vaccine, many of the fears and anxieties should fall away, but we must not count our vaccines until they are hatched. Before the first needle enters an arm, a vaccine must pass through the hoops of approval, manufacture, storage, transportation and distribution. That will take months, and, in the interval, we will have to put up with restrictions of one kind or another.

All I ask is for the Government to remember one thing: the more responsibility we are given, the more responsible we are. If we are treated like children, we will end up behaving like children. The British people are pragmatic and sensible. They are the Government's partners in this confrontation and they should be consulted at every significant stage.

To follow up on what the noble Baroness, Lady Watkins of Tavistock, said about international travel, can the Minister tell us what the position will be over the Christmas period for people whose families live abroad? For example, will my children be able to visit us or will they have to spend five days locked in our flat in London?

7.22 pm

Lord Balfe (Con): This has been a fascinating evening, has it not? I wonder whether the Minister has any support. I also wonder what the Labour Party is up to, because they do not seem to be taking part at any level at all. We have had precisely two Labour speakers, and no more, one of whom is yet to speak and will undoubtedly tell us what is what.

I have a lot of sympathy for my noble friends Lord Robathan, Lady Neville-Rolfe and Lord Cormack, and I will support whichever of their proposals goes to the vote. I am sorry but this is becoming a complete shambles. We had a little family debate at the weekend about whether we should put granny by the window or whether we did not want her to get pneumonia. We decided that we wanted her not to get pneumonia, because who on earth would end up doing the washing up? When you have senior officials in the Government talking about putting granny by the window, you really know that you have lost something.

At the same time, there is a serious point here. There is a catalogue of misery within the health service of people who cannot see their relatives, of the disabled who are stranded and lonely in homes, and the NHS does not appear to care. Why do we have a Minister for vaccinating people but no Minister for sorting out the NHS—for opening hospitals, opening surgeries, and getting visitors back into homes where people have been isolated, often for months? They are not a compassionate Government; they are in the grip of a handful of so-called experts, one of whom I remember had the distinction some years ago of having half of the cattle in Britain slaughtered quite needlessly. I hope that he does not turn those latter abilities to the general population.

Last Saturday, the shroud-waver in chief, the Cabinet Minister Mr Michael Gove, told us that we would be physically overwhelmed, with

"Every bed, every ward occupied",

and all the capacity built into the Nightingales and requisitioned from the public sector too. Let me ask this of the Minister: as of today, how many Nightingale beds are full, both as a number and as a percentage? How many of the private sector beds are full, and how many are sitting there, not taking in private sector patients because they are getting big dollops of public money—I speak from some knowledge because I have a number of friends in the medical profession—for leaving the beds empty and not taking in patients? This is the rather sad state that we are in.

What do I propose, apart from what I have said already? We need a wider view among the people who make the decisions. Why are people like Professor Heneghan and Professor Gupta voices in the wilderness? With all their scientific abilities, why are they not at least in the room where the decisions are made? They would be a small minority, but at least they would be able to put forward their views. Why are we not listening to the Chancellor and to industry? We are bankrupting the country. We are running it into debts that it will take years to pay off because we are obsessed with a handful of supposed experts—I say "supposed" because I do not think they are. I also do not think that we can continue to bankrupt the country, which is what we are doing.

I am sorry for those in the Labour Party, but their answer is always, "Give us a chequebook", and never, "Let us sort out how to get back to normal." That is what I want to see. I also want to see something that has been alluded to many times in the debate, which is an end to the withdrawal of civil liberties and the chip-chipping away at everything that we stand for. Let me say this: half of the people of the city I live in, which is Cambridge, do not understand the regulations. The other half who do are interpreting them in their own way—and that does not necessarily mean that they are obeying them, because many are not doing so. The Army is now involved in vaccinating people. We are beginning to look like Poland in the 1980s and we need to step back from this. Will the Minister please take tonight's debate as a serious contribution?

Also, and finally, we must stop persecuting people. Some 45 years ago, I first met Mr Piers Corbyn. When Labour had a leader called Jeremy, people used to say, "What do you think of him?" I would always reply, "You should meet his brother." What I will say is this: you cannot conduct society on the basis of persecuting a handful of loonies who run around demonstrating. Please stand back, think about it, calm it down, and start all over again.

The Deputy Speaker (Baroness Garden of Frognal) (LD): The noble Baroness, Lady Hoey, and the noble Lords, Lord Shinkwin and Lord Moylan, have withdrawn so I now call the noble Baroness, Lady Jolly.

7.29 pm

Baroness Jolly (LD) [V]: My Lords, this has been an excellent debate. I found myself agreeing with many noble Lords on several issues. These regulations take

us out of the national lockdown and into a revised tiered system. In theory, this is something that I agree with: a targeted approach which infringes on the freedoms of only those for whom it is necessary. I have some sympathy with my noble friend Lord Greaves in his admiration for the contribution of the noble Lord, Lord Dobbs, but I do not support the amendment of the noble Lord, Lord Robathan. At times, I agreed with his assessment of the Government's handling of this: communication was poor and the level of dither was astounding.

I also welcome many of the revisions to the previous tiers, which impose tighter restrictions on aspects of social life while extending support bubbles for some households at highest risk of isolation. However, there are some serious issues that need to be considered.

My noble friend Lady Brinton mentioned people with a learning disability. At the beginning of the virus, there was a scandal about GPs putting "DNR" on to the records of people with learning disabilities without any consultation with family or care homes. Fortunately, the CQC intervened and made it clear without any equivocation that this was not ethical, acceptable or legal.

Many concerns have been raised about the criteria for tier allocation. Of course we need a system that takes a more nuanced approach than just the number of cases in the population but, when restrictions are so damaging to the local economy and residents' mental well-being, we need transparent data and decision-making. Last week, the transparency data was published a day late and we still do not have the full scientific evidence behind the rationale for different tier restrictions. Many noble Lords have given the impact assessment the ridicule it deserves. It is crucial that the Government engage with local authorities that know what is happening on the ground to inform decision-making. How do the Government plan to engage with local authorities to ensure they can make informed decisions that go beyond just raw data? Can we also get reassurance that political pressure is not the hidden sixth criteria for tier allocation?

There have been concerns about the size of the geographical areas that are grouped for tier allocation. Areas with low infection rates are understandably frustrated, as they are grouped with nearby areas with higher rates. Countries with robust test-and-trace systems are able to target their restrictions with far more precision; that is what this Government should be aiming for. Can the Minister please tell the House what progress was made on improving test and trace during the national lockdown? Are the Government now beginning to recognise the amazing efforts of local test-and-trace teams who use their existing expertise? How much of the £7 billion in additional funding will go to local authorities to help them trace the most difficult cases? We all know that the first 80% or so are straightforward to trace, but it is the last 20% who are the problem. Local public health teams, who know the area, can find those out-of-the-way addresses.

Now I would like to consider the rule of six. Under national lockdown rules, children under five were exempt from the rules on one-to-one meetings. Will the Government now make children exempt from the rule of six? This issue is particularly pertinent for parents of young babies who were born in lockdown and have not had access to the usual support systems. Under the rule of six, new parents can meet only in groups of three, despite these informal support networks being so important to maternal mental health. I hope that the Minister will consider this and provide a response which will make England consistent with Scotland and many of our European neighbours.

The new regulations make the new tiered system more restrictive than that which came before. Combined with some specific easing over the festive period and adjustments to policies on support bubbles, this has the potential to be confusing, to say the least. There has to be a clear communications strategy that aims to reach particularly hard-to-reach communities. As these restrictions are being brought into law with significant fines attached, the onus is on the Government to ensure that individuals know exactly what they can and cannot do—and that if they do what they want, it should be clear how much it will cost them. This is rarely mentioned at Downing Street briefings; nor does it make the front page of the dailies or the evening news.

My noble friend Lord Scriven gave us a blow-by-blow breakdown of all the recent SIs laid in your Lordships' House for us to debate. The seeming randomness of the measures in each subsequent SI was appalling.

Christmas is an emotive issue. Many of us miss our loved ones greatly and the opportunity to meet in person at Christmas is ever so tempting. Although in-person celebrations are allowed, this should not be confused with them being encouraged. I am pleased that we have managed to obtain national consensus on Christmas bubbles. I hope that, in the new year, we will see much more of this co-ordinated approach. How are the Government going to ensure that the message is clear? Remote ways of meeting are the safest and are recommended to connect with the family.

I know that in my household, we will have a virtual Christmas this year to protect each other and show solidarity with those whose religious celebrations could not go ahead in 2020—those who did not celebrate either Diwali or Eid ul Fitr. There will be a time when it will not pose a danger to see the ones we love, but now is not it. Taking this virus seriously means recognising those who will remain isolated this Christmas: care home residents are just one example.

The winter plan outlines a significant increase in the testing occurring in care homes, with specific mention of visitor testing and testing of staff. I welcome this, but I would press the Minister on how the Government anticipate that Christmas will operate in care homes. This morning, I received an email from the chief executive of Care England, a representative body for independent care homes, who said:

> "The issue about visiting in and out of care homes goes far beyond Christmas, we want to craft robust guidance that deals with the short, medium and long term. The guidance needs to recognise the intricate balance between well being and safeguarding. Although the new testing regime is extremely welcome we need to face facts that it will be a while until it is entrenched and also needs to operate as part of a raft of other infection control measures."

[Baroness Jolly]
No additional resources have been announced to assist with this testing. The National Care Forum estimates that an average 50-bed care home will need to administer at least an additional 1,350 tests per month, amounting to an additional 450 hours of work or an extra 15 employees. This time is taken away from caring for residents, with no replacement. Care homes need additional resources and support to have the capacity to implement the testing that we have so long called for.

The restrictions we have all been living with have had a significant impact on our economy, mental health and well-being. Every person in the country has made a huge personal sacrifice and we cannot fall at the final hurdle. We now know that there is a get-out-of-jail-free card and, within a few months, many of us will be vaccinated with one of the growing number of vaccines. I would like the Minister to put to the department that the most vulnerable adults of working age are those with a learning disability. However, they were not even on the first list that I saw for early vaccination. For nearly a year, we have suffered lockdowns and other restrictions. Living in a tier 1 area, I will resist the Boxing Day trip to Staffordshire to see my family. We will leave it to spring and rely on a video Christmas. But this means getting restrictions right and keeping them so, then regaining the public's trust so that they can confidently follow the guidance, knowing that they are doing the right thing to protect their family, friends and neighbours.

7.39 pm

Baroness Thornton (Lab): Perhaps I may say how pleased I was to see the noble Baroness, Lady Brinton, in the Chamber today, joining in our debates.

I thank the Minister for introducing these very important regulations to the House. I hope that he, like me, does not feel too second division, as the debate in the other place was opened by the Prime Minister and the leader of the Opposition, but I am sure that he and I can probably do more than justice to this subject. I think that his right honourable friend the Prime Minister might be feeling just a little worried at the moment because I gather that he had 56 rebels on the vote that has just taken place in the Commons.

This statutory instrument sets out that the Secretary of State must review whether each area that is part of tier 2 or tier 3 should continue to be part of those tiers at least once every 14 days, with the first review to be carried out by 16 December 2020, and review the need for each of the tier 1, tier 2 and tier 3 restrictions at least once every 28 days. The first review is to be carried out by 30 December 2020, so I hope that the Minister will have some Christmas. The shame of the statutory instrument is that it offers a binary choice. If this were primary legislation, we could really test the legitimate concerns in a way that we are not able to do this evening. The regulations will expire on 2 February 2021. I urge the Government to think very carefully about how the discussion on renewal, or whatever happens next, takes place. We are many months into this regulatory review; I think it is time that it ended and we had proper primary legislation.

The allocation of the areas of the revised tiers was announced on 26 November. As the noble Baroness, Lady Hayman, said in her very wise contribution, it has cemented the deep sense of divisiveness in the nation. The Government have published information alongside a Written Statement which sets out the rationale behind the allocations. Many noble Lords have already criticised that, so I will not go into detail on it. However, it means that tier 1, which had 23.5 million people in it pre-lockdown, now has 713,000 people, and tier 2 now covers 32 million people whereas it previously covered 24 million. So it is not surprising that people are concerned about where they have been put.

The new map of the three-tier system in England looks very much like a depiction of the north-south divide, and as Danny Dorling, the Oxford Professor of Human Geography, said on Saturday:

> "What's certain is that the key to understanding the map is the underlying social and economic geography of England. To understand the changing medical geography of this pandemic, you must first understand how the country lives and works".

There is the rub. If the Government do not have a real understanding of how people live their lives, the conditions under which they work, the security or otherwise of their jobs, the adequacy of their homes, the transport they rely on, their relationship with schools and local facilities and their reliance on informal support networks, it is difficult to see how the current proposals and the ones that have gone before can work effectively.

The combination of vaccines, mass-scale rapid turnaround testing and therapeutic advances offers a way out of the current Covid-19 challenges in the spring and early summer, but in the meantime, restricting social contact is the only way of reducing the pandemic, protecting our National Health Service and allowing it to do its job, as my noble friend Lord Hunt and the noble Baroness, Lady Watkins, explained. We can see some success, and I applaud that, but the Minister needs to understand that many people believe that the success in getting the R rate down has been achieved despite the Government and not because of them. Why do we need to be still learning the lessons of being too slow?

It is of course welcome news that the R rate is below one, but today we learned what that means—and it does not mean that we can return to any sort of normal life. The news on the vaccines is of course tremendously good. Like others, I am allowing myself to hope that one day I will be able to see my sisters, nieces and nephews in Yorkshire and to hug people. I am also hoping not to have to queue for the supermarket, and maybe I will be able to sit at the same table as my noble friend Lady Wheeler in the Guest Dining Room, rather than sitting six feet apart at separate tables.

However, we have been here before: overpromising and underdelivering. As my right honourable friend the leader of the Opposition said, we are now on plan 5. The slowness with which we have entered these different plans is the reason why the UK economy has been hit particularly hard. As the OBR reported, a sharp slowdown in activity meant that the UK experienced one of the larger falls and that activity was then slower to recover.

The shame of this is that the Government learned none of the lessons from the first wave of the crisis and failed to listen to SAGE—or to Labour, when we

argued for a two to three-week circuit-break to coincide with half term. Instead, we have had a longer national lockdown and the economy has taken a bigger hit.

It is therefore vital that the tiers work, and that the relaxation of Christmas does not lead to a further spike and lockdown in the new year. How could that be done? We have a few ideas. We need to end the topdown, centralised model of testing, tracing, isolating and supporting. Local teams with local knowledge must be put in charge, and they must be given the resources to do the job. We need to get rid of Serco and give the testing, tracing, isolating and supporting to our local teams. Frankly, if the Government have spent £22 billion on this and it is still not working, there has to be an alternative.

We need to ensure routine testing for all high-risk workplaces and high transmission areas for NHS and care staff, of course, but those in retail, hospitality and transport, teachers and pupils in secondary schools should also have access to tests whenever they need them.

Furthermore we need to overhaul the failing support for self-isolation, for both businesses and individuals. We need to support our businesses. The Government's approach to supporting areas under local restrictions is fundamentally unfair and risks a gulf in support opening up across the country. The idea that the Isle of Wight should receive the same amount of support as Manchester is patently unfair.

Businesses are in the dark about the future of the furlough scheme, which is up for review in January. What will happen next? The Chancellor is still refusing to help millions of people excluded from his support schemes for the self-employed, despite having had months to plug those gaps.

What about our students? What will be the impact of their return home before Christmas? What is the Government's assessment of the risk of students contracting the virus between having the test—which I hope will be available in the universities—and returning home? What steps are the Government taking to ensure that transport capacity is not overwhelmed by the numbers of non-socially-distanced travellers next week? It is completely irresponsible for the Government to leave tier 3 areas across the north and the Midlands in the lurch again.

What about Christmas? What is the scientific assessment of the risk that five days of relaxation will entail? I raised this matter yesterday with the Minister, and I am still seeking an answer. Covid-19 cases have spiked across Canada in the past month, since Thanksgiving and Halloween. On 12 October, Canada had 185,000 Covid cases. Only six weeks later that number has nearly doubled. Canadians and Americans alike are saying that the surge is proof that nothing is worth the risk. I would, therefore, like the Minister to address this issue: what will the cost of Christmas be in infections?

Does the Minister believe that the three-tier system provides for the necessary post-Christmas restrictions, or is a third lockdown inevitable? Given the prediction that cases will increase after Christmas, what plans are in place to prepare the NHS and safeguard services in the coming months, until a vaccine allows life to return to normal? Front-line resilience is already at a premium and will be critical over the next weeks and months, particularly after Christmas, especially if we do not wish to look back on those activities with very deep regret.

With regard to the amendments to these Motions proposed by the gaggle of Conservatives, I sort of feel sorry for the Minister. It is noticeable that yet again the Government find themselves under fire from their own side. As I have said at least twice to the noble Lord, Lord Robathan, he has form in being a Covid restriction objector and seems prepared to risk people's lives instead of supporting them to do the right thing. This is my view of the noble Lord's—

Lord Robathan (Con): It is wrong.

Baroness Thornton (Lab): Well, that is my view; I think it is right. I think that is what will happen if he gets his way. The noble Lord does not seem to understand that, until his Government actually manage to build and support the systems that will contain the virus, particularly in deprived communities, his proposal would only cost lives—and they will be the lives in our poorest communities, the BAME and the vulnerable.

I believe the other two are legitimate regrets and at least show consistency from the movers. However, as we have in the past, we on these Benches will abstain if any of the movers choose to test the opinion of the House.

7.51 pm

Lord Bethell (Con): My Lords, it has not been the most comfortable two and a half hours of my life, but I have profound sympathy for a huge amount of what has been said in this debate; I really do. I completely understand where the Opposition Benches are coming from on some of the major themes raised. I will go through some of those in detail, but I will summarise briefly before moving on.

On test and trace, I understand the frustration that those on the Opposition Benches have voiced, but I would like to reassure them that the numbers have come up dramatically, that Thursday's numbers were incredibly impressive and that this Thursday's will be even more impressive. A massive amount has been done to address the concerns they have quite reasonably voiced in the past.

Huge strides have been made on collaboration with local authorities in the last few weeks. The publication yesterday of the community testing document and the process around that is proof that those commitments are sincere. I have been held to task on the clarity of government communications many times over the last seven months. The way in which even these restrictions have been communicated has had a lot of thought and has landed very clearly indeed.

On my own Benches, there have been extremely clear messages that I personally agree with wholeheartedly on a sentimental basis. Who would want to stand at the Dispatch Box today putting a restraint on the liberty of the British public of the kind we are looking at in these statutory instruments? This is a joy to

[LORD BETHELL]
absolutely no one, and it is done with a huge number of reservations, with concern and with a full understanding of the implications.

On the economic case, I do not need to be told by anybody about the implications of these restrictions on our economy. I know from my own life, my friends and those I love what they mean to our economy. I feel that very harshly indeed and assure noble Lords that those matters are taken fully into account when we put these statutory instruments before the House.

On the complexity of some of these statutory instruments, we are dealing with a difficult and complex situation. Noble Lords have rightly ridiculed the language used, and I have greatly enjoyed some of the language used in tearing into these statutory instruments, but I cannot hide from noble Lords the fact that to be effective they have to be legal. Legal language is sometimes funny but always necessary. We need to do things in a thorough, thoughtful way.

I have sat in more meetings with experts in the last eight months than anyone else in this House, and they drive me nuts, but we appreciate and value the scientific dialectic. We have approached it with an enormous amount of transparency, and there is no point in scapegoating those who posit the best ideas they can. It is up to us as the decision-makers to make our choices, not to blame the experts for the advice they give us.

Lastly, on the democratic element, I have stood here and apologised for the late arrival of statutory instruments and the retrospective nature of some of these debates. But I remind everyone that I am standing here ahead of the application of these statutory instruments and, as the noble Baroness, Lady Thornton, just reminded us, next door—in the other place—they have been approved by a vote of 291 to 78, which is an emphatic win for the Government.

Before I move on, let me tackle a couple of the key questions; I cannot possibly address all the issues that have been raised today. My noble friend Lord Robathan covered an enormous number of points, and I very much value the challenge he brings to the Government in these matters. I remind him that we are all sobered by the statistics that he cited on suicides and cancer, and, of course, those numbers are far too high. I cannot help thinking that, at the end of all of this, we are going to rethink the value of life and think about how much more we can do to address questions like suicide and cancer. But no one is suggesting that we are facing a tsunami of either cancer or suicides that threatens hundreds of thousands of lives in the next few months, or that it might overwhelm the NHS. Therefore, the parity he suggests is not right.

I completely sympathise with the points that my noble friend Lady Neville-Rolfe made so eloquently and thoughtfully on the impact of regulations such as these on the economy and, in particular, on the hospitality sector. I reassure her and all other noble Lords who have raised, quite reasonably, the impact on the economy of these regulations that we absolutely think about education, business and the secondary health impacts of these regulations on the country.

However, when asked about the impact assessment, I remind noble Lords of the very important work done by the ONS, the Home Office, the Department of Health and Social Care and the Government Actuary called *Direct and Indirect Impacts of COVID-19 on Excess Deaths and Morbidity*. That is a detailed analysis of the various impacts of a strategy of letting the disease take its course, and if anyone wants any guide to what the alternative looks like, that report spells it out extremely clearly indeed. I am extremely disappointed whenever people raise the question of cost-benefit analysis and government analysis that this report is not cited more, because it is an excellent piece of work, and I highly recommend it.

My noble friend Lord Lilley speaks of an institutional bias and groupthink. I respect his challenge enormously. He is entirely right to warn any organisation, particularly one in the grip of a serious pandemic, about falling into the trap of any kind of groupthink. But I remind him that there have been moments when the groupthink went the other way. I remember very well at the beginning of this pandemic, when people told us that Covid was going to be like flu—and then many millions have died around the world. I remember when people said that it would never come to Britain and that it would stay in China where it started, but then the cruise ships showed that the disease did travel, and when it started travelling, it would not stop.

There were those who initially denied that the lockdown in March was necessary, but I think there are few people who would make that case right now. There were people who said that antibodies and T cells would somehow mean that large sections of the population would be resistant to the disease. That has been seen not to be true and, in fact, antibodies in the UK—now that we have tested hundreds of thousands, or millions, of people—are rarely more than 10%, and show every sign of fading away in some people. There were those who thought that the disease might just blow itself out and mutate into something that was harmless, and that the second lockdown was unnecessary. Professor Spiegelhalter has predicted 20,000 deaths before Christmas, and I am afraid that the second lockdown absolutely has been necessary.

I completely understand my noble friend Lord Howard of Rising's aspiration of somehow segmenting demographics. He makes it sound easy, as if we could somehow split older people off from the rest of society. However, it is not only the view of SPI-M that this is impossible but the view of every single country in the world. Not one country has managed to do what he suggests. It is simply not possible. He may not like this answer and feel that I have not answered him completely but, as on the 180 times I have stood at this Dispatch Box in the last eight months and in the 1,000 letters I have replied to, I am afraid that this is one of those cases where I have sought to answer his question, even if he does not like the answer.

I completely agree with my noble friend Lord Ridley that persuasion is of course better than compulsion. That is exactly the approach we have taken. We have tried to use consent wherever possible. If you speak to the police force or any of the agencies of the state, you will find that that is absolutely the principle we have taken. I also completely agree that the authoritarian approach of China, Korea or Taiwan may suit those cultures and political systems, but they are not for us. However, he is completely wrong to think the public are not with

us on our approach. In September, 62% of the public supported our rules; in October, it was 72%; and in November, it was 73%. Some 89% support the wearing of masks and 77%, even now, support the rule of seven. And 76% support the closing of bars and restaurants where necessary. I fear that, sometimes, noble Lords in this Chamber are out of step with the heart of public opinion. While I agree ideologically with the points they make, it is wrong to suggest that they are speaking on behalf of the public in these matters.

I am extremely glad that my noble friend Lady Meyer and the noble Lord, Lord Birt, mentioned the vaccine, because that is very much the focus of our efforts. These restrictions are merely a bridge to get there. No one wants to live under the terms of these statutory instruments. I can report that progress on the vaccine is extremely encouraging; I am grateful to the scientists designing it and those involved in its deployment.

The noble Baroness, Lady Barker, speaks with so much truth and wisdom in her interventions, but I push back slightly on her remarks on the shielding letters. I know my noble friend Lord Cormack thought that they were wise. The shielding letters are extremely clear because people asked for them to be clear. We work very closely with stakeholders to make sure that they are right, and they are passed to stakeholders for their consent before they go out. The 76-page documents are very long because people want to know the answers to detailed questions. When we ask them what kind of detail they want, this is exactly it. The extract the noble Baroness read out seemed to me a model of clarity and exemplary in the wisdom of its advice.

I am afraid to tell the noble Baroness, Lady Hayman, that, if you are going to have boundaries, they must lie somewhere. Regions need boundaries. When you live on the side of one, that is always uncomfortable, but I know no other way of dividing the country.

Where I completely agree with the noble Baroness, Lady Hayman, is on her reference to Dame Sally Davies, who has a point when she says that social deprivation, bad diet and bad living habits have undoubtedly contributed and hit the country hard in this epidemic. Sally Davies is completely right that there is a social justice issue here. Levelling up, which I campaigned on in the last election and which the Prime Minister has evangelical support for, means health outcome equality, if it means anything at all. I completely share the aspiration that a benign outcome of this awful disease would be a national commitment to this agenda, not only for the principles of social justice but, pragmatically, for national resilience.

I will say a few words about trust and authoritarian measures to my noble friend Lord Cormack, who had extremely harsh words about the Government's motives and their actions. I respectfully remind my noble friend that the Government are not conspiring to separate families, isolate the vulnerable or close businesses but this awful virus. That is what is causing the trouble, and it is our commitment to protect the vulnerable, businesses, the health service and, thereby, to protect the economy and the very fabric of society that leads us to this point. I completely sympathise with his frustration and I take his concerns about liberty seriously, but he is aiming at the wrong target.

The noble Lord, Lord Scriven, asked about the accuracy of lateral flow tests, and I would be happy to enter into correspondence with him on this. It is a short measure. I reassure him that these are an extremely effective screen. We have been using millions of them up and down the country and have become extremely experienced with them. They are not the tests we would use if you were going to go into an operating theatre, but they are the tests we would use if you were going to see Granny.

The noble Lord, Lord Scriven and my noble friend Lord Cormack asked about public understanding of government measures, which is a relevant, pertinent question. I reassure them both that the Centre for the Mathematical Modelling of Infectious Diseases has found that mean contacts—the number of contacts each original case study had—increased gradually from early April to July, which is exactly what we learned during the summer, when contacts began to grow. Since then, contacts peaked in mid-September and have come down, which is an indication that people are taking more seriously the strictures of the Government to socially distance and reduce social contact.

The noble Lord, Lord Greaves, spoke with great humanity about the plight of those in Pendle and the north. I reassure him that we do not think that it was only community testing that led to the decline in Liverpool but the commitment of the political leadership and a terrific civil effort on the part of the whole city. However, community testing did help. It not only helped break the chain of transmission but helped focus minds on the disciplines of epidemic control. He is right that the Army cannot do everything and that the priority is to test people who are most likely to have the disease. On the £500, it has undoubtedly been a struggle for both councils and individuals to claim the money, but we have, as of yesterday, made it accessible through the app, which I hope will change matters considerably.

The noble Baroness, Lady Thornton, and others asked about support; we have provided unprecedented levels of support to businesses and individuals. That includes helping to pay the wages of people in 9.6 million jobs across the country through the Coronavirus Job Retention Scheme, protecting jobs that might otherwise have been lost, and supporting the livelihoods of 2.7 million self-employed workers. Businesses have received billions in loans and tax deferrals.

By way of summary, the noble Lord, Lord Birt, made this central public health insight that we have all learned throughout this pandemic. My health is no longer a private matter. What I have realised is that I might have Covid, therefore, I might infect my neighbour. If I get ill, I will take up a bed in a hospital, and that bed will not be available for you. In other words, this is a classic liberal dilemma, which a number of noble Lords referred to. Of course, we respect everybody's freedom and liberty but at this stage, with this horrible contagious disease spreading around the country, I am afraid we are all dangerous to others, and that is why we have to bring in statutory instruments such as the one we are looking at today.

Around 633,000 people in Britain have Covid today. We are doing our best. Some 246,298 were isolated by track and trace between 22 and 28 November, but we

[Lord Bethell]
are going into the winter with far too many people walking the streets, schools and hospitals with a highly contagious and dangerous disease. That is why we have the restrictions we are looking at today, why I stand by them and hope your Lordships will support them, why I hope my noble friend and others will withdraw their amendments, and why I commend these regulations to the House.

8.10 pm

Lord Robathan (Con): My Lords, my noble friend the Minister has been a bit on his own this evening—actually, he has been entirely on his own—but I will say that he has made a pretty good fist of defending these regulations. However, when he says that 78 people voting against the Government in the Commons is an emphatic victory, as a former Whip there, I would say that since most of them are Conservative Back-Benchers, the Whips' Office will be pretty worried.

I said earlier that this is the worst economic crisis of my life, and possibly the worst crisis of my lifetime. I think the nation is engaged in a most extraordinary act of self-harm. However, we need to look at this in the round. Before I sit down, I just say to the noble Baroness, Lady Thornton, that I think it is unworthy of her to say of me that I wish to see people die, because that is not the case. I thought about giving my view of her—I will, if she wishes—but I thought it would be unworthy and I shall show some restraint.

I have been listening to wiser counsel than my own, and there is not an appetite to force my fatal amendment to a Division. I think it might undermine the better vote we have had in the House of Commons of those who are unhappy with the way government policy is going. I am used to putting my money where my mouth is; however, on this occasion I will not divide the House and I will please the House, and especially the Chief Whip, by saying that I have made my point and I am unlikely—although it is not impossible—to table another fatal amendment. I think he knows what I think.

Lord Robathan's amendment to the Motion withdrawn.

Amendment to the Motion
Tabled by ***Lord Forsyth of Drumlean***

At end insert "but that this House regrets that the restrictions being introduced to address the COVID-19 pandemic do not adequately consider the impact of such restrictions on the (1) number of jobs lost, (2) businesses permanently destroyed, (3) costs to taxpayers, and (4) consequences for mental and physical health, and regrets that Her Majesty's Government have not provided a strategy for the lifting of the restrictions put in place to address the COVID-19 pandemic."

Lord Forsyth of Drumlean's amendment to the Motion not moved.

Amendment to the Motion
Tabled by ***Lord Cormack***

At end insert "but that this House regrets the confusing signals given out by the contrast between the rules for Tier 2, Tier 3, and the relaxation of rules over the Christmas period."

Lord Cormack (Con): I do not wish to delay the House, or those who wish to play with their electronic voting machines.

Lord Cormack's amendment to the Motion not moved.

Amendment to the Motion
Moved by ***Baroness Neville-Rolfe***

At end insert "but that this House regrets that the restrictions being introduced to address the COVID-19 pandemic were not informed by a wide and detailed analysis of the costs and benefits of the possible measures to be adopted."

Baroness Neville-Rolfe (Con): My Lords, sadly, I have heard nothing to change my mind and a great deal to stiffen the sinews. The ONS coronavirus social impact material, to which my noble friend the Minister referred to, is very useful, but it is not applying a wide and detailed cost-benefit analysis to the regulatory measures as they are adopted, and I would like to test the opinion of the House on my amendment.

8.12 pm

Division conducted remotely on Baroness Neville-Rolfe's amendment to the Motion.

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Baroness Neville-Rolfe's amendment to the Motion disagreed.

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Motion agreed.

Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020

Motion to Approve

8.25 pm

Moved by ***Lord Bethell***

That the Regulations laid before the House on 30 November be approved. *Instrument not yet reported by the Joint Committee on Statutory Instruments.*

Motion agreed.

House adjourned at 8.26 pm.

Grand Committee

Tuesday 1 December 2020

The Grand Committee met in a hybrid proceeding.

Arrangement of Business

Announcement

2.30 pm

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): My Lords, the hybrid Grand Committee will now begin. Members know the spiel regarding hygiene and capacity, so I will not repeat that, but let me say to Members participating here in the Room that their microphones are turned off. 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 you begin to speak. The process for unmuting and muting for remote participants remains the same.

Protocol on Ireland/Northern Ireland (Democratic Consent Process) (EU Exit) Regulations 2020

Considered in Grand Committee

2.32 pm

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

That the Grand Committee do consider the Protocol on Ireland/Northern Ireland (Democratic Consent Process) (EU Exit) Regulations 2020.

Relevant document: 34th Report from the Secondary Legislation Scrutiny Committee

Viscount Younger of Leckie (Con): My Lords, these regulations have a straightforward aim: to reflect in domestic law the consent mechanism set out in Article 18 of the Ireland/Northern Ireland protocol and the UK Government's unilateral declaration of 17 October 2019. The protocol itself is an annexe to the withdrawal agreement and was developed with the intent of protecting the Belfast/Good Friday agreement. That intent was at the heart of our negotiations with the EU last year and is reflected here in the consent mechanism. It is something we will always uphold.

These regulations provide for the locally elected politicians of Northern Ireland to decide whether Northern Ireland remains aligned with certain aspects of EU law set out in Articles 5 to 10 of the protocol. These articles cover customs, the UK internal market, technical regulations of goods, VAT and excise, the single electricity market and state aid. The unilateral declaration published by the Government concerning the operation of the consent mechanism provides further detail on the obligation described within the protocol. These regulations implement that consent process by providing for a vote in the Assembly as to whether to continue this alignment. These commitments have been set out and committed to in international law, and now it is for us to bring them into domestic law with this instrument.

It will perhaps help to begin with the fundamentals. The Belfast/Good Friday agreement was ratified by referenda in both Northern Ireland and Ireland and is built on the principle of consent. In the protocol, the necessity of consent is recognised in the provision for Northern Ireland's alignment with certain aspects of EU law to be disapplied if Northern Ireland's political representatives decide that it is no longer what is wanted. Be in no doubt that reflecting this principle of democratic consent in the protocol was intrinsic to its acceptance by the Government. As noble Lords will know, the protocol was designed as a practical solution to avoiding a hard border on the island of Ireland while ensuring that the UK, including Northern Ireland, could leave the EU as a whole. The protocol necessarily included, therefore, a number of special provisions which apply only in Northern Ireland for as long as the protocol is in force. That is why it is for the elected representatives in Northern Ireland to decide what happens to the protocol alignment provisions in a consent vote that can take place every four years, with the first vote taking place in 2024. Only elections to the Northern Ireland Assembly and its Members' votes will decide the outcome.

I will now turn to the detail of the process. These regulations implement both a default consent process and an alternative consent process. The default process will apply if a First Minister and Deputy First Minister are in office on the day the Secretary of State issues the notification to begin the process. In 2024 that will be on 31 October. Under that default process, the First Minister and Deputy First Minister have one month during which they can, acting jointly, table a consent resolution. This is our central scenario: that the Executive will be functioning normally in 2024 and the First Minister and Deputy First Minister will jointly table the Motion, which will be debated in the normal way in the Assembly. Everything else that follows in these highly technical regulations is designed to cater for increasingly unlikely scenarios, but they are reflected here in the regulations to ensure that a consent decision can always be reached.

In that vein, if, before 1 December, the First Minister and Deputy First Minister have not tabled a Motion for a consent resolution, any Member of the Assembly can table a consent Motion before 7 December. It would then be debated in the normal way, although if the Motion has not been decided by 17 December, the debate will be scheduled automatically and the Speaker will move the Motion.

The process I have just described will operate if the political institutions in Northern Ireland are functioning as expected. That is our central scenario, as I said earlier, and the path we expect to go down. But we must be prepared for all scenarios. The alternative process will therefore apply if, on 31 October 2024, or any future such point, a First Minister and Deputy First Minister are not in office. We should remember that the protocol was drafted at such a time—a deeply challenging time for Northern Ireland. While we all welcome the restoration and subsequent stability that the Executive have achieved, it is right that we have this in reserve.

The alternative process enables any MLA to bring forward the consent Motion in the absence of a First Minister and Deputy First Minister at any time from

[Viscount Younger of Leckie]
1 November until 7 December. If no Motion has been tabled or has not been decided on by 7 December, the Speaker must summon the Assembly to sit and consider the Motion. The alternative process also puts in place a procedure to enable the consent vote to happen under the alternative process even if the Assembly is unable to elect a Speaker when required to do so. In this case, the Assembly would move to elect by simple majority an interim Speaker, whose only role would be to preside over the consent debate and transmit the result to the Secretary of State. The interim Speaker would have no wider role beyond this narrow task. This provision ensures that MLAs will always be able to take a decision on a consent Motion, discharging the obligation in international law to facilitate this process.

If these draft regulations are approved, the first consent process would, as I have set out, take place in 2024. If consent is given at that point, the process will then be repeated every four or eight years. So, if consent is given with a simple majority, that is four years. If consent is given with cross-community support, it will be eight years. Cross-community support means the support of a majority of the Members voting, a majority of the designated nationalists voting and a majority of the designated unionists voting, as set out in the Northern Ireland Act 1998. This illustrates that the mechanism itself is designed to encourage cross-community support, giving the Assembly the chance to provide eight years of certainty to Northern Ireland's businesses through cross-community agreement.

There are arguments that this approach is not compatible with the Belfast agreement. That could not be further from the truth: our approach is entirely compatible with the agreement; let me explain why. The principle of cross-community consent as set out in the Belfast agreement applies to matters for which the Northern Ireland Assembly is responsible. The consent mechanism, as contained in the Northern Ireland protocol, relates to the UK's continued relationship with the EU. This is an excepted matter in Northern Ireland's devolution settlement. This means that the matter at hand falls outside the responsibility of the Assembly and outside the principle of requiring cross-community consent in order for it to pass.

I can assure noble Lords that the Government remain fully committed to implementing the withdrawal agreement and the protocol, which was specifically designed to protect the 22 year-old Belfast/Good Friday agreement and the huge gains of the peace process. That is why the alignment provisions in the protocol depend for their legitimacy on consent. This ensures that democratically elected local politicians will decide the future of the protocol in Northern Ireland. By making these regulations, we will ensure that this can be delivered for the people of Northern Ireland by the institution established by the Northern Ireland Act 1998. I beg to move.

2.40 pm

Lord Empey (UUP): It is difficult to know where to start. The Minister said that this was all about protecting and upholding the Belfast agreement. I do not know where he has been in recent years, but if he, or whoever wrote the notes for his contribution, thinks that any of this is compatible with the Belfast agreement, they are way off. This is a corruption of the agreement.

First of all, we are in this mess because of a terribly badly negotiated protocol which severs the economic activity of Northern Ireland from the rest of the United Kingdom. Our regulatory functions will be governed by European Union law, and, while a fig leaf of a customs territory has been invented, I refer the Minister to a House of Commons Library note of October last year which specifically sets out that, to all intents and purposes, we are in the customs union as well.

What we have actually done is the antithesis of the Belfast agreement, which insisted that the status of Northern Ireland would not be changed without the consent of its people. Nobody can claim that the status of Northern Ireland has not changed, with the result that our regulatory activities are governed by Brussels, where we will have no say whatever in the regulatory environment in which we operate. Border inspection posts will be established, one of which, in Larne Harbour, will occupy 14 acres. Every item of food that comes into Northern Ireland will have to be notified in advance to the relevant authorities and will be subject to inspection, including physical inspection if required. Each of the statutory instruments in this whole apparatus separates Northern Ireland by minute amounts each time. Nevertheless, a border has been constructed in the Irish Sea, which is the antithesis of the Belfast agreement.

The document refers to consent. Where was the consent from the people of Northern Ireland to enter into this twilight zone, this constitutional mess whereby we are neither in nor out of the United Kingdom but we have a new status—whatever that may be? It is like saying that you are married but every four years you can divorce; however, you are not given any choice in how you go into the arrangement in the first place. I have to say to the Minister that I find nothing remotely compelling in his argument.

The mechanisms governing how this consent is to be given are also against the Belfast agreement, because it set out to remove simple majoritarianism from key decisions so that each section of the community could protect its own interests, thereby having a cross-community vote. There has been no cross-community vote to enter into this process. Rather than some kind of protection, this is a fig leaf covering the fact that a border has been created against the wishes of the people. I did not want to see a border on the island—nobody wants to—but there should not be a border in the Irish Sea, either. Any border on either side does not uphold the agreement but is a repudiation of it.

This also creates uncertainty, because investors will not know what regulatory environment their company will be operating in in every four-year cycle. People in the Republic and in Great Britain will know, but we will be in this twilight zone of uncertainty, which is a negative push against investment.

I have to say to the Minister that I have seen absolutely nothing in this document that is compelling in any way. To prove my point, the Government are putting forward £355 million to handle the trading

consequences over the first two years—£355 million. People tell us, and the Government will not admit, that they have created a border in the Irish Sea. I think we would be as well to be straightforward with each other: I do not find anything in this document that is remotely compelling or advantageous to the people of Northern Ireland.

2.45 pm

Lord Dodds of Duncairn (DUP): My Lords, it is a pleasure to follow the noble Lord, Lord Empey, on this issue. These regulations are described as a "Democratic Consent Process". In the view of many people in Northern Ireland, it is neither democratic nor is it a proper definition of consent.

I want to take the Committee through the background to this issue. It goes back to the joint report of 2017 agreed between the United Kingdom and the European Union, which said in paragraph 50 that "no new regulatory barriers" will

"develop between Northern Ireland and the rest of the United Kingdom, unless, consistent with the 1998 Agreement"—

the Belfast agreement—

"the Northern Ireland Executive and Assembly agree that distinct arrangements are appropriate for Northern Ireland."

Of course, under devolution for Scotland, Wales and Northern Ireland, within the union, there can be different laws in place, but that can happen only with the democratic consent of the institutions in each of those countries. In paragraph 50, Her Majesty's Government and the European Union made a commitment that there would have to be the agreement of the Executive and the Assembly—I will come back to the point about the Executive, because that is significant as well.

Then, of course, in October 2019 Her Majesty's Government committed to the same thing. Prime Minister Boris Johnson wrote to Jean-Claude Juncker on 2 October 2019 setting out proposals for a new protocol on Ireland/Northern Ireland, based on five principles. The fourth said that any potential regulatory zone on the island of Ireland must have the endorsement of the Northern Ireland Executive and the Assembly before it enters into force—that is, during the transition period and every four years afterwards. Paragraph 13 of the Explanatory Notes sent by Downing Street to the European Commission states:

"Our proposal is that before the end of the transition period and every four years afterwards, the UK will provide an opportunity for democratic consent to these arrangements in the Assembly and the Executive within the framework set by the Belfast Good Friday agreement."

The point I am trying to make is that these regulations do not faithfully implement what was set out by Her Majesty's Government and the European Union back in December 2017 and do not set out the proposals put forward by Her Majesty's Government in October 2019. The Government have dropped any prior consent by the Northern Ireland Assembly to the implementation of this regulatory regime by the European Union in Northern Ireland. What they are saying is that you can have a vote after four years, but you are not to be allowed any vote to actually begin the process, contrary to all previous assurances. How on earth is that democratic? How on earth is that consent?

The Government are also saying that only the Assembly will be included, not the Executive. That is important because the powers of the Executive in terms of the parties being able to proceed by consensus or to veto proposals are very significant; that is why "Executive" was included, but it has been completely dropped. The whole customs regime is also included. Originally, only single market regulatory issues were to be considered. Now the whole panoply of customs is also included, as the noble Lord, Lord Empey, pointed out. Again, that is contrary to what the Government and the EU set out in December 2017, and to what Her Majesty's Government committed to in October 2019.

These regulations are extremely defective and are opposed by anyone who believes in democracy and proper consent in Northern Ireland. They are contrary to the Belfast agreement—there is no doubt about that. These points have been clearly made by the noble Lord, Lord Empey, who was instrumental in negotiating it, and by the noble Lord, Lord Trimble, who is also here and was one of its main architects. Yet, their voices are not listened to. I would have thought that they were worthy of respect and of being harkened to on this very issue.

To say that this is a reserved matter really misses the point. Agriculture and the regulation of manufacturing are devolved matters. Okay, the rules are set down in European Union directives, but many are implemented through legislation in the Northern Ireland Assembly: they are devolved. A mechanism of approval is going to be given to the Northern Ireland Assembly after four years, not immediately—not now, when it should be happening. I challenge the Minister in his response to give me one example of a significant controversial issue in the Northern Ireland Assembly which is not based on cross-community voting or is not susceptible to being turned into a cross-community vote through the petition of concern. There is not a single one; yet, on this most significant issue of all, it is to be a bare, simple majority. If this is a reserved matter, you would say it is a matter for Westminster to vote on, but it has been given to the Northern Ireland Assembly, so the mechanism set out in the Belfast agreement, the St Andrews agreement, and so on, for implementing how the Assembly should work should be respected.

Finally, this measure is contrary to the basic tenets of democracy, as has been said. The rules for a whole swathe of manufactured goods and agriculture products in Northern Ireland—the laws—will now be made in Brussels. No one at Stormont will be able to have any say or vote. Nobody at Westminster will have any say or vote. How on earth can that be democratic? I agree with the basic principle of taking back control through Brexit, but I challenge the Minister: how can the people of Northern Ireland be left in this position of having no say or control over laws affecting the basics of the economy of Northern Ireland—laws that could be put in place in Brussels, and which could actually be injurious to the position of Northern Ireland? Nobody here, and nobody at Stormont, will be able to do anything about it. The Minister really does need to deal with these issues.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): My Lords, before we go to the next speaker, just to alert you, the clock is not working

[LORD DUNCAN OF SPRINGBANK]
on the screen, so I am relying on noble Lords to self-regulate and to be aware that the time limit is seven minutes. If you do go substantially over, I am sure that someone will drag you off. On that basis, I call the next speaker, the noble Baroness, Lady Hoey.

2.53 pm

Baroness Hoey (Non-Afl): My Lords, I thank the Minister, who has probably drawn the short straw today. He has just heard from two noble Lords who understand hugely the history and the whole process of the Belfast/Good Friday agreement and subsequent policies. It is also a privilege to have here the noble Lord, Lord Trimble, who also knows it inside out. I therefore sympathise with the Minister because clearly, even the title of this statutory instrument—"Democratic Consent Process"—is amazing. As the noble Lord, Lord Moylan, who is also here today, said in a debate on a statutory instrument last week, the only place in Europe where we are de-democratising is Northern Ireland. We have had an explanation from the Northern Ireland Office of the administration of this process in four years' time which is genuinely full of gobbledegook. It would require quite a lot of concentration even to work out how it could possibly happen. Of course, that is four years away.

What concerns me is that, as both noble Lords have already said, we are talking about consenting in four years' time. We have not agreed, and Northern Ireland has not agreed, to the protocol. It is ironic that we are talking about how it could be changed in four years' time, given that we have not even had the opportunity to discuss how we could change it now, because we have not been asked.

Obviously, I continue to be very involved with Northern Ireland, but I bow to the experience of those who have already spoken. The Minister, the various interpretations given and the Library briefing talk about protecting the Belfast/Good Friday agreement. My question to the Minister is: how can you protect something that has already been broken, and broken so clearly? The withdrawal agreement overall rips the Good Friday agreement apart. The laws governing some 60% of economic activity in Northern Ireland will no longer be made at Westminster or by the devolved Assembly, but by an outside law-making body—the European Union—and will be subject to interpretation by a non-UK court. Clearly, anyone who looks at this issue will see that the constitutional position of Northern Ireland has been changed, without the consent of the people of Northern Ireland as required by the Belfast agreement. No one is going to have a say in this.

The noble Lord, Lord Dodds, talked about no one having a say in these decisions. Of course, the people who will likely have more of a say in Northern Ireland are the Irish Government, who are members of the European Union and are well in with the European Commission. We will find more and more that decisions will be taken based on what the Dáil and Ministers in the Irish Government think, rather than our own Government in the United Kingdom.

The whole issue of consent has been based on the fallacy that it was impossible to have a trade arrangement between Northern Ireland and the Republic of Ireland, whereas it was very simple, apparently, to have a trade border between Great Britain and Northern Ireland. I appreciate that the Government have to try to defend this, but I cannot see how anyone cannot accept that this has broken the Belfast agreement. It has broken the trust of many, many people in Northern Ireland in their own Government and their protection of their right to be British.

Obviously, we will get the internal market Bill and I will fight very hard to ensure that your Lordships' House reinserts the clauses that were taken out, because they are absolutely crucial, and just a little bit of help in what is a very dangerous situation.

I ask the Minister: what happens if all this breaks down before the four years is up? We have no idea what could happen. Hopefully, the Assembly and the Executive will continue, but what happens if the Assembly breaks down and there are no MLAs? Frankly, if the Assembly breaks down again, I doubt whether the people of Northern Ireland will accept MLAs continuing to be paid fully for another three years. It appears that the word "consent", as interpreted by the Government, means "consent" only if it something that suits the Government; if it does not, it is no longer required.

As someone who campaigned very hard to get us to leave the European Union, I voted for the whole of the United Kingdom to do so. Let us not forget that 44% of the people of Northern Ireland voted to leave the European Union, and as part of the United Kingdom—not as this little sideshow, separated out, with new rules, new business difficulties and extra costs that taxpayers will pick up. Very little can be done between now and the beginning of January, but I just want Ministers and the Government to be honest about this and accept the situation. I know that when this was finally signed up to, the Government were under great pressure from those who wanted us to stay in the European Union, and there was time pressure, but it should not have happened without the people of Northern Ireland being taken along with them.

I find it very difficult to support this SI, but I know that my vote will not make any difference, so I will not be calling any kind of vote.

2.59 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I thank the Minister for his explanation of the regulations. It is important to remember the political reasons for the Northern Ireland protocol and to recall and emphasise that the purpose of the Good Friday agreement was to ensure that those who come from a unionist background, from a nationalist background and from neither can work together and build relationships. It is not one-sided by any manner of means. The whole purpose of the protocol was to prevent a hard border on the island of Ireland and to protect our peace and political process—the delicate political architecture that was carved out of the Good Friday agreement and the Northern Ireland Act 1998.

I remind your Lordships that Northern Ireland voted on a majority vote to remain in the European Union and did not ask for Brexit, so it is important that those delicately balanced relationships are nurtured and built on. The Good Friday agreement was not an end in itself: we need to be able to build the healing

process on our island, which has been painfully slow, characterised by long interruptions to the political institutions over the past 22 years. No political impediments should be put in the way of such processes taking place in a natural way.

I remind my unionist colleagues here today that I, as a democratic Irish nationalist, do not want a border in the Irish Sea, nor on the island of Ireland. I think that characterises the view of democratic Irish nationalism. We have to get around this in some way or another. The protocol is important, but I have a problem with the way the Government have invoked the consent principle contained in the Good Friday agreement. The point was raised in the House of Commons Delegated Legislation Committee by Karin Smyth of Labour's Front-Bench team. The UK Government are stretching the idea of consent way beyond the real, explicit consent principle which is in the Good Friday agreement—the provisions around a border poll and a change in the constitutional status of Northern Ireland.

It may be helpful if I quote from that agreement. I bear in mind that certain people in this debate, such as the noble Lords, Lord Empey and Lord Murphy, were part of the negotiating process of the agreement, but the principle of consent is set out clearly in the Good Friday agreement in the constitutional issues provision, which recognises that it is

"for the people of … Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland".

It also specifically only requires a majority of the people of Northern Ireland, not a majority of any one community. It is important to be clear that the principle of consent is in no way undermined by the protocol to the withdrawal agreement, which specifically reaffirms it and the territorial integrity of the UK.

Even if it could be legitimately argued that the principle of consent applies more broadly, or should apply to any implementation of the protocol, it is difficult to see why, then, it should not also apply to Brexit itself, which a clear majority of the people in Northern Ireland expressly voted against. In practice, the Government seem selective about what consent really means and whose consent they are really talking about.

In this respect, I ask the Minister: what discussions have taken place with the Northern Ireland Executive, Northern Ireland political parties and the Irish Government, with whom the Government are supposed to be in a bipartisan approach in the implementation and working out of the agreement? Did the Government talk to those various people in the Irish Government, the Northern Ireland Executive and the Northern Ireland Assembly about the content of this statutory instrument? If so, what was the outcome of those discussions; and, if not, why did they not talk to them, because surely they are the people who will be most directly affected, as well as the people of Northern Ireland.

I will leave it there with the Minister and hope that the Government will reconsider this use of the consent principle and will not bring forward these regulations in this form.

3.06 pm

Baroness Suttie (LD) [V]: My Lords, it is a great pleasure to follow the noble Baroness, Lady Ritchie, and I agree with so much of what she just said. This has been an extremely interesting short debate and has clearly illustrated the strength of feeling on this matter. It would not be an exaggeration to say that none of us taking part in this debate from our very different perspectives would have wanted to start from here—but we are where we are.

The withdrawal agreement and the Northern Ireland protocol are both compromises and are far from perfect, for many of the reasons set out this afternoon. Very few people—including many on the government Benches—would now claim otherwise. But, as the noble Baroness, Lady Ritchie, said so powerfully just now, the Northern Ireland protocol has none the less been an essential element in maintaining the peace and progress on the island of Ireland since 1998. We should also acknowledge, as did the Minister in his opening remarks, that the Northern Ireland protocol is an internationally agreed treaty. As part of that internationally recognised agreement, it was agreed to allow the MLAs in the Northern Ireland Assembly an opportunity every four years—or eight years, as the case may be—to indicate their support for continuing with the arrangements laid down in the protocol. In that context, somewhat reluctantly from these Benches, we will support the statutory instrument before us today.

In this afternoon's debate, we have heard views from many of the political parties represented in the Assembly, although we have not heard from Sinn Féin or Alliance. I add in passing that, as a result of the mechanisms set out before us today, my colleagues from Alliance in the Assembly may very well find themselves having the casting vote. It is also worth noting that this consent mechanism was not asked for by most of the Northern Ireland political parties or by the Northern Ireland Assembly. The debate this afternoon has illustrated one of the concerns about this consent process. The consent vote, potentially taking place every four years, risks creating a new layer of instability and friction in what is already a fragile and polarised political system. The position taken on this vote by the Northern Ireland political parties risks becoming a key issue during Assembly elections at the expense of other hugely important issues that affect the lives of ordinary Northern Ireland people. As the noble Lord, Lord Empey, said so clearly in his speech, the whole process will add significantly to the general feeling of uncertainty.

During the debate in the House of Commons, as the noble Baroness, Lady Ritchie, said, Karin Smyth MP raised concerns about the use of the word "consent". Language and the use of words are hugely important in any political context, but most especially in the context of debate in Northern Ireland. As Karin Smyth said in the debate in the other place, it may have been preferable to use different language in this context. The carefully crafted principle of consent as set out in the 1998 Good Friday/Belfast agreement is based on a different mechanism from that set out in this order, and this produces an inevitable tension. There is tension, too, about inconsistencies of approach as to when and how a majoritarian rather than cross-community vote is applied.

[Baroness Suttie]

I will conclude by asking the Minister for a little further clarification on how the independent review mechanism set out in Part 6 of the instrument would work in practice. There is an understandable view that there has been insufficient consultation across the board throughout the Brexit process. Can the Minister therefore say whether it would be the intention of the Government to seek the approval of the Assembly on the remit and content of the review in advance of it beginning its work, and will they consult the Assembly on who will carry out such a review? I would be very grateful if the Minister could expand a little on these processes, as the unilateral declaration does not make it entirely clear.

3.10 pm

Lord Murphy of Torfaen (Lab) [V]: My Lords, this has been a very interesting short debate. The Opposition will—reluctantly—support the Government on this, but I endorse what the noble Baroness, Lady Suttie, just said. It is with reluctance because, although obviously it is important to get as much consent and consensus as possible, the invocation of the principle of consent, as defined in the Good Friday agreement, is not absolutely right in this context.

Like the noble Lords, Lord Empey and Lord Trimble, I was heavily involved in establishing the Good Friday agreement and chaired many of the talks that led up to it being signed in 1998. I have to say that the definition of consent that the Minister referred to, as it applies to this issue, is not quite right. The main reason for that is that the consent, as opposed to the consent to get either a united Ireland or to remain as part of the United Kingdom, for other issues within the Good Friday agreement was based on agreement: it was based on consensus. The problem here is that because, among other things, the Northern Ireland Assembly and Executive were not operating when all these negotiations took place, no one in Northern Ireland has really had any say on Brexit or the protocol, in the way that they did when the Good Friday agreement was constructed.

Some people say that the Good Friday agreement could have been written in a few weeks. That may well be the case—but it would have failed, because the agreement had to be written by the people involved on both sides, with the parity of esteem that is the central part of the Good Friday agreement. The fact that there was nobody involved in the working out of the protocol or the withdrawal agreement, or of course the particular issue we are dealing with today, means that it has been in a sense imposed on the people of Northern Ireland—and that is very unfortunate.

The other issue of course is that there is a bit of a muddle about what consent is. Is it a simple majority or cross-community approval? They are two very different issues. The absence of Northern Ireland people as Members of either the Executive or the Assembly in establishing what has now happened to Northern Ireland because of the withdrawal agreement and the protocol has meant that there has been a deep misunderstanding about how these issues work.

The other issue of course is that the majority of people in Northern Ireland actually voted to remain in the European Union. Of course, we voted as a United Kingdom to stay in or go out, but it is a factor that people in Northern Ireland voted to remain and a substantial minority voted to leave. So there is a divided position in Northern Ireland. That is all the more reason why consensus among people, and particularly among politicians in Northern Ireland, would have been much more acceptable than the situation we are in today. So to invoke the consent issue as defined in the Good Friday agreement does not work. I understand the plight of the Government, and the need to try to get that consensus. This is a genuine attempt to do it, but it will be very difficult.

The other problem is that this has the potential to create enormous instability every four years. In between in Northern Ireland, there are elections for local government, elections to the Assembly and elections to Parliament. All those things are destabilising in themselves, but the fact that the Assembly then has to vote in the way that is prescribed by this statutory instrument is indeed a recipe for instability over the next eight years.

I honestly do not know what the alternative is, but I must say that this is not ideal—far from it—and it is a great pity indeed that the Northern Ireland Executive and the Assembly were not functioning when all this was agreed, because frankly they would have come up with a solution that would have been better than the one we have today.

3.15 pm

Viscount Younger of Leckie (Con): My Lords, I will start by saying that I am grateful to all noble Lords for their contributions to this debate. I am also very aware, having listened to some passionate and hard-hitting speeches from certain noble Lords, that this is not an easy subject. Those speeches came in particular from the noble Lords, Lord Empey and Lord Dodds. I am very happy to welcome the noble Baroness, Lady Hoey, and of course I take into account the experience of the noble Lord, Lord Murphy. I will also say that I welcome the presence of my noble friend Lord Trimble. I know that he could have put his name down to speak today.

I will do my best to address the points raised in the debate. I will start with some of the basics. I may sound a bit like a long-playing record, but I will reiterate that the UK Government are committed to implementing the Northern Ireland protocol, with work being progressed across government and in partnership with the devolved Administrations. Our top priority is to protect the Belfast/Good Friday agreement and the gains of the peace process, and to preserve Northern Ireland's place in the UK. Our approach, whether we agree or do not agree, is at all times guided by these priorities, and our Command Paper and the guidance we published in August set out how we will meet our obligations under the protocol.

I remind the Committee that the protocol states that it should

"impact as little as possible on the everyday life of communities".

These communities were certainly alluded to in the interesting speech of the noble Baroness, Lady Ritchie. The Committee will also know that the proposals will

deliver unfettered access for Northern Ireland business to the whole of the UK market; ensure no tariffs on goods remaining within the UK customs territory; uphold our obligations without the need for any new customs infrastructure; and guarantee that Northern Ireland businesses benefit from the lower tariffs that we will deliver through trade agreements with third countries.

I will go straight in to answer a question raised by the noble Baroness, Lady Suttie, who asked about Part 6 of the regulations and the independent review, which I have a copy of here. She asked whether we would need to seek the approval of the Assembly on the remit and content of the review, and whether the Assembly would be consulted. I note her comments and can say to her that the review will include close consultation with Northern Ireland political parties, businesses, civil society groups, representative organisations, including of the agriculture sector, and trade unions, as stated in paragraph 9 of the unilateral declaration made by the UK Government on 17 October 2019. The review will be chaired by an independent person, who will be decided on, if needed, at the time. Of course, this is in circumstances where a consent Motion has been approved by a simple majority but not by cross-community consent.

One of the themes of this debate has been consent, which was raised by the noble Baroness, Lady Ritchie, the noble Lords, Lord Dodds, Lord Murphy, and, of course, the noble Lord, Lord Empey. I note their comments but want to offer them further reassurance that it is the firm intent and desire of the Government to preserve Northern Ireland's place in the UK. I say again that the approach is entirely compatible with the Belfast/Good Friday agreement. The principle of cross-community consent applies to matters for which the Northern Ireland Assembly is responsible. The consent mechanism, contained as it is in the Northern Ireland protocol, relates to the UK's continued relationship with the EU—an excepted matter in Northern Ireland's devolution settlement. That is why the principle of cross-community consent does not apply.

Following on from that, the noble Lords, Lord Empey and Lord Dodds, made some strong comments about consent and where it came from. My response is that consent was intrinsic in the withdrawal agreement Act, including provisions to implement the Northern Ireland protocol. That received the approval of both Houses in January of this year. However, it is rightfully a matter for Northern Ireland's political representatives to determine whether provision for alignment in the protocol should continue to apply, and that is why these regulations are necessary, as I set out in my opening remarks.

Let me clarify that the Government see the consent principle in the Belfast/Good Friday agreement as relating to the right of the people of Northern Ireland to decide whether to remain part of the United Kingdom. That is not the matter at hand, which is about the application of an international treaty to Northern Ireland. Therefore, it would not be right to allow one community to veto that decision. This matter was raised also by the noble Baroness, Lady Hoey.

The noble Lords, Lord Empey and Lord Murphy, spoke about businesses needing certainty, and of course they are quite right. On the points raised about the difficulty of returning to this matter every four or eight years—that is, if we get cross-community consent—it is essential that the continued application of certain aspects of EU law maintains the democratic consent of Northern Ireland's elected representatives.

The noble Lord, Lord Empey, talked about a border down the Irish Sea. I say in response—he would expect me to say it, but I mean it—that trade between Great Britain and Northern Ireland is vital to the prosperity of the four nations of the UK, and we have committed to delivering unfettered access for Northern Ireland to the whole UK market. That is why we have provided legal protections against new checks or controls on Northern Ireland goods. Ensuring there are no barriers to the UK market for Northern Ireland firms is extremely important.

The noble Baroness, Lady Hoey, asked what would happen if the Northern Ireland Assembly broke down. I alluded in my opening remarks to the alternative mechanism, which is designed specifically for a scenario in which the Executive are not functioning. I point out to the noble Baroness that MLAs remained in office even when the Executive were not functioning, during their previous challenges.

The noble Baroness, Lady Ritchie, rightly raised a point about communication and asked what communication regarding the regulations there had been with the Northern Ireland Executive and the Assembly, and what discussions had been had. I say first that the Irish Government have been kept fully informed of the regulations. The noble Baroness can rest assured that working with Northern Ireland's businesses and citizens to prepare them for the end of the year continues to be a top priority for me, the team and this Government. My department continues to work intensively with the Northern Ireland Executive, industry stakeholders and civic society, including through more than 20 meetings of the Business Engagement Forum and multiple meetings with community leaders over the past six months. I hope that this gives some reassurance that strong communication is at hand.

As I said in my opening remarks, the Government remain fully committed to implementing the withdrawal agreement. Our intent and purpose are to protect the Belfast agreement, and these regulations are an important part of that. This must be done in order to fulfil our obligations in international law. The regulations recognise the unique situation of Northern Ireland and give responsibility to those whom the people of Northern Ireland have elected to represent them. It will be up to those elected representatives whether Northern Ireland's alignment with aspects of EU law continues. That is the essence of the regulations and I commend them to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): The Grand Committee stands adjourned until 3.34 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

3.24 pm

Sitting suspended.

Food and Feed Hygiene and Safety (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020

Considered in Grand Committee

3.34 pm

Moved by ***Baroness Penn***

That the Grand Committee do consider the Food and Feed Hygiene and Safety (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): My Lords, the hybrid Grand Committee will now resume. I will not read out the entire spiel because noble Lords are familiar with the drill.

Baroness Penn (Con): My Lords, these regulations were laid before the House on 14 October. As noble Lords will be aware, this is one of a number of statutory instruments that implement the Northern Ireland protocol and technical changes ahead of the end of the transition period. The Government's priority is to ensure that the high standard of food and feed safety and consumer protection that we enjoy in this country continues to be maintained now that the UK has left the EU, and beyond the end of the transition period.

The instrument does not introduce any changes that will impact the day-to-day operation of food businesses, nor does it introduce any new regulatory burdens. The overarching aim of the SI is to provide continuity for business. It will reflect our obligations under the Northern Ireland protocol and ensure that, following the end of the transition period, high standards of safety and quality for food and feed regulation will continue across the UK. These regulations concern food and feed law. The instrument is made under the powers in the European Union (Withdrawal) Act 2018 to make necessary amendments to UK regulations. It follows on from the 17 EU exit instruments in the field of food and feed safety made in 2019, which I will refer to as the 2019 regulations.

I must briefly draw attention to two technical corrections to the original SI, which were identified after the SI was laid and have been rectified by means of a correction slip. The corrections are as follows. First, on page 1, Regulation 1(2) previously read:

"Part 2 and Part 4 come into force on".

It is now corrected to read:

"This Part, Part 2 and Part 4 come into force on".

Secondly, on page 12, in Regulation 10(13), in the inserted Regulation 20A(b)(i), the substituted text at lines four and five, "may made regulations", has been corrected to read "may make regulations". Officials in the devolved Administrations have been kept fully informed.

The primary purpose of the instrument is to provide necessary amendments to implement the Northern Ireland protocol in the field of food and food safety by ensuring that retained EU law on food and feed applies only to Great Britain. It does so by removing references to Northern Ireland authorities and revoking corrections previously made to Northern Ireland domestic legislation in the 2019 regulations. EU food and feed legislation will continue to apply in Northern Ireland. For example, those functions currently undertaken by the European Commission to review and make changes to legislation were assigned by the 2019 regulations to the "appropriate authority", these being the relevant Secretary of State in England and the relevant Ministers in Scotland, Wales and Northern Ireland. To implement the Northern Ireland protocol, it is now necessary to amend the definition of "appropriate authority" in retained EU law to remove references to Northern Ireland.

The secondary purpose of the instrument is to remedy deficiencies in retained European Union food and feed legislation. In particular, it accommodates legislation that has come into force since the 2019 regulations were made. The amendments are technical in nature—for example, removing references to the EU and its institutions, which will no longer be appropriate following the end of the transition period. Amendments include, for example, consolidating provisions allowing for the words "United Kingdom" or the abbreviations "UK" or "GB" to be used on identification marks. Similarly, amendments to the general food law will allow a period of 21 months after the end of the transition period for products of animal origin carrying a "UK/EC" identification mark to be placed on the English market. This measure should reduce the impact of the change in requirements for identification marks. Similar provision is expected to be introduced in Wales and Scotland.

A public consultation on the statutory instrument was issued in August. We remain grateful to the stakeholders who responded, with the majority being supportive of the legislative approach. All devolved Administrations have been closely involved in the development of this instrument and all have provided their consent for it.

In conclusion, I take the opportunity to reassure the Grand Committee that the overarching aim of the SI is to provide continuity for business. It will reflect our obligations under the Northern Ireland protocol and ensure that, following the end of the transition period, high standards of safety and quality for food and feed regulation will continue across the UK. Having effective and functional law in this area is key to ensuring that the standards of food safety and consumer protection that we enjoy in this country are maintained in the immediate and long term. I beg to move.

3.40 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, I thank my noble friend the Minister for setting out the regulations so clearly. As she says, they are technical in nature. Their purpose, as I understand it, is essentially twofold. The first is to provide in regard to a range of food and feed hygiene regulations for the implementation of the Northern Ireland protocol, which I understand and support, and to address a range of deficiencies in retained EU law in this area. The second purpose is largely to take account, as my noble friend said, of changes made in the law after withdrawal from the EU and during the implementation period.

I have some general comments to make and a few questions to ask, rather than raising a specific issue on any of the deficiencies which the regulations seek to

address. I am conscious that the noble Lord, Lord Rooker, is speaking in the debate. He will doubtless have some telling points to make about areas where he certainly knows a thing or two.

I have two questions, if I may, on the implementation of the Northern Ireland protocol. The first relates to future divergence, which I assume is to happen at some stage. What is anticipated for our future law in this area and, if we diverge, what frictional pressure points will arise as a result of Northern Ireland continuing to follow the EU position while Great Britain ploughs its own furrow, if I may risk mixing the metaphor?

My second question relates to the protocol and paragraph 7.8 of the Explanatory Memorandum, on allowing

"the words 'United Kingdom' or the abbreviation 'UK' to be used on health and identification marks.

It also allows, according to the memorandum, for a continuation of the abbreviation "GB" as this is the International Organization for Standardization's two-letter code for the United Kingdom—so "GB" and "UK" are to be used for the United Kingdom. This might appear curious and quaint and would perhaps not be a serious issue if Northern Ireland were going to be treated like the rest of the United Kingdom, but it is not. I understand why and, as I said, support that but it is a recipe for confusion if labelling is to be used in this way. It means that "UK" can be used for England, Wales and Scotland and "GB" can be used for the United Kingdom, while Northern Ireland, as a part of the United Kingdom, is to be treated as if it were a part of the EU. It smacks very much of one of those brilliantly funny episodes of "Yes, Minister", but I suggest that it could cause confusion here. Is the Minister able to unravel this confusion a little?

I have further questions about the consultation, or should I say consultations, conducted in relation to these regulations and the impact statement—I do not think that it is an impact assessment—in the Explanatory Memorandum. I think my noble friend referred to the consultations. To the first consultation, which was made between 4 September and 14 October 2018, there were 50 responses. It is noted in the Explanatory Memorandum that 82% either

"supported or did not disagree with the … approach".

I wonder if we can break that down a little, because there seems to be a very real difference between supporting and not disagreeing. In the second consultation, conducted more recently, between 20 August and 16 September this year, there were far fewer responses—only seven—but 71% supported it. It does not suggest that they "supported or did not disagree". The approach in the latter consultation seems far more sensible, as it says how many people supported it and what percentage they were.

The memorandum went on to say that 29% of replies to the second consultation—the balance of them—"had mixed comments", but there is no further elucidation of what they were. Presumably, those mixed comments involve some criticisms, if those people are not supporting the regulations for some reason or another. I wonder what those mixed comments are and I would be grateful if my noble friend could clear up some doubt on those points.

With regard to the impact statement, it is suggested that the impact on 200,000-plus agri-food businesses is that it will take each one an hour to read, digest and disseminate the information. I would suggest that that stretches credulity a little; there is far more meat in these regulations than an hour's work. Does my noble friend have any comment on that, as it would seem to be greater than that? It also talks about the impact of familiarisation on the 419 local authorities and 22 port authorities affected. It does not say how minimal that impact is, unlike in relation to agri-food businesses. Has any assessment been made of the impact it will have on our local authorities and port authorities? I would be grateful if my noble friend could cast aside some doubt on that.

I do welcome the regulations in a couple of respects. The 21-month buffer period for the use of labels seems a common-sense approach. I also very much welcome the involvement of the devolved authorities. I hope that that approach will be followed in other regulations and orders where it has a considerable impact. That is a fundamental concern of the devolved Administrations, and I am relieved and pleased to note their involvement. With that, noting the concerns I have raised, I certainly support the regulations.

3.46 pm

Lord Rooker (Lab) [V]: My Lords, I welcome these regulations. As I think I said in an aside when I signed on, I have never believed in Parkinson's law so I will not take very long. The regulations are a good set of amendments to the law. I am a bit surprised that nobody with a Northern Ireland connection has turned up for this debate because if ever there was an example of the boundary and border down the Irish Sea, it is these regulations. What they do is to classify and regulate; they make it crystal clear that there is now a border down the Irish Sea. I am not opposed to that reality but the fact is that we were told it was not going to happen.

The industry affected by these regulations, food and feed, taken in its totality, is the UK's largest manufacturing sector. It is very varied, as the noble Lord, Lord Bourne, said; its 220,000 businesses have been referred to, and I think there may be 500,000 to 600,000 restaurants, cafés and so on. The rest are factories, small firms and farms.

These are massive regulations. In fact, I misread the size of them and printed them by mistake, rather than searching them. I can well understand that for the specific company or business concerned, it should not take more than an hour to sort out the change in the regulations. Nobody, except I suppose the FSA itself, is responsible for the whole of these regulations—responsibility is probably shared with Defra as well. I can well understand the scepticism of the noble Lord, Lord Bourne, but the fact is that this is spread across the businesses.

I too was curious about paragraph 7.8's explanation of whether "GB" equals "UK". I never came across the International Organization for Standardization using "GB" to mean "UK" during my time at MAFF, Defra or the FSA. I well understand the potential confusion this may cause, specifically because Northern Ireland will be treated differently from Great Britain in

[Lord Rooker]
respect of food and feed regulations. Reading paragraph 7.8 took me to paragraph 7.9. I made a couple of inquiries of the FSA, as it says at the end of the memorandum, "If you have a query, email Karen Pratt at the FSA". I did that on two issues and Karen gave a brilliant response on behalf of the FSA. Overall, the Explanatory Memorandum is a model of its kind because it is so clear. I emailed about paragraph 7.8 and I am satisfied with the answer I received about slaughtering animals on the farm in certain circumstances. The other issue I raised concerned the British islands.

I have one query because my memory is uncertain on it. Paragraph 7.17 of the Explanatory Memorandum concerns Chernobyl and Fukushima. I thought that it was the case that we had lifted all of the Chernobyl restrictions in the UK regarding what would happen to sheep from the hills before they could go off to slaughter. I thought that we had got over all of that and we were clear. Do I take it that this applies only to imports from countries that are closer to Chernobyl than we are which may still have Chernobyl-type restrictions on bringing food animals to market in order to make sure that they are absolutely clear? I would like some clarity on that.

That said, this is a sensible change in the regulations that will get rid of some errors and consolidate a lot of other points, although I think that consolidation of the law in this respect will be required after we have finally broken clear of the EU once a deal has been done. However, I put on the record that after 1 January, the Food Standards Agency will not be responsible for the chaos at ports, or for the delays and shortages of food imports, which will be an inevitable consequence of the crazy way that we are leaving the EU. I have made my political point, if you like, because I want to defend the FSA. This is not its responsibility. With that, on behalf of the Opposition, for which I am guesting today, believe it or not, I consent entirely to these regulations.

3.51 pm

Baroness Penn (Con): My Lords, I thank both noble Lords for their contributions to the debate and I am glad that the regulations as outlined have been broadly welcomed. I shall pick up on the point made by my noble friend Lord Bourne, which lies at the heart of the approach in the protocol to a number of issues around where future regulations may be made and the scope for divergence between GB and Northern Ireland. On the approach to future policy, food and feed safety is one of the policy areas subject to detailed discussions between the Government and the devolved Administrations to explore what common framework arrangements are needed now that we have left the EU. The Food Standards Agency continues to have close working relationships with the Administrations in Scotland, Wales and Northern Ireland, and there is a commitment to a common approach across the UK, with the potential for evidence-based divergence. Good progress is being made to identify where common approaches are needed and what they might look like, along with the operational elements of the framework, such as how decisions will be made and the roles and responsibilities of each Administration.

A common framework will facilitate trade between different parts of the UK and help it to fulfil its international obligations, safeguard common resources and protect the UK internal market. I think that the question put by my noble friend was more about the potential divergence between GB, which will not follow the EU acquis, and Northern Ireland, which will, but the comments I have just made reflect the fact that policy in this area has been devolved to Wales and Scotland.

On Northern Ireland, there is of course also the potential for divergence if the EU changes its rules and regulations in this area. Under the Northern Ireland protocol, we have established the joint consultative working group. It will have both UK and EU representatives on it and will meet once a month, serving as a forum for the exchange of information and mutual consultation. The protocol provides that there will be an exchange of information about planned, ongoing and final measures in the EU laws listed in the annexes to the protocol and the EU shall inform the UK about planned EU Acts within the scope of the protocol, including EU Acts that amend or replace those listed in the Northern Ireland protocol. The UK will continue to engage with the EU through the joint consultative working group and other committees to be set up under the protocol. This will facilitate the exchange of information and ensure that, from the perspective of Northern Ireland consumers, their interests are being represented and considered in EU decisions.

The noble Lords asked a number of other questions. My noble friend Lord Bourne and the noble Lord, Lord Rooker, asked about the UK versus GB labels, the consultation responses, the impact assessment and the assessment that it would take around an hour to digest the changes in this statutory instrument. The noble Lord, Lord Rooker, also asked about the approach to Chernobyl and Fukushima. If they will allow me, I will give precise answers to their questions in writing as soon as possible after this debate and thus give them the clarity that they deserve. However, I think that we are all in broad agreement about the benefit of these regulations and I commend them to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): The Grand Committee stands adjourned until 4.15 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

3.55 pm

Sitting suspended.

Arrangement of Business

Announcement

4.15 pm

The Deputy Chairman of Committees (Baroness Morris of Bolton) (Con): My Lords, the hybrid Grand Committee will now resume. All Members will be treated equally, whether participating physical or virtually. Members in the Room should wear a face covering except when seated at their desk, should speak sitting down, and should wipe down their desk, chair and any other touch points before and after use. If the capacity of

the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

I remind Members participating here in the Room that their microphones are turned off. 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 you begin speaking. The process for unmuting and muting for remote participants remains the same.

Ecodesign for Energy-Related Products and Energy Information (Amendment) (EU Exit) Regulations 2020

Considered in Grand Committee

4.16 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Ecodesign for Energy-Related Products and Energy Information (Amendment) (EU Exit) Regulations 2020

Relevant document: 32nd Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, these regulations were laid before the House on 13 October 2020. The draft instrument serves several purposes, from fixing deficiencies in retained EU law to implementing the Northern Ireland protocol, which I will explain further shortly. Ultimately, it is necessary to ensure the continued operation of ecodesign and energy labelling policy in the UK after the end of the transition period.

Before I talk specifically about the instrument, it may be helpful if I speak briefly about how the EU framework for ecodesign and energy labelling has worked. In recent years, the EU has introduced, through the ecodesign directive and the energy labelling framework regulation, a suite of product-specific regulations. Ecodesign regulations are about minimising the costs and environmental impact of products used in both homes and businesses by setting minimum energy performance standards.

Energy labelling regulations provide consumers with information on a given product's energy performance to allow them to make informed purchasing decisions. In 2020, these policies will save households approximately £100 on their annual energy bills and lead to greenhouse gas emissions savings of 8 million tonnes of CO_2, while also driving innovation and competitiveness among businesses.

This brings me to the instrument being debated today, which serves four purposes. It amends retained EU law to ensure that the ecodesign and energy labelling regime remains operable in the UK once the transition period has ended. It makes necessary amendments to the 2019 EU exit SI to account for regulations that have come into force between 29 March 2019 and 31 December 2020. It implements the Northern Ireland protocol and unfettered access for ecodesign and energy labelling policy. It also implements a change to replace energy labels' use of the EU flag with a UK flag, and removes EU languages from these labels.

I turn to the amendments. First, amendments to retained EU ecodesign and energy labelling legislation are required to ensure that the legislation can continue to operate in the UK from 1 January 2021 without disruption. Fixes include, but are not limited to, removing EU-related references. For example, new energy labelling regulations for some products have come into force in the EU. These require suppliers of relevant goods to provide new re-scaled energy labels with their products from 1 November 2020. However, retailers do not need to display these until 1 March 2021. The SI ensures that the March 2021 requirements, which would otherwise not become retained EU law, will still come into force in March as intended.

Secondly, the 2019 EU exit SI for this policy area ensured that, in the event that no agreement was reached with the EU, existing minimum performance and energy labelling requirements would continue to operate and remain enforceable in the United Kingdom. The UK of course remains bound by EU law until the end of the transition period, and a number of EU ecodesign and energy labelling regulations have come into force since this first EU exit SI was laid. As a consequence of those new EU regulations, some aspects of our 2019 EU exit SI no longer work as intended. This SI makes amendments to the original SI to ensure that the new EU ecodesign and energy labelling regulations will be fully operable in the UK after 1 January 2021.

Thirdly, on legislative implementation of the Northern Ireland protocol and unfettered access, this instrument amends our 2019 EU exit SI and the underlying legislation so that certain UK-wide provisions are limited to Great Britain only. This will avoid confusion, as EU requirements continue to apply in Northern Ireland after the transition period, as per the terms of the Northern Ireland protocol.

This SI also allows relevant qualifying Northern Ireland goods that comply with EU ecodesign and energy labelling regulations to be placed on the GB market without undergoing additional checks. Qualifying Northern Ireland goods are defined in another instrument laid by the Cabinet Office. This SI will enable UK market surveillance authorities to ascertain whether a product came into the GB market from a Northern Ireland-based business through the information provided in a product's declaration of conformity.

Fourthly, on labelling and marking requirements post transition period, this SI implements a decision to replace the EU flag on energy labels with the UK flag. Alongside this, we have removed EU language text from energy labels. As the UK is no longer part of the EU, the continued presence of EU logos and languages on energy labels would be inappropriate in UK legislation and could create confusion for consumers. UK energy labels have been made available to businesses free of charge through an online service to support compliance with this amendment.

Some UK trade associations wrote to the Secretary of State with concerns that they had had little time to prepare for these changes. Minister Kwarteng responded on 18 October, explaining that the change was a

[Lord Callanan]
necessary fix to deficiencies in the law and that the Office for Product Safety and Standards would take a proportionate approach to market surveillance, as it has always done.

Officials in my department have undertaken the appropriate assessment of the impacts of this instrument on businesses and relevant bodies. It showed that the estimated cost to business was approximately £1.95 million, so a full impact assessment was not required. Nor was a formal consultation required under the legal powers used, Sections 8 and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

In conclusion, these regulations are necessary to ensure the continued functioning of ecodesign and energy labelling policy in the UK, while upholding our commitments under the Northern Ireland protocol, such that the UK, its consumers and its businesses may continue to realise the benefits of this policy. I commend the regulations to the Committee.

4.23 pm

Lord Moynihan (Con): My Lords, I declare my interests as set out in the register, drawing particular attention to my chairmanship of Buckthorn Partners, which is active in the energy transition space. While the regulations are welcome and specific to the narrow issue of ensuring continuity after the end of the transition period, this debate provides a useful, albeit brief, opportunity to highlight the importance of government returning to this issue as soon as parliamentary time permits, since the system we are transposing into UK law is far from perfect and needs further consideration in terms of its objectives, ease of use and effectiveness in the welcome move towards substantial government support for energy transition.

To put my questions to the Minister in context, it is important to set the regulations in context. It is many years since I was a Minister for Energy in another place. During that time, significant developments have taken place in the context of ecodesign which have led to a European framework. The first major initiative in the sector was the European ecolabel, a voluntary scheme established to encourage businesses to market products and services that were kinder to the environment, with products and services awarded the right to carry the European flower logo. Ecodesign competitions followed. Ecodesign aspects were integrated into ISO standards, and framework conditions developed by the EU moved initially from waste management strategies and packaging to other end-of-life directives which aimed to follow the three Rs—reduce, reuse and recycle.

Educational initiatives were launched and now hundreds of ecodesign-related labels have come into existence across the world. The European Commission established integrated product policies to support the sustainable consumption and production action plans which underpin the regulations before us today.

Nevertheless, despite this remarkable increase in worthy activity, many issues remain. There has been a great deal of talk about environmental product development but, in many cases, too little change in practice. To remedy this, we will need to address the definition of each phase of a product lifespan from not just the producer's perspective but the user's. Just as much importance should be attached to the use as well as the after-use phases in the selection of ecodesign criteria. Do the Government intend to address this in the wider context of the 10-point plan for a green industrial revolution announced last month, particularly under point 7, greener buildings, where a target milestone was set for the launch of a world-class energy-related products policy framework? The document states:

> "We will push for products to use less energy, resources, and materials, saving carbon and helping households and businesses to reduce their energy bills with minimum effort."

The target milestone for this objective is set for 2021. When does the Minister expect this work to begin and will the House have the opportunity to debate ecodesign and energy information standards in this context? If so, this measure should be seen, as I believe it is, as a stepping stone to the design and development of more whole-life standards, thus enabling the UK to take the lead in ecodesign labelling.

Only last week, the Secretary of State for Housing, Communities and Local Government published the social housing White Paper, *The Charter for Social Housing Residents*, which focused on providing tenants in social housing with more information so that they can hold landlords to account. This is yet another example of the welcome incoming tide of green, sustainable change to everything we do in production lines, in our economy at large and in society. Energy information and ecodesign will need to keep abreast of these changes and be embodied in life-cycle principles. At the moment, too many of the ecodesign criteria are independent of one another, which increases the complexity of ecodesign labelling's inner logic. There is no effective connection between the production and end-of-life phase.

I appreciate that this is not the time to do more, and I urge the Government simply to ensure that in 2021 they look carefully at the current system. Clean production, zero emissions, renewable resources, non-toxic resources, compressibility, short-distance eco-transports and limited eco-friendly to no packaging are all important production-phase criteria for ecodesign. At the point of sale, we need to introduce regional businesses, upgradeability, durability, shared-use potential, repairability, guarantees and maintenance, recyclability and compostability. For today, the two must be considered together. I urge the Government to recognise the challenge and to ensure that, as far as possible, investments made in ecodesign bring returns in the sense of ecological advantage.

Elsewhere, the blind spots of ecodesign are well understood and deserve urgent consideration so that we can seek to lead the world in the area of responsible environmental practice. Ecodesign is an instrument for increasing the potential ecological performance of a product, applying specific criteria, some of them with high interrelationships. Both the selection of the criteria and the realisation of the potential ecological advantages are beyond the reach of ecodesign. Future ecodesign strategies should wherever possible encompass the entire lifecycle of a product in the design phase, from the manufacturer to the consumer.

Ecodesign is an instrument; it is not a strategy. It is a welcome instrument which concerns environmental improvements; it is not an appropriate tool for setting

these goals. Government needs to integrate ecodesign into a wider strategy, which can be achieved only by close collaboration with industry and by recognising the importance of continuing dialogue in Europe with our friends.

My questions on the regulations are brief and as follows. Is the Minister satisfied that the complex rules regarding Northern Ireland are workable, in particular the need for all products listed in the categories we are considering today to comply with relevant EU legislation, including the EU flag and QR codes that link to the required product information on the EPREL database? What rules will be expected to apply to goods placed first in the Northern Ireland market which are then sold elsewhere in Great Britain? Will EU labelling on those products not create the very confusion that the Minister is seeking to avoid in the rest of Great Britain, given the contents of EU labels, flags and EU languages on such products? In that context, who will undertake enforcement of these regulations, and is my noble friend the Minister persuaded that they will be sufficiently well resourced to undertake these responsibilities?

In addition to the point my noble friend made about the time constraint, what else did the Government learn from the informal consultation phase on the regulations which he can share with the Committee? Is a year enough time to allow the permissible CE mark for some goods to continue in place of the UKCA mark? Does everyone involved understand the need to act within that allotted timeframe, and are Ministers confident that it is sufficient when taking into account the need to link QR codes to the required product information on publicly accessible websites?

I look forward to hearing from my noble friend and, in the meantime, very much welcome the Government's objective to provide for the continuity and ease necessary after the transition period.

4.30 pm

Baroness Bennett of Manor Castle (GP) [V]: I thank the Minister for his clear introduction to the statutory instrument, and it is a pleasure to follow the clear expressions of concern of the noble Lord, Lord Moynihan, for green, sustainable change, the need for systems thinking and the joining up of various elements of environmental impacts in understandable ways.

It is clear that now, on 1 December, there is little alternative but to back the statutory instrument. As have so many noble Lords in recent days and weeks, I can only say thank you to the Secondary Legislation Scrutiny Committee for its clear examination of this and so many other SIs. I note that the committee says that

"this instrument allows qualifying NI goods which meet EU … requirements to be placed on the GB market, even where these requirements may differ from those that will apply in GB after the TP"

and that the instrument will also

"allow products from GB to be placed on the NI market, provisions are made for a UK(NI) mark which will have to accompany all products which have been CE certified by UK bodies and are destined for the NI market."

The report continues, but I shall stop there. I am thinking particularly about small, independent businesses. Is the Minister confident that they are getting the advice and have the chance to understand these complex, very last-minute arrangements? As he said, this is another change from the 2019 statutory instrument. I am thinking of traders on eBay, perhaps, and similar trading platforms. What contact have the Government had not just with big businesses but such trading platforms, which are these days used by many small traders? They are suffering under the turmoil of Covid and now have this problem, but as we see regulations change and possibly diverge in future, it will only become more complex. There is a need to deal with the next month and the next 12 months, but will support also be in place for the long-term, continuing problems that will inevitably arise?

Both the Minister and the noble Lord, Lord Moynihan, noted that this is a chance to look over where we are with ecodesign. I doubt that many noble Lords can forget the period when these EU regulations were applied—or were mooted—over the past decade or so. It was a tabloid storm. British floors would turn into archaeological assemblages like a slovenly medieval household without 2,000-watt vacuum cleaners. British marmalade would be spread on soggy, white or somehow or other inadequate toast without a huge blast of heat. We would all be breaking our necks on the stairs without incandescent lighting burning up the planet while showing us the way. I wonder whether some of the journalists who were writing that guff then might like to recant now, particularly as, as the Minister noted in his introduction, it had the "terrible" effect of saving households £100 a year, as well as cutting greenhouse gas emissions.

Now it seems we are in a different age. The Government have issued a consultation on higher energy standards, improving on EU standards. I can only applaud that. The cleanest, greenest, cheapest energy you can have is the energy you do not need to use. The EU headline energy efficiency target for appliances for 2030 is at least 32.5%. Do the Government have in mind how much they would like to exceed that figure by? I also note that the consultation refers to the possibility of appliances being part of a smart grid. Your freezer might be part of the energy storage system, and there is talk of improving the performance of ovens and stove tops from A to A+, which could save 300,000 tonnes of carbon dioxide each year.

There is also talk of displaying lifetime energy costs at the point of purchase for a product, plus additional information on the cost of running it and, importantly—this picks up points made by the noble Lord, Lord Moynihan—how easily it can be repaired, reused and recycled, and how durable it is. Will the Minister consider whether the Government could sign up to the Manchester declaration, also known as the right to repair? We would be talking about an end to planned obsolescence, the creation of a situation where, if any element of an appliance goes wrong, it can be repaired, ideally at home or in a repair cafe, with the parts available when needed and the documentation available to assist the repairer. This is in a context where—I cite a German study from 2015, but I doubt the situation has changed—there was effectively a doubling in the proportion of defective appliances sold from 2004 to 2012, and the number of appliances failing in their

[Baroness Bennett of Manor Castle]
first five years of use rose from 7% to 13%. We are talking about a real change towards ensuring that we and our appliances tread lightly on the planet.

We come back to Northern Ireland. Our discussion has already revealed how fast-changing this area is in technology, practice, consumer expectation and the urgent planetary need. The future will surely look back and ask just what we thought we were doing in the past few decades in terms of planned obsolescence. Batteries in a certain brand of popular phone were designed not to be replaced. There is the sheer profligacy of our use of resources. In Northern Ireland, the trading situation the Minister outlined in his introduction means there will be ongoing considerable difficulty. Are the Government ready? Do they have sufficient plans in place to help small business in particular, not just through the inevitable chaos of January and the next 12 months but in the years to come?

The Deputy Chairman of Committees (Baroness Morris of Bolton) (Con): The noble Baroness, Lady Bowles of Berkhamsted, has withdrawn, so I call the noble Lord, Lord Grantchester.

4.37 pm

Lord Grantchester (Lab): I thank the Minister for his careful explanation of the order before the Committee. As he says, it does a number of things while basically transposing the EU ecodesign and energy labelling directives into equivalent standards in UK law. The effective continuation of the ecodesign directive of 2009 ensures a progressive energy efficiency standard for electrical products, so that the least efficient are progressively withdrawn from sale, and it embraces consumer rights in respect of the purchase of electrical goods, delivering continuous improvement in energy efficiency. In tandem with this, the labelling framework regulations of 2017 cover the energy efficiency ratings of a product as guidance to consumers.

We can all clearly see the importance of the continuation of those directives and that they are made effective. The other features of the SI update further measures to reflect changes in EU law made since the earlier order was laid at EU exit time. I can clearly approve the order today to continue the policy to reduce the carbon footprint of energy-related products, to support informed purchasing decisions and to encourage the uptake of the most energy-efficient products.

However, the difficulty of this SI clusters around the Northern Ireland protocol, which other speakers have commented on, and the timing of various directives and implementation in UK law. My first specific query relates to the fact that, since exit day, the dates of further EU measures and their implementation through this SI have got out of alignment in respect of the new lighting regulations. I understand that energy labelling requirements for luminaires are repealed in the UK, while ecodesign requirements in the new lighting regulations will not apply until September 2021. Can the Minister clarify what is being done about that mismatch?

In other respects the provisions appear to be consistent with measures that existed before EU exit and what will continue to exist into the future. However, this SI does not seem to accommodate all the issues that were highlighted through the Northern Ireland situation. Northern Ireland will continue to be in the EU regulatory system and the ecolabel with EU badging, as the Minister explained. Products within Great Britain will be marked on UK CA marking but with the additional UK(NI) mark, should products be marketed into Northern Ireland.

It is all a little confusing to understand from the Explanatory Memorandum what is the position of EU goods in Northern Ireland, whether produced there or not, and their labelling, should they be sold into Great Britain. This could have particular reference to goods from the Irish Republic. Am I correct to understand, from paragraph 2.30, that these goods must be rebadged as UK? The UK has yet to produce separate agreements conforming to EU standards, and therefore the existence of a UK mark will not be sufficient to secure marketing arrangements. In the event that no agreement is reached with the EU on the UK's future relationship, will GB companies have to agree on an additional EU label over and above the UK label? Over time, there could be divergence between Northern Ireland and Great Britain on standards with reference to EU protocols. There will then arise many foreseeable anxieties over safety and other standards for consumers to understand their differences.

There is also no agreement yet on access by Northern Ireland to the EU product database, which informs ecolabelling and product standard activity. The UK should not, as a third country, have access to this database and needs to set one up on its own. Can the Minister update the Committee on how that work is proceeding and whether it will be ready to be implemented from 1 January? I presume the Minister will confirm that Northern Ireland will need to have access to the EU database if it is to continue to work to EU ecolabelling criteria.

What plans do the Government have regarding the declarations of conformity of goods to various standards in and out of Northern Ireland and their checking of these once divergence proceeds between the EU and the UK? What plans do the Government have to address the confusing picture that will be placed in front of the consumer? Which consumer bodies will be drawn into the communication to help with the explanations to the consumer, and how will this be done?

There was little information in the consultations undertaken with stakeholders, other than general agreement to the necessity of these regulations. However, stakeholders were anxious about the limited timeframe to implement the required changes to UK energy labels, and the Minister did update the Committee in the further communication between the Minister in the Commons and various stakeholders in October. Was anything agreed further with stakeholders that could help them comply with the reducing timeframes to agreements before the end of the transition period, and are stakeholders now content?

I thank the noble Lord, Lord Moynihan, for his further questioning on ecodesign in relation to after-use and the climate sensitivities to the lifetime of any product. These are important matters that he raised.

He also forsesaw confusion in products that originate in Northern Ireland and in who is responsible for enforcement after the transition period. I also thank the noble Baroness, Lady Bennett, who also raised issues that affect small business traders and modern online platforms. Regarding ecodesign, how will the UK make further efficiency gains over and above those of the EU?

Having said that, it is very important that the UK continues with the commitment to the standards, ecodesign and energy labelling regulations that have proved so beneficial in reducing both energy bills and emissions.

4.45 pm

Lord Callanan (Con): I thank noble Lords for their valuable contributions to this debate. The Government are committed to providing certainty for businesses and, of course, the public in any scenario from 1 January 2021 by ensuring that the UK has a functioning statute book after the transition period, and these regulations will play their part in helping to accomplish that. They will ensure continuity for our ecodesign and energy labelling regime, which has to date helped us to achieve significant savings on energy bills and carbon emissions, making a realistic and noble contribution to our national carbon reduction commitment.

In response to my noble friend Lord Moynihan, the noble Lord, Lord Grantchester, and the noble Baroness, Lady Bennett, who raised questions regarding the operation of the policy in Northern Ireland, we are confident that the rules in Northern Ireland are workable. This has been communicated to stakeholders via our technical notice, and UK market surveillance authorities are confident that they have sufficient evidence to ensure compliance with this. Qualifying Northern Ireland goods are goods placed on the GB market by qualifying Northern Ireland businesses and, as such, are entitled to unfettered access to the GB market. This means that they are free to circulate without any customs supervision, tariffs or restrictions. Qualifying Northern Ireland goods are defined in draft regulations laid under Section 8C(6) of the European Union Withdrawal Act 2018 entitled the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020.

My noble friend Lord Moynihan raised questions about the circular economy principles. They form a part of ecodesign requirements, and of course that is led by officials from Defra. In the UK, we will endeavour to support circular economy principles under ecodesign after the end of the transition period. My noble friend also asked about consultation. Formal consultation was not required, as I said, by the legal powers used, Sections 8 and 8C of and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018. In addition to that, we concluded that no consultation was necessary as this SI makes the required changes only to ensure a functioning statute book in the UK, and the costs involved are minimal, as I said in my introduction.

On the issue of CE marking, the 12-month standstill approach was agreed by the Cabinet Office on advice provided by officials. Ministers are confident that this timeframe is sufficient. The Office for Product Safety and Standards is responsible for enforcement and has been for a number of years, and it is confident that it has the resources required to continue with those activities.

The need for QR codes has been communicated with stakeholders at many events over the summer and most recently in November. We have also published a technical notice on GOV.UK that supports business preparedness for the end of the transition period. Additionally, my department determined that this deficiency should be fixed from 1 January 2021 without a transition period to avoid creating potential confusion for consumers with the continued presence of EU flags on energy labels for goods designed to meet Great Britain ecodesign requirements from 1 January 2021.

I also thank the noble Baroness, Lady Bennett of Manor Castle, for her questions on whether businesses and traders are prepared for the changes brought in by this SI. We have communicated with a number of small businesses in the UK, through their various trade associations, that represent key sectoral interests in the UK. We have also responded to a large volume of direct communication from businesses, and we are confident that the majority of them are aware of the requirements. As I said in my introduction, a letter was written to the Secretary of State to this end on 14 September 2020, signed by a number of stakeholders, including the British Retail Consortium, Make UK, techUK, AMDEA, BEAMA, the Lighting Industry Association, GAMBICA and the British Home Enhancement Trade Association. However, as the market surveillance authority, the Office for Product Safety and Standards will take a proportionate and reasonable approach to market surveillance on this matter, we believe that the concern is somewhat mitigated. The noble Lord, Lord Grantchester, also raised a question on this point, and I hope that I have been able to reassure him on this matter.

The noble Baroness, Lady Bennett, also asked about the Manchester declaration. As recently announced in the Prime Minister's 10-point plan, we will set out our world-leading product policy in 2021, continuing to work with international partners and across government to achieve the benefits of energy and resource efficiency.

The noble Baroness also asked a question on the Northern Ireland protocol. I covered that in my earlier response, so I hope that has already been answered. However, I would like to add that the Northern Ireland protocol has been implemented in such a way for ecodesign and energy labelling that it will continue to operate long into the future.

I thank the noble Lord, Lord Grantchester, for his concerns about the lighting regulations, on which officials have launched a consultation. We are closely monitoring amendments at an EU level. We will ensure that future policy meets our ambitions for high standards and consumer savings.

On the EU product database, there are no current plans to create a UK equivalent to the EPREL database. Businesses placing products on the market in Northern Ireland will, of course, have access to the EPREL database to comply with the relevant EU requirements, which they must do.

The noble Lord also asked how we will monitor and enforce the policy should requirements in the EU and the UK diverge. I reassure him that the UK

[Lord Callanan]
market surveillance authority will continue to carry out its duties in Northern Ireland according to the relevant EU standards and in Great Britain according to the relevant UK requirements.

I hope I have been able to deal with all the questions that have been raised, and I will underline once more the four purposes of the instrument. It will use powers under Section 8 of the withdrawal Act to amend retained EU law to ensure that the ecodesign and energy labelling regimes continue to operate without hindrance in the UK after the end of the transition period. It will amend the first EU exit SI to take account of the new regulations that come into force at an EU level between 29 March 2019 and 31 December 2020, and therefore in the UK following the extension of Article 50 and the transition period. It will implement the Northern Ireland protocol and ensure the unfettered access of energy-related products that meet qualifying Northern Ireland goods requirements, as I outlined. Finally, it will enable labelling and marking requirements to take effect from 1 January 2021, replacing EU flags and language text with UK flags and text on energy labels, while implementing an end date to the recognition of CE marking 12 months after the end of the transition period. With that, I commend the draft regulations to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Baroness Morris of Bolton) (Con): That completes the business before the Grand Committee this afternoon. I remind Members to sanitise their desks and chairs before leaving the Room.

Committee adjourned at 4.53 pm.