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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Wednesday 6 January 2021

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Rochester.

Arrangement of Business

Announcement

12.06 pm

The Lord Speaker (Lord Fowler): My Lords, Oral Questions will now commence. Please can those asking supplementary questions keep them short and confined to two points? I obviously ask that Ministers' answers are also brief. I call the noble Baroness, Lady Deech, to ask the first Oral Question.

Divorce

Question

12.06 pm

Asked by ***Baroness Deech***

To ask Her Majesty's Government, further to the research on the impact of divorce published by Resolution on 30 November, what steps they are taking (1) to improve the capacity of family courts, and (2) to support divorce litigants.

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con) [V]: [*Inaudible*]—enormous pressure. Despite this unprecedented challenge, I can reassure the House that the whole system has worked together to prioritise support for the most vulnerable. Of course, we acknowledge that there is always more to do, which is why the department continues to work with the advice sector to provide vital support services for litigants.

Baroness Deech (CB) [V]: The Resolution report showed that we are heading for disaster in the family courts, and that 41% of those recently divorced suffered mental health episodes or even had suicidal thoughts. The Nuffield report on remote hearings showed that while the professionals are happy with remote court working, litigants are not. There are technical issues and a lack of privacy. What will the Government do to help those in divorce proceedings? Disputes over financial provision are a major irritant. If mediation is a solution, the law in that area has to be simplified. Will the Minister update the House on progress with a promised review of financial provision law aimed at making it less contentious?

Lord Stewart of Dirleton (Con) [V]: My Lords, I do not accept the noble Baroness's characterisation of the situation as one in which we are heading for disaster. The situation is no doubt complex, and we are aware of the data to which she refers.

Lord Farmer (Con): My Lords, Resolution urges early support for separating couples to mitigate the pain of divorce and consequential mental ill health they and their children very frequently experience. The Lord Chancellor committed to join up government family support to mitigate the pain of no-fault divorce. Family hubs, as recommended by Justice Cobb's Family Solutions Group, are firmly on the Department for Education's agenda, but how will the Ministry of Justice ensure support for separating families?

Lord Stewart of Dirleton (Con) [V]: My Lords, the noble Lord is correct to identify the family hubs as a principal part of the Government's intention to join up government family support as part of the backdrop to implementing no-fault divorce. Ministers and officials from the Ministry of Justice are working closely with their counterparts in the Department for Education and a number of other government departments to share a cross-government agenda for strengthening families. Family hubs are a vital element of this agenda, and work is continuing to further develop the family hub model to ensure that they improve outcomes for children and families with children. This will include those at risk of separating or who have separated, equipping them with the skills to manage issues and decisions independently and effectively so that they do not need to rely on family courts. In addition, and as previously stated in this House, the Government will use the opportunity of revising the online divorce application process to improve the signposting of relevant support services.

Baroness Butler-Sloss (CB) [V]: My Lords, will the Minister ensure that the Government give sufficient support, especially to children suffering from the separation of their parents, including better funding for CAMHS?

Lord Stewart of Dirleton (Con) [V]: I am very sorry; may I ask the noble and learned Baroness to repeat the question? I am trying to communicate by telephone, and it is not particularly easy.

The Earl of Courtown (Con): My Lords, I think we should move on to the next question. If my noble friend the Minister could write to the noble and learned Baroness with his answer, we can move on to the next supplementary.

Lord Stewart of Dirleton (Con) [V]: I am obliged to my noble friend Lord Courtown.

The Lord Speaker (Lord Fowler): Moving on to the next supplementary, I call the noble Lord, Lord Faulkner.

Lord Faulkner of Worcester (Lab): My Lords, I think we are all aware that this post-Christmas period is a particularly difficult time for relationships, and the feelings of depression and anxiety among divorcees, which the noble Baroness, Lady Deech, referred to, are made worse when they are worried about whether they can afford professional or legal advice. So many decide to represent themselves in the divorce court

[Lord Faulkner of Worcester]
rather than to have professional advice, sometimes with disastrous results. How do the Government intend to ensure that poorer people have access to justice, and what are they doing to relieve the huge burden of overwork for court staff which leads to phones not being answered and cases postponed?

Lord Stewart of Dirleton (Con) [V]: My Lords, with regard to the noble Lord's first question, legal aid is available for private families where an applicant is a victim of, or at risk of being a victim of, domestic abuse or child abuse, and that is subject to the means and merits criteria. Legal aid is available for the purpose of obtaining urgent protection such as non-molestation orders without any up-front evidence requirements, and the Legal Aid Agency has the power to waive all financial eligibility limits so that a victim may qualify for legal aid even if their income or capital exceeds the eligibility limits. An overall contribution may be required later. Legal aid for matters out of scope of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is available via the exceptional case funding scheme. That is intended to ensure that legal aid is accessible in all cases where there is a risk of breach of human rights, subject to the statutory means and merits test.

Lord Thomas of Gresford (LD) [V]: [*Inaudible.*] Can the Minister confirm that, as discussed in the recent GR judicial review case, where a wife subjected to domestic abuse has been assessed as having capital in a jointly owned matrimonial home but is otherwise penniless, and where she can demonstrate that she is unable to access that capital because the violent husband refuses to sell or mortgage the property, the director of legal aid casework has a discretion which he should exercise to treat the applicant as financially eligible for legal aid?

Lord Stewart of Dirleton (Con) [V]: The noble Lord's question addresses aspects of detail as well as recent case law. I do not have the detail and the material with me to permit me to provide the noble Lord with a satisfactory answer. Again, I shall ensure that I correspond with him and put down in writing the answer to his question.

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, in November, the Children and Family Court Advisory and Support Service, Cafcass, triggered its prioritisation protocol in South Yorkshire and the Humber region, which means it is allocating only the highest priority cases there due to severe understaffing. The trade union Napo has described this as a crisis. What steps is the Minister taking to prevent this prioritisation protocol being triggered in other areas, and what estimate has he made of the extra resources necessary to stabilise Cafcass in this region and to prevent a similar protocol being triggered elsewhere?

Lord Stewart of Dirleton (Con) [V]: The question covers some of the ground posed by an earlier question but I am happy to answer it. Approximately £3.5 million of additional funding has assisted Cafcass in increasing staffing levels. Her Majesty's Courts & Tribunals Service has recruited approximately 900 additional support staff across jurisdictions and around 700 further appointments are currently sought. Your Lordships will be aware that Her Majesty's Courts & Tribunals Service has established 17 Nightingale courts across England and Wales. These give 32 additional courtrooms to alleviate the pressure on courts and tribunals. These courts are hearing, as well as family cases, civil, tribunal and non-custodial criminal work. I can advise that judicial sitting days in the family court have been increased. Current projections are that a level of nearly 96,000 sitting days for 2020-21 may be accomplished—5,000 more than allocation—and the courts sat for record numbers of days in June and July 2020.

The Lord Speaker (Lord Fowler): The time for this Question has elapsed. We now come to the second Oral Question.

Green Homes Grant Scheme

Question

12.17 pm

Asked by ***Lord Oates***

To ask Her Majesty's Government what assessment they have made of the effectiveness of the Green Homes Grant scheme.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): The green homes grant voucher scheme opened for applications in September 2020 and so far has received over 58,000 applications. There will be an independent evaluation of the processes and effectiveness of the voucher scheme, including a comprehensive analysis of scheme outcomes and evidence collected from scheme applicants and other stakeholders. This will begin this month and will run until 2023.

Lord Oates (LD) [V]: My Lords, given that the figures the Minister has given us show that the scheme has achieved less than 10% of its original target, does he recognise that no programme to upgrade the 28 million homes that require it will be successful if it is designed as a short-term stimulus measure, as this scheme was? Rather than downgrading quality requirements, will the Government therefore commit to a long-term sustained scheme over five or 10 years, which would incentivise the building industry to develop the skills base and create the jobs required to deliver such a major programme?

Lord Callanan (Con): We are not downgrading the quality requirements, but the noble Lord makes a good point. We have had a number of these schemes over the years and we will look at what we can do in the future as well.

Baroness Young of Old Scone (Lab) [V]: My Lords, the noble Lord, Lord Oates, made a very good point: this needs to be a long-term scheme that gives the supply chain confidence to invest in and expand the workforce and create new green jobs. Can the Minister assure me that, in collecting the data that he says will

come from the applicants, he will look at the assessment needed not only of the scheme's contribution to carbon reduction but of its contribution to reducing fuel poverty in less well-off households? Can he tell us when we will see what proportion of households whose applications have been approved are in receipt of benefits and what proportion are landlords whose applications will benefit their tenants?

Lord Callanan (Con): We have already listened to feedback and announced the extension of the scheme until March 2022. We will always listen to feedback. I gave the figures earlier for the number of applications that have been received. In due course, we will a provide further breakdown of those figures.

Lord Mann (Non-Afl): The number of contractors engaged with the scheme appears, not least in the north and the Midlands, to be remarkably low. What will the Government do to incentivise more contractors so that issues such as the replacement of oil heating systems can be delivered through this scheme? There appear to be no contractors doing it anywhere across the whole of the north and the Midlands.

Lord Callanan (Con): More than 1,300 companies are registered with TrustMark so far, of which 765 are registered with the scheme, including many businesses that operate nationally with substantial capacity to carry out work across the country, but the noble Lord makes a good point. We are well aware that we need to get more contractors and installers signed up to the scheme. We are actively working with TrustMark and the certification bodies to do that, but we need to ensure that the essential quality standards are met.

Lord Naseby (Con) [V]: My Lords, is my noble friend aware that he has made an excellent start with the Green Homes Grant scheme? I spoke to former constituents. However, just one element causes a problem: the need for an urgent review of the smart meter installation programme, particularly for those who want to take up this green project and have an old smart meter, which means they cannot switch suppliers. Will my noble friend look at this small handicap to those taking part?

Lord Callanan (Con): I thank my noble friend for his question. The smart meter scheme is not part of the Green Homes Grant scheme. It is a separate scheme, for which I also have responsibility, but I would be happy to talk to him separately about the issues he raises.

Lord Stunell (LD) [V]: On Monday, the Minister announced that building contractors delivering the Green Homes Grant scheme no longer need to be registered with TrustMark, be certified with PAS or be MCS compliant, thus lowering the standard of entry for those undertaking work. This comes at a time when there is also an acute shortage of professional retrofit assessors, who are essential to check and sign off completed projects. That leaves owner-occupiers who are trying to do the right thing and make their homes energy efficient increasingly exposed to undetected bad workmanship or fraud. Exactly how does the Minister propose to increase the number of assessors, safeguard consumers and prevent this vital scheme getting a reputation for dodgy work and becoming a wild west waste of money?

Lord Callanan (Con): We absolutely want to ensure that that is not the case. The noble Lord is incorrect. Main contractors still need to be registered with TrustMark. They also need PAS certification or be on a pathway to it. We are working with contractors to make sure that more are registered. We are also talking to the certification bodies. I have met a number of them to ensure that more contractors are signed up to the scheme. The noble Lord is absolutely right that the quality of the scheme and the standards of work carried out are of priority importance and we will make sure that that happens.

Lord Moynihan (Con): My Lords, a nationally-focused, directly-funded scheme for installing energy efficiency measures and efficient heating for fuel-poor homeowners and private renters exists in Wales and Scotland. The recently introduced Green Homes Grant scheme obviously provides funding—albeit less generous—in England through local authorities but not through a single, efficient, focused nationwide scheme with high quality standards and an easy customer journey. Will the Minister look to improve the delivery mechanisms of the Green Homes Grant scheme to match the clarity of a single, focused nationwide initiative as part of the review process that he has just announced?

Lord Callanan (Con): I understand the noble Lord's point, but we specifically designed the local authority delivery element of the scheme to directly target owner-occupiers in private and social rented sectors but also to allow local authorities themselves to be responsible for the design of those schemes so that they more closely matched the requirements of their area. If we had a national instruction on how to do it, I think that would cause other problems. On balance, it is probably best to allow local authorities to decide how it works best in their areas.

Lord Best (CB) [V]: My Lords, I declare my interest as president of the Sustainable Energy Association. Bearing in mind that there have been delays in issuing the vouchers for Green Homes Grant spending, which are leading to a likely underspend in this financial year, can the Minister confirm that the Government will carry over this phase 1 underspend beyond the end of March into phase 2 spending, so that valuable funding support is not lost?

Lord Callanan (Con): We announced the extension of the scheme until March 2022, as I am sure the noble Lord is aware. In the 2020 spending review, the Chancellor allocated over £1 billion to make public sector buildings and homes greener, including £320 million for this scheme in 2021-22.

Lord Grantchester (Lab): With the initial plan for the Green Homes Grant to last only nine months now extended a further 12 months until March 2022, there

[Lord Grantchester]
must be doubts about the ambition of this scheme against the long-term challenge of making homes more energy efficient. With only 5.6% of applicants having had their applications approved and with only a single household receiving a voucher, can the Minister tell the House what success looks like for this scheme? For example, what maintenance of a set maximum response time for applicants will be achieved and how many of the 19 million homes EPC-rated D or worse will be improved through the scheme?

Lord Callanan (Con): The noble Lord asks a lot of questions. I think his figures are incorrect. We had 58,000 applications and have issued almost 11,000 vouchers to those applicants. Another 11,000 are being processed and 35,000 have gone back to the applicants for further information or clarification of their quotes, et cetera. We keep all elements of the scheme under review. We announced the extension to March 2022 in response to the feedback we received from the noble Lord and others.

Lord Foster of Bath (LD) [V]: My Lords, the sector that will deliver home energy efficiency measures wants statutory targets, such as those for climate change, to give it confidence to invest in equipment and training. The Minister, Kwasi Kwarteng, in the other place has talked specifically of the benefits of statutory targets in driving action. Will the Government enact into legislation the targets for home energy efficiency they have already promised?

Lord Callanan (Con): I cannot give the noble Lords a specific assurance on that. We keep all these matters under review.

Lord Krebs (CB) [V]: My Lords, I thank the Minister and his officials for a very helpful meeting in the autumn on this topic. Can he confirm that the original requirement for applicants to use vouchers for at least one primary measure, before becoming eligible for a secondary measure, has now been removed?

Lord Callanan (Con): No. At present, we keep the primary and secondary elements of the scheme, because we think that is the best way of delivering the maximum carbon savings that I know the noble Lord is also keen on. We keep the scheme under constant review and listen to suggestions for improvements from him and others on how we can make it more effective. The noble Lord's feedback is valuable, and I will bear it in mind.

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

Religious Groups: Financial Support

Question

12.28pm

Asked by ***Lord McCrea of Magherafelt and Cookstown***

To ask Her Majesty's Government what financial support they have provided to religious groups in the United Kingdom during the Covid-19 pandemic.

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): During the pandemic, faith-based organisations and places of worship have been able to apply for a range of government packages available to support charities and businesses. These include the Coronavirus Community Support Fund, Historic England's Covid-19 emergency relief fund and the Local Authority Discretionary Grants Fund. We continue to consider how government can effectively support the sustainability of faith groups.

Lord McCrea of Magherafelt and Cookstown (DUP) [V]: My Lords, as a retired minister, I refer to my entry in the register of interests. Over these long months of the pandemic, the Chancellor of the Exchequer has provided financial aid for people and businesses greatly impacted by Covid, but churches themselves, which provide vital assistance to the isolated, the elderly, the sick and the dying, have received nothing, although their finances have been greatly depleted by the non-attendance of most of their congregations because of government rules and restrictions. What consideration has been given to this matter, and will aid be forthcoming?

Lord Greenhalgh (Con): I do not recognise that no support has been given. In fact, during the pandemic, there have been 10 schemes available to places of worship, including churches, four of which are still available. I point to the Listed Places of Worship Grant Scheme from DCMS, the gift aid small donations scheme, the Coronavirus Business Interruption Loan Scheme through BEIS and the Job Support Scheme from HMT, all of which are still running and available.

Baroness Warsi (Con) [V]: My Lords, the All-Party Parliamentary Group on British Muslims, in its recent inquiry, received evidence of the specific targeting and blaming of Muslims as a group causing the spread of the coronavirus. Will my noble friend join me in both rejecting this false and bigoted view and paying tribute to the many mosques and community organisations which, despite the Government's decision to allow communal worship in the latest lockdown, have taken the decision to limit services where it is considered wise to do so, in the interests of public health and safety?

Lord Greenhalgh (Con): I join my noble friend in condemning those who point the finger at any community, including British Muslims. I absolutely commend the role taken by Muslim charities, such as the Muslim Charities Forum, in supporting people during the pandemic. It is part of the Voluntary and Community Sector Emergency Partnership. I commend the work of Muslim charities and mosques in helping the needy and vulnerable at this difficult time.

Lord Singh of Wimbledon (CB) [V]: My Lords, Sikhs from the gurdwara in Gravesend were prominent in organising free hot meals for stranded lorry drivers at Dover, and similar initiatives by Sikhs have been applauded in other parts of the world. Government assistance in making minority communities aware of

the perils of Covid-19 on media that they read, watch or listen to would be helpful, but does the Minister agree that the faith communities, in the welfare and volunteering they do, are playing a key role in helping us get through the pandemic?

Lord Greenhalgh (Con): My Lords, I completely agree on the role of British Sikhs. It is fundamental to their faith to help people in need, and, although I have only 15 followers, I specifically tweeted out my support for Langar Aid in Kent. It is alongside many charities, including the Salvation Army, which provided much needed sustenance at a very difficult time throughout the Christmas period.

Lord Kennedy of Southwark (Lab Co-op): My Lords, throughout the pandemic, faith groups have provided comfort, care, guidance and support for people and communities—as we saw in Gravesend with the Sikh community. We should pay tribute to them and thank them for that, but, as the noble Lord, Lord McCrea, said, we should go further. Will the Minister agree to speak to his colleagues in the Treasury to see what could be done through the tax system to provide bespoke levels of support to faith communities? I also join the noble Baroness, Lady Warsi, in condemning those who wrongly seek to blame the Muslim community for the pandemic.

Lord Greenhalgh (Con): My Lords, I will always commit to talking to the Treasury. I am not sure it will always listen to me, but I promise to make every endeavour and possible representation to ensure it sees the light and takes up the noble Lord's suggestion.

Lord Roberts of Llandudno (LD) [V]: At the end of this pandemic, whenever it is, many ordinary chapels and churches will be in difficulties, just like the major churches. In many places, those that have been closed for the pandemic will not open again. I ask the Government to give support in whatever way possible to those people, sometimes very few, who are battling to come to terms with legal or building requirements. I also thank those who have been standing so faithfully over the years in these smaller congregations. Things have changed now, and I know that in my church, the Methodist Church, the Whitechapel mission, for example, has in the past nine months served 277,000 meals. In other places, as already mentioned, drivers of the lorries held up going to Dover were very well supported by people of all faiths and of no faith. Can we also say thank you to them?

Lord Greenhalgh (Con): My Lords, I declare an interest as the grandson of a Methodist minister, and I commend what Methodists have done, but I am in fact a Roman Catholic. None the less, faith communities have stepped forward and helped considerably during this time, and the Government will continue to think about ways in which we can partner with faith communities.

Lord Flight (Con) [V]: My Lords, what criteria might the noble Lord propose should apply to qualify for financial support by religious groups?

Lord Greenhalgh (Con): That sounded incredibly technical, to be honest. I need to reflect on it and write back to the noble Lord, giving a comprehensive answer and putting a copy in the Library.

The Lord Bishop of Rochester: I am grateful to the noble Lord, Lord McCrea, as his Question enables me to acknowledge with thanks to the support which has been received by religious groups and charities, not least through the furlough arrangements, which have been a considerable help for many of them. However, in looking to the future, I join others in urging Her Majesty's Government to keep particularly in mind the needs of smaller charities, which are often religious, community and locally based in character, whose work with young people, the homeless, those in debt, the elderly and other groups has been growing in this time, while their voluntary income has often been diminishing. Perhaps I can tempt the Minister by suggesting that Her Majesty's Government might consider using their new-found freedoms to exchange the current scheme, whereby VAT is reimbursed on works relating to listed places of worship, for one where it is not charged in the first place.

Lord Greenhalgh (Con): My Lords, I know that that will be the start of a series of specific, bespoke requests, but it is right that the Government think about how we support small, grassroots charities. I want to commend the efforts of my colleague, my noble friend Lady Barran, for setting up the Voluntary and Community Sector Emergency Partnership during the pandemic, which is trying to do precisely that with a £5 million award, and we are looking to build on that for particular faith communities as well.

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, the second round of the Cultural Recovery Fund will be open for applications from 7 January and will close on 26 January; £36 million of this funding will be allocated to heritage organisations and businesses, administered by the National Lottery Heritage Fund in partnership with Historic England. Will this fund be open to faith organisations that are based in historic buildings, especially in rural areas?

Lord Greenhalgh (Con): My understanding is that DCMS funding is open to places of worship. In fact, a number of places of worship, including many cathedrals, have been in receipt of funding already.

Lord McColl of Dulwich (Con) [V]: My Lords, many places of worship are open for people of all faiths and of none as places of refuge and renewal, as are organisations such as the Salvation Army, which has already been mentioned. They provide invaluable help to many people, particularly those who have been rescued from abuse of all kinds, such as human trafficking and domestic violence. As their income has been greatly reduced by the Covid pandemic, will the Government help so that their work can continue? Perhaps, as my friendly colleague, the noble Lord, Lord Kennedy, suggested, they can have some form of tax relief.

Lord Greenhalgh (Con): My Lords, I, too, commend the work of the Salvation Army. I now consider Dean Pallant to be a close friend, and the work it does is phenomenal. It is fair to say that it has been able to apply to around 10 schemes, four of which remain open, it is a member of the Voluntary and Community Sector Emergency Partnership, and £5 million has been distributed to its members.

Lord Dholakia (LD) [V]: My Lords, I am aware of the valuable work that faith organisations do in our community. Temples, gurdwaras and mosques provide food parcels, and religious leaders provide counselling and other services to local communities. Will the Minister talk to his colleagues in other government departments to ensure that these services are not curtailed by a lack of financial resources? Any help for these organisations through local authorities would be most welcome.

Lord Greenhalgh (Con): My Lords, it is important that we provide joined-up government. I am working closely with my colleagues in DCMS, and we work across Whitehall to ensure that that happens.

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

Law Enforcement: Brexit Impacts

Question

12.40 pm

Asked by ***Lord Harris of Haringey***

To ask Her Majesty's Government what assessment they have made of the impact on law enforcement agencies in the United Kingdom of (1) not having access to European Union databases for the purposes of investigating crime, and (2) the replacement being put in place for the European arrest warrant.

Lord Harris of Haringey (Lab): My Lords, I draw attention to my interest in the register and beg leave to ask the Question in my name on the Order Paper.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the safety and security of our citizens is the Government's top priority. That is why we have secured an agreement delivering a comprehensive package of capabilities that will ensure that we can work with counterparts across Europe to tackle serious crime and terrorism, protecting the public and bringing criminals to justice. Importantly, this agreement includes arrangements facilitating streamlined extradition and the fast and effective exchange of data.

Lord Harris of Haringey (Lab): My Lords, on Christmas Day, the Home Secretary issued a statement saying that the new agreement with the EU was "historic" and would

"make the UK safer and more secure".

Will the Minister tell us precisely in what ways the deal makes us safer and more secure? How will the loss of direct, real-time data-sharing access, and the loss of access to the Schengen database of alerts about wanted or missing people, stolen firearms and vehicles, conceivably help our law enforcement agencies?

Baroness Williams of Trafford (Con): My right honourable friend the Home Secretary is absolutely right. This deal is historic and it will keep us safe. In terms of SIS II, to which the noble Lord refers, as he knows, the EU took the position that it was legally impossible for any non-Schengen country to be included. We obviously are using Interpol and bilateral channels to facilitate that. It is important that we get SIS II into perspective, because every time that a UK law enforcement officer checked policing or border systems, it counted as a check against SIS II. That is why there were 572 million checks in 2019. Less than 0.5 per cent of those SIS II records related to persons of law enforcement interest.

Baroness Kennedy of The Shaws (Lab) [V]: My Lords, I first pay tribute to the Minister, who led a very fine debate last night on domestic abuse and domestic violence. I wish to pick up on that in relation to the questions of my noble friend. When protection orders are made on domestic abuse to protect someone who is being victimised and has survived domestic abuse, the order could, until now, be enforced in other parts of Europe. What will happen if, for example, a woman goes with her children to visit family members in Europe but is pursued by her abuser, who assumes that the order will no longer operate beyond our borders? Are we going to create new mutual recognition mechanisms to make sure that any order to protect her will be enforced in other parts of Europe?

Baroness Williams of Trafford (Con): As the noble Baroness will know, we will not be seeking membership of Europol but the arrangements that we have in place will allow for the UK's continued effective co-operation with Europol, including rapid exchange of operational information and data for mutual benefit—in particular, in the type of case that the noble Baroness outlined.

Lord Marks of Henley-on-Thames (LD) [V]: My Lords, the agreed surrender arrangements that replaced the European arrest warrant include a significant number of grounds for withholding surrender and an overall principle of proportionality. All issues raised by a requested person will have to be litigated in the executing state before a surrender decision can be made. Will the Government undertake an audit of the delays and costs involved in the new system arising from our withdrawing from the clear procedures for European arrest warrants?

Baroness Williams of Trafford (Con): The noble Lord will be pleased to know that some safeguards regarding human rights would be right for the carrying out of justice. However, in terms of speed, we fully anticipate that the arrangements will be as fast and effective as those under the EAW.

Lord Randall of Uxbridge (Con) [V]: My Lords, I declare my interest as deputy chairman of the Human Trafficking Foundation. Without seamless access to shared intelligence or co-operation both domestically and within Europe, human trafficking here will, I fear, inevitably increase. I heard what my noble friend said earlier, so will she now confirm that the UK will still have access to Europol, Eurojust, the Schengen Information System and passenger name record data?

Baroness Williams of Trafford (Con): I can confirm that the arrangements will allow for the UK's continued co-operation with Europol. In terms of Eurojust, they ensure that UK and EU investigators can continue to share information and evidence, agree strategies and co-ordinate activity to tackle cross-border criminality.

Lord Woolf (CB) [V]: Could the Minister tell me how she will ensure that the new arrangements, which are obviously welcome, are working efficiently and not leading to delays that will hamper the workings of the criminal justice system in this country?

Baroness Williams of Trafford (Con): There will be continued scrutiny of the effectiveness of the new arrangements. The noble and learned Lord is right that these things need to be swift and efficient but, as I said in reply to the noble Lord, Lord Marks, they also need safeguards built into them. I have every confidence that the new arrangements will work well.

Lord Rosser (Lab) [V]: If there has been no weakening of our security arrangements as a result of the new agreement with the EU, why, in the negotiations with the EU, did the Government seek to retain access to all the existing direct real-time data-sharing arrangements, including the Schengen database, that we had as EU members—not all of which we have retained?

Baroness Williams of Trafford (Con): The noble Lord is right that we have not retained everything. We have not got everything we wanted, which was always going to happen in a negotiation. But we believe that we have a set of agreements that protect our citizens and keep people safe.

Lord McNally (LD) [V]: My Lords, is the Minister aware that the longest-serving Home Secretary of recent times, Theresa May, gave only qualified support for these arrangements, when she spoke in the House of Commons on 30 December? She expressed particular concern about the timeliness of access to databases of European criminal records, modern slavery and child abduction. Is it not time for the Government to come clean and say that we are weaker now with these protections and to come up with specific policies to plug the knowledge gaps identified by Mrs May?

Baroness Williams of Trafford (Con): My right honourable friend Theresa May was probably right to give it qualified support. We have not seen how it will work yet. I am confident it will work well and I am sure that this House will scrutinise any deficiencies in the new arrangements. We have a very good package for the safety and security of the citizens of this country.

Lord Mackenzie of Framwellgate (Non-Afl) [V]: My Lords, real-time access to intelligence is crucial in the fight against serious organised crime and terrorism. Can the Minister assure the House that any reduced capability to access such information in a timely manner will not increase the risk level in the United Kingdom, thereby endangering UK citizens from January 2021?

Baroness Williams of Trafford (Con): My Lords, timely access and cross-border co-operation benefits not only the UK but the EU. The noble Lord talks about serious and organised crime, which knows no borders and is global. It is incumbent on all of us to work together to stem its flow.

Lord Caine (Con): My Lords, as my noble friend is aware, the closest co-operation between the Police Service of Northern Ireland and An Garda Síochána is absolutely crucial in the fight against both terrorism and organised crime. In this context, the European arrest warrant has aided the smooth extradition of suspects between our two jurisdictions. Could my noble friend assure the House that arrangements are in place to ensure that this continues and that there is no going back to the extradition problems that beset us in the past, which so soured UK-Irish relations?

Baroness Williams of Trafford (Con): My noble friend is absolutely right to point that out, and I think it will have been foremost in the minds of negotiators, both here and in Ireland. We do not want to go back to those days, and it is very important that arrangements are in place that allow for criminals and terrorists to be dealt with swiftly and efficiently.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed, which brings us to the end of Question Time.

12.51 pm

Sitting suspended.

Arrangement of Business

Announcement

1 pm

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

Schools: Exams

Private Notice Question

1 pm

Asked by ***Lord Watson of Invergowrie***

To ask Her Majesty's Government what steps they are taking to ensure exams which were originally scheduled to take place in January can take place

[Lord Watson of Invergowrie]
safely; and when they plan to publish alternative arrangements for exams which were scheduled to take place in the summer.

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, schools and colleges can continue with vocational and technical exams that are scheduled in January where they judge that it is right to do so. Students will not sit GCSE and A-level exams this summer. We are working closely with Ofqual to provide clarity on VTQ exams and assessments that are scheduled for later in the academic year. We and Ofqual will consult on how to award all pupils a grade to ensure that they can progress.

Lord Watson of Invergowrie (Lab) [V]: My Lords, the Government could not quite complete yet another 180-degree turn of the sort we have become all too familiar with in education policy, stopping short by leaving it to individual colleges to decide whether BTEC exams should go ahead this week. That inevitably means a patchwork system for BTEC students, who once again seem to be an afterthought for this Government, and is a further example of their lack of leadership. There should have been a plan B for the always-likely scenario now facing school and college exams. How will the Department for Education reassure students who were expecting to sit BTECs that they will not now lose out on university applications or other career opportunities, and how can a repeat of the uncertainty and stress caused to pupils and parents by the changes to last year's GCSE and A-level exams be avoided?

Baroness Berridge (Con): My Lords, colleges have been given the discretion this month, because most of the content will have been learned. Seven awarding organisations had assessments planned for this month, and many of those assessments are required occupationally for people to progress, even into work, so it was important that colleges were given that discretion. We have encouraged this where career progression is dependent on the assessment. From February, the Ofqual consultation will consider all qualifications so that those who take qualifications other than A-levels and enter higher education will get a fair assessment of their grades. The noble Lord will be aware that UCAS has extended the window for applications this year by two weeks.

Lord Storey (LD) [V]: My Lords, so exams will not be sat and there will be teacher assessment, presumably with some external moderation. It is important that individual students' situations are considered in that moderation and that guidance is given to schools. For example, children and young people in vulnerable circumstances, and young people without access to the internet, paid-for wi-fi or a laptop, must be taken into account. As one head teacher put it, there is a huge regional variation between space and peace and support. Can the Minister guarantee that all students will have a level playing field when it comes to their virtual learning? She might be interested to know that the guidance on the government website says that children who are vulnerable can still attend school in person. Hopefully that will be changed or altered.

Baroness Berridge (Con): My Lords, we have made clear that school places are available for children where one parent is a critical worker, and for vulnerable children, because they are best off in school. We have given head teachers the discretion to include in that vulnerable category any children who they identify as being at risk and better off in school. There will be a consultation. Ofqual will have to consult, as the Prime Minister outlined, working with the department on how the assessment exams will take place this summer so that all the factors outlined by the noble Lord can be taken into account. I will ensure that noble Lords who have an interest in this matter get the link to that consultation when it is announced.

Baroness Bull (CB): My Lords, this latest lockdown and the change to exams is yet again likely to impact disproportionately on the outcomes of already disadvantaged students. The Minister reassured me on 2 September that better-resourced independent schools were keen to engage in supporting these students and that her next meeting with them would focus on how to structure their desire to help. Can she update us on these discussions and say how, at this critical juncture, their support might be accessed and made widely available?

Baroness Berridge (Con): My Lords, the noble Baroness is correct. For disadvantaged students the lockdown and the closure of schools was a last resort. We are keenly aware of the implications for children and families. Regarding the independent schools' offer, we have made clear to them that if they already have students who are vulnerable or the children of critical care workers, they should make education available to them. I am meeting with the sector at the end of the month and will be able to give the noble Baroness further information then.

Lord Wei (Con): My Lords, given that the history of pandemics has shown that there are often many twists and turns, and given that even with the vaccine there may be further disruption for the rest of this year and possibly even next year, can the Minister share some of the plan Bs in the event of future lockdowns pushing out the exams further? For example, are there plans to explore taking exams virtually, where technology allows you to check that the pupil is sitting the exam properly? Also, are measures in place to show employers and universities other evidence beyond the teacher's perspective on the achievements of a pupil?

Baroness Berridge (Con): The noble Lord is correct that twists and turns can obviously be very quick. Remote education is the most important thing for students at the moment. A direction was issued before Christmas of three hours for primary-school children and four hours for secondary, and the right honourable Member the Secretary of State for Education is currently outlining the strengthening of those requirements. In 2020, we delivered 560,000 laptops to disadvantaged

children. We delivered 50,000 on Monday, and there will be another 50,000 by the end of the week. This is key to those students in accessing curriculum that is delivered remotely for them. Regarding the consultation, all perspectives on how exams can be conducted will be able to be put forward.

Lord Knight of Weymouth (Lab) [V]: My Lords, the summer exams were cancelled in Wales on 10 November, allowing time for schools and exam boards to develop robust alternative assessments. In Scotland, they followed suit on 8 December, yet Ministers in England dogmatically held out until Monday. They have catastrophically mishandled the impact of the pandemic on schools, on the digital divide, on free school meals, on last summer's exams, on the abandoned mass-testing rollout and now in providing some certainty for schools this year. Has the Minister seen today's statement by Parentkind that 84% of parents say that it is impacting their children's mental health? Given that Ministers have lost the confidence and trust of teachers, school leaders and parents, is it not time for the Secretary of State and the Schools Minister to resign?

Baroness Berridge (Con): My Lords, obviously education is a devolved matter within the United Kingdom, and Northern Ireland is still planning examinations, so there will have been different decisions at different times. In normal circumstances, exams are the best way to assess the education that children have been given, and we held out, as we believed was appropriate. It was a last resort to close our schools. We are keenly aware of the mental health and well-being implications for young people, hence why schools are open for vulnerable children at this time. We have not abandoned mass testing, because there are children in school. This will be a period in which schools can roll that out for students and staff who are there with a view to it being rolled out to primary schools and with a view to reopening as soon as the public health situation allows. That mass testing may be necessary at that point in time. We have closed the schools as a last resort and will reopen them as soon as public health allows.

Lord Addington (LD): My Lords, I remind the House of my interests and declare another: I have an 18 year-old daughter who was actually set to be taking her exams this year, and I can confirm that, even for somebody like her who was expected to do well, there is stress.

Looking at other groups, students who sometimes overachieve in exams—generally the males of the species and particularly those with special educational needs, and who, for instance, might be able to dictate to somebody for the first time in an assessment—what plans have been made to make sure that these people are allowed to progress? Are we going to make sure that extra places are available in the next stage of their education in the foreseeable future?

Baroness Berridge (Con): My Lords, on the cancellation of exams for this summer, the consultation by Ofqual will include all the factors, including the ones that the noble Lord outlines. We know that although there was generally, percentage-wise, an inflation grade last year over the previous year, there are certain groups—sometimes disadvantaged students, sometimes BAME students—whose predicted grades are less than what they actually achieved. This consultation will enable those factors to be part of that assessment as to how we fairly assess the performance of our young people who will not be sitting exams.

Baroness Coussins (CB) [V]: My Lords, one of the groups that lost out last summer was the group of students studying for a GCSE or A-level in a heritage or community language at a supplementary school that was not partnered with a mainstream school, so they were unable to be awarded a centre-assessed grade. Will the Minister assure the House that, if similar or indeed whatever arrangements are made this year, the Government will work in advance with teachers and all types of school to ensure that no students from supplementary schools are so unfairly disadvantaged again?

Baroness Berridge (Con): My Lords, those students at supplementary schools are reviewed as private candidates. That is the same situation that home-educated students found themselves in last year, many of whom took advantage of the autumn series to sit examinations where centres could not, with integrity, give a grade to their work. Again I must point the noble Baroness to the consultation that will take place, but I anticipate that private candidates, including supplementary schools, will be part of what is looked at in the consultation to try to ensure that we can give them a grade through the assessment process in the summer.

Baroness Warsi (Con) [V]: My Lords, I declare my interest as set out in the register. I support the Government's decision to put teachers at the forefront of grading A-levels and GCSEs this summer. Following the question from the noble Lord, Lord Storey, I stress that there must be an external moderating assessment of whatever process is put in place. Can my noble friend shed some detail on the timeframe for the consultation of what this process will be? What assessment has been made of the impact of this timetable on university applications?

Baroness Berridge (Con): My Lords, as I outlined, UCAS has extended the application window for two weeks. I am anticipating that external moderation will be part of what the consultation will include. That will be swift; it needs to be a valid consultation, but we know that we need to give certainty as soon as we can to schools, pupils and families. It may be that as I speak the Secretary of State is in the other place outlining further details. I am obviously not at liberty to give them today but I will be repeating that Statement tomorrow.

The Deputy Speaker (Baroness Morris of Bolton) (Con): The next speaker is the noble Lord, Lord Austin of Dudley.

Baroness Penn (Con): We cannot hear the noble Lord. Can he repeat his question?

Lord Austin of Dudley (Non-Afl) [V]: I apologise. I was saying that many children still do not have a computer, wi-fi or space in which to work. If schools are open for the children of key workers or for vulnerable children, why can space not be found in schools, community centres or libraries for those who cannot learn at home? Why not pay unemployed graduates or retired teachers to support pupils whose parents cannot afford tutors?

Baroness Berridge (Con): My Lords, in addition to the laptops that I outlined, 50,000 4G routers have been given to disadvantaged children. We have worked closely with the mobile phone companies to lift data limits so that children and families can access data on educational sites without limit. I advise noble Lords to look at the "Get help with tech" part of the website. However, in relation to space and the gathering together of people, contacts are what we need to limit at the moment, so those kinds of out-of-school settings are open only for vulnerable children and children of key workers. In relation to graduates, the academic mentors, who are part of the catch-up programme that Teach First has been using, are physical mentors in schools, so I anticipate that some graduates and potentially retired teachers have taken advantage of that.

Baroness Blower (Lab) [V]: My Lords, the last time I had occasion to ask about exams, it was to ask the Minister why the Government had not followed the lead of other UK jurisdictions in cancelling 16-plus exams, given that it was clear even at that stage that they could not be held fairly in 2021. Today I ask whether her department will take the opportunity to review the appropriateness of exams at 16-plus going forward, particularly given that, however good online teaching is, current year 10 students will have missed at least a term and a half—and probably more—of face-to-face teaching.

Baroness Berridge (Con): My Lords, as I have outlined, the Government closed schools as a last resort and cancelled exams as the best independent way of assessing students' performance. The tectonic plate that shifted with the new variant over the Christmas and after-Christmas period has changed things dramatically from the last time that I stood at the Dispatch Box. However, it remains the case in England, as I have outlined—there are different approaches in different parts of the United Kingdom because of different education systems—that most students in England transition at 16, and that is why an examination at 16 is important.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, the time allowed for this Private Notice Question has elapsed.

Medicines and Medical Devices Bill

Order of Consideration Motion

1.17 pm

Moved by ***Baroness Penn:***

That the amendments for the Report stage be marshalled and considered in the following order:

Clauses 1 to 29, Schedule 1, Clauses 30 to 39, Schedule 2, Clauses 40 to 49, Title.

Baroness Penn (Con): On behalf of my noble friend Lord Bethell, I beg to move the Motion standing in his name on the Order Paper.

Motion agreed.

Covert Human Intelligence Sources (Criminal Conduct) Bill

Order of Consideration Motion

1.17 pm

Moved by ***Baroness Penn:***

That the amendments for the Report stage be marshalled and considered in the following order:

Clauses 1 to 3, Schedule 1, Clauses 4 and 5, Schedule 2, Clauses 6 and 7, Title.

Baroness Penn (Con): On behalf of my noble friend Lady Williams, I beg to move the Motion standing in her name on the Order Paper.

Motion agreed.

Provisional Local Government Finance Settlement

Statement

The following Statement was made in the House of Commons on 17 December 2020.

"Today I have written to all local authorities in England thanking their councillors, officers and employees for their exceptional service this year. From carers to teachers to social workers to refuse collectors to council officers, as well as the elected members, they have worked tirelessly over the course of this pandemic to keep us safe, to provide support to the most vulnerable, to assist local businesses and to deliver public services under immense pressure. I think I speak for the whole House in saying a sincere thank you and in wishing them and their families a happy and peaceful Christmas.

From the start of the pandemic, we committed to ensuring that councils had the resources they needed to step up and support their communities. We have provided councils with more than £7.2 billion of additional funding for Covid-19 expenditure. We have ensured that councils receive support to manage associated losses in income, including from sales, fees, charges, leisure centres and local taxes, and that is expected to amount to further billions of pounds of support. That commitment remains undimmed, and the settlement we are announcing today ensures that councils have the resources they need to continue that work next year, to play their part in the recovery of their communities and to deliver first-class public services.

As we look ahead to 2021 and 2022, the annual settlement makes an extra £2.2 billion available to fund the provision of critical public services, including

adult and children's social care. Within that, we are giving authorities access to an additional £1 billion for adult and children's social care, made up of £300 million of social care grant and the flexibility of a 3% adult social care precept. On average, English councils will see a 4.5% cash-terms increase in core spending power, which is also an increase in real terms. That is testament to the support that our local government deserves, and it comes off the back of three settlements in a row that have increased funding in real terms.

The £1 billion grant announced at last year's spending review will continue, along with all other existing social care funding. Balancing the contributions of national and local taxpayers, we are giving councils increased flexibility through a 2% council tax referendum limit, with an extra 3% for social care authorities. Councils will, of course, want to take into account the financial circumstances of their residents and to protect households from excessive increases in bills. It is incumbent on councils to balance these competing pressures and reach the right decision for their local areas.

To help councils continue reducing council tax for those least able to pay, including households hit hard financially by the pandemic, I am making £670 million of new grant funding available outside the core settlement for local council tax support. Lower-tier councils, including districts, will benefit from a new one-off £111 million lower-tier services grant, and we are providing certainty and stability by confirming that the main funding allocations for the full range of council services will rise in line with inflation.

Our settlement also addresses the extra costs incurred by councils in rural areas, providing an extra £4 million to the rural services delivery grant—the highest contribution to date, at £85 million. We are also proposing a further £622 million of new homes bonus allocations. We will invite views on how we can reform the scheme next year to ensure that it is focused where homes are needed the most and where councils are ambitious to get on and deliver them.

Despite the arrival of vaccines, we will continue to live with Covid-19 for some months. That is why, alongside the core settlement, I am announcing comprehensive measures, including £1.55 billion of additional, un-ring-fenced grant funding for Covid expenditure. Our measures insure against funding shortfalls, and I am particularly pleased to confirm today the scope of and approach to our very well received scheme to reimburse councils for 75% of irrecoverable lost tax income from 2020-21.

As the cold weather sets in, the protection of those sleeping rough amid the pandemic continues to be one of my priorities. Our world-leading Everyone In initiative was and remains a powerful testament to what local and central government can achieve together. We are building on that work to ensure that as few of the 29,000 people who were helped off the streets under that scheme, and subsequently, return to life on the streets, spending over £750 million next year to tackle homelessness and rough sleeping—a 60% increase on the previous year spending review. In addition, we are providing £165 million of new funding to councils for the troubled families programme, underlining our continued commitment to the most vulnerable in society. Following the passage of the Domestic Abuse Bill, we will provide £125 million funding next year to enable councils to meet their duties in full to provide the support that victims of domestic abuse and their children undoubtedly deserve.

Serious challenges remain, but the start of the vaccine rollout last week offers us cause for optimism and allows us to at least begin to glimpse the world beyond the pandemic. We want to work with local councils to build a new country beyond Covid—a country that is more prosperous, greener, safer and more neighbourly. Local government will be integral to the achievement of that shared vision. We will establish a new £4 billion levelling-up fund, building on the success of our £3.6 billion towns and high streets funds. Any local area will be eligible to apply directly to this fund, which will finance the everyday infrastructure, town centre regeneration and culture that communities need and local people want. The UK shared prosperity fund will help to level up and create opportunity across the UK. A UK-wide investment framework for that will be published by my department early next year.

The Government are funding vital local infrastructure, with total capital spending at £100 billion. That will fund once-in-a-generation changes to local communities and deliver the highest sustained levels of public sector net investment since the 1970s, including the biggest hospital building programme in living memory, and £2.2 billion investment in our schools funding programme to rebuild 500 schools over the next decade. In addition, local councils will benefit from £1.7 billion for local roads maintenance and upgrades to tackle potholes, which will improve local connectivity and deliver better roads for our communities.

I want local government to emerge stronger, more sustainable and better able to meet the needs of those it serves. That means greater openness and accountability, and in a minority of cases it means better financial management and regard for taxpayers' money. To that end, my department is publishing today its response to Sir Tony Redmond's excellent review of the effectiveness of external audit and transparency. We will provide councils with an additional £15 million next year to implement Sir Tony's recommendations. We are preserving the ability of local authorities to invest in programmes to power growth by lowering Public Works Loan Board interest rates, but we must also protect taxpayers from unwise risky investments of the kind we have seen, sadly, in some councils in recent years. Those practices must now end.

When there is a clearer path ahead, we will work with the sector and Members across the House to seek a new consensus for broader reforms to local government, including the fair funding review and the business rates reset, and we will ensure that councils are set on a long-term trajectory of sustainable growth and fair resources.

This will, I hope, be viewed as a significant settlement that paves the way for a bright future for our local communities as they seek to bounce back from an exceptionally difficult year. The settlement will deliver £2.2 billion of extra funding, a 4.5% cash and real-terms increase in core spending power, and it will further fund councils to ensure that they steer the course of the remaining months of the Covid-19 pandemic with certainty and confidence. Building on last year's settlement, which exceptionally received cross-party support, it puts

[Baroness Penn]
councils, which were at the forefront of our response to the pandemic, at the forefront of our recovery, and I commend this Statement to the House."

1.18 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, first I draw the attention of the House to my relevant registered interest as a vice-president of the Local Government Association. Secondly, I place on record my thanks to the whole of local government, including elected mayors, councillors, officers and all staff, for the fantastic job that they have done in the most difficult of circumstances over the past year.

When our communities have been most in need, local authorities and their staff have stepped up and delivered in every field—teachers, social workers, care staff, refuse collectors and all the others doing the important jobs that must be delivered. However, this is a disappointing Statement from the Government. It will lead to job losses and cuts to key front-line services, such as adult social care, which will cause great hardship to people and communities. On top of that, the Government are proposing that councils raise additional revenue through a 5% rise in the council tax, taking money from hard-pressed people who are already struggling.

Council tax is a regressive tax. It hits people and families on lower-than-average incomes much harder than people on higher incomes. In our most deprived areas, people on lower incomes will, as a result of this Statement, see the bills that they pay rise and the services they rely on cut. "Pay more, get less for your money" seems to be the by-line of the Government—not a great deal in my opinion.

So can the noble Lord tell the House what plans the Government have to support local authorities during the year as we seek to get out of the nightmare of the pandemic? It is very likely that Covid costs will outstrip even the revenue that can be raised from the council tax increase.

What plans do the Government have to support hard-pressed families? Is the noble Lord talking to the Treasury to ensure that support packages are available after March this year? Can he say something about the support that will be available for councils to help families who find themselves homeless? Does he think that the funding system for local government is fair and fit for purpose? If he does not, what action is he taking to change it? If he does think it is fair, can he please justify that?

At the start of the pandemic, the Government said that they would provide local authorities with all the support they needed. Sadly, however, I do not think that many in local government would say that that is the case at the start of 2021—that promise has not come to fruition.

Another huge issue for local authorities is the costs associated with people who have no recourse to public funds. How does the noble Lord intend to address that with this settlement? On a more general note, does he see the practical sense, particularly in these extraordinary times, of providing a multi-year settlement for local government? It would seem to be worth considering and would certainly help local government with its long-term financial planning.

Baroness Pinnock (LD) [V]: I draw the attention of the House to my interests as a member of Kirklees Council and as a vice-president of the Local Government Association.

This annual announcement of the funding package for vital local government services is never given the attention it merits. In the last year, it has become ever more apparent how dependent our communities are on the services provided by local councils. In March, it was local councils that ensured that nearly all rough sleepers were placed in accommodation. Contact tracing by local council officers has been over 90% successful, as compared with the approximately 60% success rate for the private sector, which has had vast resources to do the task. It is local councils that have encouraged and enabled hundreds of thousands of local volunteers to support their communities by befriending the lonely, and that have provided food and meals for families on the breadline and have continued to provide essential services, carried out by unsung heroes—the key workers in waste collection, social care and children's services, to name just three.

The Public Services Committee of your Lordships' House has reported that, in the nation's efforts to combat the pandemic, it was locally delivered services, provided by local councils and the voluntary sector, that were able to rise effectively to the challenge and respond to new demands in very different circumstances. On behalf of Liberal Democrats in this House, I express thanks for the amazing effort and leadership of councillors and council staff across the country.

That is the context of this funding settlement. It is, then, disappointing to read that those sterling efforts are not to be rewarded by the provision of funding that will enable councils to provide the additional services that their communities will need in the months and years ahead. For example, all predictions are that there will be a considerable rise in unemployment and business closures.

The funding settlement has a top-line figure of an increase in spending of 4.5% in what is described as "core spending power". However, this is predicated on councils increasing council tax by the maximum amount permitted by the Government before triggering a local referendum. Unpacking this top-line increase reveals that 85% of the increase in funding comes from council tax payers—hard-pressed council tax payers. There will be a 2% council tax increase and, on top of that, a 3% increase in the social care precept, resulting in an expectation by the Government that council tax payers must pay an additional 5% this coming year.

Since the social care precept was first introduced by this Government, it has resulted in council tax payers being required to pay 15% more, over and above the 2% maximum allowed. For an average band D council tax payer, the extra imposed by this could mean a further £260 each year. Do the Government intend to pile the pressure on council tax payers every year via this social care precept? Can the Minister let the House know when proposals for social care funding reform will be published?

It is welcome that the Government have recognised the cost pressures on councils as a result of Covid. Those cost pressures come in the form of lost income for, for

example, leisure services teams, but there are additional costs in tackling the pandemic. Unfortunately, the Government appear to be willing to fund only 75% of the losses, which simply puts even greater pressure on service delivery at a time when this is needed as never before. The consequences are, as the noble Lord, Lord Kennedy, has just said, inevitable job losses in local government and a reduction in vital services at a time when they are needed as never before.

If the Government's levelling-up agenda is to be meaningful, it has to include enabling local government to extend its services—for instance, in the regeneration of local economies and improving skills to open up better-paid opportunities for local people. Can the Minister give any assurances to the House that the Government's thinking on the levelling-up agenda includes a substantial and properly funded role for local government?

Of course, fundamental reform of local government funding and business rates is the basis of a secure future for local government when the role of public services, locally determined and delivered, has been never clearer. Therefore, can the Minister tell the House when the fair funding reform for local government is to be published and determined, and when business rates reform is to be tackled? I look forward to his answers to those questions.

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): My Lords, unfortunately I do not have the ability to declare an interest in local government as a vice-president of the Local Government Association, despite 16 years as a local councillor, six years as council leader in the London Borough of Hammersmith and Fulham, and four years in City Hall as Deputy Mayor for Policing and Crime, but that gives me the ability to talk with some confidence about why I think this settlement by the Government is particularly generous at this time.

Even when you unpack the numbers, as has been done by the noble Lord, Lord Kennedy, and the noble Baroness, Lady Pinnock, the reality is that there is a headline increase in core spending power of 4.5% but we see not a single reduction in grant income. Indeed, in some areas the grant income has increased considerably. Of course, if local town halls want to maximise their core spending power, they have a choice in how much they increase council tax. This coming financial year is not disproportionately different from the previous one in assuming increases of 2% in council tax and 3% for adult social care, as compared with 2% in the previous financial year, but, as a balancing item, that is a choice for council leaders and their Cabinets up and down the country to take, with, in some cases, elections looming. They have a choice in how much they increase council tax for their residents.

The Government have honoured their commitment to support local government through the pandemic. I too pay tribute to the amazing work of people in our town halls, providing services on the front line at a particularly difficult time. I commend them, and I agree with both previous speakers that they have played a phenomenal role in this pandemic. Long may that continue. As we have heard, the Government join both the noble Lord and the noble Baroness in supporting the work of people throughout the country delivering local services to their local communities.

So far the Government have provided—I am sorry to hesitate, but I am not seeing too well at the moment—£6.2 billion in support specifically to meet the pressures of the pandemic. Sorry, I got that figure wrong; it is £7.2 billion. I can add an extra billion for you: there has been £7.2 billion in support through the pandemic. As mentioned in the other place, the estimate of what local councils have spent is £4.4 billion. My maths is not terribly good, but that is less than the £7.2 billion given to councils. Frankly, that is putting our arms round town halls and supporting them through those inevitable pressures during a pandemic.

It is estimated, rightly, by local government itself, that that expenditure will increase and hit £6.2 billion. But again, within this settlement is £1.55 billion for Covid-related pressures. That shows a tremendous commitment from the Government, and tremendous work by my right honourable friend Robert Jenrick in negotiating with the Treasury for a great settlement for local government, and one that honours the support needed for our town halls.

It is fair to say that we face tough times. The economy has contracted, and people may be unable to pay their council tax. I can declare an interest as a council tax payer, and as a director of a business that pays business rates. Yes, businesses are struggling, and people are struggling to pay their bills. But covering 75p in the pound, without knowing the downside, is a pretty good deal from the Treasury, rather than the way in which the noble Baroness, Lady Pinnock, described it.

There is the same commitment to ending rough sleeping, and a 60% increase in funding. There is also the same commitment to people with no recourse to public funds. The derogation for London has been widened to the rest of the country, which is commendable. We have also told local town hall leaders that they have the discretion to support people without recourse to public funds who are not EEA nationals, as they see fit. That is the leadership we need to see in our town halls.

I agree with the noble Lord, Lord Kennedy, and the noble Baroness, Lady Pinnock, that we need to think about council tax, and about balancing council tax and grants. I will say more about that later, because I want to save some of my ammunition for speakers to come.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, we now come to the 20 minutes allocated for Back-Bench questions, and I call the noble Lord, Lord Lancaster of Kimbolton.

1.35 pm

Lord Lancaster of Kimbolton (Con): The Oxford-Cambridge arc is an economic powerhouse, but we desperately need more new homes for skilled workers if we are to help drive the economic recovery post-Covid. The challenge for local authorities is the up-front funding of vital infrastructure such as roads and schools, given that council tax receipts will not come until after the homes are built. The new homes bonus is most welcome, and although I will not join the chorus for

[Lord Lancaster of Kimbolton]
more money, may I simply ask my noble friend whether he thinks it could be better targeted at the areas that need it most?

Lord Greenhalgh (Con): My Lords, I thank my noble friend for mentioning the Oxford-Cambridge arc. Unlike the Prime Minister, I err more towards the Cambridge end of it. My noble friend is absolutely right to draw our attention to the importance of getting the infrastructure right to unlock growth and the prosperity of this country. That is why, as part of planning for the future—we discussed this at length in connection with the *Planning for the Future* White Paper—we are looking at an infrastructure levy, which would be much more transparent and streamlined, as a way of raising the funds that local areas need to ensure that they have the infrastructure to unlock their potential.

Lord Liddle (Lab) [V]: My Lords, I declare an interest as a member of Cumbria County Council, and I seek the Minister's advice, because we have a meeting on Monday morning about whether to proceed with the 3% supplement on council tax to fund social care. Does he agree that, in total, a 5% increase in council tax is a very considerable real-terms increase at a time of great economic stress? Secondly, does he agree that council tax is an unfair tax, because it does not make the broadest backs bear the heaviest burden, which should be a fundamental principle of taxation? Thirdly, does he agree that, given the desperate position of social care, made worse by the Covid crisis, local authorities have little real choice in whether to implement the 3%? Finally, will he make a commitment that this will be the last year when this grossly unfair mechanism for funding social care will be applied, and that in 2021 the Government will produce their long-promised plan for putting the funding of social care on a long-term sustainable basis?

Lord Greenhalgh (Con): My Lords, I have never heard so many questions poured in with such economy, but I refuse to give advice to any council, or any councillor, on how they should tax their local communities. I could point to my own record as the leader of Hammersmith and Fulham Council. For six years we cut council tax by 3%, and for one year we froze it. That was because I believed that our council tax level was too high. I did not understand why neighbouring boroughs such as Wandsworth and the Royal Borough of Kensington and Chelsea had substantially lower council tax than Hammersmith and Fulham. I chose the route of being able to tax less and provide better services, through more efficiency and driving greater productivity. So I would say that it is down to local leaders to decide how they set their council tax. My advice would be: what do you think is in the interests of your people? I agree that council tax is a regressive tax—but it is particularly ridiculous to see how some councils have to raise their funds largely through council tax increases, because they receive so little grant as a proportion of their combined budget. I shall give more examples of that later.

Lord Young of Cookham (Con): My Lords, in the Statement we are discussing, the Secretary of State said:

"I want local government to emerge stronger, more sustainable and better able to meet the needs of those it serves."

Does my noble friend, with his local government experience, recognise that the current tax base for local government is unsustainable, with domestic rates 30 years out of date—and, as he has just admitted, regressive—and commercial rates killing the high street? Will the White Paper on devolution and local recovery, promised for last autumn, set out a firmer and broader basis for local government, so that it can be empowered as the Secretary of State wishes?

Lord Greenhalgh (Con): My Lords, I have saved my data, which I carefully put together—although I will not be able to read it very well—for my noble friend's question, of which he kindly gave me notice. I shall tell a tale of two boroughs—the London Borough of Richmond upon Thames, a Liberal Democrat authority, and the London Borough of Hammersmith and Fulham, now, sadly, a Labour borough. It was taken over after I was leader of the council—but that is democracy for you. Things can change back again, I hasten to add, for the benefit of the noble Lord, Lord Kennedy. Things can swing both ways. For those two boroughs, exactly the same budget base was estimated, through both council tax and grant. Richmond upon Thames had £173 million and Hammersmith and Fulham £174 million—pretty much the same amount. Yet 83% of the money in Richmond upon Thames is raised through council tax, whereas only 31% of the money in Hammersmith and Fulham is raised through council tax. That is patently absurd. Of course we need to think about a more sensible system of local government finance. It is very hard to estimate via complex formulae, and I am sure the devolution White Paper will look into some of the vagaries of local government financing, whereby a river can separate, and thus create such great differences between, two neighbouring authorities.

Lord Scriven (LD) [V]: My Lords, I draw the House's attention to my interest in the register as a vice-president of the Local Government Association. The public health grant for 2020-21 was 22% lower per head in real terms compared to 2015-16. Restoring spending per head to this level would require an additional £1 billion. At a time of a public health crisis, to deal with the local ongoing and long-term effects of Covid-19, and to restart public health services that have had to be paused during this pandemic, does the Minister think the £1 billion should now be reinstated?

Lord Greenhalgh (Con): I will have to write to the noble Lord about that. I did not quite catch his question, but I will make sure that we get a full and proper answer to him and put a copy in the Library.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I declare my position as a vice-president of the Local Government Association. On the subject of local government finance, I am going back to two answers from the Government on 15 December to questions that I and the noble Lord, Lord Young of Cookham, had asked, referring to the £500 self-isolation payment to people who were ordered to self-isolate due to Covid-19 exposure or infection. At that point it

was clear that there was a postcode lottery, and some local authorities had run out so people were unable to get payment. On 15 December the Government gave two answers, one of which said there was a fixed envelope of money and implied that no more money would be given, while the other, from the noble Lord, Lord Bethell, said that this was under review. Has it been reviewed, and has the postcode lottery over the money being paid out by local government been fixed?

Lord Greenhalgh (Con): My Lords, I am sure that my noble friend Lord Bethell is absolutely right and the matter is under review.

Lord Greaves (LD) [V]: My Lords, I declare my interest as a member of Pendle Council. Pendle is a small district in east Lancashire. I speak again from the sunlit uplands of east Lancashire but they are not sunlit from the point of view of local government finance. The Minister talks about a 4.5% increase in core spending power but in my authority, if we did not increase council tax by the 2% that is allowed, we would have a reduction in core spending power, which is grossly unfair. About two-thirds of our council tax payers are in band A, which puts that band up to unsustainable levels. It is getting out of hand. People simply cannot afford the council tax that they are now being asked to pay. What is the Minister doing about that? Will he give an absolute commitment that not only is there the £1.5 billion in the settlement for Covid-related extra costs but there is still a commitment from the Government that all extra costs to local authorities from Covid during the next financial year will be met by government grant?

Lord Greenhalgh (Con): My Lords, I remind everyone that we have seen a seismic contraction of the economy and that many people have lost their jobs and will need to retrain. This has been a dreadful pandemic and it continues to be extremely tough as we enter another lockdown, but with the glimmer of hope that we have with the vaccine being available. We are providing grant funding that is absolutely flat in cash terms. Baseline funding remains £12.48 billion, the revenue support grant has increased a tad from £2.32 billion to 2.33 billion. Other grants have increased from £4.98 billion to £5.26 billion. That is quite a sizeable increase. There is no reduction at all in cash year on year, with inflation at relatively low levels and, as I mentioned, huge amounts of support for Covid-related pressures. I think that is an excellent financial settlement for local authorities. It really is up to the people in town halls to show some civic leadership and decide what they tax the local residents. If they choose to tax them heavily then they may have to pay the price at the ballot box, but that is democracy for you.

Baroness Uddin (Non-Afl): My Lords, I humbly succumb to the Minister's statistical genius, so I am not going to go into that arena. I welcome all the resources and measures introduced by the Government so far, especially regarding homelessness and commitments towards easing the "no recourse to public funds" rule for families. The Minister will be aware that, in Newham and Tower Hamlets in particular, homelessness issues and overcrowding have contributed in part to the incredibly high numbers of infections and admissions. Yesterday in this Chamber we debated the commitment from the Government, and indeed all of us, regarding housing for families fleeing domestic violence. What consideration is being given to ensuring that that commitment and the Statement encompass and embrace all these very pressing needs and demands? How will we continue to ensure that the Government adhere to their own principles and desires to level up and be fair and equal and just?

Lord Greenhalgh (Con): I thank the noble Baroness, Lady Uddin, for raising the issue of homelessness. I know from having visited the London Borough of Tower Hamlets on many occasions and the London Borough of Newham on a number of occasions that homelessness is a real issue. I would point out that this settlement is pretty good news: it is reasonable to put forward £100 million to start planning for move-on accommodation from temporary accommodation, which is not a place where you want families to be. That was provided in the summer. There is a commitment in the financial settlement of £750 million towards supporting people whom we have a statutory duty to house—the homeless—and £430 million of that is for move-on accommodation. I hope that assures the noble Baroness that we take issues of how to tackle homelessness very seriously.

Baroness Neville-Rolfe (Con) [V]: My Lords, largely because of the needs of Covid, the national finances are now in a dire state. Many retailers are experiencing serious financial problems for the same reason. The temporary suspension of business rates, a national policy, is relevant. Is the Minister satisfied that the Government's policy on business rates is optimal and value for money and that it best deals with the serious problems both within the retail sector and, more generally, the problems of the high street?

Lord Greenhalgh (Con): I thank my noble friend for raising the issue of the high street. There is support through the high streets fund to ensure that our high streets thrive, but they are places where we need to see significant change. As my noble friend points out, a lot of businesses on the high street are struggling to pay their business rates. I think that, in the longer term, the tax base needs to shift. This is not policy, but self-evidently we are seeing online business take a greater share, and those housed in bricks and mortar are struggling to make a go of their businesses.

We need to see a policy shift over time. The Government cannot do that by waving a magic wand, so we need to make sure that there are policy tweaks to support the high street in the interim. There are a lot of measures to do that in those that my right honourable friend Robert Jenrick has announced. More will be coming to support our high streets, which are the very bedrock of local economies.

Lord Shipley (LD) [V]: My Lords, I too should remind the House that I am a vice-president of the Local Government Association. The Minister said earlier that the settlement is particularly generous, but

[Lord Shipley]
the reality is that the Statement means that council tax could rise for council tax payers by up to 5% in April. At the general election just over a year ago, the Conservative Party manifesto promised not to increase income tax, national insurance or VAT in this Parliament. The consequence is an increased burden on council tax payers for the sixth year in a row, largely to fund adult social care. Why do the Government force up council tax in this way, well above the rate of inflation?

Lord Greenhalgh (Con): My Lords, all of us who have run local authorities recognise the spending pressures intrinsic to local government, particularly for adult social care but also for social care for children. They form a significant part of any local authority budget, so it is quite right and proper to think about giving the option, as a balancing item, to have the latitude to increase council tax to pay for some of our most needy. The other 2% is very much guidance; it is a balancing item. It is for administrations up and down the country to decide whether they want to increase council tax to achieve the maximum core spending power. That is the situation that we find ourselves in. There is no reduction in grant and significant extra funding to see local councils through the Covid-related pressures. That is a good deal, particularly given the state of our national economy and the rise in national debt.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, the noble Lord, Lord Wei, has withdrawn so all Back-Bench questions have now been asked.

1.50 pm

Sitting suspended.

Arrangement of Business

Announcement

2 pm

The Deputy Speaker (Lord Haskel) (Lab): My Lords, the Hybrid Sitting of the House will now resume. I ask all Members to respect social distancing. I will call Members to speak in the order listed in the annexe to today's list. Interventions during speeches or "before the noble Lord sits down" are not permitted, and uncalled speakers will not be heard. Other than the mover of an amendment or the Minister, Members may speak only once on each group. Short questions of elucidation after the Minister's response are permitted but discouraged. A Member wishing to ask such a question, including the Members in the Chamber, must email the clerk. The groupings are binding, and it is not possible to degroup an amendment for separate debate. A participant who might wish to press an amendment other than the lead amendment in the group to a Division must give notice, either in the debate or by emailing the clerk. 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 wants their voice accounted for if the Question is put, they must make this clear when speaking on the group.

Trade Bill

Report (3rd Day)

2.02 pm

Relevant document: 15th Report from the Constitution Committee

Amendment 17

Moved by ***Lord Hain***

17: After Clause 2, insert the following new Clause—

"Trade agreement with the EU: compliance with the Protocol on Ireland/Northern Ireland

Any trade agreement between the United Kingdom and the European Union that is subject to sections 20 to 25 of the Constitutional Reform and Governance Act 2010 is not to be ratified unless it fully complies with the requirements of the Protocol on Ireland/Northern Ireland as part of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as signed and ratified by Her Majesty's Government."

Lord Hain (Lab) [V]: My Lords, I will move Amendment 17 and speak to Amendment 18. Both on the Irish border and have been largely superseded technically, if not in spirit, by the December deal. I will also speak to Amendment 26 on the Irish Sea, on which I will seek leave to divide, with the permission of your Lordships' House. I am grateful for the support of the noble Baronesses, Lady Altmann, Lady Suttie and Lady Ritchie, the noble and right reverend Lord, Lord Eames, and the noble Lord, Lord Cormack.

First, I will address Amendments 17 and 18 on the Good Friday agreement and the Irish border. As I have argued before, both on this Bill and on other Brexit-related Bills, I am profoundly convinced that the objectives of Amendment 18 are absolutely essential to provide for full protection for the Good Friday/Belfast agreement in all its parts, and, as part of that, to prevent a hardening of the border on the island of Ireland. Very importantly, the amendment is also consistent with, and indeed complementary to, the European Union (Withdrawal) Act, into which this House placed important text along similar lines to Amendment 18, with the eventual agreement of the Government in the other place at the final stage.

There is now agreement between the UK and the EU on how to implement the Irish protocol, which is fully incorporated in the December deal, but we must help the Government to keep to their word and stated commitment to the Good Friday/Belfast agreement, not least—crucially—when negotiating future trade agreements.

The future relationship agreement, negotiated just before Christmas, thin though it is, at least removes the question of tariffs from the long list of barriers that Brexit has put up around this country. Those of us who have served as Secretary of State for Northern Ireland, whether Labour or Conservative, know how politically unique and ever-fragile matters are on the island of Ireland.

Amendment 18 is consistent with our international legal obligations. In fact, it will help with trade negotiations, because our potential trading partners will know where they stand and what the parameters related to the protocol are, and it would therefore be good to hear the Minister uphold the principles within the amendment when he replies, even if technically its drafting is now outdated because of the deal struck in December.

Let us remind ourselves one more time why we have the Northern Ireland protocol. The border is the key sensitive issue: it is 300 miles long, with 300 crossings, unlike almost every other border in the world. Of course, there is more to the protocol than the border. We have the unique arrangements under the Good Friday/Belfast agreement for north-south co-operation: no less than 157 different areas of cross-border work and co-operation in Ireland, north and south.

I have said it before here and will say it again: the work of successive UK and Irish Governments, in helping courageous and visionary leaders in Northern Ireland, was all about taking borders down, not putting them up. It is vital that the United Kingdom and its Government keep in line with that. No new international trade agreement between the United Kingdom and another nation must ever be ratified unless it is compatible with the Good Friday agreement and Northern Ireland Act 1998, is fully compliant with the protocol on Ireland/Northern Ireland, does not negatively affect any form of north-south trade in goods and services, and does not create physical infrastructure related to customs checks, customs or regulatory compliance checks. These are all things that Ministers say they agree with, and they are contained in Amendment 18.

I turn to Amendment 26, on the Irish Sea, on which, as I said, I will seek to divide. It is designed to ensure unfettered market access for goods moving between Northern Ireland and other parts of the United Kingdom's internal market, and unfettered market access for services between the two. It is also designed to ensure that there are no tariffs or customs procedures for goods originating in Northern Ireland that are entering Great Britain so that there is no discrimination against Northern Ireland's businesses.

We had significant progress last month in the meeting of the co-chairs of the UK-EU joint committee, which was most welcome and not before time. That "agreement in principle" was to implement the protocol on Ireland/Northern Ireland in a way that reduces potential friction and burdens on businesses come 1 January. However, the protocol is not an event but the environment or a process in which Northern Ireland's economy will have to develop, and many uncertainties remain for Northern Ireland's businesses, which have suffered huge stress because of that over the past year, and in many respects are still suffering.

The conditions of Northern Ireland's economic development will be directly affected by the UK's trade deals to be sought and negotiated with other countries beyond the European Union. This is not just by virtue of its access to those free trade agreements; it is also by virtue of the potential consequences of those deals on Northern Ireland's place in the UK internal market.

The protocol that was agreed and ratified as part of the UK's withdrawal agreement puts Northern Ireland in a wholly new position. It is a unique set-up in terms of global trade, let alone a distinctive arrangement with the European Union. The protocol text makes it clear that there are significant limitations and boundaries to its scope, most particularly when it comes to trade. Article 4 states that

"nothing in this Protocol shall prevent the United Kingdom from including Northern Ireland in the territorial scope of any agreements it may conclude with third countries".

Article 4 also states that

"nothing in this Protocol shall prevent the United Kingdom from concluding agreements with a third country that grant goods produced in Northern Ireland preferential access to that country's market on the same terms as goods produced in other parts of the United Kingdom."

Furthermore, Article 6 of the protocol states that there is nothing in it that would prevent

"the United Kingdom from ensuring unfettered market access for goods moving from Northern Ireland to the rest of the United Kingdom's internal market"—

as this amendment states. Those restrictions on the scope of the protocol put the onus squarely on the United Kingdom to deliver such things for Northern Ireland—access to the UK's free trade agreements and unfettered access to the markets in Great Britain.

However, what the protocol does not and cannot do is ensure that there is no discrimination against Northern Ireland, and no knock-on consequences for its place in the UK's internal market when it comes to the UK's future trading relationships.

We saw with the recent UK-Japan free trade agreement an acknowledgement that there could be an "inconsistency" between a free trade agreement and the protocol. Thankfully, in the case of the UK-Japanese deal this will be minimal, because—I stress this—of the pre-existing conditions of the Japanese trading partnership with the EU. It was much easier to protect Northern Ireland's situation in this new Japan-UK deal because the Japan-EU deal meant that Japan could offer "full extended cumulation" in its deal with the UK: it could count all goods with EU origins, and even those part-processed in the EU, as being from the UK. This helps to keep Northern Ireland, which is producing to EU standards, in the ring.

These conditions, however, will not be the same for many future free trade agreements. It is quite conceivable that differences between the UK's rules and the EU's rules in trading with any particular country could bring friction for Northern Ireland, both on the entry of its goods into Great Britain and on the entry of goods from Great Britain into Northern Ireland. Given these risks, it is quite extraordinary that the UK Government's own impact assessment on the UK-Japan free trade agreement explicitly acknowledges that it did

"not explicitly take account of any impacts arising from the Protocol on Ireland/Northern Ireland".

Amendment 26 is necessary for four main reasons. The first is the distinctiveness of Northern Ireland's economic and trading position under the deal. The second is its dependence on the commitment of the UK to delivering on filling the gaps in its trading arrangements. The third is the possibility of tensions between the

[LORD HAIN]
terms of new UK free trade agreements and Northern Ireland's position in the protocol. The fourth and final reason is the failure of the UK Government, in their most substantial non-EU free trade agreement to date—with Japan—to give due consideration to this matter.

We can be sure that the economic and trading environment for Northern Ireland—de jure in the UK's customs territory, but applying the European Union's customs code—will become only more complicated over time. It is therefore absolutely essential to put protections for Northern Ireland into UK domestic law that ensure that government commitments to this most vulnerable of UK regions are upheld and secured, even as the tough decisions and pay-offs in international trade negotiations become an increasingly familiar reality.

The same applies to services as to goods. Though they were not covered by the protocol—or by the deal struck with the EU before Christmas—and are often not included in free trade agreements, we must ensure that there is no discrimination against services either, because they are a very important part of both the Great Britain and Northern Ireland economies. I therefore urge your Lordships to support Amendment 26, on unfettered access for Northern Ireland, when the House divides.

2.15 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, it is a pleasure to follow my noble friend Lord Hain, who has outlined in a very detailed and expansive way the purpose and remit of these three amendments.

These amendments, to which I am one of the signatories, are very much Northern Ireland-specific. It is important that there is now a trade deal. I was a remainer and I will always be a remainer: I did not vote for Brexit but I recognise that there was a need for a trade deal between the UK and the EU—albeit a thin deal, as this is. Having talked to businesses in Northern Ireland, I know that it is clear that mitigations are still required. As a result of the trade deal—which is totally wedded to the protocol—and the acceptance and acknowledgement of the Northern Ireland protocol between the UK and the EU in the joint committee, Amendments 17 and 18 are largely eclipsed.

Notwithstanding the need to see ongoing commitments that demonstrate the implementation of the withdrawal agreement and the Ireland/Northern Ireland protocol, all efforts must be made to ensure the full implementation of the Good Friday agreement and the principles of parity of esteem and reconciliation. These are fundamental to our political and peace settlement. Having served as a Minister in the Northern Ireland Executive when my noble friend Lord Hain was in the later stages of his tenure as Secretary of State for Northern Ireland, I know that he will be well aware of the importance of parity of esteem, reconciliation, working together and partnership in the process of bringing people together.

Borders are generally anathema to us: we do not want to see borders on the island of Ireland—hence the need for the protocol—or a border in the Irish Sea. Sadly, however, that has happened, because there are now border posts at Larne, Belfast and Warrenpoint ports. There have also been some teething difficulties, such as the vacant shelves announced today by Tesco and Sainsbury's. Can the Minister say that those teething issues will be resolved, if at all possible, and that mitigations will be introduced to assist the business community and keep our local economy buoyant?

So far, analysts and researchers, such as Professor Hayward from Queen's University Belfast, have indicated that the trade and co-operation agreement did very little to soften the Irish Sea border. But one thing is sure: Amendments 17, 18 and 26 precipitate the need to look out for certain things in relation to the protocol and the trade and co-operation agreement.

The TCA is complicated, and it will take months for experts, lawyers and officials fully to work out its implications, and on many of these we will be reading across to the protocol. The TCA is a work in progress; there are many references in the document to future development or anticipated improvements. There are four overriding concerns for Northern Ireland. How will the evolution of the TCA be connected to that of the protocol? How will the governance of the protocol, including its unique institutions for that purpose, be linked into relevant areas of governance of the TCA in a specialised committee for SPS measures? How will the British-Irish and north-south strands work to develop substantive and serious bilateral arrangements to meet the gaps in the TCA and common travel area? When the real impact of Brexit takes effect on Britain and the EU, how much care and flexibility will either be prepared to show Northern Ireland, which is on the periphery of the UK and of the European Union?

As the noble Lord, Lord Hain, stated, Amendment 26 deals specifically with the need to ensure that there is no discrimination in goods and services from Northern Ireland to Britain. It is important that provision for that unfettered access is placed in the Bill. The amendment would mean that any trade agreement between the UK and any other party that was subject to Sections 20 to 25 of CRaG was not to be ratified if anything in that agreement prevented the UK from ensuring unfettered market access for goods moving from Northern Ireland and other parts of the UK's internal market and services provided by a service provider in Northern Ireland to customers in other parts of the UK and vice versa. It would also ensure that the Northern Ireland economy was protected and not undermined in any specific or deliberate way and, particularly with the ravages of Covid-19, was allowed to become buoyant again.

I fully support the noble Lord, Lord Hain, in proposing Amendment 26. If he calls for a Division, I shall support him in the virtual Lobbies later this afternoon. It is important that Northern Ireland's distinct trading position is protected and that any tensions that may arise between the protocol and the internal market are resolved. The one way in which to do that is by accepting Amendment 26.

Lord Eames (CB) [V]: My Lords, I want to address the terms of Amendment 26, in the name of the noble Lord, Lord Hain, the noble Baroness, Lady Ritchie, and others. I do so with a feeling of compulsion, not just for historical reasons but because of the situation as it is now in Northern Ireland. When we talked about this amendment for the first time, it was possible

to refer to the fact that the Northern Ireland land border would soon become the border between the United Kingdom and the European Union. As time has passed and we have considered this Bill, the situation is now slightly different. The difference is that the land border between Northern Ireland and the Republic is the border between the United Kingdom and the EU. Because of that, many would say, "Well, the situation has clarified for Northern Ireland, and many of the worries that you have expressed to the House over the years have resolved themselves to a certain degree of clarity, because the situation is that your border is the border with the EU".

I refer to a remark made by the noble Lord, Lord Fox, on a previous occasion in debate on this Bill. He said that trade was about people—a simplistic remark that it would be very easy to erase from the memory. However, in the light of what we who support this amendment today want to stress to the House, that remark stresses something of great importance. Over the years, I have at some length spoken to your Lordships of the sensitivities in Northern Ireland based on our history, and this is not the occasion to do so again—except to say that nothing in this Bill can be dismissed as having no historical context, because trade is about people. I speak after years of experience of dealing with those problems, and dealing with them on a practical level, as the Anglican primate of the whole of the island.

The wording of Amendment 26 attempts to answer what underlines a great deal of the trouble and worries in Northern Ireland at this moment. Those worries can best be summed up as uncertainty, because uncertainty brings with it stress. The business community is faced with Brexit, with the unknown future lying before us all and with the questions of our relationship with the rest of the United Kingdom which the noble Lord, Lord Hain, painted so clearly just now. All that uncertainty combines to figure dangers for the trade and business prosperity of a part of the United Kingdom—namely, Northern Ireland. If the sense of this amendment is not included on the pages of the statute book, in the light of what else is said about the Trade Bill, its absence will make even more visible the uncertainty and the stress for our local community.

We have spent a long time in this House looking at this Bill. We have had to face its terms not only in what is before us on the Marshalled List but in what is happening in the situation around us, far from Westminster. The plea that I make, coming as I do from Northern Ireland, is that your Lordships realise that we are not playing with words. We are not trying to overdramatise for historical reasons the need for this amendment. We are saying that we represent genuine uncertainty and doubt and, as one businessman put it to me at the weekend, the fear of the uncertainty that lies ahead of us as part of the UK.

I stress one other aspect. One lesson that the debates on this Bill has produced has been a new recognition of the doubts as well as the achievements of the devolved settlement. We have learned a great deal about that relationship and that settlement; we have learned how good it can be, how welcome it can be and how strong it can be for the whole United Kingdom, but we have also recognised its limitations.

Amendment 26, so ably produced by the noble Lord, Lord Hain, shows the need to be clear in those areas of uncertainty where part of the United Kingdom finds itself not as a future border with the European Union, but the border today between two Administrations. I hope the Minister will realise, when he comes to reply, that one of the shortcomings of the way in which we work as a House under our present conditions is that there are often things that cannot be examined in detail. This is very true of matters of trade but even more true of matters to do with people, and because people are a part of trade, I support Amendment 26.

2.30 pm

Baroness Altmann (Con) [V]: My Lords, I congratulate the noble Lord, Lord Hain, on his tremendous work in the area of Northern Ireland-Great Britain relationships. I was delighted to add my name to Amendments 17 and 18, alongside the noble Baronesses, Lady Ritchie and Lady Suttie. I am also happy to congratulate the Minister and our Government for reaching an agreement on trade with the EU that avoided a no-deal Brexit and all its disastrous consequences for every part of the UK. I recognise that this means Amendments 17 and 18 have been superseded, but I want to mention my ongoing concerns about the position of Northern Ireland within the UK and the fact that the UK-EU trade agreement reached in December still means that goods entering Northern Ireland from Great Britain need a customs declaration, and new border posts have been set up, yet Ministers continue to suggest that there is no Irish Sea border. Will my noble friend just confirm for the House that, indeed, there is one?

I fear that trade experts confirm that there are still unanswered questions on tariffs and trade, even with the deal. Indeed, customs officials with decades of experience have said that post-Brexit Irish Sea border arrangements are cumbersome and complex, and that there is a shortage of customs agents, which is already causing significant problems in Northern Ireland. Will my noble friend tell the House how many agents are expected to be required, how many are in place at the moment, and when the Irish Sea border will be fully staffed? Will my noble friend also explain why the Government refused to accept Amendments 17 and 18 in December and why they reject Amendment 26 now? Surely, the Conservative and Unionist Party would agree with this amendment as it does protect the Northern Ireland protocol. Will my noble friend reassure the House and comment on what the noble Lord, Lord Hain, said about the UK-Japan trade deal, which did not contain an impact assessment of its effect on the Northern Ireland protocol?

Clearly, the position of Northern Ireland is a special one, and it is special also to those of us on these Benches who have, for so long, been supportive and concerned about the impact of Brexit on Northern Ireland, the Good Friday agreement and the protocol. I hope my noble friend can explain to the House, reassure us on a number of these issues and explain what reasons the Government have for not accepting Amendment 26.

Lord Cormack (Con) [V]: My Lords, it is a pleasure to follow my noble friend Lady Altmann. I join her in congratulating the noble Lord, Lord Hain, on the

[Lord Cormack]
ingenuity of his important Amendment 26. As he and others have recognised, Amendments 17 and 18 have, to a large degree, been overtaken by events, but I believe that something along the lines of Amendment 26 must be incorporated in the Bill to give reassurance in Northern Ireland. I would go so far as to say that the success of the deal concluded on Christmas Eve, which I welcome, hinges to a large degree upon Northern Ireland.

In his very moving words, the noble and right reverend Lord, Lord Eames, indicated that the fact that the border between the Republic and Northern Ireland is also the border between the United Kingdom and the European Union is a matter of great significance. He also pointed out the sensitivities in Northern Ireland, sensitivities of which I became acutely aware during my five years as chairman of the Northern Ireland Affairs Committee in another place and which, for me, were seen at their most acute and most moving at a meeting I had the privilege to address in Crossmaglen village hall in 2009, following the brutal and sadistic murder of Paul Quinn.

Northern Ireland is a precious part of the United Kingdom. The Belfast agreement must not be put at risk. Free passage across that border, with its 300 points of crossing, must remain and anything that can give reassurance where, at the moment, there is uncertainty, as the noble and right reverend Lord, Lord Eames, so graphically outlined, must be to the betterment of our relations not only within the United Kingdom—which I pray remains the United Kingdom—but between the United Kingdom and the European Union. Anything that can give such reassurance must, surely, add strength and purpose to the Bill.

I am not going to attempt to rehearse the arguments of the noble Lord, Lord Hain. He put them succinctly and graphically and I believe they should command the support of your Lordships' House. I therefore have pleasure in supporting these amendments, particularly Amendment 26, and I beg my noble friend on the Front Bench to give a reply that means that the noble Lord, Lord Hain, does not need to divide the House. We should not be divided on an issue that, above all, should unite us—the future of the Belfast agreement. If this amendment cannot be accepted for some technical reason, then I beg the Minister to undertake to introduce an amendment at Third Reading that will encapsulate the fundamental points of this one and underline its purpose. I am glad to give my support to the noble Lord, Lord Hain.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I am pleased to offer the Green group's support to all these amendments, particularly Amendment 26. It is a pleasure to follow the detailed, highly informed expositions of the noble Lord, Lord Hain, and the noble Baroness, Lady Ritchie of Downpatrick. I do not feel there is a great deal to add, so I will be very brief, but I want to ask two questions of the Minister. First, what assessment have the Government made of the understanding and ability to deal with this of small businesses, particularly in Northern Ireland but also those exporting goods and services to Northern Ireland? How are they dealing with, and how will they be able to deal with, the trading co-operation agreement arrangements? Is the Minister confident that there is sufficient support for those, given the uncertainties that the noble Lord, Lord Cormack, just referred to?

Secondly, venturing into a very complex area but one that I know is of great importance to some people, as I understand it there is a hard border down the Irish Sea for seed potatoes and possibly also for fresh potatoes. Can the Minister explain the situation with potatoes going to and fro across the Irish Sea?

Lord Wigley (PC) [V]: My Lords, I am delighted to follow the noble Baroness, Lady Bennett, and to support very warmly the vital point made by the noble Lord, Lord Hain, who has shown such great commitment to Northern Ireland over the years and continues to do so, particularly in the dimension of the Brexit process. I also warmly support the comments made by the noble Baronesses, Lady Ritchie and Lady Altmann, and the noble and right reverend Lord, Lord Eames. I address these remarks particularly to subsection (1)(b) of the new clause proposed in Amendment 26, relating to goods originating in, or moving from, Northern Ireland and entering Great Britain.

Assurances were given to business in Northern Ireland by the Prime Minster that there would be no bureaucratic hindrances whatever on the goods they trade with other parts of the United Kingdom. It now appears that in some circumstances there can be documentary imposition placed upon them. This has serious implications for those selling such goods and those operating ports such as Holyhead. I remind the House that many of the products from Northern Ireland destined for UK markets have in the recent past been coming via Dublin and Holyhead. This is a matter I have repeatedly raised here in the Chamber. If trade such as this requires documentation, whereas trade directly from Northern Ireland to English ports does not, clearly this represents discrimination against Holyhead whether the goods, or part of them, originated wholly in Northern Ireland or were partly imported from third countries.

Holyhead has already suffered in recent days since the conclusion of the Brexit deal, with shipments that previously would have come from Dublin via Holyhead to English markets or on to continental markets now shipped from other locations in Ireland and not coming via Holyhead. Some, indeed, are going directly to the European mainland. We need clarification, so I hope that the Minister will accept Amendment 26 and can give some assurances, which are needed by those operating the port of Holyhead.

Baroness McIntosh of Pickering (Con): My Lords, I seek clarification on Amendment 26. We were promised unfettered access to the Northern Ireland market. I am privileged to sit on the EU sub-committee on the environment, which has taken a great deal of evidence on food producers, hauliers, and others in connection with trade between Great Britain and Northern Ireland in the run-up to the agreement now in place from 1 January 2021.

This unfettered access is clearly not in place. Although the briefing I was fortunate to receive last week from the Food and Drink Federation says their concerns in

this regard are reduced, they certainly remain. One of the difficulties relates to sausages, which seems to cause great hilarity because of the "Yes Minister" sketch that keeps being revived. Sausages and processed foods such as pies, in the short term, are apparently not permitted to enter the Northern Irish market. Are the Government, including the Minister and his department, aware of this? I know that there is a longer-term concern over these goods as well as milling flour, rice, some sugar products, and seed potatoes to the rest of the European Union, but there is the short-term issue of exporting these goods to Northern Ireland. I imagine that this is an unforeseen consequence of the deal which was announced at very short notice. I would be grateful for a commitment from my noble friend to ensure that this will be resolved and that sausages, whether made in north Yorkshire by Heck or other producers across Great Britain, will have access sooner rather than later to Northern Ireland.

What is the position on the time and cost to be taken on issuing export health certificates? Does my noble friend share my concern and that expressed by others, including the British Veterinary Association, of which I am an honorary associate, about the shortage of vets and potential impact on exports and movement between Great Britain and Northern Ireland in this regard?

There is a need for a provision along the lines of Amendment 26, and I look forward to hearing what the Minister has to say to allay my fears.

2.45 pm

Viscount Trenchard (Con): My Lords, I hesitate to speak in connection with Northern Ireland matters and have tended to leave these matters to those with more experience of the Province. Like many noble Lords, I regret that the Northern Ireland protocol introduces uncertainties into the status of the Province as an integral part of the United Kingdom.

Amendment 17 is fair enough, except that it is unnecessary in a trade Bill. It is not necessary to complicate the Bill in this way because it is incumbent on the Government to comply with the requirements of the protocol. This includes, as noble Lords are aware, an affirmation of the place of Northern Ireland in the United Kingdom customs territory. Furthermore, the Government would not be able to enact any FTA not consistent with our international obligations. I believe that there is a strong case for saying that entering into the withdrawal agreement and the Northern Ireland protocol breached Article 50 of the Lisbon treaty. As the noble Lord, Lord of Kerr of Kinlochard, knows well, because he drafted it, the treaty clearly states that the terms of withdrawal of a member state shall be agreed against the background of that state's future relationship with the European Union. The EU, in my view, wrongly decided to cajole us into negotiating and agreeing the terms of withdrawal separately, and ahead of, agreeing what our future relationship should be. I trust that the Joint Committee will continue to make progress in mitigating the damage the protocol may do to the Belfast/Good Friday agreement.

Amendment 18 covers only north-south trade. It does not mention east-west trade. Amendment 26 covers east-west trade, but not in precisely the same terms. I believe that neither amendment is relevant or necessary in this Bill, although it is most important that facilitations should be agreed which minimise damage to both north-south and east-west trade.

The Deputy Speaker (Lord Haskel) (Lab): I call the noble and learned Lord, Lord Morris of Aberavon. He is not there, so we will move on to the noble Baroness, Lady Neville-Rolfe.

Baroness Neville-Rolfe (Con) [V]: My Lords, I rise to express my concern at these amendments. They have been presented at length and with much eloquence by the noble Lord, Lord Hain, and others. However, they ought not to be for this Bill.

This is not a Bill on our future relationship with the EU or the Northern Ireland protocol. We put all that to bed last month; there is another debate on Friday and a great deal of work continues not least in the EU committee on which I have the honour to serve and in the Joint Committee. However, except on procurement, the Trade Remedies Authority and data, this Bill is concerned with existing agreements between the EU and third countries. I take this opportunity of congratulating the Minister and Secretary of State Truss on the 63 agreements concluded with third countries in the last year, a record that will undoubtedly stand. The idea of attaching new conditions to such continuity agreements on other policy areas such as the Good Friday agreement, however strongly felt by those involved, is inappropriate. I will vote against the amendment for that reason, as I hope will others across the House.

The EU deal is behind us, thanks to the Prime Minister, my noble friend Lord Frost and the team, and the time has come to get this Trade Bill, which started as long ago as 2017, on to the statute book. I will not extend proceedings by speaking on other amendments which suffer from the same problem and which will also, no doubt, be presented with an equally eloquent case. We do no good in this House by introducing these kinds of conditions into inappropriate or irrelevant Bills. To my mind, they should be rejected.

Separately, as someone who loves and has historically been involved in investment in Northern Ireland, and in the interests of reducing uncertainty, to which my noble friend Lord Cormack referred, I look forward to the Minister's comments on the teething problems in supermarkets mentioned by the noble Baroness, Lady Ritchie of Downpatrick.

The Deputy Speaker (Lord Haskel) (Lab): I call again the noble and learned Lord, Lord Morris of Aberavon. No? I call the noble Baroness, Lady Suttie.

Baroness Suttie (LD) [V]: My Lords, it is a somewhat unexpected pleasure to end up following the noble Baroness, Lady Neville-Rolfe, who always brings so much practical business experience to debates, not least on Northern Ireland, given her experience with Tesco.

This has been an interesting short debate, with many powerful speeches. As the noble Lord, Lord Hain, and others have said, these amendments were tabled before a trade deal was reached with the EU and an outcome had been found for many of the remaining unresolved

[Baroness Suttie]
issues on the Northern Ireland protocol. Although Amendments 17 and 18, to which I have added my name, have clearly been passed by events, the anxieties surrounding the Government's ongoing commitment to the 1998 Good Friday/Belfast agreement remain, as the noble Baroness, Lady Ritchie, spelled out so powerfully. It is unfortunate that, as a result of the timings of this Bill, this House was unable to express its view through a vote on Amendments 17 and 18 before the ratification of the UK-EU trade deal.

These cross-party amendments stem from a lack of trust in this Government's ability to stick to their word. The handling of the Brexit negotiations has done little to increase that confidence. I therefore hope that the Minister can reconfirm to the House in his concluding remarks, for the record, the Government's total commitment to the Belfast/Good Friday agreement now that the trade deal has been agreed.

Amendment 26 deals with unfettered market access between Northern Ireland and other parts of the United Kingdom's internal market and in many ways reiterates the Government's stated policy. We are now in day six of the post-Brexit world and dealing with the realities rather than debating ideologically based theories. We are now beginning to see the realities of barriers to trade and of what the BBC has described as the "internal UK border". We are also witnessing the consequences of doing a deal so much at the last minute that proper preparation for the business community in Northern Ireland was not really an option.

Before Christmas, as the Minister will know, Northern Ireland trade groups warned that, in spite of the £200 million trader support service, businesses would not be ready to deal with the new border processes, computer systems and bureaucracy in time for 1 January. We are already seeing significant disruption to deliveries in Northern Ireland from many large retailers, such as Amazon, Sainsbury's, John Lewis and others. There is a genuine and understandable concern that this is not just a result of teething problems but could mark the beginning of a long-term trend where retailers based in Great Britain cut their services to Northern Ireland because of significant additional red tape and costs.

The introduction of the three-month grace period, while welcome, begs the question of what preparations the Government are making now to ensure that similar problems do not occur after 1 April this year. I would be grateful if the Minister could say a little about what preparations are taking place to prepare for the end of the grace period and what mechanisms the Government are putting in place to minimise barriers to trade. Will he commit to ensuring genuine consultation with Northern Ireland businesses, as well as with businesses based in Great Britain, that are directly affected? Will he also commit to listen, make changes and reduce barriers to trade, where such changes are still possible within the constraints of the EU trade deal?

I end by referring to the very powerful speech of the noble and right reverend Lord, Lord Eames, quoting my noble friend Lord Fox, saying that trade is ultimately about people. Passing Amendment 26 this afternoon would go some way to removing some of the deep uncertainties currently facing people and businesses in Northern Ireland.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, I am very grateful to my noble friend Lord Hain for pursuing these issues of such immense importance to the lives and prosperity of the people who live on the island of Ireland. I thank all those who have contributed to this rather good debate on the issues he raised. As the noble and right reverend Lord, Lord Eames, reminded us, successive UK Governments of all political colours have supported the people of Ireland and the peace process.

These amendments speak to that history. The Northern Ireland protocol is now the definitive statement about how trade in goods, but not services, is to be organised going forward. However, as my noble friend Lord Hain said, it must be supported, and, as the noble Baroness, Lady Ritchie, reminded us, it is really complicated. Amendment 26, which we support, raises how future UK FTAs will impact trade in goods and services in Northern Ireland, with particular reference to any discrimination which might arise, directly or indirectly.

The Minister will almost certainly say that we should not worry and that all the issues raised today are covered. Indeed, the noble Baroness, Lady Neville-Rolfe, urged us to move on. However, as my noble friend Lord Hain said, future free trade agreements may well raise issues, and he is right to insist that this Bill makes the position crystal clear. As the noble and right reverend Lord, Lord Eames, warned us, the absence of such a clause may have a disproportionate impact on the current situation. We should heed carefully his words about fear and uncertainty ahead and do what we can to mitigate it.

I agree with the noble Lord, Lord Cormack, that the Government should offer to bring this issue back at Third Reading, but I am not optimistic. If they do not, we will support my noble friend Lord Hain if he decides to divide the House.

Viscount Younger of Leckie (Con): My Lords, I thank the noble Lord, Lord Hain, the noble Baronesses, Lady Ritchie of Downpatrick and Lady Suttie, and my noble friend Lady Altmann for their amendments.

Amendment 17 strives to make the ratification of any future UK-EU trade agreement conditional on compliance with the Northern Ireland protocol. As noble Lords will be aware, and as the noble Lord, Lord Hain, himself has said, we have been overtaken by events—I think the word used by the noble Baroness, Lady Ritchie, was "eclipsed"—and the EU-UK trade and co-operation agreement has now been ratified. Noble Lords will also be aware that we remain fully committed to implementing the Northern Ireland protocol.

However, I am happy to provide further reassurances in my remarks today—I hope I will be able to do so. Our commitment is demonstrated by the agreement we have reached with the EU in the withdrawal agreement Joint Committee on the implementation of the Northern Ireland protocol. To reassure my noble friend Lady McIntosh, this upholds unfettered access for Northern Ireland businesses to their most important market, eliminating any requirement for export declarations for goods moving from Northern Ireland to Great Britain. It safeguards Northern Ireland's place in the UK's customs territory, establishing the platform to

preserve tariff-free trade for Northern Ireland businesses, protect internal UK trade and maintain the UK's VAT area.

On the question raised by my noble friends Lady McIntosh and Lady Neville-Rolfe on supermarkets, the Government acknowledge there are some teething issues and are working closely with the relevant stakeholders to urgently iron them out. The issues are being addressed, to give some reassurance.

3 pm

Throughout 2020, we worked intensively to ensure that the withdrawal agreement, in particular the Northern Ireland protocol, would be fully operational on 1 January 2021. The noble Lord and the noble Baronesses can be reassured that the agreement we have reached with the EU protects the interests both of the EU single market and, more importantly, the territorial and constitutional integrity of the whole United Kingdom so that both sides can have confidence in the agreement. We remain fully committed to the Belfast/Good Friday agreement and will not allow a hard border to appear between Northern Ireland and the Republic of Ireland.

My noble friend Lord Trenchard put this more eloquently than me, but, crucially, the Bill we are debating here does not address the UK's future relationship with the EU. That was dealt with via Parliament's ratification of the deal agreed with the EU last year. The Bill is concerned with, among other things, the implementation of international trade agreements with trade agreement continuity countries and making provision for establishing the Trade Remedies Authority.

Amendment 18 seeks to make ratification of any future trade agreement between the UK and the EU contingent on, first, compliance with the Northern Ireland Act 1998 and the protocol on Ireland/Northern Ireland, and, secondly, ensuring that there is no negative impact on trade between Northern Ireland and Ireland.

The protection of the Belfast/Good Friday agreement is a grave and solemn responsibility for both the UK and Irish Governments as its co-signatories, and both the UK and the EU have affirmed in the protocol that the agreement must be protected in all its parts. The protocol is a practical solution to avoid a hard border with Ireland while ensuring that the UK, including Northern Ireland, leaves the EU as a whole, enabling the entire UK to benefit from free trade agreements. As a result, there will be no change in the movement of goods between Northern Ireland and Ireland. That means there will be no new paperwork; no tariffs, quotas or checks on rules of origin; nor any barriers or checks on movement into the Republic of Ireland for goods in free circulation in Northern Ireland.

With the agreement in the Withdrawal Agreement Joint Committee on the 18 December last year, we have been able to deliver a package which now means that the protocol can be implemented in a pragmatic and proportionate way. It takes account of the Belfast/Good Friday agreement in all its dimensions. I understand your Lordships' desire to ensure that there will be no hard border between Northern Ireland and the Republic of Ireland, and it is a concern I share. The agreement we reached with the EU both on the protocol and on the UK's trading relationship with the EU ensures that this is an issue with which we need no longer be concerned.

Finally, Amendment 26 seeks to ensure that the UK's trade agreements cannot impede the unfettered access of goods and services from Northern Ireland to Great Britain or services from Great Britain to Northern Ireland. I took note of the passionate speech made by the noble and right reverend Lord, Lord Eames, where he said—quoting the noble Lord, Lord Fox—that trade is about people, and, of course, he is right. He went on to say that, therefore, people need certainty, and he is right again. But let me explain why we give this.

As noble Lords will be aware, the Government are already committed to ensuring unfettered access while maintaining and strengthening the integrity and smooth operation of our internal market through the United Kingdom Internal Market Act. The United Kingdom Internal Market Act guarantees UK companies can trade unhindered in every part of the UK by ensuring the free flow of capital, labour, goods and services. It also ensures that Northern Ireland is fully part of the UK's customs territory by ensuring that there are no tariffs on goods remaining within the UK customs territory and that businesses based in Northern Ireland have true unfettered access to the rest of the United Kingdom, without paperwork.

Our aim is to ensure that all our international agreements are implemented in a way that takes full account of the Northern Ireland protocol; this includes unfettered access. As set out in the Command Paper on the UK's approach to the Northern Ireland protocol, unfettered access means no declarations, tariffs, new regulatory checks or customs checks, or additional approvals for Northern Ireland businesses to place goods on the Great Britain market. We recognise that international trade partners will seek full access to the UK market. The UK internal market system provided for in the United Kingdom Internal Market Act will provide a stable, consistent regulatory framework that will support the UK's exporting and inward investment ambitions. Ensuring regulatory coherence across the UK internal market will help support free trade agreement implementation while maintaining unfettered access.

My noble friend Lady Altmann asked a number of questions. In terms of the focus on customs officers, I reassure her that we have already hired 900 more officers as customs agents, and 1,100 are to be hired by March. The Border Force will have recruited over 2,000 officers by July 2021, so there is urgent work in hand there. May I also attempt to answer her question on what the deal means for goods travelling into Northern Ireland from Great Britain? As she will know, a UK trader scheme will allow authorised businesses to undertake that the goods they are moving into Northern Ireland are not at risk of onward movement to the EU, and therefore not liable to EU tariffs. The scheme will be focused on goods being sold to, or provided for final use by, end consumers located in Northern Ireland. The scheme will be open only to businesses established in Northern Ireland, or businesses that meet certain closely linked criteria, to prevent abuse by letterbox or shell businesses.

As such, I can assure noble Lords that the Government are already fully committed to ensuring that the unfettered access that is the intent of Amendment 26 is maintained

[Viscount Younger of Leckie]
and—as the noble Lord, Lord Hain, himself said—that the principle is upheld. I therefore ask that the amendments be withdrawn.

The Deputy Speaker (Baroness Morris of Bolton) (Con): I have received no requests to ask a question of the Minister, so I call the noble Lord, Lord Hain.

Lord Hain (Lab) [V]: My Lords, I am very grateful to all the speakers. Perhaps I could single out my noble and right reverend friend Lord Eames for his powerful and passionate exposition of the worries in Northern Ireland at the moment, especially those of its businesses that face a very uncertain, stressful future.

Amendment 26 especially is a very live issue in Northern Ireland, as my noble friend Lady Ritchie of Downpatrick emphasised; she quoted the examples of hiccups over supply from Tesco and Sainsbury's. Northern Ireland's businesses feel they are left high and dry at present, as the noble Baroness, Lady Suttie, emphasised so compellingly, and as my noble friend Lord Wigley said about Holyhead and the hiccups around that, in terms of trade across the Irish Sea with the Republic of Ireland.

I am afraid that there is a reality gap between ministerial assurances, as we have heard so decently from the noble Viscount, Lord Younger of Leckie, and what is happening on the ground. For example, the noble Baroness, Lady McIntosh, made it clear that unfettered access is not in place, especially for agri-food products and others. With great respect to the noble Baroness, Lady Neville-Rolfe, Amendment 26 is about this Bill. As the Japan deal—a rollover deal—shows, these free trade agreements which will take place in the future could still affect Northern Ireland negatively, regardless of the assurances given. It is important to put this principle of unfettered access in statute in this Bill, which is about future free trade agreements.

I thank the noble Viscount, Lord Younger of Leckie, for his assurances—absolutely compellingly meant, I am sure—on the Irish border and the Good Friday agreement. But I am extremely disappointed, as many in Northern Ireland and especially in its business community will be, that the Government will not accept what they profess to uphold: the principle of unfettered access for Northern Ireland's businesses contained in Amendment 26. Although I will withdraw Amendment 17, I will divide the House on Amendment 26 when the time comes.

Amendment 17 withdrawn.

Amendments 18 and 19 not moved.

The Deputy Speaker (Baroness Morris of Bolton) (Con): We now come to the group beginning with Amendment 20. I remind noble Lords that Members other than the mover and the Minister may speak only once, and that short questions of elucidation are discouraged. Anyone wishing to press this or any other amendment in the group to a Division must make that clear in the debate.

Amendment 20

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

20: After Clause 2, insert the following new Clause—

"Ratification of international trade agreements

(1) An international trade agreement may not be ratified unless it enables the United Kingdom to require imports to meet standards that are equivalent to the principal standards laid down by primary and subordinate legislation in the United Kingdom regarding food safety, the environment and animal welfare.

(2) The condition in subsection (1) does not apply if the international trade agreement is with one or more least developed countries and, in the Secretary of State's opinion, is seeking equivalence on standards which would present an unfair impediment to trade for the country or countries concerned.

(3) The Secretary of State must by regulations specify which of the standards laid down by legislation in the United Kingdom regarding food safety, the environment and animal welfare are principal standards for the purpose of subsection (1).

(4) Regulations made under subsection (3) are subject to affirmative resolution procedure.

(5) In this section "least developed countries" means any country on the United Nations Committee of Development's List of Least Developed Countries, as amended from time to time."

Member's explanatory statement

This new Clause ensures that UK standards regarding food safety, the environment and animal welfare cannot be undermined by imports produced to lower standards.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I will be brief. I think there are several more exciting amendments coming after mine. My Amendment 20 is about the ratification of international trade agreements. The Government have failed miserably to demonstrate any material benefits from Brexit so far, and now focus almost exclusively on reclaiming our sovereignty, which they do not seem able to do in other arenas.

In the same way that some individuals agree to sacrifice some personal autonomy by forming a contract or association, trade agreements, by design, cede a degree of sovereignty in exchange for streamlined trade. Amendments 20 and 22 are expressions of parliamentary sovereignty and our sovereignty as a so-called newly independent nation.

They say to the Government and our trading partners that there are areas of our sovereignty that we refuse to sacrifice in the name of trade. Those protected areas include food safety, the environment and animal welfare, which we all care about across your Lordships' House, the general public and, apparently, the Government, who keep telling us how much these issues matter to them but then encourage their Members to vote "Not Content" to any amendments that would put these protections into legislation. At times, it feels rather pointless. The only thing that has cheered me up today is that it looks as if the Democrats have taken back the Senate in the United States of America. I beg to move.

Lord Grantchester (Lab): I thank the noble Baroness, Lady Jones of Moulsecoomb, for initiating this group of amendments, and the noble Baroness, Lady Boycott, for her support. This opening amendment is on conditions for free trade in relation to environmental obligations. It goes somewhat wider than Amendment 22 in my name and has perhaps a slightly different purpose. I thank the noble Lord, Lord Purvis, and the noble Baronesses, Lady Boycott and Lady Jones, for adding

their names to the amendment to which I shall speak, which is more specifically on the standards that must be maintained across a range of areas of international trade agreements.

The maintenance of food standards within a domestic context was the subject of much debate during the passage of the Agriculture Bill last year. This amendment to the Trade Bill takes the importance of the issue into trade agreements that must abide by those same standards. It would clarify the mechanisms that would ensure that standards were not compromised. I will not replay the many arguments expressed during the passage of the Agriculture Bill, but merely add that legal guarantees on food imports through trade deals should also be laid down in a transparent procedure or code of practice which Ministers must commence in statutory instruments. Such standards on imported food products as appropriate to trade deals must be widened to certain other areas of human rights, public health and labour laws. Should a Minister decide that a change in standards needs to be made, subsection (5) of the new clause proposed by the amendment would specify the transparent steps that would need to be undertaken to effect that change.

Although it was in the Conservative Party manifesto, the Government have been reluctant to commit both to legislative certainty of standards and to public transparency in relation to scrutiny of trade deals. We are all rightly proud of the high agricultural and food standards in this country. Many people believe that trade must be encouraged not to undercut those standards, not only to maintain fair competition across food sectors, including catering and manufacturing, but to maintain and improve health benefits to consumers from transparently-certified production regulations. There are significant doubts over the claim that protections stemming from EU membership have been transferred into UK law. The final EU-UK agreement allows latitude for the UK to diverge from the level playing field in future. The UK will maintain an autonomous sanitary and phytosanitary regime.

3.15 pm

We all know the threat posed by potential trade agreements with America and Australia. With this amendment, we want to see Ministers following a strict governance procedure of constant advice and engagement with stakeholders, trade unions, the Food Standards Agency, environmental agencies and businesses, and reports to Parliament with evidence to the relevant committees, all building on Section 42 as inserted into the Agriculture Act. This could lead to a legal review of standards in statute for each relevant area, but Ministers must have a procedure to follow to ensure that standards are maintained.

Where any changes in standards are deemed necessary, they should be undertaken via primary legislation before a trade deal or agreement is laid under the CRaG process. Standards must not be changed through the back door of a trade agreement. This amendment will aid and improve scrutiny of trade deals, drive up international standards and aid countries to increase trade with the UK, while improving environmental conditions, animal welfare, human rights and labour laws. I am likely to press this amendment to a vote.

Baroness Boycott (CB) [V]: I support Amendment 22 in the name of the noble Lord, Lord Grantchester, and will vote for it. On the previous day of the debate, I spoke at some length about the importance of ensuring that our trade standards are consistent with our high standards of food and animal welfare, and our climate and environmental obligations in particular. I will not repeat those arguments here, because I have bored noble Lords enough by my concerns about public health and food, but this amendment is important and, without it, we run a lot of danger of leaving ourselves open to standards that are below ours and will damage our health, animal health and environment.

More generally, in 2020, we saw a small reduction in emissions globally as a result of the pandemic that we still have. This reduction should not be a blip; we need to see it as a more permanent arrangement and build on it. If we do not have considerations such as those in this amendment brought to the front of trade policy, we risk doubling down on our old ways of trading, increasing global emissions again. We need to use our trade power for good and to encourage others to produce carbon-neutral products. If we do not, even if we reduce emissions at home, we will import them from abroad. The same general principle applies to the food that we import into this country which we expect ourselves and, more importantly, our children to eat.

This amendment is about parliamentary scrutiny, which I am sure will carry favour with many noble Lords. It would not make it illegal to import products that were produced to a lower standard but, as the noble Lord, Lord Grantchester, has so clearly set out, it would require consultation and a vote in Parliament to approve any deviation from existing standards. In essence, it is a compromise that would give our farmers as well as the huge swathes of the population which have made their voices heard in the last few months—about their determination to maintain not just good food standards but transparency in food standards—peace of mind without making trade impossible.

Finally, I specifically ask the Minister what he and his department know—I am sure they are aware of it—about the Agreement on Climate Change, Trade and Sustainability, or ACCTS, as it is called. This is led by New Zealand. Nations are free to sign up to it to show that they are committed to using their trade policy to support action on climate change. As we have now left the EU and the transition period is over, can we join this agreement to show our intent in this hugely important year before COP 26? I will return to ACCTS when I talk about labelling later in the debate. I thank the noble Lord, Lord Grantchester, for his amendment and give him my wholehearted support.

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady Boycott. I speak to Amendments 20 and 22 in this group. The noble Baroness, Lady Jones of Moulsecoomb, moved Amendment 20, and I fully support her and others in ensuring that imports will meet the current principal standards on food safety, the environment and animal welfare.

We have had numerous direct debates about ensuring that these issues remain at the forefront of the Government's commitments to the public. It is, however,

[Baroness Bakewell of Hardington Mandeville] vital that in order to trade with least developed countries and encourage their entrepreneurial skills, our standards do not act as a blockage to those countries. At the same time, it is important for public confidence that food safety standards are maintained and animal welfare is not compromised. We are, after all, a nation of animal lovers.

Cross-party Amendment 22, moved by the noble Lord, Lord Grantchester, also mirrors debates that took place during the passage of the Agriculture Bill. It is an extremely important amendment to ensure that Parliament is fully involved in ensuring that standards affected by international trade agreements are maintained at our current high levels.

Members of Parliament are elected to ensure the well-being of their constituents in a wide variety of areas, and it is simply unacceptable for them to be excluded from debating trade agreements that could have a dramatic impact on local businesses and their constituents. Similarly, the upper Chamber, while not currently elected, has a wealth of expertise and knowledge that can be brought to bear to enhance future trade agreements, where necessary.

Issues of food safety, quality, hygiene and traceability are essential not only to protect consumers but to ensure a level playing field for our farmers and food producers. It is important for human rights and equalities to be included, especially women's and children's rights along with other classifications under the Human Rights Act of 1998.

The devolved Administrations should not be an afterthought but should be consulted at an early stage and able to express their view on trade agreements that affect them. The relevant committees of both Houses, including the Secondary Legislation Scrutiny Committee, will also have a view.

As we move forward with the continuing process of separating ourselves from the rest of Europe and bringing the UK closer to other countries in the world, standards and scrutiny will be important to maintain the confidence of the public, business and our other partners, some remaining in the EU. This amendment gives the reassurance that is required for this to happen. I fully support these two amendments, and I will support Amendment 22 should the House vote in the virtual Lobby.

Baroness Noakes (Con): My Lords, I expect that the noble Baroness, Lady Jones of Moulsecoomb, knows what I am about to say about her Amendment 20, which is yet another attempt to hardwire the maintenance of UK standards into statute.

Time and time again the Government have said that they have no intention of lowering standards. The noble Baroness has usually replied that she does not trust the Government. I hope she will accept that amendments to legislation are not customarily made in your Lordships' House in order to confirm what is already government policy, especially when it has been repeated at the Dispatch Box numerous times.

I can levy the same criticism at Amendment 22, in the name of the noble Lord, Lord Grantchester, and others, but my main reason for putting my name down to speak on this group is because I think that Amendment 22 is quite extraordinary. There are certainly examples of codes of practice required by statute, and some also require approval by Parliament, but as far as I am aware, there is no precedent for an Act requiring one Minister to set out how that Minister or any other Minister must behave. The codes of practice that exist are usually intended to complement often complex legislation to guide those who need to implement it. I believe that they have never been used as instructions to Ministers on what to do, and I do not believe that we should start to do that now.

I also remind noble Lords that the negotiation of international treaties is firmly within the royal prerogative. I believe that Amendment 22 would fetter the royal prerogative, and apart from anything else it should not be pursued on those grounds

The Government have said that they will maintain standards, but Amendment 22 just tries to tie Ministers up in knots. We should just let them get on with their jobs. I hope that noble Lords will not support these amendments if the noble Baroness, Lady Bakewell of Hardington Mandeville, or the noble Lord, Lord Grantchester, choose to press them.

Lord Curry of Kirkharle (CB) [V]: My Lords, my interests are as listed in the register. It is a privilege to follow the noble Baroness, Lady Noakes, who is extremely well informed. I speak to Amendment 22 in the name of the noble Lord, Lord Grantchester, and supported by the noble Lord, Lord Purvis of Tweed, and my noble friend Lady Boycott.

I will be brief and reserve most of my comments on the proposed trade and agriculture commission when we debate amendments in the group beginning with Amendment 26. However, I have a straightforward request for clarity, which is linked to this grouping of amendments. How do the Government plan to respond to the report that will be delivered by the existing Trade and Agriculture Commission within the next couple of months, when I assume it will report? We look forward to the conclusion of the crucially important task that the TAC was commissioned to undertake by the Secretary of State. It may well recommend a code of practice, as proposed in the amendment, and will certainly make recommendations that should influence the way we conduct future trade deals.

We must assume that the Trade Bill will have become law before the current TAC reports, so I am concerned that we will not be able to take its recommendations into account. I am interested in what the Minister has to say about how the Government will respond to the TAC's recommendations retrospectively, having passed the Trade Bill before it delivers the report.

Baroness Young of Old Scone (Lab) [V]: My Lords, I declare my environmental interests in the register and my interest as chairman of the Royal Veterinary College.

I support Amendment 22 in the name of my noble friend Lord Grantchester and other noble Lords across the House. I absolutely agree that there should be parliamentary scrutiny of a code for ensuring standards and of any variation of standards in these highly important areas. My primary areas of interest and expertise are in the environment and animal welfare.

I am sure that the Government may say that provisions such as those in subsection (5) in Amendment 22 would be cumbersome and could delay important free trade agreements which the Government regard as so important to the UK in forging its future place in the world. However, I hope the Minister can reassure us that lowering or abandoning standards will not occur frequently—in fact, that they will be an exception—so the use of the subsection (5) provisions will not prove burdensome at all.

I hope, indeed, that it might be the reverse: that the Minister might welcome this amendment. I am not sure that the Government truly understand the pressure to reduce standards that will come from other countries in some trade negotiations. Having a bulwark in legislation should be a comfort to the Government, so that they can say, "We're very sorry. We can't agree to any lowering of standards unless our Parliament approves that".

3.30 pm

I was singularly unpersuaded by the arguments of the noble Baroness, Lady Noakes, against Amendment 22. She described very fully the situations when codes of practice are generally used for guidance on the basis of complex legislation and in negotiations where the legislation needs to be explained by the code of practice, and that is the precisely the situation that we fall into as regards these trade negotiations and the maintenance of standards. I also find it rather staggering that she said that the Government have already promised to maintain the standards and therefore we should not fetter Ministers any further. My memory is that the Government promised us that Covid would be over by Christmastime, so I am not entirely convinced by government assurances on these standards. Let us have it in the legislation.

Lord Purvis of Tweed (LD): My Lords, on my way in today I was reflecting on the fact that I started last year, at about this time, discussing a trade Bill on Report, so it is nice to see that some traditions in the House of Lords do not change.

I support Amendment 22, as the noble Lord, Lord Grantchester indicated. He moved it very well. I do not need to rehearse all the arguments because, as my noble friend indicated, we have had many debates on this issue.

I was grateful that the noble Baroness, Lady Jones, referred to what looks to be the news that the Senate of the United States may well be changing hands. That will bring about a direct consequence for the UK's trade negotiations. This amendment refers to domestic standards, but it also links to who we trade with. Will there be pressure on our domestic standards by the country that we seek to have an agreement with? We know that the discussions with America are ongoing, and they are likely now to be impacted by a Democrat-controlled White House and full Congress—both Houses.

The consequence of that will mean that the Bipartisan Congressional Trade Priorities and Accountability Act 2015, which put in place conditions on the US trade representative in negotiations on agriculture, environmental standards and objectives, will be reformed, so the United States will have a new position when it comes to the ongoing discussions with the United Kingdom. That is now inevitable, which means that in our approach to the negotiations it is valid that we discuss what our equivalent legislation in this country will be that set our standards, and what the requirements on Ministers will be.

We know that the Government have accepted in part to enshrine standards obligations in a treaty. The European TCA, for example, has set a three-year standstill on organic standards. That is a guarantee, if ever there was one, that there would be no change over a period. Why three years? The noble Baroness, Lady Noakes, indicated that it would be a nonsense to put into any form of legislation a commitment that a Minister has given not to deviate from standards, but why then did we legislate for that exact thing last week in the Act for the European agreement? A standstill for three years on organic standards is a restriction on how this Parliament can now operate standards on organic farming. With that legislation, the Government have bound us for three years. I do not think there is any disagreement about that, because offering some degree of certainty to organic farmers on the standards that will be accepted for trading between the United Kingdom and the European Union is a positive thing. We suggest that under Amendment 22 there are other positive elements that should be highlighted regarding the way that we trade.

I was puzzled by the assertion that Amendment 22 will fetter the prerogative of Ministers and will limit their freedom to bring measures to Parliament for approval by indicating in effect instructions under statute of how they exercise their powers. What puzzles me is that the opposite side supported that with a government amendment to the Agriculture Act. I remind the House that Section 42 is a fettering of the prerogative power that limits the freedoms of Ministers, because it requires them, before they bring forward approval under CRaG, to carry out an exercise whereby they seek an independent body, now a statutory independent body—to emphasise the concern of the noble Baroness, Lady Noakes, about something that she has already supported—to report before Parliament acts. Therefore it is not we who do not necessarily trust the Government, because clearly the Government do not trust themselves if they brought forward an amendment to their own Bill that required an independent statutory body to report to Parliament before we even had a vote on it.

The noble Baroness's point is even more reduced by the very quick search I was able to do on the legislation website for "Ministers must have regard to" before they carry out their duties. There are scores of examples in legislation where Ministers "must have regard to" before they exercise their ministerial functions on immigration, the health service, judicial appointments, inquiries. In most large areas where Ministers carry out their duties, such as negotiating trade or carrying out health duties, judicial appointments or whatever, there are many statutory expectations of what they must do before they carry out their functions. Amendment 22 is appropriate, because it puts in a slightly wider set of criteria on Section 42 of the Agriculture Act, which the Government themselves had put forward.

[Lord Purvis of Tweed]

My final point is on standards in particular. I am glad that Amendment 22 references women's rights. We debated the UK-Japan agreement at length, and there was consensus around the House that one of the deficiencies of that agreement was that it did not expand on the areas for supporting women's rights and expanding women's economic empowerment within that agreement. On human rights, we know that the Cotonou agreement is already out of date and has to be replaced, so the extra elements under proposed new subsection (3) of Amendment 22 are appropriate.

I will make one point on food rights that links to developments just three days ago with regard to food imports. We assume that food that comes into the United Kingdom is of the same standard that we would expect our own producers to sell elsewhere, and we have worked very hard through the Fairtrade Foundation, which we have supported, and other organisations to make sure that that is the case. I was very sad to learn that Brexit tariffs were imposed on a shipment of fair-trade goods from Africa that arrived into Portsmouth—£17,500 on shipments of bananas from Ghana—and that tariffs of 16.5% will be imposed on tuna.

I hope very much that the Government will recognise that this should not be the situation and that it can be rectified. As much as we want to promote other countries improving standards on labour rights, environmental standards and food standards, as we do here at home, we must work in partnership and we should not penalise those for whom we seek to have much higher standards. I am very happy to support Amendment 22.

The Minister of State, Department for Business, Energy and Industrial Strategy and Department for International Trade (Lord Grimstone of Boscobel) (Con): My Lords, it seems very appropriate that we are beginning the new year by welcoming a familiar friend: a debate on standards in the Trade Bill. Yet again, there were most interesting comments from noble Lords in the debate.

I turn first to Amendment 20, so ably moved by the noble Baroness, Lady Jones of Moulsecoomb, which seeks to prevent the ratification of FTAs unless there are provisions that ensure that imports under those FTAs comply with the UK's domestic standards for food safety, animal welfare and the environment.

As noble Lords know, the Bill is principally concerned with continuity agreements, which we have now signed with 63 partner countries. It is rather cheering that each time I speak from this Dispatch Box that number has crept up. I should emphasise to noble Lords that none of those agreements has led to a lowering of domestic standards. Cheap food is not flooding our market. Workers' rights are not being undermined. All we have done is deliver on our central objective of providing continuity for businesses and consumers.

The amendment has unintended consequences that its signatories have not addressed. It could, I am afraid, jeopardise the UK's ability to meet its WTO commitments. WTO rules constrain the ability of the UK to restrict imports based on criteria such as animal welfare and environmental protection. These WTO rules play an important and balanced role in containing disguised protectionism, but inevitably mean that there is a real risk of a WTO dispute if we do not handle these important matters with care.

Establishing the amendment as a negotiating objective has the potential to create great uncertainty and undermine continuity for businesses at an already critical time. I know that noble Lords would not wish this. It may of course jeopardise the implementation of continuity agreements, including those already signed but not yet ratified. Let us not forget that UK businesses have a long history of trading under these agreements and rely on them for stability and certainty. Any delay to implementation will impact the import of goods on which businesses and consumers are dependent. Furthermore, the noble Baroness's amendment could result in similar measures being deployed by trade partners with regard to UK exports. That could prevent UK producers from being able to export goods overseas until they had demonstrated that they had met the domestic standards of our trade partners.

However, we of course understand the importance of this issue and the Government have established a number of initiatives to ensure that any concerns around agriculture and the environment are addressed at each stage of the negotiation processes. This includes: public consultations ahead of new trade negotiations; increased engagement with agriculture and agri-food stakeholders; establishing the trade advisory groups; and of course passing an amendment to this Bill, placing the Trade and Agriculture Commission on a statutory footing.

I now turn to Amendment 22, in the names of the noble Lords, Lord Grantchester and Lord Purvis, alongside the noble Baronesses, Lady Boycott and Lady Jones of Moulsecoomb. As I have explained, our continuity programme maintains high standards in areas including food standards, human rights and environmental obligations. Indeed, in many areas the UK goes much further than the EU. Like the noble Lord, Lord Grantchester, I am proud of our standards. Let me give some examples.

When discussing workers' rights, the UK has led the way and the EU is significantly behind us. The statutory minimum wage in the UK for people aged 25 and over is £8.72 an hour, whereas the EU has no legal minimum. Furthermore, UK workers can get statutory sick pay for up to 28 weeks, whereas the EU has no minimum sick leave or sick pay legislation. Further still—this gets to the crux of our debate—the UK has world-leading standards for animal welfare, while food standards are overseen by the Food Standards Agency and Food Standards Scotland, which I am sure noble Lords agree are the most independent of experts.

The UK has a strong history of protecting human rights and promoting our values globally. We will continue to encourage all states to uphold international human rights obligations. It should also be said that there is no provision within the Trade Bill that could allow amendment of the Human Rights Act.

3.45 pm

The noble Baroness, Lady Boycott, asked about the agreement on climate change, trade and sustainability. We very much support this agreement. The noble Baroness, Lady Bennett, has an Oral Question for

answer on Monday about this very subject, and I look forward to answering further questions from noble Lords at that time.

The noble Lord, Lord Curry, asked about the report that we shortly expect to receive from the Trade and Agriculture Commission. We are looking forward to the report and we will of course respond when it comes forward and, as appropriate, take it into account in future trade agreements. The horse of future trade agreements has certainly not yet bolted.

In conclusion, the Government have always been clear that we have no intention of lowering standards as part of our trade agenda, through either the front door or, as the noble Lord, Lord Grantchester, feared, the back door. The continuity agreements that we have signed thus far maintain our commitment to vigorously defend and uphold standards. I therefore ask that Amendments 20 and 22 not be pressed.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I thank the Minister for his response, made in his usual sincere and emollient way. I had not understood just how devastating the impact of my amendment would be. I think there might have been a tiny bit of scaremongering in that. He also said so far, so good—but we all know that it is early days and we have a long way to go to get the sort of trade deals that we really want. We need the protections that we are asking for. We have had this debate a lot and the Minister knows full well how the majority of the House feels.

I thank all noble Lords who have contributed to this debate. I particularly enjoy the interventions of the noble Baroness, Lady Noakes, whom I very much enjoy clashing with. I should like to say to her that it is absolutely true—I do not trust this Government. I am in awe of her unswerving loyalty to them, especially in view of the fact that in the other place our Prime Minister stands up, makes all sorts of promises and then reneges on them. How she maintains her loyalty is absolutely astonishing.

However, we have had this debate many times. I do feel that the Government just do not understand the depth of feeling on this issue, not just in the House but among the general public, farmers and all sorts of producers. Ignoring this issue is a terrible mistake.

The Deputy Speaker (Lord Haskel) (Lab): Is the noble Baroness withdrawing her amendment?

Baroness Jones of Moulsecoomb (GP) [V]: I am, yes.

Amendment 20 withdrawn.

Amendment 21 not moved.

Amendment 22

Moved by ***Lord Grantchester***

22: After Clause 2, insert the following new Clause—

"Standards affected by international trade agreements

(1) The Secretary of State must by regulations made by statutory instrument establish a code of practice setting out how a Minister of the Crown should take steps to maintain standards established by any enactment regarding—

(a) food,

(b) animal welfare,

(c) the environment,

(d) human rights,

(e) welfare, and

(f) labour law,

if a proposed international trade agreement is likely to affect such standards.

(2) A statutory instrument containing regulations under subsection (1) may not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament.

(3) The code under subsection (1) may provide that a Minister of the Crown ensures as far as possible that a future trade agreement is consistent with United Kingdom levels of statutory protection regarding, among other things—

(a) human, animal or plant life or health;

(b) animal welfare;

(c) the environment;

(d) food safety, quality, hygiene and traceability;

(e) employment and labour standards; and

(f) human rights and equalities, including but not limited to—

(i) women's rights,

(ii) child rights, and

(iii) the Human Rights Act 1998.

(4) This is in addition to and does not impact on the provisions in section 42 of the Agriculture Act 2020 (reports relating to free trade agreements).

(5) Where a Minister of the Crown decides that it is appropriate and necessary to change standards in pursuit of an international trade agreement, a Minister of the Crown must—

(a) send a notification of the necessary changes to primary or subordinate legislation to the relevant Committee in each House of Parliament at the earliest opportunity;

(b) consult and seek the consent of the devolved authorities; and

(c) take steps to ensure that necessary changes to primary or subordinate legislation have completed their parliamentary processes before the final texts of agreed trade agreements, together with full impact assessments which cover the economic impacts and social, environmental, and animal welfare aspects of the agreement, in advance of such agreements being laid before Parliament under section 20 of the Constitutional Reform and Governance Act 2010.

(6) In this section, "United Kingdom levels of statutory protection" means levels of protection provided for by or under any—

(a) primary legislation,

(b) subordinate legislation, or

(c) retained direct EU legislation, which has effect in the United Kingdom, or the part of the United Kingdom in which the regulations have effect, on the date on which a draft of the regulations is laid."

Lord Grantchester (Lab): I wish to thank all noble Lords who have spoken in this debate, especially the noble Baroness, Lady Noakes, who said that she finds this amendment extraordinary. I would merely say that making trade agreements has not been specifically undertaken by the UK while a member of the EU and that this is a new area of competence. Thus, new procedures need to be set up and how these agreements will be scrutinised needs to be fully understood—in

[Lord Grantchester]
this amendment, specifically in relation to food standards and other standards. I thank the noble Lord, Lord Purvis, for his remarks in reply to the noble Baroness.

The noble Lord, Lord Curry, asked the Minister how the Government may respond to the existing TAC as it moves through its report. There are many and varied anxieties. We must have certainty regarding standards that must be maintained in trade agreements. I am very glad to hear that the Government have maintained continuity in rolling over more deals, yet it is disappointing to repeatedly hear misleading arguments about how WTA commitments will constrain us or be an unintended consequence. They do not seem to have fettered the laying down of our current standards. Let us make sure that these current standards can continue by supporting this amendment and setting a governance procedure in regulations. I beg to move and wish to test the opinion of the House.

3.50 pm

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4.04 pm

The Deputy Speaker (Lord Haskel) (Lab): We now come to Amendment 23. I remind noble Lords that Members other than the mover and the Minister may speak only once, and that short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division must make that clear in debate.

Amendment 23

Moved by ***Baroness Kidron***

23: After Clause 2, insert the following new Clause—

"Protection of children online

(1) The United Kingdom may only become a signatory to an international trade agreement if the conditions in subsection (2) are satisfied.

(2) International trade agreements must be consistent with—

(a) other international treaties to which the United Kingdom is a party, and the domestic law of England and Wales (including any changes to the law after the trade agreement is signed), regarding the protection of children and other vulnerable user groups using the internet;

(b) the provisions on data protection for children, as set out in the age appropriate design code under section 123 of the Data Protection Act 2018 (age-appropriate design code) and other provisions of that Act which impact children; and

(c) online protections provided for children in the United Kingdom that the Secretary of State considers necessary.

(3) In this section a "child" means any person under the age of 18."

Baroness Kidron (CB) [V]: My Lords, I shall speak to Amendment 23 in my name and those of the noble Lords, Lord Stevenson of Balmacara, Lord Clement-Jones and Lord Sheikh. This amendment represents the wishes of many colleagues from all sides of the house, and with that in mind I have informed the clerk that we intend to divide the House. I refer noble Lords to my interests in the register, particularly that as chair of the 5Rights Foundation, a charity that works to build the digital world that children deserve.

The amendment has been slightly revised since it was tabled in Committee, to reflect comments made then, but its purpose remains resolutely the same: to ensure that the online safety of children and other vulnerable users is not compromised as a consequence of clauses that appear in future free trade agreements.

Like many colleagues, I would rather that the UK Parliament had, as the US Congress does, a system of parliamentary scrutiny of all aspects of trade deals, but that is not the case. The amendment would offer significant protections for UK children online by protecting UK domestic law, widely regarded as the best in the world, as far as it affects children's online safety. It would sit after Clause 2 and would therefore pertain to all future UK trade deals.

Proposed new subsection (2)(a) would capture existing UK legislation and treaties. This would allow the Government to cite existing treaties, such as the Convention on the Rights of the Child, which the UK has ratified but the US has not, or domestic legislation that already offers protections for children online. It would also capture any further advances made in UK law between now and the time that any trade agreement is settled.

Proposed new subsection (2)(b) specifically refers to data protections brought into law on 2 September last year in the form of the age-appropriate design code, which will have a profound impact on children's online safety. That code was an initiative introduced and won in this House by a similar all-party grouping, with support from all sides of the House. It would also ensure that the Data Protection Act 2018 was protected in total, since many of the provisions of the children's code build on the broader provisions of the DPA.

Proposed new subsection (2)(c) would give the Secretary of State the power to carve out from a trade deal any new or related legislation—for example, the upcoming online harms Bill, or any provisions put forward as the result of inquiries by the Competition and Markets Authority, the Law Commission, Ofcom, the ICO and so on. Digital regulation is a fast-moving area of policy, and the discretion given to the Secretary of State by subsection (2)(c) would ensure his or her ability to reflect the latest commitments on children's online protection in FTAs.

The amendment would also define children as any person under 18. This is crucial, since the US domestic consumer law, COPPA, has created a de facto age of adulthood online of 13, in the face of all tradition and decades of evidence of child development. Using 13 as a false marker of adulthood has been thoughtlessly mirrored around the world. It fails to offer any protection to those aged 13 to 17, who require protections and freedoms in line with their evolving maturity but are clearly not yet adults.

I am very grateful to both the Minister and the Minister of State for Trade Policy, Greg Hands MP, for taking the time to speak to me since I first tabled this amendment. I am sympathetic to their overall position that the Bill should not tie the hands of UK trade negotiators, but in this case it is imperative that we do so, because some things are simply not for sale.

In the very few weeks since we debated this amendment in Committee, we have seen that the protections outlined in the amendment are entirely absent in the EU-UK deal, and in the same few weeks we have seen suggestions for the inclusion of provisions in the proposed mini-deal with the US that could completely undermine all the advances that we have made to protect children. That is even before we get to a full-blown US-UK FTA. In

this context, Ministers can no longer cast doubt on the relevance of the amendment, nor can they suggest that this is an issue that can be dealt with at some indeterminate time in the future. We have set our sights on being a sovereign trading nation and are seeking to do that in short speed. We must make sure from the very beginning that we do not trade away the safety and security of our children.

In closing, I point to the Government's recent online harms response and say to the Minister, whom I know to be personally committed to the safety of children, that it is simply impossible to balance the promises made to parents and children in the context of the online harms Bill without us also determinedly protecting the advances and commitments that we already have made. Amendment 23 would ensure that the UK domestic attitudes, legislation and guidance that protect children's safety online could not be traded away. In a trade deal, no one side ever gets everything that it wants. We have to take kids off the table. I beg to move.

Lord Clement-Jones (LD) [V]: My Lords, it is a privilege to follow the noble Baroness, Lady Kidron, and her extremely cogent introduction. I have signed Amendment 23, which we on these Benches strongly support. I pay tribute to her consistent campaigning efforts in the area of online child safety and child protection. Very briefly, I will add why we need this amendment, through some recent media headlines which illustrate the issues involved.

First, on the extent of online harms, here are just a few headlines:

"Social media stalking on rise as harassers dodge identity checks",

"QAnon is still spreading on Facebook, despite a ban",

"Facebook's algorithm a major threat to public health"

and

"Tech companies continue to provide online infrastructure for contentious Covid-19 websites even after flagging them as fake news, finds new Oxford study".

Many of these online harms impact heavily on children and other vulnerable groups.

Secondly, here are two headlines on the power of big tech:

"Google told its scientists to 'strike a positive tone' in AI research documents"

and

"Facebook says it may quit Europe over ban on sharing data with US".

There can be no doubting the sheer global lobbying power of the major platforms and their ability to influence governments.

Thirdly, on the opportunity for change and to retain our laws, the headlines included

"New 'transformational' code to protect children's privacy online",

which refers to the age-appropriate design code that has now been renamed "the children's code", and

"Britain can lead the world in reining in the tech giants if we get the details right",

which refers to the proposals to introduce a new online duty of care.

"CMA advises government on new regulatory regime for tech giants"

refers to the new digital markets unit, and the CMA is referred to again in:

"Google told to stamp out fraudulent advertising".

We have started down a crucial road of regulating the behaviour of the big tech companies and preventing harm, particularly to our children and the vulnerable. In any trade deal we want to preserve the protections that our citizens have, and all those that are coming into place, and we do not want to water them down in any way as a result of any trade negotiation.

The trade deal that looms largest is of course with the US, and there are indications that with the new Administration, which so many of us welcome, there will be new attitudes towards privacy rights, especially now that it seems that Congress will have Democrat majority control. I hope that they will vigorously pursue the antitrust cases that have been started, but we have no guarantee that they will go further, for instance in successfully eliminating the all-important safe harbour legal shield for internet companies, Section 230 of the Communications Decency Act. There is no guarantee that this will go, or that there will not be attempts to enforce this by the US in its future trade deals.

The Minister, the noble Lord, Lord Grimstone, for whom I have the greatest respect, will no doubt say that the Government will have red lines in their negotiations and that there is no way that they will countenance negotiating away the online protections which we currently have. But, as we have seen with the withdrawal agreement, Northern Ireland, the fishing industry and the UK-EU Trade and Co-operation Agreement, these can be washed away, or blurred, as data protection is in the agreement with Japan. So there is a great degree of uncertainty on both sides of the Atlantic. For that reason, without doubting any assurance that the Minister gives, this amendment is essential, and on these Benches we will strongly support it if the noble Baroness, Lady Kidron, takes it to a vote.

4.15 pm

Lord Sheikh (Con) [V]: My Lords, I speak in favour of Amendment 23, to which I have added my name as a supporter. I spoke on this issue in Committee. As we have now left the EU, we must outline our priorities as a nation, and protecting children online must be high on the list.

Amendment 23 would offer significant protections for UK children online by effecting UK laws relating to online safety in future trade deals. I have been impressed by Her Majesty's Government's ambitions and efforts to make the UK the safest place in the world to be online. I support the regulatory framework outlined in the Government's response in December 2020 to the *Online Harms White Paper*, which is ground-breaking in creating a new duty of care that will make companies take responsibility for the safety of their users.

This amendment is an important part of this new strategy and should be supported. As set out in proposed new Clause 2(a) in Amendment 23, international trade agreements must be consistent with other international treaties and domestic laws on the protection of children and other vulnerable groups using the internet. This would refer to treaties such as the United Nations Convention on the Rights of the Child, which recognises

[Lord Sheikh]
the special safeguards that children need in all aspects of their life, including protection from all forms of violence, and the right to privacy.

Proposed new Clause 2(a) could also refer to the Digital Economy Act 2017, which prevents under-18s in the UK accessing pornography on the internet. During the pandemic, digital technologies have helped us to work and connect with loved ones, but they have also opened up greater risks for children. For instance, during the first lockdown, the Internet Watch Foundation and its industry partners blocked at least 8.8 million attempts by UK internet users to access videos and images of children suffering sexual abuse. At the same time, research by the British Board of Film Classification shows that 47% of children and teens had, during lockdown, seen content that they wished they had not seen.

The risks to children online are growing by the day, and we need to be proactive in tackling these harms and encouraging others to do so by supporting this amendment. In Committee, I was pleased that my noble friend the Minister said,

"we stand by our online harm commitments, and nothing agreed as part of any trade deal will affect that."

This is reassuring, and I welcome his support. However, protecting children online is such an important issue it needs to be guaranteed in legislation, so that it is not accidentally traded away. This amendment will make sure this cannot happen by ensuring our online protection is a necessary requirement of any future trade deal.

In Committee, my noble friend also said that

"our continuity programme is consistent with existing international obligations, as it seeks to replicate existing EU agreements, which are themselves fully compliant with such obligations",—[*Official Report*, 1/10/2020; col. GC 140.]

to protect young and vulnerable internet users. Although I welcome this continuity, my concern is with countries such as the US, which may not have the same standard of protection as we do in the UK and the EU.

As has been mentioned previously, the trade agreement between the US, Mexico and Canada has effectively created a legal shield for tech companies in line with US domestic law. In this agreement, service providers are not liable for content on their platforms or the harm it may cause to users. This fails to hold social media companies to account and risks protecting the big tech firms over children online. Rather than just replicating the existing legislation on online harms in future trade agreements, the amendment will also apply to updated or new legislation. For example, proposed new subsection (2)(c) of Amendment 23 refers to

"online protections provided for children in the United Kingdom that the Secretary of State considers necessary."

This means that future legislation, such as the upcoming online harms Bill, will be protected in international trade agreements.

The digital space is continually changing and growing at a rapid pace. I am sure that, over the next few years, more legislation will be created for new technologies that we may not even know exist at present. With this amendment, we will ensure that protecting children goes hand in hand with technological innovation.

In Committee, my noble friend the Minister reaffirmed the UK's commitment to international obligations on protecting young and vulnerable internet users. Supporting this amendment is the best way to strengthen this commitment and make it truly enforceable, as it means that children online will be fully protected within future trade deals, regardless of the make-up of the negotiating team of the day.

Data protection is also central to protecting children online, and proposed new subsection (2)(b) will ensure that the age-appropriate design code is also properly honoured. The code came into force in September 2020, and is a code of practice that explains how online service providers can ensure that they appropriately safeguard children's personal data.

Data is essentially the building block of the digital world and affects how we use it. Although data is important and useful, it can also be dangerous in exposing children to age-inappropriate content, such as material on self-harm, sexual abuse, bullying, misinformation and extremism. As data travels across borders, it is important that future international agreements are consistent with our leading online protections.

In proposed new subsection (3) of the amendment, a child is defined as

"any person under the age of 18."

This is consistent with existing UK law and the UN Convention on the Rights of the Child. This is important, as the age of a child differs between countries. For example, US domestic consumer law has created the de facto age of adulthood online as 13. I am sure your Lordships will agree that a 14, 15, 16 or 17 year-old is still as much at risk of sexual exploitation, misinformation, grooming, bullying and harmful content online as a 13 year-old. For instance, in a survey by Ofcom and the Information Commissioner's Office in 2019, 79% of 12 to 15 year-old internet users claimed that they had had at least one harmful experience in the past 12 months. It is important that this amendment is supported, so that any person under the age of 18 can be protected, as, even at 17, a young person is still developing, and harmful experiences online can impact them for the rest of their life.

I applaud the Government's use of digital technologies to power economic growth across the UK and abroad. This is exciting, but we must exercise caution. To quote the response to the online harms Bill White Paper:

"we must be able to look parents in the eye and assure them we are doing everything we can to protect their children from harm."

By supporting this amendment, we are making a true commitment to create a safer digital world for our children.

Lord Knight of Weymouth (Lab) [V]: My Lords, I am an enthusiastic supporter of this cross-party amendment to the Trade Bill.

The Government do not have that much to be proud of right now, but they should be rightly proud of their moves to make the UK the safest place in the world to be online, especially for children. The noble Baroness, Lady Kidron, has done great work, both through the 5Rights Foundation and in this House on this issue. Her efforts to persuade the Government to bring in the age-appropriate design code in the Data

Protection Act were hugely important and ground-breaking. Ministers should be proud that they listened and acted to ensure that technology platforms put the interests of children first.

Although I have been critical of the delays from the Government in bringing forward the online harms Bill, we are finally seeing movement. Again, Ministers should be proud of what they are doing to make the online world safer for children in the UK through the measures they are bringing forward this year. But we know that the large US tech companies hate the "duty of care" idea at the heart of the Bill and have an equal dislike of age-appropriate design. We know that they have successfully persuaded the US Government to write into trade deals with Japan, Mexico, Korea and others that tech companies should not be liable for the harms they cause. And they do cause harms.

Just this week, I was followed by someone on Twitter. When I checked her Twitter account, I was faced with a highly graphic image of her genitalia. I blocked the user and reported the account, and have heard no more from the user or from Twitter. This is just an everyday example of what we all have to navigate.

Of course, for children, this is much more serious. I was talking yesterday to a leading researcher into children's mental health. We agreed that, for primary-aged children, it is reasonable—and, I think, desirable—to ban online devices from bedrooms, but she advised me that her research shows that secondary-aged pupils will get a device into their rooms, whether parents like it or not. A study published last year found that 75% of parents did not believe that their children would have watched pornography, and yet the majority of children told researchers that they had.

Of course, we know that this goes way beyond porn to grooming, bullying, radicalisation and so on. We must protect our children as best we can. Parents have a responsibility, and education has some responsibility, but so do we as legislators, and so do the technology companies that profit from our engagement with this content.

4.30 pm

Section 230 of the US Communications Decency Act 1996 allowed internet companies a free rein to make and break things. This did some good in the early years, but it also allowed unimaginable amounts of child sexual abuse imagery and grooming, and the targeting of teenagers with harmful content.

Especially with the news today from Georgia, we can be hopeful that the US may now want to do more itself to regulate the technology companies, but our responsibility is to the UK, and Amendment 23 would make it impossible for the UK to sign away through trade deals the protections that we in this Parliament are putting in place for children.

I know that the Department for International Trade wants a free hand in negotiation. I imagine that there is a good old row across Whitehall over this issue with DCMS. This House should be on the right side of the argument and back Digital Ministers and, in doing so, safeguard our children by, as the noble Baroness, Lady Kidron, said in opening this debate, taking them off the table.

Baroness Noakes (Con): My Lords, it is a pleasure to follow the noble Lord, Lord Knight, who clearly has a much more exciting life on Twitter than I do.

In respect of the substance of the amendment moved by the noble Baroness, Lady Kidron, I again say that your Lordships' House does not need to—and, indeed, should not—seek to write on to the face of legislation that to which the Government are already committed.

The noble Baroness and other noble Lords who have supported this amendment are aware that the Government have recently published their response to the online harms consultation and have announced that they will create a new regulatory framework, overseen by Ofcom, which will apply internationally. Once that is legislated for, it will be the law of the land, as is the Data Protection Act 2018, and cannot be overridden by any international trade agreement. The only way that the law can be overridden is if Parliament chooses to change it. I am sure that my noble friend Lord Grimstone of Boscobel will provide further reassurances in respect of the Government's position.

I should like to concentrate my remarks on the drafting of the amendment. We all know that amendments for Committee can be somewhat rough and ready because they are often used as probing amendments and are rarely divided on—at least, that is the modern practice, although it was not like that when I first joined your Lordships' House—but I hope that the House will agree that it is incumbent on those moving amendments at later stages of a Bill, including Report, to ensure that they are well drafted. With that background, I wish to offer three comments on Amendment 23.

First, subsection (1) of the proposed new clause has a misplaced modifier. The word "only" is incorrectly attached to becoming a signatory to trade agreements. I believe that the noble Baroness intended to say that the UK may become a signatory only if certain conditions are met, rather than that the only thing that the UK can do if the conditions are met is become a signatory to a trade agreement.

Secondly, subsection (1) refers to

"the conditions in subsection (2)",

but subsection (2) is not drafted as conditions to be satisfied; rather, it is just one statement—that trade agreements must be "consistent with" three things. I also remind the noble Baroness, Lady Kidron, that her concerns are not addressed by whether or not international trade agreements are consistent, because trade agreements do not, and cannot, change UK law, as I have already said. If they were inconsistent, they would have no effect unless and until changes were made to UK law, which would of course require the agreement of Parliament.

Thirdly, proposed new subsection (2)(a) refers to consistency with the domestic law of England and Wales, which rather begs a question about Scotland and Northern Ireland. They may or may not have their own relevant child protection legislation at the moment—I am not an expert on that—but, even if they do not have relevant legislation now, they presumably could have in the future. I am mystified by why paragraph (a) is restricted to English and Welsh law.

I hope that the noble Baroness, Lady Kidron, will reflect on those points.

The Lord Bishop of St Albans [V]: My Lords, I will speak briefly in support of Amendment 23. The Government's proposed online harms Bill will provide a welcome framework to protect the most vulnerable from exposure to dangerous content by placing the burden of responsibility on social media companies. This crucial legislation will better equip Britain to deal with the digital age.

Much has been made of our new-found freedoms now that we have left the EU, and some people might wish to use those freedoms in a race to the bottom. However, some of us are hoping that they can be used to give a very strong lead in the world as to the ways in which nations can seek to protect the most vulnerable from all sorts of harms that can come their way when they are online.

Concerns have been raised about the prospect of protections for big tech firms being forced into future trade deals, particularly those between the UK and the US, which might undermine our national efforts to hold tech firms accountable for the content on their platforms. The recent trade deal between the EU and the UK should serve as a reminder of the gap that exists between rhetoric and reality. For all the Government's talk of a fishing renaissance, the trade deal with the EU achieved only a marginal improvement in quotas, much to the dismay of many. As such, there is, rightly, a fear that, without strong legal provision within trade agreements to protect children online, this will simply become another area up for negotiation—a concession that could be traded away to secure a deal.

The collective efforts of the Government and this Parliament to protect children from exposure to dark and sordid material, which in some cases can lead to serious mental health problems—even, exceptionally, to suicide—cannot and must not be sacrificed on the altar of material gain. The amendment would guarantee the safety of children online and ensure that these protections could not be negotiated away, and I hope that your Lordships' House will support it.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I am delighted to follow the right reverend Prelate the Bishop of St Albans, and I take this opportunity to congratulate the noble Baroness, Lady Kidron, on bringing back this revised amendment on Report. I was happy to support it in Committee and am now very happy to do so on Report.

There is a concern that the upcoming UK-US trade deal will put at risk the UK's progress in providing a safe digital world for children. I hope that, on the side of the United States, President-elect Biden and his colleagues can address that issue. There is a fear that the US tech lobby has forced domestic protections for big tech firms into US trade deals with Japan, Korea, Mexico and Canada, and, according to informed research, is trying to do the same with the UK-US deal. What update does the Minister have on that issue? There is no doubt that it would undermine both existing UK law that protects children online and the impact of the much anticipated online harms Bill.

It is important to ensure that future trade deals carve out our domestic legislation so that the UK can continue to be a leader in child protection online. Amendment 23 would clearly require all future trade deals to respect and protect the progress that has been made in the UK, including through the online harms Bill, the ICO's age-appropriate design code and the Data Protection Act 2018, of which the code is part, and make it impossible for the UK to sign deals that put these protections at risk. It would stop children's safety being compromised by US trade interests and, in doing so, maintain the leadership in children's online safety. I am happy to support the amendment.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I support this amendment, which has been brilliantly introduced by the noble Baroness, Lady Kidron, and we have heard some very strong and emotional speeches in favour of it. It is quite obvious that the internet is a most incredible thing. I cannot imagine what the past year would have been like—and, of course, this year and all years into the future—without the connectivity that the internet has given us when life could have been extremely lonely.

At the same time, the internet can be a very dangerous place because the dominant companies have the most incredible amount of power. This small but crucial amendment would go a long way towards protecting our children. With the USA, it is obviously even more important that we have these sorts of protections, not just because those companies think that anyone over 13 is not a child any more but because they have a strategic interest in disassembling regulations from other countries, which is to maintain their dominance in this area.

This Government like to use moral panic to justify all sorts of legislation—repressive legislation, I would call it—using censorship and spying to further their aims. They cannot have that in only one direction. The same logic must support this amendment, to protect children from the darkest corners of the internet.

Baroness Kennedy of The Shaws (Lab) [V]: My Lords, I too support this revised amendment. Like everyone else, I pay tribute to the work of the noble Baroness, Lady Kidron, who is a true reforming pioneer. Her ground-breaking work both domestically and internationally in seeking protective regulation for children really goes before her. She has been combating the hugely damaging impact of social media on children's lives and has been at the forefront in creating a code of standards for child-sensitive design in technology and so on. Here is an area where, because of her persuasive skills, the UK really is leading the world. I hope that it will continue to do so and be at the vanguard of protecting children.

There is increasing recognition of the addictive nature of social media; probably most of us suffer from it in relation to our constant need to check our emails and our inability to function without our iPhones, so we know the nature of this particular development. For young people at an important stage in their psychological development, the harm can have very long-term effects and be especially damaging. I sit on the human rights advisory council for one of the big American tech companies, and not one of the people who lead those companies would let their children

have the kind of access to the internet that so many of our young have. They put restrictions on their children having phones; they do not allow them usually until they are well into their teens; they put limits on their app use once they are 15 and 16, and they demand a handover of the phone in the evenings after supper so that they do not take it to bed and stay up all night linked in to other people.

4.45 pm

You have to ask yourself why that is, and the answer is because they know the truth. They know that, in order to monetise their inventions, which feed the human desire for connection with others, they have had to have something to sell. You have to ask yourself: if your children are not paying for a product such as Facebook, Snapchat or Twitter, where is the profit? The answer, as we now know, is that the way it is monetised is that the children become the product. Shoshana Zuboff, the Harvard professor who has written a powerful book on surveillance capitalism, says that getting children addicted to phone usage is like trading in pork belly futures. They are being manipulated into being the ultimate consumer.

One of the designers that I have met spoke of his guilt about creating "likes" on these apps, because, of course, for advertisers pushing a commodity or for those promoting a particular political position, it is a vital indicator of interest and propensity. For the young, it feeds into, unfortunately, unmanageable emotions of uncertainty and feelings as to whether they really are likeable or attractive, and it can often lead to self-loathing. Recent research in the United States has shown that there is a frightening escalation of anxiety among the young—and it is certainty true here too—leading to self-harming, depressive illness, hospitalisations and suicide because of the kind of stuff that they find on the internet. It is not only among the older groupings of people in their teens; it goes right down to pre-teens of 10, 11 and 12.

I recently received a letter from a mother, Catherine Liddell, pleading for something to be done by Parliament because of the conflict this issue creates inside homes. Having a phone becomes a rite of passage for children when they go to secondary school, and sometimes they even have them at the end of their period in primary school—children of 10, 11 and 12. Children face ridicule if they do not have one. Platforms are designed to get them to spend as much time as possible on a company's page, and it is made possible because each child is uniquely targeted by algorithms and supercomputers, which know and build up a profile of their every preference.

I know that the Government's position is that they do not want the hands of its trade negotiators to be tied. Well, I am afraid that I do want them to be tied because, when it comes to the values that inform our trade negotiators, they really have to have some clarity when it comes to things as important as the well-being of our children. While we may feel slightly more optimistic today about the fact that a Democrat-led Administration in the United States will come to future negotiations for trade with perhaps a different set of values from those of the Trump Administration, we should not underestimate the real power and influence of the tech companies, as has been said by others. They are going to put the press on the Democrats as much as Republicans. We have to recognise that our trade negotiators will really be put under the cosh by the big internet companies. That is why this amendment is so important. Some things have to take precedence over commercial interests.

I urge the Government to support the amendment and display their commitment to leading the world on this important issue of online harms to our children.

Lord McNally (LD) [V]: My Lords, as ever, it is a pleasure to follow the noble Baroness, Lady Kennedy. I also want to speak in support of the amendment. My intervention is based on a long-term commitment to seeing age-appropriate design embedded—as it was in the Data Protection Act 2018—activated and written into future legislation. That commitment owes much to the efforts and persistence of the noble Baroness, Lady Kidron, as has been noted by my noble friend Lord Clement-Jones and others.

My fears for the future of that commitment have not been helped by awaiting the implementation of the long promised internet harms Bill. The harms identified by the 2018 Act are real and present now, and delay leaves ongoing harms unchecked. For over a year I have been working with the Carnegie UK Trust on a paving Bill intended to ease the passage of the online harms Bill. In its briefing for this Bill, the Carnegie team had this to say:

> "At Carnegie we remain concerned about the opaque nature of the discussions on the UK/US Trade Agreements and the risks that the wholesale imports of provisions relating to section 230 of relevant US legislation"—

that is, the legislation referred to earlier in the debate—

> "may significantly restrict the ability of the UK to enact the systemic online harms regulation it intends".

My concerns were further increased by the briefing from the 5Rights Foundation, which warns that the US tech lobby is working to ensure that US domestic legislation protects big tech companies from liability, and that that is written into all US trade agreements—a warning that Lord Sheikh emphasised.

If such clauses were to appear in a future UK-US trade deal, they would have a chilling effect on all the advances the UK has made to protect children online. So I believe that this amendment is necessary to protect safeguards already in law or proposed in future law, but which could be voided by clauses written into trade treaties.

I believe the good intentions expressed by the Minister, but we are only six days into our new liberties, so claiming that there are no problems is a little premature. I am a little worried about the self-styled buccaneers in his party, whose idea of behaving in accordance with commitments to the law may be equal to that of the old buccaneers.

Although the amendment would be a valuable addition to the Bill, we must also address the wider issue of the use of the royal prerogative in making treaties. There is an urgent need to review how Parliament deals with trade and other treaties. The 2010 Constitutional Reform and Governance Act—the CRaG Act—is now not fit

[Lord McNally]
for purpose. It was drawn up when we had already spent 30 years in the EU, which then had responsibility for our trade treaties. The CRaG Act is out of date, but so too is the concept of the royal prerogative, which is a useful fig leaf for giving Ministers power and preventing Parliament from having power.

A Government who came to power promising to return power to Parliament, not to the Executive, should really examine the CRaG Act, the royal prerogative, and how we handle trade treaties. As has been said, there are lots of Governments, chiefly the US Congress, who have powers to scrutinise. American Ministers, and other Ministers in the same situation, simply have to live with that kind of scrutiny. Let us pass this amendment, but let us then put down a firm marker that there is other work to be done before Parliament can regain sovereignty over treaties.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it is a pleasure to follow my noble friend Lady Jones of Moulsecoomb in thanking the noble Baroness, Lady Kidron, for tabling Amendment 23. My noble friend and I do not usually speak on the same amendment, but there is a particular range of issues that I want to speak to on this one—issues that no other noble Lords have addressed. I am talking about controlling advertising, a fast-rising area of concern.

When I talk about advertising I also mean some of the broader online issues such as product placement and payments to influencers, which are effectively indirect forms of advertising. This is where I agree with a comment made by the noble Lord, Lord Vaizey, yesterday, which may surprise the House. He expressed concern about differential controls on advertising for broadcasters in the UK, which do not apply online. Yet we know that consumption of media is very much blending now; indeed, the divisions between broadcast and online material, from consumers' point of view, are pretty artificial these days.

In some areas we already have quite tight controls in the UK for broadcasters and others—on smoking advertising, for example, as well as some controls on gambling advertising, and limited controls on alcohol advertising. We have also seen, particularly in the London underground, controls on the advertising of unhealthy food. As we start to face up to our role as chair of COP26, and face the climate emergency and the nature crisis, a broader concern about advertising is rising, in relation to its place in driving consumption, and driving the destruction of our planet.

The amendment is about children in particular. It is Green Party policy that all advertising directed at primary school age pupils, who psychologists tell us cannot distinguish between advertising and programmes, or editorial content, should be banned. In the online context, it should be possible to create a situation in which we can protect children up to a certain age from online advertising.

I note that just before Christmas, on a question about gambling advertising, the noble Baroness, Lady Barran, speaking for the Government, said:

"We very much welcome moves by the major platforms that give individuals greater control".—[*Official Report*, 14/12/20; col. 1518.]

over gambling advertising. Should a future Government decide to enforce even the rights of users to block advertising, I suggest that we do not want to see trade Bills stopping that happening.

I conclude by referring to what the noble Baroness, Lady Kennedy of The Shaws, said. What we are talking about here is giving guidance and democratic control—sovereign control—to our trade negotiators in future trade deals.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, I thank all speakers for their contributions to this rather important debate. I was happy to sign up to Amendment 23, tabled by the noble Baroness, Lady Kidron, because surely ensuring online safety for children and otherwise vulnerable people is one of the key issues of our time. Secondly, while the age-appropriate design amendments your Lordships' House made to the Data Protection Act 2018 have made a start in ensuring that the UK is a safe place for children to be online, much still hangs on the progress of the as yet unpublished online harms Bill. Sadly, there is still rather a long way to go before that become law. If, and when, the online harms Bill, assuming it retains its present ambitions, becomes law, it may provide a bulwark against any tendency the Government may have in future to trade away current or future protections for our children and other vulnerable users. But we are not there yet.

The points made by my noble friends Lord Knight and Lord McNally about the way in which the US tech giant lobby has been forcing changes on recent trade deals are, frankly, chilling. This is not the time to weaken current protections for children online. We must ensure that future trade deals protect our current, and prospective, domestic legislation, and we can do that by taking this issue off the negotiating table.

Lord Grimstone of Boscobel (Con): My Lords, Amendment 23, tabled by the noble Baroness, Lady Kidron, and the noble Lords, Lord Stevenson of Balmacara, Lord Clement-Jones and Lord Sheikh, would preclude the Government from signing an international trade agreement that is not compliant with existing domestic and international obligations relating to the protection of children on the internet, including under the Data Protection Act.

I thank noble Lords, particularly the noble Baroness, Lady Kidron, for meeting me and discussing this in more depth. Nobody can doubt the passion and resolve she brings to this issue, and I can assure her that the Government share her concerns, and those of other noble Lords who have spoken so powerfully in the debate. I personally fully share those concerns.

That is why I am pleased to confirm that our trade agreements are already fully compliant with existing domestic and international policies protecting children on the internet. We are already committed to making the UK the safest place in the world to be online. We carefully consider any interaction between trade policy and impacts on user protection in trade agreements.

5 pm

I am pleased that we have now published the full government response to the *Online Harms White Paper* consultation, setting out the new expectations on

companies to keep their users safe online. Our proposals mean that companies must tackle illegal content on their platforms and protect children from harmful content and activity online. The full government response will be followed by legislation, which we are working on at pace, and which will be ready this year. As my noble friend Lady Noakes emphasised, no FTA, no matter who it is with, will be able to overturn this legislation. I hope all noble Lords agree that it is absolutely inconceivable and, frankly, verging on the insulting to suggest that any Government of any persuasion would ever seek to trade away children's safety for a trade advantage.

The major platforms will need to set out clearly what legal content is acceptable on their platform and stick to it. I am very pleased that these laws will close the gap between what companies say they do and what they will actually do. We are also confirming the decision to appoint Ofcom as the regulator, and we will give it a range of enforcement powers, including substantial fines. Our proposals will set out how the proposed legal duty of care on online companies will work in practice; they will protect children, with the strongest possible protections for children and young people from harmful or inappropriate content.

Social media, websites, apps and other services which host user-generated content or allow people to talk to others online will have a duty to remove and limit the spread of illegal content such as child sexual abuse, terrorist material and suicide content. They will need to do far more to protect children from being exposed to harmful content or activities such as grooming, bullying, pornography and the encouragement or promotion of self-harm and eating disorders. Further still, the most popular social media sites will need to go further by setting and enforcing clear terms and conditions which explicitly state how they will handle content that is legal but could cause significant physical or psychological harm to adults.

As I have previously stated, online harms protections belong in online harms legislation, and the legislation that the DCMS will be bringing forward is the appropriate vehicle to address the matters raised by the noble Baroness. Through the Trade Bill, we are seeking in part simply to provide continuity in trading relationships with existing partners. As I have mentioned, the FTAs that we have brought into effect with 63 countries are all consistent with obligations relating to the protection of children on the internet, including those found in the Data Protection Act. We have replicated existing EU agreements, which are themselves fully compliant with such obligations.

I also emphasise that there are no powers in this legislation to implement a future FTA with the USA—whether mini, moderate or max—and I direct the noble Baroness's attention to the negotiating objectives we have published for the US negotiations, which give far more information on our vision in this area.

I am pleased that we are entering a new age of accountability for tech, to protect children and vulnerable users and to restore much-needed trust in this industry. As such, I ask the noble Baroness to withdraw this amendment.

Baroness Kidron (CB) [V]: Well, I am somewhat surprised. I want to say at the outset that I do not doubt the passion of the Minister himself for protecting children, just as he does not doubt my passion. But this is not about passion; it is about insurance. I am surprised that, even though he set out at great length the online harms legislation—and I indeed agree with him that that is where we will ensure that all the protections that we wish for children exist—he does not see that, as others have said, this amendment seeks to protect such legislation and existing legislation.

I also have to say—and we have such recent evidence that I do not want to extrapolate—that trading objectives and trading results are two very different things. As many noble Lords have set out, the tech lobby is probably the most powerful lobby in the world now and its ability to get into trade agreements has been eye-watering.

I thank all noble Lords who spoke. If I had not been in favour of this amendment in the beginning, I would have been as a result of noble Lords' words. They were very powerful and persuasive speeches. I would really just like to say this: many people have said in the course of this debate that it is about using the freedoms we have, setting out the priorities we have and ensuring that children are taken off the table. These are things that we must all agree with. I am actually saddened that the Government, while promising so much to parents and children about online safety, have not adopted this amendment or, indeed, a better-drafted amendment that would satisfy the noble Baroness, Lady Noakes—or, indeed, found another route, which, as I think the Minister will remember, I did offer.

I always take the line that I would prefer to work with government rather than against it to protect children online, because it is an area in which the Government have some cause to be proud. However, in the absence of that possibility, I have no option but to test the opinion of the House.

5.08 pm

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5.21 pm

The Deputy Speaker (Baroness Watkins of Tavistock) (CB): We now come to the group consisting of Amendment 24. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division must make that clear in the debate.

Amendment 24

Moved by ***Lord Stevenson of Balmacara***

24: After Clause 2, insert the following new Clause—

"Consent of devolved authorities

(1) No international trade agreement may be authenticated by the United Kingdom so far as it contains provision which would be within the devolved competence of the Scottish Ministers (within the meaning given in paragraph 6 of Schedule 1), unless the Scottish Ministers consent.

(2) No international trade agreement may be authenticated by the United Kingdom so far as it contains provision which would be within the devolved competence of the Welsh Ministers (within the meaning given in paragraph 7 of Schedule 1), unless the Welsh Ministers consent.

(3) No international trade agreement may be authenticated by the United Kingdom so far as it contains provision which would be within the devolved competence of a Northern Ireland department (within the meaning given in paragraph 8 of Schedule 1), unless a Northern Ireland devolved authority (within the meaning of paragraph 9 of Schedule 1) consents.

(4) No international trade agreement may be authenticated by the United Kingdom unless a Minister of the Crown has consulted and sought the consent of devolved authorities on the implementation of international trade agreements.

(5) An international trade agreement may be authenticated by the United Kingdom without the consent of devolved authorities sought under subsection (4) only if—

(a) the period of one month beginning with the day on which consent was first sought has elapsed, and

(b) a Minister of the Crown has made a statement to each House of Parliament explaining why consent has not been obtained."

Lord Stevenson of Balmacara (Lab) [V]: My Lords, Amendment 24 is in my name. Although devolution is a settled fact in our constitutional arrangements, it is odd how often we find that legislation brought before Parliament either ignores it completely or makes token gestures in that direction. The recent experience of those involved in this Bill and the then United Kingdom Internal Market Bill has made this abundantly clear.

The proposed new clause is offered to the Government as a template that I hope they might find of interest as they consider matters relating to the devolved settlements. Building on successful amendments that were made to the then United Kingdom Internal Market Bill, which were accepted by the Government, they propose a two-stage approach: where devolved competences are engaged, there is a separate process, and, where they are not, committing to consult and seek consent from the devolved Administrations should be combined with setting a one-month time limit for the consent process. This proved successful in what became the United Kingdom Internal Market Act, and, as far as we are aware, it is acceptable to the devolved Administrations. I hope it will be of interest to the Minister when he comes to respond, and I thank others who have decided to support this amendment in this debate. I beg to move.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it is a great pleasure to follow the noble Lord, Lord Stevenson of Balmacara, and to back his amendment. As the noble Lord said, this is territory that we have covered over and over again, so I will not take a great deal of time. The sections of this amendment say that the devolved Scottish Government should not be overruled on matters within their purview; that the Welsh Ministers should not be overruled on matters devolved to them; and that the Northern Ireland Government should not be overruled on matters devolved to them.

We have here something of a reflection of what happened on 30 December, when many noble Lords participated, in one way or another, and in one day both Houses passed a Bill to which we had no consent from the devolved Administrations—indeed, there was opposition from two of them. This amendment aims to create, as the noble Lord, Lord Stevenson of Balmacara, said, a blueprint for the way forward. It is a balanced amendment. Clause 5 says that if the Westminster Government seeks to overrule the devolved Administrations, that has to be explained to both Houses of Parliament.

We hear an enormous amount about sovereignty and taking back control. This Bill seeks to ensure that the nations of the UK are in control of their own destiny in the areas where they have been given powers. I very much hope that your Lordships' House will back this amendment.

Baroness Humphreys (LD) [V]: My Lords, I am grateful to the noble Lord, Lord Stevenson of Balmacara, for tabling this important amendment and presenting us with the opportunity to debate, yet again, the issue of powers and responsibilities in areas of devolved competence being overlooked or ignored—in this Bill and, as we have seen, in other Brexit Bills that have recently come before Parliament.

I acknowledge, as does the Senedd's External Affairs and Additional Legislation Committee, that the regulation of international trade is a matter reserved to the UK Government, and that on the other hand the implementation obligations arising from international agreements are primarily the responsibility of the devolved Governments and legislatures. Another of the Senedd's committees—the Legislation, Justice and Constitution Committee—agrees with this analysis, pointing out that the international trade agreements covered by this provision will encompass a wide range of policy areas that fall within the legislative competence of the Senedd, including agriculture and fisheries.

It is of some comfort that Clause 2 of this Bill confirms the respective responsibilities of the two Parliaments by confirming that non-tariff regulations can be made by UK and Welsh Ministers, alone or concurrently, and are then subject to the affirmative procedure in the appropriate Parliament. Nowhere in this clause, however, is there a recognition of the role of the Welsh Government in trade agreements in their areas of devolved competence. I accept that the agreements themselves are a reserved matter, but omitting the devolved Administrations from playing any part in the process indicates the desire of the UK Government to control and create trading agreements in their favour—agreements that might not meet the needs of the devolved nations.

Sadly, we are faced once again with an example of the UK Government ignoring the powers and responsibilities of the Senedd and the other devolved Administrations, and the lack of a reference to them in Clause 2 makes their omission obvious to all. It is another example from this Government of what I have referred to before as "attempted constitutional change by stealth".

Actions such as these are perceived in Wales as making a mockery of the promise of taking back control. Control is now seen as being consolidated in Westminster, and evidence is mounting that these omissions act merely as a recruiting sergeant for those who wish to promote an independence agenda.

This amendment seeks to provide that, if trade agreements contain provisions relating to the devolved competences of Scottish, Welsh or Northern Ireland Ministers, the consent of those Ministers is required to authenticate that agreement, and it has my full support.

Viscount Trenchard (Con): My Lords, I regret that I cannot support Amendment 24 in the names of the noble Lord, Lord Stevenson of Balmacara, and the noble Baroness, Lady Bennett of Manor Castle. It would weaken the authority of our negotiators in agreeing the best possible terms in an international trade agreement for the whole United Kingdom.

In an earlier debate, on Amendment 6, my noble friend Lord Lansley explained that although the noble Lord, Lord Purvis of Tweed, maintained that that amendment did not restrict the prerogative powers of the Government, it did in fact do so by placing limits on the prerogative powers to proceed with negotiations. The arrangements in the CRaG Act, together with the further measures that the Government have taken to increase parliamentary involvement, are sufficient.

Noble Lords will be aware that the negotiation and entering into of international treaties are a function of the Executive exercising their prerogative powers and are a reserved matter for the United Kingdom Parliament.

We should also remember that international trade is an exclusive competence of the European Union, and that member states have the power to block ratification only in the case of trade agreements that include matters other than trade matters and which are shared competences. It seems to me that this amendment would further weaken the prerogative powers and would be likely to give rise to arguments about the extent of the devolved competences described and contained in Schedule 1, which could be exploited by a Government with whom we were negotiating a free trade agreement. Can my noble friend confirm that the Government are already taking the views of the devolved Administrations fully into account? Subject to this assurance, I believe that the amendment would create more uncertainty and should not be accepted.

5.30 pm

Lord Wigley (PC) [V]: My Lords, I am glad to add my name to those who have spoken in support of Amendment 24 and, yes, we have been here before many times over recent months. Clearly, I totally support the principle that trade agreements should be acceptable to devolved Governments—they may not have a veto, but that acceptance should be sought. The opposition and the reservations of the devolved Governments to the recent European agreement should be a timely reminder to the UK Government of the importance of securing that sort of consensus.

I have some reservations about the adequacy of both this amendment and of the Bill as it stands in meeting the needs of the Welsh Government, so I will pose a question to the Minister. If there were a UK agreement with New Zealand for the import of lamb in terms that would undermine Welsh hill farmers, what safeguards are in the Bill as it currently stands? If the Minister believes that this amendment is unnecessary, will he please tell me how the Bill as it stands meets such worries and how he can persuade the House and the Welsh Government of that fact?

Lord Morris of Aberavon (Lab) [V]: My Lords, I wish to say a few words on Amendment 24, which I support, moved by my noble friend Lord Stevenson. Like the noble Lord, Lord Wigley, I am concerned about the position of Welsh lamb, as I come from a family that has been breeding them for centuries now and continues so to do in three counties in Wales. If there were any barrier, inhibition or taxation on its export, it would ruin the hill farmers of Wales.

I am surprised that my noble friend had to table the amendment at all. I welcome what is devolved very much. I repeat what I have said many times: what is devolved is devolved and cannot be withdrawn without primary legislation. Proposed new subsections (2), (4) and (5) concern me. One of the side-effects of the coronavirus pandemic is a wake-up call to Whitehall that there are four Governments in the United Kingdom as far as health is concerned. I wish there had been more fruitful dialogue between Whitehall and each of the devolved Governments so that there was more uniformity. It was not to be, and I respect the decisions of the Welsh Government on matters entirely within their competence. I support the amendment.

Lord Bruce of Bennachie (LD) [V]: My Lords, like others who have spoken, I recall that I have spoken several times on similar amendments to this Bill, the then Agriculture Bill and the then United Kingdom Internal Market Bill. I do not intend to repeat previous speeches, but rather to challenge the Government to wake up and smell the coffee. Because, in spite of paying lip service to the contrary, Ministers have been careless or dismissive of the concerns of the devolved Administrations and clearly disregard the impact of this insouciance, coupled with incompetence, on the mood across the devolved Administrations, which has hardened. If they had a voice, mind you, I suspect that that mood would be articulated by a number of English regions as well.

Before we got here, the interconnection of the EU, the UK and devolved decision-making worked pretty well, but the transition to the UK outside the EU is clearly having a disruptive effect. The rise in the support for separatism, which has been commented on across the devolved Administrations, has been driven by the combination of incompetence and scathing indifference to the concerns of a growing number of our citizens. The combination of Brexit, the Covid pandemic and an ideological, right-wing Government has created a toxic mix that is putting the future of the UK as a working enterprise at grave risk.

I believe there is a positive case to be made for the United Kingdom, and for the benefits to all its parts of staying together, but it will not be achieved by London-centric English exceptionalism. All the peoples of the UK benefit from both our own achievement in developing the Oxford AstraZeneca vaccine and the UK's ability to secure significant quantities of this and other vaccines and begin the process of distributing them fairly, on a pro rata population basis, to all

[Lord Bruce of Bennachie]
corners of the kingdom. The resources of the UK have delivered furlough to millions and survival support to businesses to try to get us through the crisis, and that has reached all corners of the UK.

Our security and defence capacity and diplomatic reach across the world may not be appreciated on a day-to-day basis by the average citizen, but they would certainly be missed if they were disrupted by the break-up of the UK. So that is a warning. It is the case, unfortunately, that much of this has been compromised by the Government's cavalier disregard for international law, the surrender of many of the hard-won advantages and influences we had secured through the EU and the cut to our aid budget—much of it administered, as it happens, from Scotland.

The defeat of President Trump and the election of the new, more constructive and engaging Administration in the United States surely demonstrate that we should not lightly throw away the things we share across the United Kingdom just because we dislike or even despise the current Prime Minister and his self-serving cronies. However, with elections in Scotland and Wales in May, the Government need a desperately urgent reset of their stance towards the devolved Administrations. As has been said, the fact that trade policy and, more pertinently, trade treaties are reserved does not justify excluding Scotland, Wales and Northern Ireland from having a say in shaping them.

The noble Viscount, Lord Trenchard, may be right in saying that the negotiation of these treaties is a reserved matter exclusive to the Executive, and that this amendment is unhelpful, but I say to him very gently that I think he is totally failing to understand the mood that is growing in the devolved Administrations about this approach. If the UK Government could secure more preferential access, for example, for Scotch whisky into India, it would be a cause for rejoicing—but not if at the same time we saw a relaxation of standards for imported beef. So the devolved Administrations would first want to have a positive input into the things they wanted to secure, as well as a protective input and concerns about agreements that might damage significant parts of their interests in the economy. Surely the UK Government should seek to represent the whole of the UK in their approach to trade negotiations and agreements.

So I support the basic aims of this amendment tabled by the noble Lord, Lord Stevenson, and the noble Baroness, Lady Bennett. It is, I believe, weakened by proposed new subsection (5) which, although requiring the UK Government to seek the consent of the devolved Administrations, allows that to be set aside. However, I understand that that has been put in in a spirit of compromise. Personally, I would prefer some form of qualified majority voting, and also a way of testing the interests of English regions. Unless the Government respond to the spirit of this and similar amendments, by engaging much more positively with the devolved Administrations, they will face a constitutional crisis on top of the pandemic and Brexit—a perfect storm.

I say to Ministers that they should recognise that this has been a growing movement since the Brexit scenario has developed and the legislation relating to it has come forward—on agriculture, trade and the internal market. As has been clearly stated, we have tabled and supported a series of amendments seeking to secure the role of the devolved Administrations in the decision-making process. If the Government choose to disregard that, they will only be fuelling the centripetal pressures on the future of the United Kingdom, and I plead with Ministers to recognise that it is not just about the terms of the legislation, it is about the mood, the spirit, the language and the body language of Ministers when they speak to and about the devolved Administrations. Because, right now, that body language is driving support away from the future of the United Kingdom. I do not believe that that is the Government's intention, but it is the effect of their behaviour and I think they should really reflect on that.

Viscount Younger of Leckie (Con): I thank the noble Lord, Lord Stevenson, for Amendment 24, as it provides a further opportunity to talk briefly about the important issue of the devolved Administrations' role in our new international trade policy.

The UK Government are committed to working closely with the devolved Administrations to deliver an independent trade policy that works for the whole of the UK, and this has been reflected by statements from the devolved Administrations. For example, as I noted earlier in previous debates, the Counsel General for Wales, Jeremy Miles MS, recently said in his evidence to the Welsh Affairs Committee on 19 November that the department has listened to the devolved Administrations and established a new ministerial forum for trade, which we have used to consult them on all our trade agreements. The forum met four times last year, most recently on 9 December, and regular engagement will continue in 2021. I listened to the speech by the noble Lord, Lord Bruce of Bennachie, and do not entirely agree with his version of how the continuing talks are going.

This engagement has meant that the devolved Administrations' views have already begun to be reflected in our free trade agreements. For example, the devolved Administrations made it clear that they supported high ambition for the mobility of professionals in all our FTAs. With regard to the Japan FTA, the UK Government delivered this by securing more flexibility for Japanese and British companies to move talent into each country, covering a range of UK skilled workers to enter Japan, from computer services to construction.

I also listened to the brief speeches by the noble and learned Lord, Lord Morris, and the noble Lord, Lord Wigley, on their concerns over Welsh lamb. As noble Lords will know, the Bill does not give the UK Government powers to implement future trade agreements with partners, including New Zealand, but we will continue to work closely with the devolved Administrations on all our current FTA negotiations, so that their interests and priorities are reflected through negotiations.

However, while it is absolutely right that we engage meaningfully with the devolved Administrations, we must do so within our existing constitutional framework. That is why the DIT has sought to strike the proper balance between engaging with the devolved Administrations

and respecting that, under our constitutional settlement, international trade is both a reserved matter and a prerogative power.

My noble friend Lord Trenchard spoke at greater length—and in my view, very wisely—on these points. I agree with him that, unfortunately, this amendment would upset that balance. It would require the UK Government not only to consult but to seek the consent of the devolved Administrations for FTAs covering areas of devolved competence. This goes far beyond what is appropriate, given that international trade is a reserved matter and would have significant implications for the strength of the UK's negotiating position. I believe that my noble friend Lord Trenchard also made that point.

The principle that the UK Government have sole responsibility for decisions on international trade negotiations is not just long-standing constitutional practice but is critical in ensuring that the United Kingdom can speak with a single voice in our international relations, providing certainty for our negotiating partners and the strongest negotiating position for all the regions and nations of the UK. The amendment would undermine this unity and could lead our negotiating partners to try to play different Administrations off against one another. This is surely one of the reasons why the UK Parliament decided that international relations should remain a reserved matter and enshrined this in the devolution settlements.

The UK Government have worked hard with the devolved Administrations to ensure that the Bill is already drafted in a way that respects the devolution settlements. The Minister of State for Trade Policy has undertaken a significant programme of engagement to achieve this, including regular meetings with devolved Ministers, bilateral calls and attending the devolved legislature committees to discuss their views.

As noble Lords will know, the Scottish Government withheld consent from the previous Bill—the Trade Bill 2017-19. For this Bill, we therefore made additional amendments to address their concerns, such as removing restrictions on Scottish Ministers' use of the Bill's delegated powers. As a result, the Scottish Government and the Scottish Parliament's Finance and Constitution Committee changed their position and recommended that the Scottish Parliament consent to the Bill. On 8 October, a legislative consent motion—an LCM—was formally granted.

5.45 pm

Similarly, following our amendment and commitments on the data sharing parts of this Bill, the Welsh Government have also now recommended consent to all the relevant clauses of the Bill. We expect the Welsh Parliament to debate a legislative consent motion on the Bill shortly. The House of Lords Constitution Committee welcomed this progress in its report on the Bill, and a recent report by the Institute for Government on the Sewel convention highlighted the Trade Bill as an example of positive intergovernmental working on Westminster legislation.

We continue to engage with the Northern Ireland Executive, so that they also recognise this progress and support the Bill, which is vital to ensure continuity of trading relationships for businesses in all parts of the UK, including Northern Ireland.

Therefore, while I absolutely share the noble Lord's belief that the UK Government should be working closely with the devolved Administrations on our trade policy, I do not think that this amendment is the appropriate way to achieve this, and ask the noble Lord, Lord Stevenson, to withdraw it.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, I am grateful to all noble Lords who have spoken in this short debate. I always listen very carefully to the noble Viscount, Lord Trenchard, and again I thought that he spoke with great sense about some of the issues here. However, I was left a little puzzled by where he ended up in his contribution. If the best possible deal in a future trade negotiation means that we have to change the devolution settlement, where will that judgment be taken? At the moment, the issue we have is that there is no sufficient structure or support for the interrelationship between the UK Government and the devolved Administrations to resolve the difficulties and tensions that will occur most on these issues.

This is a little unfair, because the Minister perhaps needed more notice, but, when he responded to the questions about Welsh lamb from the noble Lord, Lord Wigley, and the noble and learned Lord, Lord Morris, he did not get down to the details. Perhaps he would write to them with a more considered position, because of exactly the point they made: where is a decision that affects the narrow interests—as some might call them—of Welsh upland farmers going to be taken, in relation to a trade deal that has been made by the UK Government as a reserved matter? This is of real importance to those affected by it in the devolved Administrations.

The noble Lord, Lord Bruce, suggested that Ministers need to wake up and smell the coffee, and that there is a need to reset this relationship, which I have already covered. He made the very good point that, just because a matter is reserved, it does not mean that good would not flow from a debate and a discussion, and the emergence of common positions around the devolved Administrations and the United Kingdom.

That is where we were trying to get to with this amendment: it is clear that, while the Government are going through their paces and beginning to get the hang of how negotiations need to happen, they do not yet have the mood, spirit and body language—as was mentioned by the noble Lord, Lord Bruce—in their day-to-day workings. That shows, I am afraid. If you want an example of that, the Minister ended on the changes that have been made between the Bill's first emergence in 2017 and today, but of course they include a number of amendments to try to paper over the arrangements that previously existed for trade, as it affects the devolved Administrations. That makes my point.

However, this is not the time to force change. This needs more debate and discussion, important use of the existing channels, and some reform of those channels. I beg leave to withdraw the amendment.

Amendment 24 withdrawn.

Lord Purvis of Tweed (LD): My Lords, I reserved my position on Amendment 25 when we debated it before Christmas. I will not divide the House on Amendment 25, which relates to trade with developing countries. In the previous group, I referred to the consequences of the tariffs now being charged. In the next few days, I hope that the Minister will add extra effort to ensure that this situation does not continue and that we see an agreement with Ghana, in particular, to resolve this issue. On that basis, I will not move Amendment 25.

Amendment 25 not moved.

Amendment 26

Moved by ***Lord Hain***

26: After Clause 2, insert the following new Clause—

"Northern Ireland: non-discrimination in goods and services

(1) Any trade agreement between the United Kingdom and any other party that is subject to sections 20 to 25 of the Constitutional Reform and Governance Act 2010 is not to be ratified if anything in the agreement prevents the United Kingdom from ensuring unfettered market access for—

(a) goods moving between Northern Ireland and other parts of the United Kingdom's internal market,

(b) services provided by a service provider in Northern Ireland to customers in other parts of the United Kingdom, and

(c) services provided by a service provider in another part of the United Kingdom to customers in Northern Ireland.

(2) Regulations under section 2(1) may not impose any tariffs or any requirement of customs procedures for goods originating in Northern Ireland which are entering Great Britain, or discriminate, either directly or in effect, in relation to such goods entering Great Britain as compared to other goods being traded within the United Kingdom."

Lord Hain (Lab) [V]: With permission, I move Amendment 26 and seek to divide the House.

5.51 pm

Division conducted remotely on Amendment 26

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Amendment 26 agreed.

Division No. 3

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6.03 pm

The Deputy Speaker (Baroness Henig) (Lab): We now come to the group beginning with Amendment 26A. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Amendment 26A

Moved by ***Baroness Boycott***

26A: After Clause 2, insert the following new Clause—

"Product standards: labelling

(1) The Secretary of State must by regulations made by statutory instrument make provision that any relevant food agency must specify that products imported under an international trade agreement meet UK levels of statutory protection for—

(a) food safety,

(b) quality,

(c) hygiene,

(d) traceability,

(e) human and animal welfare, and

(f) the environment,

with labelling on the packaging.

(2) A statutory instrument containing regulations under subsection (1) may not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament."

Baroness Boycott (CB) [V]: My Lords, I will speak to my Amendment 26A, which concerns the importance of labelling, and will support Amendment 31A in the name of the noble Lord, Lord Grantchester. Both are connected with public health and human health.

People do not realise how hard fought the campaign for clear labelling was. Someone I was at school with called Caroline Walker, a great food campaigner in the 1980s, made the wonderful point that we knew more about the ingredients that went into our socks than we knew about the ingredients that went into our food. She fought long and hard for good, clear labelling, and it would be an incredibly regressive step if, for any reason, the UK lost control of this.

Other countries that we are considering signing trade deals with take very different approaches to labelling. To choose just one example, I am sorry to come back to the USA again but it is permitted to refer to mechanically recovered material as "meat." This could be any parts of anything that runs around on four legs or two, scrambled together from anywhere.

If the UK opts to accept another country's labelling as part of a free trade deal, we could end up with food that has less information on labels and perhaps nothing at all. Our own labelling is not brilliant. For instance, pigs can be reared in Denmark, imported into the UK and turned into sausages in the Midlands. They can then be labelled as made in Britain. That is legal, but I think it is slightly deceitful, because it hides the fact that those pigs have been reared in conditions that we find to be unacceptable ill-treatment of animals.

Consumers here are very accustomed to using labels not only to buy what they want but to buy according to their values. They know that they can also eat to stay healthy. It is incredibly important to understand how much salt or sugar there is, and if you are diabetic this is a matter of life and death. The UK's front-of-pack traffic light labelling scheme, which uses colours, words and numbers to help UK consumers to understand fats and saturated fats, was introduced in 2013. Our Government describe it as

"a crucial intervention to support healthy choices and reduce obesity rates by communicating complex nutritional information to shoppers in a way that's easy to understand."

To understand the risk that future trade deals could have on our food labels, leaked US-UK trade negotiation papers show that the US side says that food labels are "harmful" and that they are

"not particularly useful in changing consumer behaviour."

They say this particularly about sugar, and I would bet my bottom dollar that that comes from the sugar lobby. I and many health experts would beg to disagree.

Health matters are intrinsically interwoven with all food and farming. It is very hard to see how Ministers can try to unpick them and put one bit here and one bit there. Research shows that some of our prospective trade partners have really irresponsible approaches, for instance, to using medically critical antibiotics in farming. It could have a serious impact on health in the UK, despite our own standards, if we water them down in any way. Similarly, prospective trade partners use a great many more pesticides. Some of these are known to be linked to cancers and are currently banned in the UK.

We know that the UK is reliant on foreign trade for a great deal of its fruit and vegetables, but other trade can also have a negative impact on diets. The obesity rates rose in Mexico and Canada post-NAFTA due, most researchers now believe, to the greater availability of food and drink products that are high in calories but very low in nutrition—in other words, snacks and fizzy drinks, out of which the manufacturers make a great deal of money.

Thanks to their greater transparency, the US produces barriers to trade reports. These show their hostility to the sorts of measures which the UK has already introduced or would like to undertake as part of its obesity strategy. It includes front-of-pack labelling, sugary drinks taxes, a ban on junk food adverts, and limiting the use of cartoon characters in marketing and reformulation policies. Free trade agreements could change our food environment not only by increasing the availability of such foods but by limiting our Government's ability to introduce policies that will help to encourage healthier diets.

Turning to Amendment 31A, I am still confused as to why the Government are happy for the Trade and Agriculture Commission to consider plant and animal health but not human health. The Minister has previously said that consideration will be given to the impact of trade on human health and that advice will be shared with Parliament. However, despite many helpful briefings I am still somewhat confused as to where this incredibly critical issue is going to live. I would like to see it in the Trade and Agriculture Commission, because the commission is statutory and to some degree independent. If it is not going to be there, could the Minister say which agency has the equivalent status and would be best placed to provide advice? Government health agencies do fantastic work, but will they have the independence and clout of the TAC?

There are many issues of human health at stake here. World health rates are not going up, due to bad diets, and I find it deeply alarming that the TAC will not be allowed to consider the impacts of trade on human health. I beg the Minister to reconsider when the amendment of the noble Lord, Lord Grantchester, is put forward. I beg to move.

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady Boycott. I am pleased to be able to make a short contribution to the debate on this group of amendments.

Amendment 26A, on the accurate labelling of products, as laid out so eloquently by the noble Baroness, is essential. I will not repeat the arguments that she has made, which I have made myself in debates. Consumers wish to know that the food they are buying is safe to eat, is of high quality and has been produced in hygienic conditions. Should there be a problem with any of the above, it is important that the produce is traceable, that both human and animal welfare have been protected during production and that the environment has not been damaged during growth and production. The latter is becoming more important by the day as we see the effects of climate change on our environment. Our agriculture and food industry produces the very best for human and animal consumption. Clarity on labelling provides the reassurance that both our farmers and the public expect.

Confidence in government is currently at a bit of a low ebb. It is necessary to repair that confidence, and detailed labelling is a step in the right direction for both farmers and food producers. Both Houses of Parliament must be reassured that this will take place at all stages, from inception—the planting of seeds—right through to harvesting and processing. This cannot be a back-door function of any trade deal.

Amendment 31A would ensure that public and human health came within the remit of the Trade and Agriculture Commission. Given the pandemic that we are living through, it is vital that we as a nation make every effort to ensure that such a situation does not happen in future. The TAC is the right place for this to be considered on a legal footing. Public health is an important element of maintaining confidence in all levels of government, from national level down to district and parish councils. All are interested in ensuring that inequalities are dealt with effectively and removed, and I hope the Minister is able to accept these amendments.

Amendment 34A would leave out the words

"except insofar as they relate to human life or health".

The amendment would remove the Secretary of State's ability to limit the advice which the Trade and Agriculture Commission can provide to him or her. For the TAC to be truly effective, it must be able to provide independent advice across a wide range of areas, many of which may not be obvious now. We have no way of telling with any accuracy what future world events may affect our trade and agriculture agreements and sectors, and I believe that it is wise not to be prescriptive at this stage. I support Amendment 31A and will vote in favour of it if a Division is called.

Lord Purvis of Tweed (LD): My Lords, I am grateful for this amendment being moved, because it means that we can debate something that is now a reality: changes in the way that goods coming into the UK and those to be exported will have to be labelled. We know that changes are already under way because of the result of the European agreement, and this amendment would take it to the international stage when it comes to the implications of any goods coming into the UK from other markets beyond.

6.15 pm

I was reflecting on my noble friend Lady Bakewell's comments about how in the past we have perhaps taken for granted that our goods, especially our foodstuffs, meet the high standards that we expect, because the consumer can understand clearly what is on the product label. I was on a CPA visit last year to an Asian country, and part of the menu for the delegation's lunch was the option of what were called "exciting sandwiches". One of the "exciting sandwiches" we were offered as a delegation was called "the Scotsman", which had "Norwegian smoked salmon on pumpernickel bread, cream cheese, egg and onion". Even just in terming it "the Scotsman", there was no comprehension that any Scotsman might be slightly offended that it was Norwegian salmon. That would be jarring for us,

[Lord Purvis of Tweed]
and that is a very obvious case, but when it comes to consumers' confidence in the products that they purchase, and will then consume if it is a foodstuff, it is very important indeed. Therefore, I agree that while we have debated it thoroughly in the past, it is very important.

I want to ask the Minister just one question to follow up, and it is linked with what procedures will now be in place for the changes to product labelling within the UK itself, because it is relevant for those that will be coming in, as I said, from imported countries. As I referenced in a previous group, there is a three-year arrangement with the European Union for labelling for organic products, and there are separate marks now, which will have to be put on goods, that will replace the CE marking. They will be replaced with a UKCA marking or, if goods are to go to Northern Ireland, a UKNI marking. But there is less than clarity as to how those goods will be decided upon in the markets that they go to.

What is the Government's position on goods entering the market, as has been referred to in the previous group, compared with those that will be either ingredients or component parts of UK goods? What will the requirements be and what we will ask of those countries for those component products? There are, of course, very many. What markings will have to be put in place? Will the UKCA marking be the requirement?

We know that there is a period with regard to goods coming from the European Union and migrating from the CE mark to the UKCA mark, but for many countries that have automatically assumed that the UK standards are EU standards, what labelling are we asking countries that have signed continuity agreements to put on their products coming into the UK? If the Minister can answer that point, I think it would go some way to provide a degree of assurance. That is one technical aspect. I support the overall approach of these amendments. As my noble friend indicated, we will also support the amendments if they are pushed to a vote.

Lord Grantchester (Lab): I thank the noble Baroness, Lady Boycott, for joining with me in this group of amendments and leading with Amendment 26A on labelling. I have added my name to this amendment as a further step that accompanies all the measures being undertaken to maintain, in a fully transparent manner, the equivalence or consistency of imported food to the current standards that will be applied within the UK. I will speak to Amendments 31A and 34A in my name in this group, and once again thank the noble Baroness, Lady Boycott, for her support, and other noble Lords who have spoken.

This returns the House again to the debates undertaken on the Trade and Agriculture Commission during the passage of the Agriculture Bill, which other speakers will remember so well. The conclusion of the Agriculture Act was that the CRaG Act 2010 was amended by new Section 42, while the Trade and Agriculture Commission to implement scrutiny on trade deals would be implemented in the Trade Bill. Unfortunately, the shape of the TAC in this Bill does not comply entirely with the shape agreed with Defra Ministers regarding public health, or the fact that others may well have other ideas about what the TAC should be.

Amendments 31A and 34A would reinsert public health considerations through food imports into the functions of the TAC. Defra Ministers had agreed these aspects and, indeed, Clause 42 includes them. Why, then, does the Minister in the Department for International Trade wish to go back on that agreement? In discussions, Victoria Prentis declared that the Government across all relevant departments, including Defra, the Cabinet Office and the Department for International Trade, had signed off on that agreement. It could well have included the DHSC as well.

I thank the Minister and his team for the discussion undertaken with myself and the noble Baroness, Lady Boycott, on Monday afternoon. Indeed, I listened carefully to his replies in Committee that gave rise to these amendments. I am grateful to his further but, unfortunately, unconvincing explanations. In Committee, he replied that Ministers can and do receive advice on standards on food from the Food Standards Agency and Food Standards Scotland, which will take on the role of upholding current legislative bans on foods that would continue to be banned, and that Ministers do not need advice from the TAC as well. He expanded on this on Monday, saying that he sees Amendment 31A as channelling all that advice from the FSA to Ministers through the TAC. To his department, that is not necessary. He wishes the agency's advice to come directly to his department.

Once again, as experienced when pressing the Minister, the reply seemed to be about process. However, the amendment is not about process and where advice to Ministers comes from. It is about full transparency to Parliament and the public, not merely to Ministers, through the scrutiny of the new export body, the Trade and Agriculture Commission. It does not take over all the reporting structures of the FSA. The TAC can direct and ask questions of the FSA, I am sure, on its investigations and analysis. Normal advice and input from agencies can continue during all the long process of negotiating trade deals, and not be concertinaed down into the CRAG, time-constrained process.

Is the Minister saying that his department did not sign off on the agreements reached during the passage of the Agriculture Bill? Amendment 31A would reinsert expertise on human health into the membership of the TAC, and Amendment 34A would consequently reinsert that advice into the reports of the TAC.

I shall press my amendment to a vote and call on the support of the House to return this matter for further consideration in the Commons, which previously agreed to the Agriculture Bill outcome, with the addition of public health in the scrutiny process of the TAC.

Lord Grimstone of Boscobel (Con): My Lords, I turn now to Amendment 26A, tabled by the noble Lord, Lord Grantchester, and the noble Baroness, Lady Boycott.

First, it is important to note—I hope this provides some reassurance to the noble Baroness—that all imports must meet the UK's regulatory requirements, and this includes imports needing to meet our high food safety standards. Of course, this will remain the case. However, the amendment will undermine our abilities to successfully negotiate and agree new international trade agreements

and to import goods from trade partners. That will have implications for all goods imported under our international trade agreements, including continuity agreements and the WTO agreements.

Requiring that such labels be applied to imports only would discriminate between domestic and imported goods. This may seem a technical matter, but it would risk violation of the UK's WTO and FTA commitments, as well as imposing additional labelling costs and administrative burdens on imports. The amendment would also have dire consequences for developing nations, which are unlikely to be able to meet this new requirement and would no longer be able to export goods to the UK, thereby losing a valuable income stream for them, their local businesses and communities.

The noble Lord, Lord Purvis, asked about conformity marking. This is a complex matter and to ensure that my answer is completely accurate, I will, with his permission, write to him and, of course, place a copy in the Library.

Turning to Amendments 31A and 34A, I thank the noble Lord, Lord Grantchester, and the noble Baroness, Lady Boycott, for the meeting we had on Monday to discuss these. I completely understand the good intentions that lie behind these amendments. Of course, the Government recognise that public health and health inequalities are important issues. The fact that advice will not be sought from the statutory TAC in relation to this should in no way dilute this message, which I thoroughly endorse. This is why the Government have taken steps to ensure that relevant interests are taken into account at every step of the negotiations process, from public consultations at the start, dedicated trade advisory groups during it and, of course, independent scrutiny of the final deal at the end.

The government amendment to put the Trade and Agriculture Commission on a statutory footing, which we discussed at length on the first day of Report, provides an advisory role for the TAC to help inform the report required by Section 42 of the Agriculture Act. The TAC will advise the Secretary of State on the extent to which FTA measures applicable to "trade in agricultural products"—as specified in the Act—are consistent with UK levels of statutory protection relating to animal and plant life and health, animal welfare and the environment. It will not advise on human health because the Government believe that this advice is best taken from other appropriate bodies. This in no way diminishes the importance of that advice; it means that we believe that it would be best for this advice to come from other, better-qualified, bodies. In answer to the noble Baroness, Lady Young of Old Scone, we will, of course, make it clear, in due course, where the advice is being drawn from in this important area.

We believe that it would be inappropriate for the TAC to be expanded in the way proposed because there are already groups looking to tackle the issues raised by this amendment. We consider that, if the TAC advised on these issues as well, it would risk wasteful duplication of effort with existing groups with similar functions—indeed, this could overwhelm the TAC and prevent it from fulfilling its obligations in other areas. Important issues such as health inequalities involve multiple factors beyond trade policy that the TAC's remit cannot fully address. I really believe that this is not the right forum. The TAC's advice should focus specifically on product characteristics rather than broader policy on public health and health inequalities.

In preparing the Section 42 report, the Secretary of State may also seek advice from any person considered to be

"independent and to have relevant expertise."

Of course, this will be a transparent process. This does not restrict or exclude experts in any specific area of human health. I hope that this reassures noble Lords, and I ask for the amendment to be withdrawn.

Baroness Boycott (CB) [V]: First, I thank the Minister and the people who spoke in the debate, particularly the noble Baroness, Lady Bakewell of Hardington Mandeville, who made the point that good labelling gives us confidence in the Government, which we all really need right now. I also thank the noble Lord, Lord Purvis of Tweed, who made the point that we now take these things for granted and that we should never do so with something like this: it is a privilege to have good labelling, and it is one that we should hold on to. I will not press this to a Division, but I wholly support the noble Lord, Lord Grantchester, in his desire to push Amendment 31A to one. I thank the Minister for his words and attempted reassurance, but I am afraid that it has not worked for me at all.

6.30 pm

I cannot understand why we are in this position on this critical issue of human health. At the end of the day, we farm in order to eat and we eat in order to live and yet, once again, after all these years, food is being kicked around like a football with nowhere to live. We still do not know where it will live. The Minister said just now that we are waiting on advice as to which body will give this advice. How will the advice be received? Will it have power, and will we be able to trust it? If the Government are serious about the issue of public health—human health—and I believe that everyone is, it absolutely defies belief as to why it cannot be put at the heart of the Bill. It was moved out of agriculture directly and given, as we understood it, to this new body, the TAC. Now we are told that it cannot be there. It is a homeless fellow right now, wandering around the walls of Westminster with nowhere to live.

I support this amendment wholly and think that it is extremely important, because this is risky stuff. The other side of it is that, if we get this right, it benefits our health and the environment, and, quite honestly, it benefits us all. I am confused, but I certainly know where I will vote in the next few minutes.

Amendment 26A withdrawn.

The Deputy Speaker (Baroness Henig) (Lab): We now come to the group beginning with Amendment 27. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this amendment or anything else in this group to a Division must make that clear in the debate.

Clause 6: Provision of advice, support and assistance by the TRA

Amendment 27

Moved by ***Baroness Kramer***

27: Clause 6, page 4, line 16, at end insert—

"( ) In order to provide the Secretary of State with the advice, support and assistance under subsection (1), the TRA must within six months of its establishment publish a strategy for its engagement with stakeholders, including, but not limited to—

(a) representatives of climate change and environmental groups,

(b) businesses,

(c) small businesses,

(d) trades unions,

(e) consumers, and

(f) each of the devolved administrations."

Baroness Kramer (LD) [V]: There are many issues to cover this evening. I am moving Amendment 27, in my name and those of my noble friend Lord Purvis of Tweed and the noble Baroness, Lady Bennett of Manor Castle, which is designed to ensure that the TRA engages with and listens to a wide range of concerned stakeholders as it does its work and does not disappear into its own bubble. Appointing representatives of stakeholder groups to the TRA does not achieve the purpose of wide engagement—I wish it did—but the responsibilities of TRA members prevent them from advocating even in areas where they are specialists. The role of TRA members is to assess the procedures followed by the TRA against its rules and mandate. I have no objection to the appointment of the diverse and widely experienced range of members to the TRA as proposed in Amendments 47 and 48, but it will be an unsatisfactory body if it does not hear from a wide range of voices as it seeks to make its determinations.

Amendment 27 would require the TRA both to develop an engagement strategy and publish it. I drafted a suggested list of stakeholders with which the TRA must engage but the list is deliberately not limited. It would make sure, for example, that small businesses, unions and consumers were heard but also climate change and environmental groups, all of whom will contribute to the TRA's understanding of the implications of its decisions, and those decisions will genuinely matter. I beg to move.

The Deputy Speaker (Baroness Henig) (Lab): I call the next speaker, the noble Lord, Lord Purvis of Tweed.

Lord Purvis of Tweed (LD): My Lords, I apologise to the House; clearly the message that I had scratched from this group has not got through. I reflected on the fact that three Liberal speakers on this group would spoil the House too much, so I have nothing to add after the very able way in which my noble friend moved this amendment.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it is a pleasure to follow the very humble noble Lord, Lord Purvis of Tweed, and the noble Baroness, Lady Kramer. I shall speak to Amendment 27, which stands in their names and to which I have added mine. I shall also speak to Amendment 47, in the name of the noble Lord, Lord Bassam of Brighton, to which I have attached my name, and to Amendment 48, which I think might best be described as a friendly amendment to Amendment 47, as it makes just a small addition to it.

As the noble Baroness, Lady Kramer, said in introducing this group, these amendments very much fit together. Amendment 27 refers to the fact that the TRA should listen to a wide range of representative groups. That very much relates to the debate on the preceding group, where the noble Baroness, Lady Boycott, and many others made a powerful case for the importance of food standards and labelling standards. If consumers were listened to by the TRA, it would certainly be very helpful. As we are in a climate emergency and a nature crisis, we need to make sure that expert voices from that area are listened to as well. It is something that perhaps we do not always see traditionally as part of trade, but it is becoming very obvious that it is a crucial part of the whole issue.

On Amendments 47 and 48 in particular, we know that we have a huge problem with the bodies or organisations that are appointed, particularly by Westminster, being representative of all parts of the country in terms of region, background, knowledge and skills. As has just been highlighted by the appointment of the new chair of the BBC, it would seem that, under this Government, there are very few positions in UK society that a long career in the financial sector does not qualify you for. Crucially, we need our government institutions and bodies to be far more representative of our society as a whole. That means including different voices, genders, backgrounds, regions, educational backgrounds, et cetera. These three amendments taken as a package are a modest but important attempt to ensure that, when we formulate and make decisions about trade policy, a range of voices is heard.

Baroness McIntosh of Pickering (Con): I am delighted to follow the noble Baroness, Lady Bennett. I shall speak to Amendments 28, 29 and 30, which are intended as probing amendments. I refer in passing to the report on the Trade Bill from the Select Committee on the Constitution, published in September of last year. The committee says at paragraph 11:

"We remain of the view that the Bill's skeletal approach to empowering the Trade Remedies Authority is inappropriate."

It goes on to say at paragraph 12:

"We recognise that there continue to be significant uncertainties regarding the UK's trading relationships at the end of the Brexit transition period",

which of course has now passed, and it concludes:

"However, it is not clear why, more than two years after the previous version of the Bill was introduced, the functions and powers of the Trade Remedies Authority cannot be set out in more detail in this Bill."

Therefore, I gently nudge my noble friend the Minister to say, when he responds to Amendments 28, 29 and 30, what the intention behind the original Clause 6 was.

With Amendments 28 and 29, I seek in particular to focus on understanding better what limits might be appropriate to a request to the Trade Remedies Authority to provide advice on matters of international trade,

and, with Amendment 30, to clarify the purpose of the initial consultation before proceeding to a request. At this stage, I should say that I am most grateful to the Law Society of Scotland for its assistance in briefing me and preparing these amendments.

With regard to Amendment 30, it is not immediately clear from the legislation why the Secretary of State would consult the Trade Remedies Authority under Clause 6(3) and how this is different from issuing the original request under subsection (1). I might be missing something but, if you are issuing a request, that seems a little odd. I am grateful to the Law Society of Scotland for raising this with me and, in turn, for the House this afternoon. Surely, if you make a request to the Trade Remedies Authority, you do not need to consult the authority beforehand on the nature of that request.

Can my noble friend clarify whether there is any distinction between the two actions, making it clear that the duty to consult in Clause 6(3) relates to framing or scoping a request to the Trade Remedies Authority, just so we can understand why it is appropriate to shape that request when, in fact, the Trade Remedies Authority is meant to be independent and impartial? By going through this process of consultation, I am slightly concerned that that impartiality and independence may be impugned or compromised.

Amendments 28 and 29 point to the fact that the Trade Remedies Authority has already existed, and exists in abstract, having been incorporated by reference in the Taxation (Cross-border Trade) Act 2018, although we are formally constituting it in the Trade Bill before us today. If it is the case that the Trade Remedies Authority is responsible for carrying out investigations and advising on remedies as set up under the cross-border trade Act, while it is an essential aspect of international trade, it is only one part of that. The proposed amendment therefore would ensure that requests for advice are limited to matters on which the Trade Remedies Authority is competent to advise, having regard to its remit and functions.

The purpose of this group of three amendments is simply to explore a better understanding from my noble friend and the Government through the department as to what the remit of the TRA should be and to ensure that the independence and impartiality of that body will not be infringed through the present drafting of Clause 6(3).

Lord Lansley (Con) [V]: My Lords, I am grateful for the opportunity to contribute to this debate. The amendments in this group all relate to the composition, functions and approach taken by the Trade Remedies Authority. I am very glad to follow my noble friend Lady McIntosh of Pickering. She rightly referred to the powers and approach set out in the Taxation (Cross-border Trade) Act 2018. I have to say equally gently that that is the answer to the points made by the Constitution Committee of this House—that they do not need to be set out in this legislation, because, way back when we first started considering the previous Trade Bill, as the noble Lord, Lord Purvis of Tweed, and I fondly remember, it was introduced at almost exactly the same time as the Taxation (Cross-border Trade) Bill. They were intended to proceed in parallel and are now entirely separate.

To some extent, that also gives a further reason why we should briefly consider at this stage the Trade Remedies Authority's understanding that it has, in the form of the trade remedies investigation directorate of the Department for International Trade, been up and running, working on the transition review from the European Union and making recommendations relating to the imposition of countervailing, anti-dumping or safeguarding duties inherited from the European Commission. To that extent, we seek to influence not something new but something that has an ongoing role.

In this debate, I want to raise several issues. I hope that my noble friend on the Front Bench will not regard it as necessary to elaborate on all these issues now. If he wishes to write later, that is absolutely fine, but I do want to make one or two points.

6.45 pm

First, there has been some concern that the delays to this legislation and its predecessor have disrupted the processes of establishing the Trade Remedies Authority and staffing it as we would have wished, leading to staff turnover. I hope that my noble friend will be able to say that we are now getting much greater stability in staffing. The leadership for the authority is now established. I have the utmost respect for the chair designate and chief executive designate, both of whom will be known to Members of this House—Simon Walker, the former head of the Institute of Directors, and Oliver Griffiths, who was trade negotiator on the UK-US negotiations in recent months. I express particular thanks to Satjit Singh, whom I remember from his health responsibilities, who has stood in as interim chief executive of the Trade Remedies Investigation Directorate in recent months. That has helped us to get to a good place. I hope that the fact that the chair designate was formerly the lead non-executive director of the Department for International Trade, and that the chief executive designate was formerly a very senior official in the department, does not undermine the independence of the Trade Remedies Authority. If we set out for it to be independent, it should be so and I hope that that will be demonstrated by the manner in which it goes about its task.

I want to make one point about engagement. It is important to understand the nature of the functions that the TRA is pursuing. With reference to the list of the TRA's stakeholders in the amendment, the importance of industry bodies, trade associations and trade unions in identifying the interests of UK producers in a particular sector is central and cannot be overestimated. For example, there is a requirement that a complaint needs to be brought by 25% of UK producers and not be opposed by others. The fact that a trade association is bringing such a complaint must often be of the essence. A central aspect of the Trade Remedies Authority's engagement must be with trade associations and trade unions—in relation to the workforces of those sectors—and that is not reflected in the purpose of these amendments.

That said, these amendments have helped identify some important issues. I hope that the Minister will not mind that I raised slightly wider issues, but these amendments are not necessary in order to give effect to a well-functioning TRA.

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, there was some good debate on the TRA in Committee, and the amendments in this group largely follow up on those themes, about which there was quite a lot of agreement. The disagreement was about whether or not they should be included in the Bill. I will speak mainly in support of Amendment 27, which my noble friend Lady Kramer has already explained. I want to add more background to why it is proper to put a little more on the face of the Bill when a regulator is created.

We have a lot of independent regulatory bodies in the UK. We will have even more, such as the TRA, following Brexit. They become part of the system of unelected power. That system has its strengths and weaknesses. We seem to have been broadly free of corruption, but maybe we have had our fair share of ineptitude. Whatever the rights and wrongs of the system, there is really only one opportunity for Parliament to intervene in the objectives and formulation of the regulator in a way that is seen as benign and away from incidents, rather than threatening it or treading on its powers, as it may see it. That time is when it is being set up, as the TRA is now. If I recall correctly, the Minister, the noble Lord, Lord Grimstone, said that the TRA will have heard Parliament's views and could take account of them. It is true that the TRA, once formed, may take note, especially if the Minister is supportive, despite wanting to keep amendments down.

However, in reality, reliance on kind words in debate is not enough, especially ones lost in the mists of time. The Government may get another go, whether through policy messages of a formal nature or otherwise, or through statutory instruments, which we all know that Parliament has no power to change. For Parliament, once the Bill is passed, it is down to how far Select Committees will manage to harangue a regulator when it goes wrong or to how many Members pose Parliamentary Questions and cause enough publicity and aggravation to force a review, usually after a dramatic failure. I have trodden that path, but how much better it would be to accept the benign influence of a few more words in legislation at the outset, so that slippages are prevented or can be reminded about and caught sooner. Maybe there will be some constructive sessions with Select Committees and regulators will say "I will take that idea back" but, in my experience with financial services regulators and the FRC, that rarely leads anywhere.

As has been pointed out, the TRA has some well-defined functions stemming from WTO rules already in legislation, but there is wriggle room left around the economic impact assessment and it is all happening at a time of great sensitivity. Although I acknowledge that the department is doing a good job in its current work and preparation for the TRA, there would be comfort for the future in having something in the Bill to remind it about engagement with stakeholders.

The other amendments in this group also have merit. Amendments from the noble Baroness, Lady McIntosh of Pickering, concerning the scope of advice, raise in my mind the question of whether the Government might at any stage wish to consult the TRA about state aid subsidies. What co-operation might there be between the CMA or other state aid control bodies given that the TRA has the other side of it? In a similar vein, I wonder whether the TRA will have the role of investigating infringement of state aid by the EU under the trade and co-operation agreement, as well as under WTO rules.

My plea to the Minister is that he put something on the face of the Bill so that there is at least something to point to concerning stakeholders.

Baroness Noakes (Con): My Lords, I shall speak only to Amendment 27 in this group. I do not support it, mainly because I believe it is not necessary to tell a public body how to do its job. The TRA will be set up with a chief executive, staff and a board which will have a majority of non-executive directors and a chairman. It is being set up in a perfectly conventional way, which should allow it to ensure that it operates effectively.

A public body—or indeed any kind of body—does not need to be told to draw up a stakeholder engagement strategy. I also find it slightly bizarre that the amendment focuses on an engagement strategy. There will be far more important aspects of the TRA's work—for example, on the kinds of information it seeks and the kind of analysis it carries out—but no strategy seems to be required for those. I also find no merit in the requirement to publish a strategy; I fail to see how that would add to the effectiveness of the TRA in providing advice.

Even if we need to specify that there must be an engagement strategy, it is quite unnecessary to specify a list of stakeholders with whom engagement must take place. I must say that the relevance of some in the list in this amendment is not entirely obvious. It seems to me that those proposing this amendment have forgotten that the TRA will focus on the kinds of things set out in Clause 6(3). It is a body focused on trade and traders, not on solving the problems of the world which are of interest to lobby groups.

Lord Bassam of Brighton (Lab) [V]: My Lords, now that the Brexit transition period has ended, the creation of the Trade Remedies Authority is obviously both necessary and very welcome. It should allow the UK to protect domestic industries, investigate allegations of unfair practices by overseas competitors and seek their resolution via the WTO's dispute settlement mechanism. We must have a Trade Remedies Authority that has a broad membership from sectors and regions across the UK, conducts meaningful stakeholder engagement and, of course, is independent from the Government.

I do not buy the argument from the noble Baroness, Lady Noakes, that it is not the business of Parliament to give some guidance or ideas as to who those meaningful stakeholders might be in ensuring that we get this right. Only then, I argue, will it be transparent and fair when investigating and challenging practices that distort competition against UK producers. But the Bill appears not to secure this, as reflected by my Amendment 47 and the other amendments in this group, which are in their own way entirely benign. It is worth reminding ourselves that the Lords Constitution Committee said that it was not clear why the functions and powers of the Trade Remedies Authority could not be set out in more detail in this Bill. We cannot have an unbalanced TRA that simply supports the priorities and approach

of this Government, or indeed any Government. We need a functioning TRA and a functioning trade remedies system, but its functioning will be undermined if there is no independence.

Amendment 47 is simple. It allows the Secretary of State to ensure that members of the TRA should have the

"skills, knowledge or experience relating to producers, trade unions, consumers and devolved administrations in different parts of the United Kingdom."

The amendment clearly seeks to guarantee an appropriate balance of views at the TRA, not in favour of any party or sector but for the benefit of all regions, nations and businesses. In particular, I argue that we need trade union representation in the TRA. The TUC has said that, without it, there will be

"no guarantee provided that the non-executive members will represent the interests of workers in manufacturing sectors who will be severely affected by the dumping of cheap goods such as steel, tyres and ceramics."

I hope that the Minister can explain in some detail how this balance can be achieved without the necessity of this and other amendments being in the Bill.

Viscount Younger of Leckie (Con): My Lords, there have been some succinct speeches in this debate and I shall keep my remarks relatively brief, but bearing in mind that there are six amendments to address.

Amendment 27 in the name of the noble Baroness, Lady Kramer, and the noble Lord, Lord Purvis, seeks to require the TRA to publish a strategy of its engagement with certain stakeholders within six months of its establishment. I am afraid that I agree with my noble friend Lady Noakes that we do not see merit in this, and I shall briefly explain why. The TRA's processes are set out in legislation and limited by the scope of WTO agreements, including much of the basis of how it will engage with stakeholders in its investigations. UK producers will be able to bring complaints directly to the TRA through an innovative digital service which will underpin the process and make it easier for businesses to engage. I hope that I can provide further reassurance to the noble Baroness by outlining that we have engaged extensively with various stakeholders on establishing the TRA and encouraged them to build constructive relationships with the TRA itself, once established. I shall say more, particularly in relation to questions raised by my noble friend Lord Lansley, about progress on setting up the TRA in a moment.

I will move swiftly on to Amendments 28 and 29, in the name of my noble friend Lady McIntosh of Pickering, in relation to the TRA. These amendments would seek to narrow the limits of a request that the Secretary of State may make to the TRA for advice, support or assistance. We are committed to creating a world-class organisation staffed by a team of highly skilled international trade experts. The Secretary of State may require assistance from the TRA's knowledgeable experts in certain circumstances to assist work carried out by government departments. There are some situations where the Secretary of State may need to request assistance from the TRA outside of trade remedy disputes arising under the WTO dispute settlement mechanism, including assistance in respect of provisions relating to trade remedies in regional trade agreements. In seeking assistance, however, the Secretary of State must have regard to the TRA's independence, impartiality and expertise.

7 pm

The provisions of Clause 6(1) specify the matters on which the TRA can provide advice, support or assistance when requested by the Secretary of State. They are limited to areas of international trade and relate to the TRA's area of expertise. The provisions of Clause 6(2) set out the types of advice or assistance that the Secretary of State may request. While the list is not exhaustive, it is limited by subsection (1) to particular matters. If the TRA received a request that went beyond the matters set out in Clause 6(1), it would provide what assistance it could—but within the scope of this provision. The TRA will be a specialised body with expert understanding of trade remedies and international trade. It is unlikely that narrowing the limits of requests that the Secretary of State can make will do anything other than hinder the TRA's ability to assist on these matters.

Amendment 30, also in the name of my noble friend Lady McIntosh, seeks to change the purpose of the initial consultation between the Secretary of State and the TRA before making a request. It is important that the initial consultation allows the TRA to provide the Secretary of State with a range of relevant information so that she can determine whether her request is appropriate.

I recognise that my noble friend is trying to ensure that the consultation process is clarified. However, restricting the consultation to a discussion of the scope of the request would limit the amount of information that could be requested about the impact of the request on the TRA. The Secretary of State must be able to make informed decisions based on the information that she receives from the TRA. This amendment would prevent the Secretary of State being obliged to seek during the consultation process information that pertained to the TRA's expertise and independence, although she would still be required to have regard to these issues when making decisions based on the TRA's assistance, under Clause 6(3)(b).

I will say a bit more about the questions asked by my noble friend Lady McIntosh, focussing mainly on why the department would need to request assistance from the TRA. My noble friend linked her questions to issues of independence and impartiality, which I quite understand. As she will know, the TRA will be an independent body staffed by trade remedies experts. There are a number of situations where the Secretary of State may need to request assistance. In relation to trade remedy disputes arising under the WTO dispute settlement mechanism, which I mentioned earlier, these may include, assistance in respect of bilateral or regional trade agreements, or assistance in relation to technical issues arising in appeals against decisions made by the Secretary of State following recommendations made by the TRA. For example, the UK may be involved in a dispute relating to an investigation carried out by the TRA. The Secretary of State would be responsible for defending the decision in this dispute but would understandably need to work closely with the TRA to do so effectively. I hope that that gives some assurance and answers to my noble friend.

[Viscount Younger of Leckie]

Amendment 47, in the name of the noble Lord, Lord Bassam of Brighton, seeks to ensure that members of the TRA have a balance of skills, knowledge or experience relating to producers, trade unions, consumers and devolved Administrations. Amendment 48, in the name of the noble Baroness, Lady Bennett of Manor Castle, adds civil society to that list. Although the full process behind these amendments may appear laudable at first sight, the skills that board members can provide to address the issues facing the TRA must be the focus of any recruitment process, and limiting that process to reflect the interests of particular parties—a good few parties—would be counter-productive.

Furthermore, this amendment does not give a description of what an "appropriate balance" may mean for the membership of the TRA board. This would create considerable vagueness in terms of prescription and uncertainty for the Secretary of State when selecting members of the board. For example, would a gap in experience relating to producers mean that the board is unbalanced? What if there was only one member with experience of the production sector, but two with experience relating to consumers? I could go on. Does there need to be an equal number of members experienced in each area?

We believe that the addition of "civil society" to the list would create even more uncertainty. The term can have a broad range of meanings and it would be difficult to discern candidates with skills in such a loosely defined area. Identifying appointments who fall into this category, rather than that of consumers or trade unions, would be challenging, further complicating the process of striking balance across the board.

As I mentioned earlier, my noble friend Lord Lansley made a number of points. I may need to consult *Hansard* later and write to him, but I will have a stab at replying on the progress of the TRA. Good progress is being made. There are currently 100 staff in post and plans to increase this to 130 as the workload increases in parallel. I welcome the support of my noble friend Lord Lansley for the leadership of the TRA, particularly for the experience of the current chair and CEO-designate. I thank him for his comments.

We have had applicants from a wide range of backrounds and all areas of the UK, and I assure noble Lords that appointments are being made on merit. As I said earlier, being beholden to a narrow and ambiguous set of criteria to appease certain interest groups would be unhelpful and open to interpretation and misinterpretation. I hope that these explanations have reassured noble Lords and that the amendments can be withdrawn.

Baroness Kramer (LD) [V]: I will be brief. I was disappointed by the speeches of the noble Viscount, Lord Younger, the noble Baroness, Lady Noakes, and the noble Lord, Lord Lansley. I heard that the TRA should engage with one stakeholder group only: producers. It was an outdated and out-of-touch view of the role of trade within the UK economy. If the Government pursue this path, it will be one to rue. I hope that the Government go away and think again, but I will not press Amendment 27. I thank all noble Lords who spoke in support of the very constructive amendments in this group.

Amendment 27 withdrawn.

The Deputy Speaker (Lord Lexden) (Con): I apologise to the noble Baroness, Lady McIntosh. I did not receive note of her wish to intervene.

Amendments 28 to 30 not moved.

Amendment 31

Moved by ***Lord Grimstone of Boscobel***

31: After Clause 6, insert the following new Clause—

"PART 2A

THE TRADE AND AGRICULTURE COMMISSION

Trade and Agriculture Commission

(1) The Secretary of State may appoint members to a committee to be known as the Trade and Agriculture Commission (the "TAC").

(2) The TAC's purpose is to provide advice under section 42 of the Agriculture Act 2020 (reports relating to free trade agreements).

(3) When appointing members to the TAC, the Secretary of State must have regard to the desirability of appointing members who, between them, have expertise in—

(a) United Kingdom animal and plant health standards,

(b) United Kingdom animal welfare standards,

(c) United Kingdom environmental standards as they relate to agricultural products, and

(d) international trade law and policy.

(4) In subsection (3)(c), "agricultural products" has the meaning given in section 42 of the Agriculture Act 2020."

Member's explanatory statement

This amendment would provide for appointments to, and the purpose of, the Trade and Agriculture Commission.

Amendment 31A (to Amendment 31)

Moved by ***Lord Grantchester***

31A: After Clause 6, after subsection (3)(d) insert—

"(e) public health and health inequalities."

Lord Grantchester (Lab): Any potential drop in imported food product standards will directly affect public health. I thank the noble Baroness, Lady Boycott, for her wide-ranging perspective on food, and the noble Baroness, Lady Bakewell, and the noble Lord, Lord Purvis, for their support. There is an issue with contaminants and food poisonings in other countries' food products, and there are efforts from Downing Street on obesity. There is the issue of highly hazardous pesticides, as well as growth promoters and AMR concerns.

We feel that the TAC has an important public health role to play and will need expertise returned to its function to advise Parliament and Ministers on such matters and on future trade deals, or its importance will be severely diminished. The FSA is not expected to put great emphasis on production methods, and the environment and animal welfare impacts of production

do not necessarily correlate with food safety issues. Neither are apparent on inspection of the final product. Advice needs the coherence of being a meaningful part of reports to Parliament by the Trade and Agriculture Commission, without further pressure being put on the already struggling FSA, which does not have the same transparency and accountability to Parliament.

I therefore wish to press my amendment to a vote.

7.10 pm

Division conducted remotely on Amendment 31A (to Amendment 31)

Contents 285; Not-Contents 258.

Amendment 31A (to Amendment 31) agreed.

Division No. 4

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7.24 pm

Amendments 32 and 33 (as amendments to Amendment 31) not moved.

Amendment 31, as amended, agreed.

Amendment 34

Moved by ***Lord Grimstone of Boscobel***

34: After Clause 6, insert the following new Clause—

"Trade and Agriculture Commission: advisory functions

(1) Section 42 of the Agriculture Act 2020 is amended as follows.

(2) After subsection (4), insert—

"(4A) In preparing the report, the Secretary of State must—

(a) request advice from the Trade and Agriculture Commission on the matters referred to in subsection (2) except insofar as they relate to human life or health, and

(b) publish the request, together with any associated terms of reference or guidance.

(4B) Before laying the report, the Secretary of State must lay before Parliament any advice received in response to a request under subsection (4A)."

(3) In subsection (5)—

(a) after "report" insert "or advice received in response to a request under subsection (4A)";

(b) omit "of it";

(c) in paragraph (d) after "report" insert "or advice".

(4) After subsection (6), insert—

"(6A) On or before the third anniversary of IP completion day and at least once every three years thereafter, the Secretary of State must review the operation of subsections (4A) and (4B) and consider whether to make regulations under subsection (6B).

(6B) The Secretary of State may by regulations repeal subsections (4A), (4B) and (6A), and amend subsection (5) to remove reference to advice requested in accordance with subsection (4A).

(6C) Regulations under subsection (6B) are subject to the affirmative resolution procedure and may not come into force before the third anniversary of IP completion day.""

Member's explanatory statement

This amendment would require the Secretary of State to seek advice from the Trade and Agriculture Commission in preparing a report under section 42 of the Agriculture Act 2020.

Lord Grimstone of Boscobel (Con): I beg to move.

Amendment 34A (to Amendment 34)

Moved by ***Lord Grantchester***

34A: After Clause 6, in subsection (2), in inserted subsection (4A)(a), leave out "except insofar as they relate to human life or health"

Lord Grantchester (Lab): I beg to move.

Amendment 34A (as an amendment to Amendment 34) agreed.

Amendment 34, as amended, agreed.

Amendments 35 and 36

Moved by ***Lord Grimstone of Boscobel***

35: After Clause 6, insert the following new Clause—

"Trade and Agriculture Commission: further provision

(1) Members of the TAC are not to be regarded as servants or agents of the Crown or as enjoying any status, immunity or privilege of the Crown.

(2) The Secretary of State may provide members of the TAC with such staff, accommodation, equipment or other facilities as the Secretary of State may consider appropriate in connection with the preparation of advice requested under section 42 of the Agriculture Act 2020.

(3) The Secretary of State may pay, or make provision for paying, expenses to any member of the TAC in connection with the preparation of advice requested under section 42 of the Agriculture Act 2020.

(4) Schedule (Trade and Agriculture Commission: public authorities legislation) contains provision applying legislation relating to public bodies to the TAC."

Member's explanatory statement

This amendment would make provision about administrative matters relating to the Trade and Agriculture Commission.

36: After Clause 6, insert the following new Clause—

"Trade and Agriculture Commission: repeal

(1) The Secretary of State may by regulations made by statutory instrument repeal sections (Trade and Agriculture Commission) to (Trade and Agriculture Commission: further provision).

(2) Regulations under subsection (1) may make incidental, supplementary, consequential, transitional, transitory or saving provision, and such provision may modify an Act of Parliament.

(3) Regulations under subsection (1) may not come into force before regulations under section 42(6B) (as inserted by section (Trade and Agriculture Commission: advisory functions)) of the Agriculture Act 2020.

(4) A statutory instrument containing regulations under subsection (1) may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament."

Member's explanatory statement

This amendment would empower the Secretary of State to repeal provision relating to the Trade and Agriculture Commission if the Secretary of State's duty to seek its advice under the Agriculture Act 2020 is repealed.

Amendments 35 and 36 agreed.

The Deputy Speaker (Lord Lexden) (Con): My Lords, we now come to the group beginning with Amendment 36A. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Clause 7: Collection of exporter information by HMRC

Amendment 36A

Moved by ***Lord Stevenson of Balmacara***

36A: Clause 7, page 5, line 9, leave out subsection (4)

Lord Stevenson of Balmacara (Lab) [V]: My Lords, the meat of this short group of amendments is in government Amendments 37 to 42, as listed, which cover the main issues we need to debate.

I am sure that the Minister, when he comes to respond, will not be upset with me if I say that I expect him to say that he would not expect, when considering amendments, ever to be in a situation where people were legislating for a second time on an issue that had already been decided in a different Bill. However, a bit like Groundhog Day, that is what we are doing today, because this part of the Bill has already been put into law and exists as the Trade (Disclosure of Information) Act. I am very grateful to the Minister for his letter of 4 January, which answered a number of points that were raised during the very truncated session we had on the Trade (Disclosure of Information) Bill in order that one section of this Bill could be in place from 1 January—although it is intended to be sunsetted as soon as the Trade Bill has received Royal Assent.

Amendment 36A is very limited and I do not expect a very full response to it, because it is not germane to the main issue before us, which is to try to make sure that the Trade (Disclosure of Information) Act, as it now is, contains the same wording, effectively, as will be in the Trade Bill when it receives Royal Assent. We should not impede that, because it is important that we get it right and that the sunset clause takes place.

However, during the debate on the then Trade (Disclosure of Information) Bill, I asked why Clause 7 of the current Bill was not included in the sections relating to disclosure of information which follow Clause 7, particularly those from Clause 8 to Clause 10 in the current Bill. The answer I received was that they dealt with different issues, even though they were also about the disclosure of information required and, indeed, are covered by amendments that follow. The purpose, therefore, of having this amendment at this stage of this Bill is simply to get on the record for response that the Minister made the first time around, in order that we have both parts of the legislation which will end up being in the Trade Bill in sequence and saying the same thing. I beg to move.

7.30 pm

Lord Lansley (Con) [V]: My Lords, as the noble Lord, Lord Stevenson of Balmacara, said, this short debate follows on from the debate that we had in this House on the Trade (Disclosure of Information) Bill on 17 December. Like the noble Lord, Lord Stevenson, I am most grateful to the Minister for his letter of 4 January.

There are just two things that I want to say following on from that. The first is that I am grateful, but not surprised, that in his letter the Minister said that, although the wording in the amendments that we are now making to the Trade Bill varies slightly from the wording of the clauses in the Trade (Disclosure of Information) Act, the legal effect is exactly the same. I do not think we ever thought that the legal effect would be different. What we find somewhat surprising is that, to achieve the same effect at virtually the same time in two pieces of legislation, the wording is not the same. That was a slightly surprising aspect of the drafting that we were presented with when we saw the Trade (Disclosure of Information) Bill last month.

Secondly, I raised the question of what is meant by, and what is the purpose of, the amendments that put into the Bill the saving provision in Clauses 8 and 9 —that

"nothing in this section authorises the making of a disclosure which … contravenes the data protection legislation"

or aspects of the Investigatory Powers Act. The purpose of the government amendments is to ensure that, when these pieces of legislation and their constraints on disclosure are considered, Ministers can also take into account the powers conferred in this clause.

The Minister's letter refers to the Supreme Court case of the Christian Institute and others v the Lord Advocate in 2016. I have had the chance to read the judgment and it does indeed refer to the situation where there is in effect, under legislative provisions such as the data protection legislation, a statutory gateway that allows those provisions to be escaped from in circumstances where there are powers for disclosure in other enactments. In the absence of these provisions, the data protection legislation and the Investigatory Powers Act might well make it very difficult for the necessary disclosures to be made in certain specific circumstances. Therefore, it allows for them to be seen together.

Paraphrasing, I think, the language of the Supreme Court, it is necessary for anyone wanting to understand the effect of this clause to have this legislation in one hand and the data protection law—indeed, I would add the Investigatory Powers Act—in the other. It does not tell you how any particular instance would be resolved but it does tell you that both must be considered together, and that is entirely reasonable.

The only issue that one is left with when one reads both the legislation and the Supreme Court judgment is that the clauses we are looking at do not say that the disclosures made by public authorities must be necessary and proportionate. Therefore, I think that it would finally close the gap and make matters very clear if the Minister would confirm that, where these disclosures are made, or indeed where further public authorities have information disclosed to them for their trade functions, the disclosures must be necessary and proportionate to meet those functions.

Baroness Neville-Rolfe (Con) [V]: My Lords, I welcome the government amendments, which are technical in nature but allow proper co-operation between HMRC and the devolved authorities. As I was not able to be in the House in person during debates on the Trade (Disclosure of Information) Act, I have probably not understood the purpose of Amendment 36A in the name of the noble Lord, Lord Stevenson of Balmacara—but I have a question that perhaps he or my noble friend the Minister could kindly respond to.

I always worry about the wisdom of giving a power to amend primary legislation by order, particularly on the collection or disclosure of information by HMRC, which seems to be the issue in Clause 7(4). As a former international retailer, I know how commercially sensitive such information is and how onerous ill-thought-out form-filling requirements can be. I want to make sure that the power could not be misused by the Executive—we have seen a certain amount of evasion of scrutiny

during Covid. I want an assurance from the Minister, assuming that the power to amend primary legislation is retained in what is now being proposed, that the power would be used sensibly. If it disappears, then that would also meet my concern.

Lord Purvis of Tweed (LD): My Lords, anybody seeking to follow this Trade Bill, including the Bill that we had before Christmas, will struggle to follow the three elements through a natural progression—but we are grateful to the noble Lord, Lord Lansley, for his forensic skill. He has been able to assist in the scrutiny of this, and the questions he asks are very valid. I am glad the noble Lord, Lord Stevenson, has brought forward his amendment, and I look forward to the response from the Government and the Minister. Like others, I welcome the Minister's very full letter in response to the debate that we had on that fast-tracked piece of legislation.

There are a couple of areas that are still troubling me, and I hope the Minister will be able to explain those. I am happy with his explanation that it is purely a matter of parliamentary drafting, with the same legal effect. I will use this ad nauseam in my future career in this House, when it comes to any Ministers quibbling over the drafting of any amendments that I bring forward. I will say that it is purely drafting, with the same legal effect—so, speaking personally, I am very happy that that precedent has been set.

I am glad that the amendments to this Bill, which will effectively become the successor to the fast-tracked Bill, reference HMRC sharing information with the devolved Administrations. This goes back to the very first time we discussed these amendments, so I am happy and pleased that the Government have indicated their support for that.

However, I am interested in the language of Amendment 37, which I welcome, when it states:

"facilitating the exercise by a devolved authority of the authority's functions relating to trade".

Can the Minister outline what these are? In the previous group, on consulting the devolved Administrations on trade agreements, the noble Viscount, Lord Younger, was at pains to stress—and was accurate—that, under the Scotland Act and others, trade, as far as international relations are concerned, is a reserved matter.

However, we all know that there are "functions relating to trade" in the devolved Administrations; we know this for certain because it will be in the Bill. HMRC will facilitate the exercise of those functions by the powers under what will be this Act. I would be grateful if the Minister could outline what those "functions relating to trade" are; it would be helpful to us to know the extent of the Government's position as regards what responsibilities for trade the devolved Administrations have.

Another thing still niggling me is referenced in the Minister's letter. I have asked on a number of occasions why it was not more straightforward to put authorities that are linked with the ports and their access routes, in Scotland in particular, under those areas in the Bill. The Government have said that the powers were needed in England primarily, as the Minister's letter stated, because those authorities were identified as the ones facing the greatest disruption at the end of the transition period, but this legislation is now for the long term and this data will also be shared with the WTO and other international bodies.

The Government have said that if it becomes necessary to add an authority in a devolved Administration country, they can use order-making powers to do it, but in subsection (4) there is a reference to an offence in Scotland for a non-existing authority breaching the disclosing information powers, and it carries a term not exceeding 12 months, so for a body that is not included in the legislation it is a 12-month prison sentence for disclosing information. That happens to be twice the length of time that it will now be in England, under government Amendment 40, which is six months. I do not know why that is the case, so perhaps the Minister can explain. There seems to be a ghost criminal offence created by this legislation that does not impact on anybody and is twice as much as it is in England. I just do not understand why.

I hope that the Minister can respond. I will certainly be supporting these amendments. The letter was very helpful and gave the process for indicating when the sunset clause will kick in for the legislation that we passed before Christmas, and given that this legislation is now for the very long term I hope that the Minister can respond to the points that have been raised.

Lord Grimstone of Boscobel (Con): My Lords, I am perpetually grateful to the noble Lord, Lord Stevenson of Balmacara, for his contribution to the discussion of this Bill. Turning to Amendment 36A, in the noble Lord's name, I am sure that noble Lords will agree that for the Government to grow and strengthen the UK's export capability, we need a clear understanding of the UK's exporters. This would ensure that the work we do is targeted and tailored to the businesses where it will deliver the maximum benefit.

Clause 7 sets out the powers needed for the Government to collect data to establish the number and identity of UK businesses exporting goods and services, particularly the smaller businesses and sole traders that may not be readily identifiable from existing data, and where the Government can provide a helping hand, something of course which the Government enjoy doing, so that they can reach new markets.

Amendment 36A to remove Clause 7(4) would restrict the ability of the Government to fully implement the new voluntary—I stress voluntary—exporter question. A similar amendment was discussed in Committee, when noble Lords raised concerns that secondary legislation should not have the power to change primary legislation. However, to include new questions within the relevant tax return—it is that very specified matter—an affirmative SI will be required to amend the relevant legislation. That is the purpose of Clause 7(4), which provides the necessary powers to do so. I repeat that Clause 7(4) is necessary to ensure that the relevant exporter questions are included, as intended on tax return forms. The practical implementation of this will be a tick box on tax returns which the person filling in the tax return can tick if he wishes to identify himself as an exporter; it is entirely voluntary. On that basis, I ask for the amendment to be withdrawn.

7.45 pm

Coming to the government amendments in this group, we debated some of them during the sixth day in Committee on 15 October, when noble Lords, particularly the noble Lord, Lord Grantchester, felt that they could not agree to the changes at that stage. I hope that the confirmation I provided in my letter of 19 October, the debate that we had before Christmas during the passage of the Trade (Disclosure of Information) Act, and my response today will provide reassurance to your Lordships.

This group consists of government amendments that are technical in nature but are important to explain, and I will do my best to do so. On Amendment 37, it has always been our intention that the devolved Administrations should be able to access HMRC information to facilitate the exercise of their trade functions through the powers in this Bill. In direct answer to the noble Lord, Lord Purvis of Tweed, the implementation of trade agreements may of course fall within the delegated powers of the devolved Administrations, but that is of course different from the trade policy. So implementation of a policy may fall within a devolved Administration's powers whereas the trade policy itself, as a reserved matter, does not.

In discussions with devolved Administration colleagues, they have asked that their ability to receive information is made more explicit in the Bill. Amendment 37 provides that clarity. Amendment 42 is simply a consequence of Amendment 37 and, to aid interpretation, explains what is meant by the term "devolved authority" for the purposes of the Bill.

In Committee my noble friend Lady Neville-Rolfe expressed concern, and she has repeated some of these points today, that the devolved Administrations would be able to access HMRC data under Clause 8, that they may have different trade objectives, and in particular that they may take a different view on the confidentiality of HMRC data. On the first point, I should stress that the clause allows the sharing of data for devolved functions relating to trade only, such as export promotion, so information could not be used in a way that was incompatible with functions falling under the international trade reservations in the devolution statutes.

On the second issue raised by my noble friend, I stress that the devolved Administrations are responsible Governments and take their legal obligations very seriously. The data protection provisions set out in the Bill apply equally to the devolved Administrations, and any onward disclosure could only occur in compliance with that, as well as requiring the consent of HMRC. I confirm to my noble friend Lady Neville-Rolfe that I am sure that these provisions will be used sensibly.

We have worked closely with the devolved Administrations to ensure that the data-sharing gateways in the Bill can also assist them with their devolved functions. In this spirit, the Government have made two further commitments to the devolved Administrations in relation to data sharing in Clause 9 of the Bill in Committee, and in both Houses, during the passage of the equivalent clauses in the Trade (Disclosure of Information) Act, and I am happy to repeat those assurances today.

First, the data shared under Clause 9 will be used by the border operations centre and the Cabinet Office to develop strategic insights. The Cabinet Office is committed to sharing strategic analysis related to the flow of trade where it will support the more effective management of flow through those borders. Secondly, the UK Government commit to consulting the devolved Administrations before any devolved authorities are added to, or removed from, the list of specified authorities that can share data under Clause 9.

In Committee and in considering the Trade (Disclosure of Information) Act—this has also been mentioned today—the noble Lord, Lord Purvis, correctly noted that the list of specified authorities does not currently include devolved bodies. As I noted in my letter following that debate, the public bodies included in the Bill were identified as key sources of information in relation to the immediate requirements of the border operations centre for the end of the transition period, and particularly to monitor flow at the locations where there is the highest risk of disruption to the border. Access to the data held by these authorities is critical for minimising and managing disruption.

The key point is that Clause 9(9) permits a Minister of the Crown to add other public authorities, which include devolved authorities, to the list. Authorities added to the list subsequently are in no way second-class citizens. Once they have been added to the list, they are completely pari passu with those listed in the Bill. It should be noted that, as I mentioned earlier, we are making a commitment to consult the devolved Administrations before any devolved authorities are added to this list.

Government Amendments 38 and 39 are, like Amendment 40, intended to correct a minor drafting error. My noble friend Lord Lansley raised a number of important points in relation to the equivalent clauses when we debated the Trade (Disclosure of Information) Act. Following that debate I provided a more detailed response, which noble Lords have referred to today, outlining the effect of these amendments. In short, their effect is the same in both Clauses 8 and 9—to ensure that the additional words in parentheses apply to both paragraphs in the relevant subsections rather than just the first.

I can confirm to my noble friend Lord Lansley that data protection legislation and investigatory powers legislation authorise disclosure in certain circumstances, including when in exercise of a statutory function. The additional wording makes it explicit that the statutory powers in Clauses 8 and 9 are to be taken into account when determining whether disclosure would contravene data protection legislation or would be prohibited under investigatory powers legislation. In direct answer to my noble friend's question, I can assure him that the powers will be used only when necessary and proportionate.

Using his forensic skills which we in this House admire so much, my noble friend also correctly noted that the specific wording used to achieve the same effect in the Trade (Disclosure of Information) Act differs from that included in government Amendments 38 and 39. I can reassure the House that this is a difference in drafting but not in effect. Parliamentary counsel—a

profession for which I have great respect—is rightly jealous of its professional independence, and occasionally we find that a parliamentary draftsman will prefer the use of one word to another. I am sure your Lordships would not want to constrain their intellectual ability to do so. I can confirm that the intent of the words is the same. I admire the attention to detail shown by the noble Lord, Lord Purvis, in this matter. If his career had taken a different turn, no doubt he would have made a great parliamentary counsel.

Amendment 40 corrects a drafting omission relating to Clause 10(4)(b)(i). This, I think, will answer the question asked by the noble Lord, Lord Purvis, about why there is a difference—between 12 months and six months—between England and Scotland. As I noted in Committee, Clause 10 as currently drafted provides that a person guilty of an offence under the clause is liable on summary conviction in England and Wales to imprisonment for a term not exceeding 12 months, to a fine, or to both. However, until the relevant provisions of the Sentencing Act are commenced, magistrates can only impose a sentence of up to six months' imprisonment for a single offence in England and Wales. When the relevant sections of the Sentencing Act are commenced, this disparity will disappear.

In other legislation that provides for a maximum penalty of 12 months' imprisonment on summary conviction, a provision concerning magistrates' current sentencing powers is included, to provide that that reference to 12 months is to be read as reference to six months until relevant provisions of the Sentencing Act are commenced. That may seem a bit like Alice in Wonderland to noble Lords, but I assure the House that it represents the correct position. This amendment adds a similar provision to this Bill in relation to Clause 10(4)(b)(i). I should also make your Lordships aware that as a consequence of the European Union (Future Relationship) Act 2020, the Government will need to make future minor and technical amendments to this at Third Reading.

The House has previously noted the importance of the ongoing work of government to manage our new trading relationship with the European Union and the rest of the world. I hope that my letter and my remarks have addressed any remaining concerns.

To be clear, the minor and technical amendments that we will bring forward at Third Reading relate entirely to the renumbering of certain paragraphs and do not affect the intent or content of the legislation at all.

I hope that I have addressed any remaining concerns held by noble Lords relating to the clauses being debated. On that basis, I will move government Amendments 37 to 40 and Amendment 42 when the time comes.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, I am very grateful to all those who have spoken in this short debate. I started by suggesting that it was Groundhog Day, but we ended up in Alice in Wonderland. We may need to think about another film, play or book to get us through to Third Reading if we are to have even more amendments to this much-amended part of the Bill—and, indeed, two Bills.

I owe the noble Baroness, Lady Neville-Rolfe, an apology for not making it clear what I was at when I tabled Amendment 36A, but I congratulate her on picking up the reason why I picked that particular reference in subsection (4). On the surface it seemed an extraordinary power to take. She might feel, like I do, that the way the Minister responded did not assuage the concern that the Bill takes power to modify an Act of Parliament when all we were told about was making sure that a particular box was ticked in a tax return, for which a statutory instrument would be required. These things did not seem to square up, but given that we will come back at Third Reading I am sure she or I will take this further should we wish to.

The only other person who came out of this discussion badly was my noble friend Lord Grantchester, who I think was inadvertently blamed for making the Minister come back with the amendments on Report that he thought he had put through in Committee. It was a long time ago—indeed, it feels like even longer. We actually started Committee on this Bill a second time around—I mean the Trade Bill, not the other Bill—in a Committee Room. I know that it is a convention that amendments made then do not necessarily go into the Bill at that stage, so I thought it was appropriate for this to be brought back on Report. I do not believe that my noble friend Lord Grantchester was in any way to blame, although he might have given expression to the way it happened.

We have more than covered the ground that the amendment would open up. The noble Lord, Lord Lansley, with all his forensic skills, must be satisfied that he has most of the answers he wanted. I certainly have, and I beg leave to withdraw my amendment.

Amendment 36A withdrawn.

Clause 8: Disclosure of information by HMRC

Amendments 37 and 38

Moved by ***Lord Grimstone of Boscobel***

37: Clause 8, page 5, line 22, after "trade," insert—

"(ab) facilitating the exercise by a devolved authority of the authority's functions relating to trade,"

Member's explanatory statement

This amendment would ensure that HMRC is able to disclose information to a devolved authority.

38: Clause 8, page 6, line 9, after "2016" insert "(save that the powers conferred by this section are to be taken into account when determining whether a disclosure is prohibited by those provisions)"

Member's explanatory statement

This amendment would correct a drafting error: the words in parenthesis should limit both paragraphs in subsection (6).

Amendments 37 and 38 agreed.

Clause 9: Disclosure of information by other authorities

Amendment 39

Moved by ***Lord Grimstone of Boscobel***

39: Clause 9, page 7, line 6, after "2016" insert "(save that the powers conferred by this section are to be taken into account when determining whether a disclosure is prohibited by those provisions)"

Member's explanatory statement

This amendment would correct a drafting error: the words in parenthesis should limit both paragraphs in subsection (8).

Amendment 39 agreed.

Clause 10: Offence relating to disclosure under section 9

Amendment 40

Moved by ***Lord Grimstone of Boscobel***

40: Clause 10, page 7, line 46, at end insert—

"(5) In relation to an offence committed before the commencement of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020, the reference in subsection (4)(b)(i) to 12 months is to be read as a reference to 6 months."

Member's explanatory statement

This amendment would take account of the fact that magistrates do not have powers to confer a 12 month sentence (because paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 is yet to come into force).

Amendment 40 agreed.

The Deputy Speaker (Lord Lexden) (Con): My Lords, we now come to Amendment 41. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division must make that clear in debate.

Amendment 41

Moved by ***Lord Lansley***

41: After Clause 10, insert the following new Clause—

"International disputes

In section 32 of the Taxation (Cross-border Trade) Act 2018 (regulations etc), subsection (3), at the end insert—

"(d) regulations under section 15 (international disputes etc).""

Member's explanatory statement

This new Clause would amend the Taxation (Cross-border Trade) Act 2018 to require that, where the Secretary of State proposes tariff increases in pursuance of an international dispute (not as a trade remedy), such a regulation must be made subject to an affirmative procedure.

Lord Lansley (Con) [V]: My Lords, Amendment 41 in my name relates to the powers in the Taxation (Cross-border Trade) Act 2018, under which Ministers can impose import duties. Section 15 of that Act gives the power to impose tariffs in furtherance of an international dispute. Amendment 41 would require that a statutory instrument made under Section 15 of that Act be subject to the "made affirmative" procedure.

We had a debate on this in Committee. When the original Taxation (Cross-border Trade) Act went through, Section 15 was wrapped together with a number of others in the argument made by the Government—and, indeed, set out in the Explanatory Memorandum—that there would be frequent changes of detailed tariffs. While that is generally true in other sections of that Act, it carries no weight in relation to tariffs applied in international disputes, which are and should be few in number.

8 pm

The Government should therefore not rest on the fact that the Delegated Powers Committee did not raise this as an issue back then, not least because it passed through as a money Bill at that time and we did not have substantive debate at length in this House. Indeed, in my view the Government made assertions in the Explanatory Memorandum about the powers in Section 15 that would not prove to be true.

I am grateful to my noble friend the Minister for subsequent correspondence, but I do not think the Treasury armed him with a more credible case. To be fair to him, he has made an effort to justify the negative rather than the affirmative procedure on grounds different from those presented when the original legislation went through—that these are diplomatic negotiations in an international dispute and that the choice of products to which tariffs are to be applied is a sensitive matter. I do not doubt that it is, but these are also important matters deserving scrutiny in this House.

We do not really need to speculate too much about the nature of such disputes. On 1 January we took on responsibility for our external tariff. This includes the consequences of the disputes between the European Union and the US over, for example, Airbus and Boeing. When these amendments were first tabled, we did not know what the Secretary of State's approach to that international dispute would be. As it happens, she has chosen not to impose tariffs on US products in the way the European Union announced in November that it had chosen to do. No tariffs, so no statutory instrument.

I hope the Secretary of State's choice and the intention that it de-escalate the dispute between the European Union and the US will work. It has not yet. Last Wednesday the US trade representative announced additional tariffs on EU products from 12 January, although of course that does not apply to UK products. In so far as we have taken up a position, I hope it works to some resolution, but if it does not and if at any future time we were to reimpose tariffs on US products as a matter of necessity, such a strategic decision should be a matter for affirmative debate in this House and the other place, to give not only scrutiny but backing to any decision the Government made.

Indeed, that is not the only potential such dispute. Steel and aluminium duties in the United States, imposed by the Trump Administration nearly two years ago on national security grounds, have been the subject of a dispute with the WTO. They have been referred to a panel, which was expected to report by the end of 2020 and has not yet done so. If it were necessary for us to take countervailing measures, in that respect too the importance of the issue would and should require that they be the subject of an affirmative debate on the statutory instrument in both Houses.

Just to finish, in the recent past, we have had a number of occasions when matters of urgency have bypassed the normal scrutiny of this House. I hope we do not arrive at the point where matters that are sensitive should also escape scrutiny in this House. Matters which are important and, indeed, matters which are sensitive seem to me to deserve proper scrutiny. I beg to move Amendment 41.

Baroness Noakes (Con): My Lords, I am sorry to have to say to my noble friend Lord Lansley that I believe that your Lordships' House should have nothing to do with this amendment. When the Taxation (Cross-border Trade) Act 2018 was brought to this House, it arrived as a Supply Bill. There was much huffing and puffing by noble Lords on the Benches opposite at the time, but, of course, the House accepted it. The effect was that there was no Committee stage of the Bill and

no opportunity to make any amendments. While the *Companion* is silent on the subject, it seems to me that if we were unable to amend a Bill during its passage through your Lordships' House, that should also extend to any amendments to the resulting Act, as its nature relating to supply cannot have changed simply as the result of Royal Assent. I therefore hope that my noble friend Lord Lansley will withdraw his amendment.

Lord Purvis of Tweed (LD): My Lords, I am less squeamish that the noble Baroness about the amendment of the noble Lord, Lord Lansley, and I am grateful to him for bringing it forward. As our discussion about the Trade Remedies Authority demonstrated, the framework for how the UK, now outside the European Union, will approach trade remedies on disputes where we believe that another country is acting beyond WTO standards and principles, is much more to do with public debate and full, wide parliamentary scrutiny than whether the parent legislation involved financial privilege. Our debates about the Trade Remedies Authority lead naturally to asking what is going to provide a framework of accountability for any decisions taken as a result of its recommendations.

I have only one issue to raise with the Minister. I was not satisfied with the response in Committee to a matter I raised. One of the justifications for not supporting the amendment was that, as the noble Lord, Lord Lansley, said, the Minister said that there is sensitivity to some of these aspects. Of course there is sensitivity: that is true by definition. In any trade dispute, there will be sensitive aspects; I do not think that is denied. The noble Lord, Lord Lansley, is absolutely right: we were discussing a previous version of this Bill on Report when the WTO authorised the United States to impose $7.5 billion-worth of tariffs on the EU. The WTO subsequently authorised the EU to impose countermeasures of $4 billion and, as the noble Lord said, from the United States' point of view, the question whether to make a recalculation for the EU 27 is now being reviewed.

The most important element, to my mind, is that the WTO authorised it. I do not think anybody on any side of this House is proposing that the UK should act illegally in a trade dispute in which we are then seeking to be on the right side, inasmuch as we would not use WTO procedures. The WTO procedures are quite clear: you cannot put forward countermeasures which will include tariffs unless they have gone through the due process in the WTO.

Therefore, the notification of the WTO, with the tariff measures as part of the countermeasures, will be in the public domain. It will be debated. It is therefore nonsense to think that there will be scrutiny, transparency and a public debate regarding our measures to the WTO, but not in Parliament. Many sectors will be involved, as we saw with the US measures. I do not need to go into the detail, but be it whisky, textiles or the metal industry, these measures and potential countermeasures have an impact domestically on certain sectors, regions and nations of the UK. Therefore, it is right that, if we are to make a measured and targeted response to a third country that we believe has acted against its obligations, we ensure that we are not acting in self-defeating self-interest, and a degree of accountability is thus required.

I simply cannot understand why the Government believe that measures that have been made public cannot then be approved by Parliament. I continuously support the efforts of the noble Lord, Lord Lansley, in this regard.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, the noble Lord, Lord Lansley, has raised a very interesting question. We need to think a bit harder about it than we did when we first looked at this in Committee.

The issue is not so much with the powers split between the Commons and Lords in relation to financial matters, which I think was the point made by the noble Baroness, Lady Noakes. It is more to do with—as the noble Lord, Lord Purvis, was trying to get us on to—the reality of the grounds on which we have to consider more widely and the relationship between a pure measure, such as tariffs, and the way in which it might be used in any trade dispute, or any day-to-day consideration of our trading relationships. Out of that comes a consideration about whether this is an executive issue or there are also parliamentary concerns.

Taking it from the other end, the fact that the powers enshrined in the original legislation are for a negative instrument suggests that the Government have taken the view that this needs the very lowest level of parliamentary scrutiny. As the noble Lord, Lord Purvis, pointed out very well, this cannot be right. These areas often deal with very important and quite meaty issues to do with industrial policy, employment and the whole economy. There seems to be a distortion being built up between the particular issue in hand, the remedies available and the role of Parliament in considering it.

Surely it would be wrong if we ended up in a situation where the only parliamentary process was consideration of a negative statutory instrument when, in truth, the effects it was trying to ameliorate were causing concern on quite a large scale in the country. I do not have a solution to this. I do not think this Bill is going to provide us with an outlet. I wonder whether the Minister might consider taking this away. Perhaps a more considered review is needed in a couple of years' time, when we have had experience of how it works in practice.

Without wishing to put words in his mouth or ask him to commit to something he cannot commit to, can he give an assurance that this is something the Government will keep a close eye on? Should issues arise during the next year or so, an appropriate way forward would be to take this as an issue and see whether, as a result of the scale of the penalties, the style of the approach being taken through Parliament and the impact this is having on the economy more widely, it might be best dealt with through a review process.

Lord Grimstone of Boscobel (Con): I turn to Amendment 41 in the name of my noble friend Lord Lansley, which seeks to ensure that regulations made under Section 15 of the Taxation (Cross-border Trade) Act 2018 will be made under the affirmative parliamentary procedure. I remind noble Lords that that section allows the Secretary of State to vary the rate of import duty—that is, increase or decrease tariffs—in the context of an international trade dispute.

[Lord Grimstone of Boscobel]

First, I begin by thanking my noble friend for his commitment to this issue, alongside the correspondence and meetings that we have had on the matter. I hope my noble friend found them at least partly as useful as I did.

Noble Lords may recall that I explained in Committee why I believe that it is imperative that HMG are able to enforce, swiftly and confidently, the UK's rights under international trade agreements. I explained to the House that the conduct of state-to-state trade disputes is a matter of foreign diplomacy and is covered by the royal prerogative. I also reminded the House that international litigation, including launching and defending international trade disputes, can be extremely sensitive, with far-reaching geopolitical implications. I shall not attempt to justify sensitivity in itself, of course, as a reason for avoiding scrutiny. However, when that sensitivity may give rise to matters that are extremely prejudicial to the UK's position, it must be absolutely right to take it into account.

8.15 pm

Noble Lords may be relieved to hear that I do not intend to repeat those points at length today. However, it is important that the House fully understands the Government's reasoning for resisting this amendment so, with the indulgence of the House, I shall explain two scenarios in which the UK may use this power. I hope that it will help the noble Lords, Lord Stevenson and Lord Purvis, to understand better the Government's position on this important matter.

The first scenario that I want to illustrate is where another country launches a successful dispute against the UK and the UK does not bring itself into compliance within the required period. This could be for the simple reason that legislation is needed to make the change and it is not possible to do that quickly. In this instance, the UK may offer compensation, which may be in the form of lower import duty on certain products. The UK would then use its Section 15 power to vary the rate of import duty on those products. This amendment could mean that the UK's proposal to lower the rate of import duty on select products was voted down by Parliament. It would leave the UK in breach of its international trade commitments and subject to retaliation measures being implemented by the other country.

A second scenario could be where one of the UK's trading partners implemented a measure which caused serious harm to UK businesses and the UK launched a successful dispute against that country. If the other party did not bring themselves into compliance within a reasonable period, the UK would assess how it could best exercise its right to retaliate. This would likely involve extensive technical analysis to select a list of products which the UK thought would have the best possible chance of conducing the other country to comply with their obligations and relieve the pressure on UK businesses. These products would be chosen carefully to ensure that their value was within the limits of the retaliation award, or equivalent to the harm caused by the other country's incompliant measures.

The UK may wish to target certain products for strategic and often sensitive reasons. For example, it may wish to increase tariffs on a product because the lobby group of those stakeholders has a strong political influence in a third country, or because a product has a strong symbolic or personal connection to the Government in question. This amendment would require the Government to argue and justify in an open forum why they had chosen one product line over another and, in turn, could expose the UK's strategic decisions and negotiating positions to our trading partners. For instance, the Government may be obliged to justify the inclusion or exclusion of certain products to Parliament. This could create the risk that certain trade dependencies are publicly exposed, which could be exploited by our trading partners. This would undoubtedly cause harm to the UK's interests, leverage and international reputation.

The Government of course recognise that these tariffs may have an impact on UK stakeholders. I reassure noble Lords that the Department for International Trade will carry out comprehensive engagement with businesses concerned and mitigate the effects where it is possible to do so.

I know that my noble friend recognises that Section 15 of the Taxation (Cross-border Trade) Act is an important tool available for the UK to defend itself when other countries bring disputes against us.

My noble friend also raised the Government's approach to the Airbus and Boeing trade disputes, and I will comment briefly on that. I reassure him that the Government are serious about de-escalating these long-running disputes. As a gesture of our determination to unlock a deal, we have suspended retaliatory tariffs resulting from the Boeing dispute. This reflects the UK's continued focus on achieving a swift and balanced settlement, to the benefit of all parties involved. If this is achieved, there will of course be no need to implement retaliatory tariffs. However, we reserve the right to apply independent retaliatory tariffs if sufficient progress is not made in negotiations, and we will not hesitate to exercise our WTO rights in the interests of defending British businesses and industry in all parts of the UK.

I hope that my remarks have provided some solace to my noble friend. The Government recognise that international trade disputes serve different functions and can have wide-ranging impacts. Naturally—I absolutely take this point—some of these impacts will be of interest to Parliament. In recognition of this, the Government will address, I hope as part of the way forward that the noble Lord, Lord Stevenson, was seeking, important considerations around trade disputes within a report that the Department for International Trade will lay before Parliament. On this basis, I hope that my noble friend will be content to withdraw this amendment.

The Deputy Speaker (Baroness Watkins of Tavistock) (CB): I have received a request to ask a short question from the noble Lord, Lord Purvis of Tweed. I call the noble Lord to ask a short question of elucidation.

Lord Purvis of Tweed (LD): My Lords, I apologise for detaining the House; I know the hour is late. I am grateful to the Minister for outlining those examples. He gave the impression that Parliament should not necessarily have the ability to approve any of these measures, but that this should be Government to Government, prerogative to prerogative. However, the

legislation provides for parliamentary approval if it is through a negative procedure. So Parliament could still annul this, which would bring about all the issues he warns against. He seems to be making the case that Parliament should not even have the ability to annul some of these measures. If Parliament ultimately has the ability to approve or not to approve, we are in a different realm. I hope that, as the noble Lord, Lord Stevenson, indicated, the Government could at least reflect on this debate and the points that have been made on the benefit of having a wider degree of scrutiny, or at least public debate, of some of these aspects.

Lord Grimstone of Boscobel (Con): I thank the noble Lord for those comments. The Government will of course reflect on this debate. I perfectly understand the requirement for the annulment power, but I believe that both Houses of Parliament would wish to use that annulment power sensibly and sensitively, in light of the circumstances which might underlie it.

Lord Lansley (Con) [V]: My Lords, I am most grateful to all those who contributed to this short debate. It demonstrated the value, even at this late hour, of some of the additional issues brought out in the context of the scenarios and specific instances that my noble friend put in his response to the debate.

I think I have been inadvertently responsible for misleading the House. I intended to talk about parliamentary approval, but in doing so got carried away and talked about this House. Of course, this House would have no role. The regulations made under the Taxation (Cross-border Trade) Act, if "made affirmative", would be subject to the approval only of the House of Commons.

Therefore, in response to my noble friend Lady Noakes, I make two points. First, we are accustomed, from time to time, to making amendments to Bills that run the risk of being declined by the other place on grounds of financial privilege. However, that does not mean that we never make such amendments and invite the Commons to think again. The second point that I should make to her is that, in this instance, the effect of the amendment would be to give the House of Commons—but not our House—the right to consider regulations made under this power.

That said, I do not resile from the view that sensitive matters can, none the less, be debated in Parliament, and it is not beyond the wit of Ministers and civil servants to ensure that, in explaining the choices that have been made in the regulation, they do not disclose information of value to those who would do us harm. That happens on many occasions and, in fact—even in the scenarios to which my noble friend refers—the choices we have made and why we have made them would very often not have been lost upon other parties in trade disputes. I do not resile from the view that because something is sensitive and important it should be debated in Parliament—in this instance, because it relates to what are effectively attacks, only in the other place.

None the less, the helpful response from my noble friend—who genuinely tried to explain why the Government took the approach they did, rather than what was set out originally in the Explanatory Memorandum—took us some way towards thinking about this matter in a way described by the noble Lord, Lord Stevenson of Balmacara. We may yet come back to this matter, but not during the passage of the Bill. I beg leave to withdraw the amendment.

Amendment 41 withdrawn.

Clause 11: Interpretation

Amendment 42

Moved by ***Lord Grimstone of Boscobel***

42: Clause 11, page 8, line 4, at end insert—

""devolved authority" has the meaning given in section 4(1);"

Member's explanatory statement

This amendment is consequential on the Government's amendment to clause 8, page 5, line 22.

Amendment 42 agreed.

Amendments 43 to 45 not moved.

The Deputy Speaker (Baroness Watkins of Tavistock) (CB): We now come to the group consisting of Amendment 46. I remind noble Lords that Members other than the mover and the Minister may speak only once. Short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division must make that clear in debate.

Schedule 2: Regulations under Part 1

Amendment 46

Moved by ***Lord Lennie***

46: Schedule 2, page 13, line 26, leave out from "1(1)" to end of line 27 and insert "may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

Lord Lennie (Lab) [V]: I will be brief. Framing this debate has proved to be difficult because, quite rightly, the Government and the Opposition are focused on dealing with the pandemic, and therefore less attention has been paid to Britain's post-Brexit trading arrangements. That said, the Government's intentions are to achieve the best possible trading position and, as regards the amendment, the best possible public procurement arrangements. The intentions are clear and agreed. How to do so is not.

The Labour Party, along with many others, including the TUC and good, solid companies, are of the view that the Government must introduce measures that protect the best from being undercut by the less good. A race to the bottom should not be entertained. The Government have made several previous commitments: there was to be a Green Paper on this subject; there would be a review of the relevant EU law, post Brexit; we were told that there would not be any risk of a race to the bottom. However, that fear persists.

[Lord Lennie]

Can the Minister answer some questions, even at this late stage of the Bill's passage? Will the Government seek to protect and enhance workers' rights, living standards and our climate change position post Brexit? Will they implement International Labour Organization —ILO—standards as a form of protection, especially against modern slavery? What is the Government's position regarding what was known as EU retained law in the area of public contracts? Do they intend to legislate to make good any shortcomings in this area? Unless the Government commit to those aims, it is hard to see how protection and standards will be maintained, let alone enhanced, in the years to come.

8.30 pm

This amendment is therefore intended to keep the Government honest in their approach to the GPA by ensuring that each House has the opportunity to examine, debate and vote on measures proposed by the Government. An affirmative resolution of each House would be required before proceeding to introduce proposals to the GPA. This would allow each House to carry out its proper function. In the case of this House, that would be scrutiny of the proposals to consider whether, if taken to the GPA, they will fulfil the Government's ambitions. I beg to move.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I thank the noble Lord, Lord Lennie, for tabling Amendment 46, to which I was pleased to attach my name. I also thank the noble Lord for setting out some very clear and important questions that have not been answered, even at this very late stage of the debate on this Bill.

I note the thinness of this part of the debate. It is very clear that, despite the hard work of the Minister and noble Lords still engaged in this debate, at this late hour, the ability of this House to scrutinise the Bill line by line has been greatly damaged by the disjointed manner in which it has been progressed. We can only do our best.

The noble Lord, Lord Lennie, set it out clearly: we find ourselves saying essentially the same things, again and again. Members on all sides of your Lordships' House want statutory protections for hard-won environmental standards, workers' rights, food standards and public health standards. We keep hearing from the Government, again and again, "Oh yes, we want to keep these things", but we encounter thumping resistance to any attempt to put that in writing so that they can be held to account in the courts for their promises—in the way in which the Government have so often been held to account in recent years. Empty words and hot air cannot be taken to court.

It is late, so I will be brief. I have three bullet points to conclude, outlining the reasons why this amendment should be included in the Bill: sovereignty, democracy and taking back control. For the benefit of *Hansard*, there is an implied question mark at the end of that last bullet point. It seems that, day by day, in your Lordships' House, in Parliament and in the country, we are losing control, handing it over to executive authority and all too often to the vagaries of the market. We are seeing a society run for the benefit of the few, not the many.

Lord Purvis of Tweed (LD): My Lords, I am grateful to the noble Lord, Lord Lennie, for allowing us to conclude at the place where we started: procurement. It is perhaps a sign—I agree with the noble Baroness—that there has been a creeping increase in executive power during this process. At least the scrutiny that this House has afforded the Bill has been thorough, even if the Government may think it has been too long. Nevertheless, we started discussions on this Bill with procurement. And then the United Kingdom Internal Market Bill was introduced, scrutinised and passed before we came to the conclusion of this.

Of interest, the question that I asked the Minister, the noble Lord, Lord Callanan, on the United Kingdom Internal Market Bill was how the regulations on procurement would interact with those that will come through our obligations under international procurement. Could the Minister give us a timeframe for when we expect to see the implementation of many of the Government's policies on procurement that will now be authorised through our membership of the global arrangements? That interaction is going to be very important.

I have sympathy with the amendment on the basis that the extent of procurement goes far beyond what many people may think, which is simply about the Government purchasing goods. So much of our NHS, in both primary and mental health, is provided by contractors through procurement. The extent is really quite extensive—it is a considerable part of the UK economy—so this is not something that we should be shy about discussing in brief. It is of major importance to the UK economy, and indeed it will be a key part of our international relations.

So I ask the Minister to outline a little more detail. If he cannot give me that information today, I will be happy for him to write to me, because we will be needing to debate in full the Government's procurement policies going forward, preferably through resolutions in both Houses. We wish to see the details of the Government's intentions.

Lord Grimstone of Boscobel (Con): My Lords, I will now address Amendment 46, tabled by the noble Lord, Lord Lennie, which seeks to apply the affirmative procedure for any regulations made using the powers under Clause 1.

Perhaps understandably, because this is the last amendment that we will be addressing on Report, noble Lords wished to get certain matters off their chest at the commencement of debate on this amendment, so perhaps they will understand if I do not respond specifically to those points but restrict my comments to the amendment. I will of course commit to the noble Lord, Lord Purvis, that I will write to him with details of the exact timetable, which I do not have available to me at the moment.

Turning to this amendment and, as I say, restricting my comments to the amendment, given the late hour, I first remind noble Lords that the UK will accede to the GPA on the basis of continuity. This means that the "coverage schedules" referenced by noble Lords today and in Committee will remain broadly the same as those that the UK has had under EU membership. I know that noble Lords have suspicious minds and I

say "broadly" because the UK's independent GPA schedules incorporate technical changes to reflect the fact that the UK is no longer an EU member state, and there are now successor government entities other than those listed in Annexes 1 to 3. I have provided more details of these changes in a written response to a question asked on this issue in Committee by the noble Lord, Lord Fox, which I am happy to outline to the House.

The UK's independent coverage schedules were shared with the International Trade Committee in 2018, along with the text of the GPA and the schedules of other GPA parties. They were then laid before Parliament for scrutiny, in line with the Constitutional Reform and Governance Act, and were concluded without objection in 2019. Since then, Switzerland has agreed to implement the GPA, as revised in 2012. As such, to ensure appropriate parliamentary scrutiny and transparency, the new Swiss schedules were laid before Parliament in October 2020. So I hope noble Lords will agree that there has been ample opportunity to scrutinise the terms of the UK's GPA accession.

With regard to the scrutiny of our future participation in the GPA as an independent party, I again reassure noble Lords that provisions under Clause 1 are limited to a very specific set of scenarios in the GPA. I stress that this does not include any broader renegotiation of the GPA or of the UK's market access offer to the GPA.

In the short term, the powers are required to implement an update to the list of central government entities in Annexe 1 of the UK's GPA schedule. The update will reflect the fact that many entities have merged, moved or changed name since the list was originally written. Given the limited nature of such changes, I believe it is not appropriate to apply the affirmative procedure to Clause 1. Moreover, it is important that these necessary regulations be made swiftly because, as I often find myself saying, if there are delays, the UK could be in breach of its obligations under international law. I draw noble Lords' attention to the fact that the Delegated Powers and Regulatory Reform Committee of this House has twice considered the power in this clause and on neither occasion saw the need to comment on the use of the negative procedure.

As we are now reaching the end of Report, I will make some concluding remarks. I think that anybody who has witnessed the way our House has dealt with this Report stage can only admire the scrutiny noble Lords have given. That scrutiny has illustrated various aspects of the Bill which were not necessarily fully visible to people at the beginning, and it has drawn people's attention to how important trade policy now is to the United Kingdom. The fact that the United Kingdom now has full control of its trade policy will lead in the years to come to some very positive developments, as we have already seen with the free trade agreements we are negotiating.

I very much thank noble Lords for the way they have approached Report stage. This is the first Bill that I have had the pleasure of taking through the House, other than our "son of Bill", which we did before Christmas. I thank noble Lords for the way that they have assisted me and dealt with my inadequacies from time to time, no doubt, in the way that I have presented this Bill.

I thank your Lordships for the attention you have given to this Bill and I look forward to Third Reading. With that, I ask the noble Lord to withdraw his amendment.

Lord Lennie (Lab) [V]: I thank the noble Baroness, Lady Bennett, and the noble Lord, Lord Purvis, for their support for this amendment. I also thank the Minister for his honesty in pointing out our shortcomings in failing to take up these issues when we previously had the opportunity to do so; but that is another matter. I beg leave to withdraw the amendment.

Amendment 46 withdrawn.

Schedule 4: The Trade Remedies Authority

Amendments 47 and 48 not moved.

Amendment 49

Moved by ***Lord Grimstone of Boscobel***

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

"TRADE AND AGRICULTURE COMMISSION: PUBLIC AUTHORITIES LEGISLATION

Public records

1_ In Part 2 of the Table in paragraph 3 in Schedule 1 to the Public Records Act 1958 (definition of public records), at the appropriate place insert—

"Trade and Agriculture Commission."

Investigations by the Parliamentary Commissioner

2_ In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments subject to investigation), at the appropriate place insert—

"Trade and Agriculture Commission."

House of Commons disqualification

3_ In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which members are disqualified), at the appropriate place insert—

"Trade and Agriculture Commission."

Northern Ireland Assembly disqualification

4_ In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which members are disqualified), at the appropriate place insert—

"Trade and Agriculture Commission."

Freedom of information

5_ In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities to which this Act applies), at the appropriate place insert—

"Trade and Agriculture Commission."

Public sector equality duty

6_ In Part 1 of Schedule 19 to the Equality Act 2010 (authorities subject to the public sector equality duty), in the group of entries under the heading "Industry, Business, Finance, etc", at the appropriate place insert—

"Trade and Agriculture Commission.""

Member's explanatory statement

This amendment would provide the Schedule introduced by the amendment adding a new clause called "Trade and Agriculture Commission: further provision".

Amendment 49 agreed.

In the Title

Amendment 50

Moved by ***Lord Grimstone of Boscobel***

50: In the Title, line 2, after "it;" insert "to make provision about the Trade and Agriculture Commission;"

Member's explanatory statement

This amendment would amend the long title to reflect new provision about the Trade and Agriculture Commission.

Amendment 50 agreed.

Title, as amended, agreed.

House adjourned at 8.43 pm.

Grand Committee

Wednesday 6 January 2021

The Grand Committee met in a hybrid proceeding.

Arrangement of Business

Announcement

2.31 pm

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

The time limit for the following debate is one hour.

Antique Firearms Regulations 2020

Considered in Grand Committee

2.31 pm

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

That the Grand Committee do consider the Antique Firearms Regulations 2020.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the regulations were laid before this House on 9 November. This country has some of the toughest gun controls in the world and we keep them under review to safeguard against abuse by criminals and terrorists. The Offensive Weapons Act 2019 banned certain rapid-firing rifles and devices known as bump stocks and, in December, we began a three-month surrender and compensation scheme to take these and a range of offensive weapons out of civilian possession. In November, we launched a public consultation on a range of firearms safety issues, including security requirements for high-powered rifles.

The regulations will prevent criminals exploiting a lack of clarity in the current law to gain possession of antique firearms for use in crime. Under the Firearms Act 1968, antique firearms that are possessed, purchased, sold or acquired as "a curiosity or ornament" are exempt from most of our firearms laws, including licensing control. Unfortunately, the Act does not define "antique firearm". The Home Office has published guidance on which firearms can safely be regarded as antique, but criminals have been taking advantage of the lack of a legal definition to obtain old but functioning firearms for use in crime.

The number of antique firearms recovered per year in criminal circumstances increased from four in 2007 to 96 in 2016. The number of recoveries has since decreased but remains at an unacceptably high level. In more than half these recoveries, ammunition capable of being used with a firearm was also present. Sadly, there have been six fatalities since 2007 linked to the use of antique firearms. The problem was highlighted by the Law Commission in 2015. It recommended that there be a statutory definition of "antique firearm". The Government accepted this recommendation and included a power in the Policing and Crime Act 2017 to define "antique firearm" in regulations. The Home Office held a public consultation to seek views on the detail of the definition. After careful consideration of the feedback, and following discussions with expert stakeholders on the technical aspects, I am pleased that we are now able to bring forward these important regulations.

The regulations will define in law which firearms can safely be regarded as antique and therefore exempt from control, and which should be subject to licensing. They are based closely on the existing Home Office guidance, so will be familiar to law enforcement, collectors and dealers alike. They specify a cut-off date of manufacture, after which a firearm cannot qualify as an antique. They also specify a range of propulsion systems and obsolete cartridges which are safe to be regarded as antique.

When read with the relevant provisions in the Firearms Act 1968, the regulations will mean that, to be regarded as an antique, a firearm must be held as a curiosity or ornament, have been manufactured before 1 September 1939, and either have a propulsion system specified in the regulations or be chambered for one of the obsolete cartridges specified in the regulations. Following concerns raised by law enforcement, the list of obsolete cartridges does not include seven types that, together with their associated firearms, feature most often in crimes involving antique firearms. This means that those firearms will no longer be regarded as antique.

I realise that omitting these seven cartridges will be disappointing for collectors, who will see a drop in the value of their associated firearms. However, public safety is paramount, and it is the Government's duty to protect communities from gun crime. We are being balanced in our response to this problem. Existing owners of firearms will be able to retain them on a firearms certificate and we will make commencement regulations to allow a transition period of three months for them to do so.

We have also added 23 obsolete cartridges to the list following advice from law enforcement that they will not present a threat to public safety. This brings additional firearms into the definition of "antique".

The Government want to ensure that these regulations remain relevant and effective. There will be annual reviews to consider the latest developments in criminal use of antique firearms. We will also carry out a full review of the regulations every three years. Law enforcement and representatives of collectors and dealers will be involved in these reviews.

Public safety is the Government's top priority and these draft regulations will help to prevent criminal use of antique firearms. I commend them to the Committee.

2.37 pm

Lord Blunkett (Lab): My Lords, I appear to be stalking the Minister, as I turn up on all occasions when she presents, as she did yesterday on the important domestic abuse legislation. On every occasion I find myself reflecting on the past and wishing that I had done more in the areas she addresses. That is true today.

We are iterating as we go, because the changes the Minister described this afternoon build on what has been done over many years since 1968. I remember the terrible events at Dunblane and the actions we had to take under the then Conservative Government, and the changes we made when I was Home Secretary. On each occasion there appeared to be a loophole and something else that needed to be done. As I said yesterday in the Chamber, I appreciate that this is inevitable because we are learning as we go along, and so are criminals and perpetrators. They learn how to adapt and to adopt new methodologies as we close a loophole.

I am strongly in favour of the regulations. It may appear to be a very small measure but I am clear, as the Minister said, that we are attempting to close loopholes on risk. If anything puts people at risk—and use of these historical weapons has grown—we should try to close the loophole.

My only comment is that there is absolutely no real inconvenience to collectors, whether in the public sphere such as museums, or individuals who have developed a collection over the years. There is no real harm in asking them to register what they have because criminals will redeploy their skills on those historical weapons and in some cases make them operable, although it is more difficult with the ammunition. We sometimes create a bureaucratic barrier that does not really exist and would not be a problem for people registering. I put that on the table.

2.39 pm

Lord Addington (LD): Like the noble Lord, Lord Blunkett, I really do not have much objection to these regulations in principle. My gut reaction, however, is about the cut-off date of 1939, and the stability of the technology—creating a bullet and firing it down a metal tube, which is spun to give it accuracy. It is very established and goes back a long way, certainly to the mid-part of the 19th century. I wonder if we should not have pushed it back a bit further; I would have thought that the end of the First World War had a nice ring about it, as opposed to the start of the second. At just over 100 years, it would also make it antique even in the most pedantic of senses.

The main question here is: what criteria and threshold are we going to have for introducing the calibres of weapons that will be regarded as antique, which are not to be used but banned in future? It may be established that it is comparatively easy to repurpose, if you get the right technology and list of chemicals together. If you have the propellant and the chamber for it, you can fire it. What criteria will be used to make sure things are added to this list, or indeed taken off it? I do not think that will happen often but it could be there. If we could get an idea about this, I would be slightly happier about these provisions because of some small steps.

For instance, I live near Hungerford and catch a train there. There was a handgun used in part of the Hungerford attack; we waited until Dunblane to ban it. When are we going to get something slightly more proactive to deal with this? Handguns, in particular, are small and very short-range weapons designed for killing people. Historically, to put it in context, they replaced a sword. They are for killing people up close. They are not weapons for accuracy or sporting weapons. Can we have a better idea about how we will judge when something is deemed to be dangerous?

2.42 pm

The Earl of Shrewsbury (Con): My Lords, I refer the Committee to my entry on the register. I broadly welcome these regulations, which bring changes to the law on antique firearms. Section 58(2) of the Firearms Act 1968 provides that an antique firearm possessed, acquired, et cetera

"as a curiosity or ornament"

is no longer subject to the provisions of the Act. However, Parliament has consistently refused to give a definition of an antique firearm. I well recall during my term as chairman of the Firearms Consultative Committee—I was appointed two weeks before Dunblane—that we regularly struggled to define antique firearms and continually deferred discussion on the issue to the next meeting. I am not sure whether that next meeting ever arrived.

This statutory instrument is therefore to be welcomed, but with a word of caution. It provides that an antique firearm can only be one which conforms to the criteria that it was manufactured before 1 September 1939 and is of a defined propulsion system. Any other firearm, irrespective of age, type and more, cannot be considered antique in law if it does not meet these criteria. The chief officer of police no longer has any discretion, as was formerly the case. I welcome the clarity being imported into what has for many years been a very uncertain area.

What is less welcome is the modification of the so-called obsolete calibres list. Some revolver cartridges will be removed from the list, including the .44 Smith & Wesson, the 11 mm French and the 10.6 mm German. I would go further, but my time is restricted. Many people have acquired antique firearms chambered for these calibres since the guidance changed in 2002. Values range from the low hundreds to many thousands of pounds; they were bought as investments in many cases. It will be possible to apply for a firearms certificate to continue to possess such firearms, and the good reason test will not be applied, as I understand it. However, not all applicants will match the suitability criteria currently required for FACs. Those people affected will have to dispose of their lawfully acquired property for whatever value the market will give them, so the value of those firearms is likely to plummet and there will be no compensation.

The amendment of the obsolete cartridge list has been based on imperfect data supplied by NABIS, which alleges that there has been a steady rise in the number of antique revolvers used in armed crime. In truth, there have been seven fatalities, six of which were encounters between violent criminals who would have used any type of firearm available to them to

settle their scores. The small proportion of antiques used in crime therefore surely makes the measure wholly disproportionate. Some 23 cartridges will be added to the obsolete cartridge list. Can my noble friend give me an assurance that the regulations, and the list, will be reviewed every three years and that the review group will include both collector and trade representatives?

2.45 pm

Lord Robathan (Con): My Lords, my interest in this matter is sparked by the fact that, before the first lockdown in March, I was in discussions with the British Shooting Sports Council to become an officer of that organisation. It is not declared in the register because I think I have been proposed but not yet nominated; I am not quite clear what has happened in the past nine months but I will find out.

Having read the documents, this does not seem a huge issue. The Government's response is fairly balanced. What always concerns me is using a sledgehammer to crack a very small nut; I hope that that is not the case here. I note the Law Commission recommendation. I heard the comments made by the noble Lord, Lord Blunkett. As a former Home Secretary, he knows a lot about this and his comments seemed sensible.

I note the cut-off date of 1939. When I was at school, I was in the CCF. In the school armoury, I think we had pre-1939 Lee-Enfield mark 4s. Times have changed but, as far as I am aware, none of the Merchant Taylors' schools—

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): My Lords, I must adjourn the Committee for the next five minutes, as a Division has been called. Oh, my apologies; it is in the Commons. Let us begin again.

Lord Robathan (Con): I was just going to say that all the rifles—about 100 of them—in the school armoury were pre 1939, were not used in crime as far as I am aware and were extremely accurate. They have now all been dispersed, of course. There was an occasion when the IRA tried to steal rifles from, I think, Felsted School around 1968; they were dangerous and it is obviously much better that we do not have dangerous weapons hanging around.

I support my noble friend the Minister.

2.48 pm

The Duke of Montrose (Con) [V]: My Lords, I am grateful for the Minister's introduction. I was anxious to find out what policy the Government were pursuing. I have been through the 1968 Act, which is probably one of the most amended Acts we could see.

From what my noble friend the Minister has told us, it appears that we are following the Law Commission's recommendation in defining more closely what constitutes an antique rifle. There certainly has been a problem with uncertainty over what exactly was covered in the previous legislation.

Section 58 seems to lay down weapons that are not subject to the firearms legislation and to which licensing does not apply. Does that suggest that any gun manufactured before 1939 could be argued to qualify for not requiring a firearms certificate? I am sure that there are guns in estate gun-rooms from well before that time. I declare my interest, in that I have used quite a few guns from before 1939—some of which the police have persuaded me to hand in and a couple of which I retain.

I understand that any breach-loading gun desired to be kept as an antique in Scotland has to be disabled and the breach sliced open before it can be kept as unlisted. Have the unscrupulous people that my noble friend the Minister mentioned been able to restore such guns so that they can sell them illegally to individuals?

What will be the situation once the measures are in place? I have some ammunition that features in the schedule. My noble friend the Minister gave some information on the criteria used to draw up the list of ammunition, but it would be useful to know whether it is merely a question of what is no longer commercially manufactured.

2.51 pm

Lord Bhatia (Non-Afl) [V]: My Lords, the use of antique firearms in criminal activity has risen in recent years. Antique firearms kept as ornaments are currently exempt from several provisions in firearms legislation. At present, there is no statutory definition of an antique firearm. For that reason, this instrument will better regulate the sale of such firearms and responds to concerns raised with the Government by law enforcement agencies about the increase in their use in criminal activities in recent years.

Section 58(2) of the 1968 Act exempts from most controls under that Act antique firearms

"sold, transferred, purchased … as a curiosity or ornament".

This includes being able to possess them as a "curiosity or ornament" without needing a firearms certificate and trade in them without being registered with the police as a firearms dealer.

Recently, an increasing number of antique firearms have been recovered in criminal circumstances. There is obviously a need to regulate the sale and purchase of antique firearms; I welcome this initiative. There are also antique knives, swords, et cetera. Do the Government intend to regulate their sale and purchase?

2.54 pm

Lord Lucas (Con) [V]: My Lords, I congratulate the Government on the evidence base and proportionate response to the problems addressed in these regulations. I note that it implies a confidence in the police's ability to cope with a technically complex list of obsolete calibres and models of pre-1939 air guns, as well as being able to tell the difference between, for example, an antique Brown Bess musket and a modern one for use by re-enactors that will require licensing. That is most welcome. The police will not be able to do that, of course; they will turn to experts, who are readily available, but between them they will get these distinctions right.

If these regulations are passed today, a number of obsolete calibres can be freely gifted, loaned or sold because the Government have agreed with experts that

[Lord Lucas]
these items pose an extremely low risk to society. I am delighted that the Home Office is considering things at this level of detail and very much hope that this will lead to a reconsideration of the concerns expressed during the passage of what is now the Offensive Weapons Act, in particular the assertion that the police could not tell the difference between a pre-1945 item and a modern one—a task that is much easier than the one that this regulation places on them. This had led to wording that threatens the destruction of some fascinating parts of our heritage and profitable parts of our film industry. I hope that, in future, we will see the spirit in which this regulation has been brought forward applied to our Second World War heritage.

2.56 pm

Lord Garnier (Con) [V]: My Lords, I recommend the article by Rupert Jones, "Firearms and Fury: The Rise of Gun Crime in the UK", published in *Counsel* magazine for June 2018 and helpfully drawn to the Committee's attention by the Library in advance of this debate. Together with the clear explanation by my noble friend the Minister, it makes the case for these regulations unanswerable. Were it permissible to do so, it should be annexed to the *Official Report* for this debate.

The penalties for gun crime are almost invariably severe. Mr Jones wrote about a registered firearms dealer who was sentenced to 30 years in prison for transferring illegal firearms and ammunition. He had Home Office authority not only to possess prohibited handguns but also to sell them. His criminal sideline involved making ammunition to fit antique guns. Despite being in prison since 2015, this man's ammunition was being discharged by criminals on our streets and recovered by the police long afterwards. It very probably still is. It seems that one can lawfully buy a working handgun without any record of the transaction.

Despite the post-Dunblane restrictions, for some reason it was not thought that antique firearms, for which ammunition was no longer commercially manufactured, would be seen other than as items to be admired in collections. The non-commercial manufacture of ammunition is as old as gun-making itself. I have known people like me, who are legitimate and licensed owners of pre-1939 shotguns used only for game shooting, who used to make their own shotgun cartridges either to save money or as a hobby. That skill is well beyond me. However, my great-great uncle, the sixth Lord Walsingham—a trustee of the Natural History Museum until his death in 1919, perhaps one of the greatest game shots of his generation and a world-renowned ornithologist and lepidopterist—used to make paper cartridges filled with dust for a gun with a barrel no bigger than a pencil. He used them carefully to stun hummingbirds in the tropics so that he could study them close up.

Unfortunately, the private manufacture of modern ammunition specifically designed to be fired from otherwise lawful antique weapons in the course of crime is all too common. When I was Solicitor-General a decade ago, I learned that remarkably few handguns were used in a great many criminal shootings. A small number of illegally held handguns are available for hire to criminals and passed around from gang to gang. What I had not realised until I prepared for this debate is that the market is not limited to modern handguns and longer-barrelled weapons. Antique weapons are also used to commit crimes. If they are—I am sure that they are—we must do all that we can to prevent it. If these regulations help with that, so much the better.

Before concluding, I will say one more thing. At the time of the Dunblane reforms, ill-considered damage was done to the legitimate, competitive, Olympic sport of target shooting and its innocent participants. I join my noble friends Lord Shrewsbury and Lord Lucas in hoping that these otherwise commendable regulations cause nothing similar to law-abiding collectors of antique guns.

2.59 pm

Lord German (LD) [V]: My Lords, I welcome the policy intent of these regulations and the Minister's introduction to them. They seek to remove a category of firearms from harmful and malevolent use.

However, the Minister must explain the delay in bringing forward this new law. It is now over three years since the consultation on these regulations ended. The Government's response to this consultation was published only last November, and that took just under three years. If the obligation to protect the public from harm is the prime objective, keeping the country waiting for this length of time is certainly not the way to go about it. I am bound to draw a parallel with the Surrender of Offensive Weapons (Compensation) Regulations 2020, which had a very similar consultation period, from October to December 2017. It took two and a half years to bring forward that legislation as well. Can the Minister reassure the Committee that there is no endemic failure in her department that prevents public safety measures of this sort being dealt with at pace?

One piece of information that was not clear from the documentation supporting the regulations is the source of the antique firearms recovered during criminal circumstances. The Explanatory Memorandum states that the current situation

"is being exploited by criminals to obtain old but still functioning firearms."

Can the Minister explain how criminals are obtaining these weapons? Are they being purchased on the open market or are they being stolen from collectors, dealers or museums? If they are being purchased on the open market, that obviously adds considerable strength to the case the Minister made for these regulations.

However, on their own, these regulations will be insufficient because licensing alone does not completely stop malevolent use, particularly from theft of weapons of this sort. Supplementary to that issue, is it safe to assume that collectors and museums would not wish to render these weapons useless as firearms by altering or damaging them in any way because they would then lose market value or, in the case of museums, their importance as genuine artefacts?

As a result of the delay in implementation, these regulations are being introduced in the midst of a lockdown. This is particularly important for the impact on museums. At present, all museums are closed, certainly for the next few months and possibly for longer.

That is right across the UK, not just in England. Many museum staff are furloughed, particularly for museums run by charities and private sector bodies. Zero income is being achieved through visitor entries and other footfall and their financial future is challenging to say the least.

The impact assessment demonstrates that these regulations will have cost implications for museums. For those affected by the regulations—some 200 museums in all—the costs fall unevenly on smaller institutions. The figures given in the impact assessment are £200 for a licence and £3,000 for appropriate storage facilities. These set-up costs can be crippling when museums are struggling with the effect of the pandemic and when there is zero visitor income. So much of their revenue comes from entry charges, where there is no free entry support from Governments across the UK, and from sales in catering and shopping outlets—as any visitor to the Imperial War Museum will see, these are very important—as well as any income they get from corporate and sponsored function hire. All of these options are closed. Will the Government, having delayed the introduction of these regulations since the consultation period ended more than three years ago, provide an appropriate period of grace, not just a fixed three-month period, for museums—at least to coincide with museums' ability to bring staff out of furlough and recommence income generation so that they are not hit with a financial burden when their income is zero?

Finally, I welcome the regular review indicated in the regulations and the review body proposal. The challenge for the Government is to achieve an appropriate balance on the review body between the interests of collectors and dealers, law enforcement and museums. Can the Minister tell us the arrangements the Government are making for that balance to be achieved? With satisfactory answers to these points, it will be appropriate to welcome these regulations.

3.04 pm

Lord Rosser (Lab) [V]: We are certainly not opposed to these regulations, but there appears to be some doubt on the Government's part as to whether they will have any impact on the serious issue they are intended to address.

As the Minister said, the regulations seek to resolve concerns about the increased use of antique firearms in crime by providing a statutory definition of antique firearms. In so doing, the regulations set out to provide certainty on which firearms can be possessed or traded as an antique and thus be exempt from the need for a firearm certificate and the provisions of the Firearms Act 1968, as amended by the Policing and Crime Act 2017. The Minister gave the figures. The number of antique firearms recovered in criminal circumstances was four in 2007, reached a peak of 96 in 2016 but was still at a figure of 68 in 2019. Since 2007, six fatalities have been linked to antique firearms.

The lack of a statutory definition of an antique firearm, as opposed to Home Office non-statutory guidance, has enabled criminals to obtain old but still functioning firearms without the control provisions and licensing requirements under the 1968 Act being applicable. As has already been commented on, in 2015 the Law Commission recommended defining "antique firearm" in legislation to remove ambiguity over what was meant and provide greater clarity for the police and other criminal justice agencies in enforcing the law and prosecuting offenders. That recommendation was accepted by the Government and the Policing and Crime Act 2017 provided for a statutory definition, which led to a public consultation that year on the detailed aspects of the statutory definition.

Like the noble Lord, Lord German, I ask the Government to say in their response why it has taken more than five years to implement a Law Commission recommendation on a matter impacting on serious violent criminal offending at a time when violent crime has risen, and why it has taken three years from the conclusion of the public consultation on the detail of the statutory definition to bring these regulations forward. This might suggest a somewhat laid-back attitude to the incidence of violent crime, unless the Government say that the reason for the delay is that they still do not think that the regulations will actually have any impact on violent crime involving antique firearms.

If that is the case, such a stance would appear to be in line with the statement in the impact assessment—if I have understood it—that

"there is no robust evidence to indicate that re-classifying antique firearms in this way will reduce criminality involving antique firearms, serious violence, wounding or homicides."

Does that statement represent the Government's view of the effect, or rather non-effect, on public safety of these regulations, which have taken more than five years to appear following the Law Commission recommendation and have a net cost to business of £500,000 a year on top of set-up costs of £6 million? In their response, a clear statement is needed from the Government on not only the reason for the time it has taken to bring these regulations forward, but, in the light of the statement in the impact assessment, which I accept I may have misinterpreted, whether and why the Government think that these regulations will address two specific government issues.

The first issue is the concern mentioned in paragraph 7.1 of the Explanatory Memorandum:

"Law enforcement has raised concerns with the Government about the increased use of antique firearms in crime."

In the light of the statement in the impact assessment, do the Government think that the regulations will address that concern?

The second specific issue arises, once again, in the light of the statement in the impact assessment that

"there is no robust evidence to indicate that re-classifying antique firearms in this way will reduce criminality involving antique firearms".

The issue is whether, and why, the Government believe that these regulations will deliver on their stated primary objective, as set out in the impact assessment:

"The primary objective is to preserve public safety by strengthening firearms legislation to prevent the criminal misuse of antique firearms."

Again, in the light of the statement in the impact assessment, do the Government believe that these regulations will deliver on that primary objective?

3.09 pm

Baroness Williams of Trafford (Con): I thank all noble Lords who have spoken in this debate.

Turning first to the noble Lord, Lord Blunkett, he nobly assists me in so much these days. Yesterday, he and the noble Lord, Lord Young, gave an absolutely fantastic lesson in how, by not doing things, we will come to regret them years later. Far from feeling as if I have been stalked, I have been greatly assisted by him, particularly when we can improve on what went before. The noble Lord stated his support for the regulations and I agree with his words: there is no real inconvenience in registering what people have and, if it helps to improve safety, all the better.

The noble Lord, Lord Addington, asked about the cut-off date of 1939 and thought that 1914—or maybe 1918—would be a rather lovely date. Law enforcement and some other respondents to the Home Office's consultation preferred a 1900 cut-off date. Although moving the date from 1939 to 1900 would reduce the risk from firearms of that period by requiring them all to be licensed, the majority of firearms manufactured during that period do not in fact feature in crime. They are held safely and responsibly by museums and collectors, with no danger to the public. Licensing them all would therefore add extra burdens on the museums referred to by the noble Lord, Lord German—along with collectors, dealers and the police—without significantly increasing public safety.

The noble Lord, Lord Addington, asked me about the criteria, as did my noble friend the Duke of Montrose. I will go through those criteria again: to be antique, a firearm must be held as a curiosity or ornament, have been manufactured before 1 September 1939 and either have a propulsion system specified in the regulations or be chambered for one of the obsolete cartridges specified in them. He also asked a sensible question: how do we define "deemed to be dangerous"? There is no actual legal definition but the judgment on what is deemed dangerous is, I guess, the evidence of criminal use.

My noble friend Lord Shrewsbury questioned the reliability of NABIS data. I will take his points back. I concur that there were some inconsistencies in the NABIS data in its 2017 and 2018 annual reports in respect of recoveries of antique firearms. The head of NABIS subsequently had the data examined and found administrative errors in the figures used in the 2017 report. She has removed that inaccurate data from the NABIS website and put in place measures to ensure that there is no recurrence. The review of the list will be done every three years.

Moving on to my noble friend Lord Robathan, I just love listening to the stories from him and my noble and learned friend Lord Garnier. Honestly, what went on in their schooldays? We did not have such fun at all, but I thank my noble friend for his support for these regulations.

My noble friend the Duke of Montrose asked about disabling guns in Scotland before they can be antiques. That is not part of the current arrangement or the new regulations, so it will not be required.

I know that the noble Lord, Lord Bhatia, is pleased with the regulations but he asked about knives and swords. They are subject to different controls.

My noble friend Lord Lucas asked—no, he was delighted with the regulations. He was pleased about the clarity of it being pre-1939 firearms, as opposed to post-1939 ones.

The noble Lord, Lord German, asked how firearms were obtained. The answer is: through a variety of methods. There is evidence that criminals are taking advantage of the lack of legal clarity to obtain old but still-functioning firearms for use in crime. In recent years, there have been several notable convictions involving antique firearms, with substantial sentences handed down by the courts. For example, in 2017, a former firearms dealer was convicted and sentenced to 30 years' imprisonment for firearms offences including supplying antique firearms to criminal gangs. In 2018, a firearms certificate holder was convicted and sentenced to 23 years' imprisonment for firearms offences including making ammunition for antique firearms and supplying it to organised crime groups.

The noble Lord, Lord Rosser, asked how the regulations would help. Basically, as I said, the problems of the current law on antique firearms were highlighted by the Law Commission in its 2015 report *Firearms Law: Reforms to Address Pressing Problems*. It recommended defining "antique firearm" in law, essentially following the model used in Home Office guidance.

The noble Lords, Lord German and Lord Rosser, lamented the delay in laying the regulations. As I understand it, it was necessary to take some time to consult widely on the detail of the regulations, some aspects of which are quite technical, and consider them carefully with expert stakeholders. However, I am pleased that we can now bring the regulations forward, which will strengthen the controls on antique firearms to prevent them falling into criminal hands.

Finally, I understand and empathise with the point made by the noble Lord, Lord German, about museums. I will take it back and see whether I can get a response for him.

Motion agreed.

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): The Grand Committee stands adjourned until 3.45 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

3.17 pm

Sitting suspended.

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): My Lords, the hybrid Grand Committee will now resume. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering except when seated at their desk, to

speak sitting down, and to wipe down their desk, chair and any other touch points before and after use. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

The following Members have withdrawn from the next item of business: the noble Lords, Lord Liddle, Lord Bilimoria and Lord Bhatia, and the noble Baronesses, Lady Jones of Moulsecoomb and Lady Wheatcroft. The time limit for it is one hour.

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2020

Considered in Grand Committee

3.46 pm

Moved by ***Baroness Penn***

That the Grand Committee do consider the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2020.

Relevant document: 37th Report from the Secondary Legislation Scrutiny Committee

Baroness Penn (Con): My Lords, this order, which we are here to discuss, brings prepaid funeral plan providers within the Financial Conduct Authority's regulatory perimeter, subjecting them to compulsory, proportionate and robust regulation. This will ensure that consumers—often elderly and vulnerable—are adequately protected by proportionate but sufficiently robust regulation.

A funeral plan is a contract under which a policyholder makes one or more payments to a funeral plan provider, which subsequently provides or pays for a funeral on the policyholder's death. Funeral plans allow consumers to "lock in" the price of their future funeral when they purchase a plan. Around 1.5 million plans are held by individuals across the country. Funeral costs have risen at almost twice the rate of inflation for the past decade, with the average funeral now costing between £4,000 and £6,000.

In recent years there have been reports from Fairer Finance and Citizens Advice Scotland of consumer detriment. In 2018 the Government launched a call for evidence, which confirmed that consumer harm exists in the funeral plan market. In particular, there is a lack of clarity for customers over what is covered by their plan; high-pressure and misleading sales tactics; and a lack of access to redress schemes if things go wrong. Some 84% of respondents to the call for evidence expressed support for a compulsory regulatory regime. Following further consultation, the Government decided to bring the prepaid funeral plan market within the remit of the FCA.

The funeral plan market has outgrown its 20 year-old legislative framework. Although a funeral plan contract is a regulated activity under the regulated activities order, the existing exclusions for plans covered by a trust arrangement or insurance contract mean that no prepaid funeral plan provider has ever been authorised and regulated by the FCA. The order removes those exclusions, requiring providers to be authorised by the FCA in relation to "entering into" funeral plans. The order also introduces a new regulated activity requiring providers to be FCA-authorised in relation to the administration of funeral plans, including existing plans. These changes will enable the FCA to introduce new rules to protect consumers at the point of sale; ensure that providers administer funeral plans properly; and ensure that providers have sufficient reserves to pay for funerals as they fall due.

Many funeral plans are sold by smaller intermediaries and third parties. Regulating this large part of the market is essential to protect individuals from the risk of unfair selling practices by companies that would take advantage of vulnerable customers. The order therefore amends the regulated activities order to make dealing in funeral plan contracts as an agent a regulated activity. This means that intermediaries or third-party distributors that promote or sell funeral plans will also be brought within the scope of the regulatory regime.

However, the Government are alive to the fact that many plans are sold by funeral directors, which are generally small to medium-sized family businesses and would not otherwise engage in financial services activity. To ensure a proportionate approach to these firms, the order amends the relevant regulations to allow them to become appointed representatives of principal firms. This means that funeral plan providers, acting as the principal firm, must ensure that the representatives they appoint to sell or promote their funeral plans comply with the relevant regulatory requirements, without these firms necessarily needing to pursue full FCA authorisation.

The order makes consequential amendments to the financial promotion order. It also brings the funeral plan market within the scope of the Financial Ombudsman Service and extends the ombudsman's jurisdiction to complaints relating to matters that occurred when the relevant funeral plan provider was registered with the existing voluntary regulator, the Funeral Planning Authority.

I would like to acknowledge the work done by the Funeral Planning Authority. I hope that the FPA will continue its activities until the new FCA regime comes into force. The Government urge providers to remain registered with the FPA and continue abiding by its code of conduct during the transitional period. Having consulted widely with industry, the Treasury has concluded that most reports of poor activities can be attributed to those providers that have chosen not to register with the FPA. This demonstrates that a voluntary system of regulation cannot be fully effective because providers can choose not to comply.

It is a regrettable fact that bringing a previously unregulated sector into regulation—whatever form that may take—creates a possibility that some providers are unable to meet the threshold for authorisation. I therefore cannot rule out that, in authorising these firms under the new regime, it is revealed that some providers are unable to deliver on the promises they have made to their customers. I can assure the Committee that the Treasury and the FCA will monitor the situation closely and, subject to the facts at the time, stand ready—

3.52 pm

Sitting suspended for a Division in the House.

3.57 pm

Baroness Penn (Con): My Lords, I will repeat my last sentence in case it could not be heard due to the Division Bell. I can assure the Committee that the Treasury and the FCA will monitor the situation very closely and, subject to the facts at the time, stand ready to take any appropriate action.

Once this order has been made, there will be an 18-month implementation period before the new regulatory framework comes into force. This will allow time for the FCA to consult on and implement the new regulatory framework, and for firms to familiarise themselves with those new requirements. The Government understand that the FCA will also consult on whether to extend coverage of the Financial Services Compensation Scheme to the sector. The Government are committed to working closely with the FCA on any legislative requirements to ensure that such an arrangement would work efficiently for consumers.

Compulsory regulation in this area is long overdue. Consumers should be able to make arrangements for this difficult time in life without fear of exploitation by disreputable firms. I beg to move.

3.58 pm

Lord Empey (UUP) [V]: My Lords, I warmly welcome this order. It is perfectly fair to say that, in recent times, consumers have been bombarded by advertisements for these plans on television and radio and through other channels. As my noble friend said, people can be in a very vulnerable position in their lives when they are subjected to this pressure.

I would like to ask several things, in case I did not pick up some of the Minister's comments. She made the point that some of the current operators may not be able to manage the new regulatory environment. What is the position for their policyholders, as it will be another 18 months before things are fully in place? What triggered the decision to push for this particular order? Was it the evidence of wrongdoing? Did the Government just decide to do so or did they receive a recommendation from the FCA in this regard?

While the Minister said that there were in the region of 1.5 million policyholders, can she give the Committee some sense of the amounts of money involved in this sector? It has grown exponentially in recent years. Also, what will the position be during the 18-month implementation period when people are still selling these policies, including perhaps a number of companies that will not be able to meet the requirements in the long term?

Clearly, markets change and evolve over time. We know this, but I am interested to know who is actually looking at it. When markets open up, perfectly good companies put forward policies. That is a great thing but, as the Minister has admitted, there are a certain number of people who are prepared to exploit. What is the position for companies that may not be in the United Kingdom but sell policies to it? In which regulatory environment will they operate, and what sanctions and security can be provided to consumers if they are not registered in the United Kingdom?

However, in broad terms, I welcome this order. It is overdue, as the Minister said. I hope that it will provide reassurance to a lot of people who perhaps currently find themselves holding policies that could still be vulnerable. It would be helpful if we could alleviate any further worry among those policyholders, particularly at a critical time in their lives.

4.02 pm

Lord Davies of Brixton (Lab) [V]: My Lords, this is a no-brainer. Funeral plans are clearly a form of life insurance and, just like mainstream life insurance, they should be subject to full regulation. Promises are made to policyholders and we, as legislators, have an obligation to ensure that those promises are met.

We also have a duty of care. Funeral plans are mainly used by people on low incomes and with limited savings. Gold-standard independent financial advice will never be available to these prospective policyholders. They are inevitably on their own in an area that is potentially costly to them and where they have little knowledge, so regulations are required. I support what is proposed here today.

Provisions are required to provide protection for those who worry about being given a pauper's funeral or concerned about it being a burden on their family after their death. However, the Committee needs assurance on some issues. I assume that there will be a time limit—maybe not now—but, given the time, I will limit myself to just two points.

First, we need assurance that the involvement of the FCA will not result in an inappropriate regime of supervision that would work against policyholders' interests by unnecessarily increasing costs and limiting choice. The Minister was right to mention the work of the Funeral Planning Authority. It is a shame, therefore, that the Treasury does not appear to have made full use of its experience and expertise in this area. No doubt the Minister is aware of the detailed criticisms it has made of these proposals. I understand that a meeting with the authority is proposed but will the Minister assure us that the Treasury, and in due course the FCA itself, will take appropriate advantage of its undoubted expertise?

Secondly, it is important to mention the special needs of those religious communities—Jewish, Muslim and evangelical Christian—that provide funeral support for members of their own congregations. Such arrangements generally include a type of funeral plan that could fall under the order. I do not suggest that these plans should be disregarded for the purposes of the order. However, these arrangements are culturally significant, so will the Minister assure these communities that appropriate consideration will be given during the consultation to their special nature, both by the Treasury and by the FCA?

4.05 pm

Lord Foulkes of Cumnock (Lab Co-op) [V]: My Lords, I thank the Minister most sincerely for a very helpful introduction. I must declare a couple of relevant

interests as a former Labour and Co-op MP and as a former chair of Age Scotland. Both are, and indeed were, non-pecuniary interests. I know that that is an unusual thing in our House these days.

The Co-op Group and Age UK are major providers of funeral plans and are both members of the Funeral Planning Authority, but they do not support the FPA's objections to the order. Indeed, the Co-op welcomed the announcement made in I think the Budget last spring that the Financial Conduct Authority would be given responsibility for the regulation of funeral plans, which the Minister outlined in her introduction.

I and the Co-op appreciate the FPA's concern for the future of smaller providers. I think that the Minister dealt with that in her introduction. The Co-op also said, and I agree, that the primary concern is the protection of consumers. As has been said, FCA regulation is the only way to achieve that successfully. Similarly, my former colleague at Age Scotland, Mike Douglas, pointed out when I spoke to him that the FCA is particularly well versed in the important principle of treating customers fairly, which should be applied to these products.

I also pay tribute to the work of Citizens Advice Scotland. Someone asked who had raised the issue; it was Citizens Advice Scotland in the first instance in a report way back in February 2016. It has taken us more than four years to get to this stage.

I also understand that the Treasury consulted widely on these plans and that the Financial Conduct Authority will also do so in its implementation, as the Minister said.

I was going to ask the Minister only one question on when she expects the order's provisions to be put into practice, but she dealt with that in her introduction and said that it would take 18 months. My question now is: why will it take that length of time? Can that not be sped up? The sooner we get this protection to people purchasing funeral plans the better. Otherwise I am very pleased to say that, for once, I support the Government's order without reservation.

4.08 pm

Lord Mann (Non-Afl): My Lords, I also congratulate the Minister on the eloquence of her introduction and the Government on bringing forward this timely statutory instrument. I suppose I should declare an interest of sorts in that I am almost certainly the only qualified gravestone topple tester in Parliament. I have taken quite a significant interest in all matters relating to funerals, particularly burials. The need to regulate on this was raised under previous Governments with less success.

The kinds of people who plan for funerals in this way are very identifiable. Over the years, I have met and discussed the issue with many of them. They are easily recognisable: they are the kind of people who live in tidy houses, with tidy gardens. They volunteer; they will be volunteering to assist with Covid and matters relating to vaccinations. They are the bedrock of everything decent about the country. These people care about everything around them and, therefore, care about leaving everything in order when their time has gone. That motivation means that people tend to utilise such a service. The danger is that they perhaps place too high a value on it, and the mis-selling of the wrong or wrongly priced product has long been a concern. The beauty of the order is that any complaint about that, whenever it comes—by definition it could sometimes be made by someone from another generation rather than from the person who contracted the service—will shift the market towards good provision.

I have seen too many cases of trauma, usually when a husband dies leaving a wife or vice versa, when a funeral plan does not meet expectation. They had no idea that was going to happen. A lifetime of careful budgeting, of caution and living in a proper, very British way, as they would see it, blows up in their face. That is the importance of this, well beyond the appropriate, standard regulation of a financial product in a market. This is important in terms of the ethics of the country. The change it makes in cases where things go wrong, and the ability to do something about it, is disproportionately significant for the people impacted. I therefore thank the Government and the Minister for bringing this forward.

4.13 pm

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, as other noble Lords have mentioned, around 2016 and 2017 there began to be reports about the mis-selling of funeral plans. The concern mainly focused on the plans not covering the cost of a funeral, the magnitude of fees taken by introducers and plan providers, and the inflexibility of plans and cancellation costs. The concerns have also come to light during a period when funeral costs have escalated, with elderly individuals being sold plans based on spiralling costs. Those costs are not inevitable—indeed new, cheaper funeral arrangements are now coming to market.

At times, the hard sell takes place door to door, but the pressure to make funeral provision is all around in advertisements. Even when this is from good providers, it adds to pressure for people to "do something" and spare their hard-pressed family from financial concern at a time of distress, making them easy targets.

Like other noble Lords, I have received the brief from the Funeral Planning Authority, and I thank it for the work it has done. I recognise that the new authorisation arrangements are an existential threat to it. That seems to be acknowledged in paragraph 12.2 of the Explanatory Memorandum, which says that the regulatory cost will be partially offset by the fees that the majority of providers currently pay to the existing voluntary regulator.

The current terms for the FPA are to give 180 days' notice, which means that the FPA may well cease before the FCA becomes responsible; it might not hang out for the 18 months if it has people resigning. What effect does the Minister think that will have? Will it make for some kind of lacuna?

The FCA will establish an authorisation procedure to commence in summer 2022 and will consult in spring this year. There's the rub: we really do not know what it will do. It will all depend on that consultation. The only information at present on the FCA's website is that it will look at outcomes, ensuring that consumers get the product paid for, and that

"funds are looked after and used responsibly."

[Baroness Bowles of Berkhamsted]
I await with interest how that will roll out. For example if funeral costs become more competitive, would funds being used responsibly prevent paying over the going rate at the time and even result in a cash payment, or is that merely a statement about the prudential soundness of the provider? Does it extend to blocking excessive fees? The problem is that we do not yet know any significant detail.

At present, all providers have to use a trust or an insurance policy, otherwise they would already come under FCA regulation, so what other kind of prudential supervision does the Minister envisage and where has it gone wrong such that it is not sufficient? Or do all the problems lie with the selling side, such as the pressures, commissions and descriptions? If that is the case, it is a little disappointing that the FCA site does not say something about sales conduct, other than getting the product paid for.

The SI removes the regulatory exemption for having funds in trust or an insurance policy so that everyone becomes regulated. At the same time, that seems to open up other forms of prudential security. I wonder what the effect of that will be. In the light of the FCA website comments, does it mean an expectation that funds will be invested and secured differently?

Of course we will let the SI proceed and I broadly welcome it, but I share some of the reported concerns. Like so much of the delegated powers we give to our regulators, the fact is that we really do not know what will happen, where the improvements will be or what we can do if they are insufficient. We of course have confidence in the FCA, but it is built entirely on that. We have no assurance in the SI or in any direction to the FCA that aggressive door-to-door sales must cease. The Treasury has made some provision, with the financial ombudsman taking over the role of dispute resolution, which would have been done by the FPA, but it is not really a satisfactory vision of the future. I would be far happier if there had been more specific guidance to the FCA about those things that have to stop, such as unreasonable fees, profiteering and door-to-door selling.

I heard what the Minister said in introducing the SI about regulation at the point of sale. That is good, but will it really stamp out bad practice? As the Minister said, it is only the 5% who have not taken up the voluntary authorisation. How easy will it be to find that and reduce it to zero?

4.19 pm

Lord Tunnicliffe (Lab) [V]: My Lords, I am grateful to the Minister for introducing the order. As she outlined, it amends the regulatory framework for providers of prepaid funeral plan contracts, generally requiring them to be authorised by the Financial Conduct Authority. Intermediaries need not be directly authorised but will be expected to become appointed representatives, who are essentially overseen by an FCA-registered provider.

The provisions appear to offer a sensible conclusion to the consultation exercise launched back in 2018. We will certainly not oppose the order, though I would like clarity on a number of points.

The majority of providers act responsibly and sympathetically, and, for many, a prepaid funeral plan offers peace of mind. It is no surprise that the market has grown in recent years; it is perhaps more surprising that it has taken so long for the 2001 regulatory framework to be revisited. As the supporting documentation notes, the current voluntary regulatory system has not delivered the desired level of consumer confidence. We hope that the order sends a message to any unscrupulous actors that their behaviour must change. The ability to refer cases to the Financial Ombudsman Service is a particularly important inclusion. I hope the Minister can assure noble Lords that the department will follow early cases to ensure that the new regulatory regime has the desired effect.

Can the Minister offer any insight into how problem cases may be resolved under the new regime? If a provider or intermediary is judged to have fallen short of the FCA's requirements, for example, will the funeral package remain valid with another player assuming responsibility for delivery? Those who have taken the time to spell out their wishes will want them honoured. If their plan were to be cancelled and a refund issued, it would be not only inconvenient but a potentially traumatic experience.

The Explanatory Memorandum and the information paragraphs in the 37th report of the Secondary Legislation Scrutiny Committee note that the new regime will not be fully in force until 18 months after the order is made. It clearly makes sense to give both the FCA and providers time to flesh out the detail and adjust to the new reality. However, can the Minister confirm what steps, other than those outlined in paragraph 2.3 of the Explanatory Memorandum, will be taken to prevent vulnerable customers being targeted or pressured into signing agreements in the interim period? Can she also confirm whether the Government plan to formally make this order shortly after the Commons has considered the draft on 13 January, or is there likely to be a delay to allow the FCA more time to begin its consultation?

Finally, could the Minister please outline the rationale for explicitly excluding local authorities from the regulated activities? I am not aware of local authorities clamouring to offer such services, but what if a specific need were to arise in a particular locality?

Once again, I thank the Minister and her department for introducing the order. I look forward to her response and, all being well, the FCA launching its consultation in due course.

4.23 pm

Baroness Penn (Con): My Lords, I am grateful to all noble Lords who contributed to the debate and for their support for this measure. The noble Lord, Lord Empey, asked what triggered the Government's decision to act in this area. As other noble Lords noted, there had been reports on issues with this sector by Citizens Advice Scotland and Fairer Finance. The Government conducted their own call for evidence, which also found evidence of consumer detriment and triggered government action.

The noble Lord also asked about the amount of money involved in the sector. There are 1.5 million undrawn plans, equating to approximately £4.3 billion in assets under management.

The noble Lords, Lord Foulkes and Lord Tunnicliffe, asked about implementation. I fully expect the Government to make this order shortly after the

Commons has considered the draft. The 18 months for implementation include time for the FCA to consult on the requirements that it will put in place. I assure the noble Lord, Lord Tunnicliffe, and the noble Baroness, Lady Bowles, that, once a new regime is in place, the Treasury and the FCA will work closely to ensure that it is having the desired effect.

The noble Lord, Lord Empey, asked about firms outside the UK selling to UK consumers. I assure him that the relevant regulated activity refers to plans for the provision of a funeral in the UK. The fact that a provider is based outside the UK does not necessarily mean that the regulated activity will not be deemed to be carried out in the UK, and therefore subject to UK regulation.

The noble Lord also asked for reassurance about the impact of these regulations on specific religious requirements for burials and their provision by religious groups. The regulated activities order clearly defines what is meant by a funeral plan contract. This definition may not capture the arrangements of religious bodies. Further, the regulation applies only to persons carrying out regulated activities by way of a business.

As regards the potential for disreputable conduct by firms before the FCA's compulsory regime comes into force, I again strongly encourage all funeral plan providers to remain registered with the FPA during the transition period and to continue following its code of conduct. I also urge consumers purchasing funeral plans to choose providers that have registered with the FPA. This will provide some level of protection and, in future, the benefit of access to the Financial Ombudsman if something were to go wrong.

The noble Lords, Lord Empey and Lord Tunnicliffe, asked whether I could provide any insight into how problem cases may be resolved under the new regime—for example, where the provider of an existing plan does not get authorisation under the new regime. The noble Lord, Lord Tunnicliffe, is absolutely right that the preferred solution in this situation, where a funeral plan provider is unable to meet the threshold for authorisation or chooses not to continue in the market, will be for the transfer of its business to another provider that has successfully obtained FCA authorisation. Legislation does not prescribe the terms of any such transfers that may be undertaken in a way that preserves the consumers' underlying benefits, such as their choice of funeral director or services provided.

The noble Lord, Lord Tunnicliffe, also asked for clarity on the exclusion for local authorities. During its consultation exercise, the Treasury found no evidence of harm from prepaid funerals sold by local authorities. The Government therefore consider that it is not necessary to bring them within the scope of the FCA regulation. However, they can continue to provide this service should they wish to. The order simply excludes them from the regulatory remit of the FCA.

The noble Lord, Lord Davies, asked for reassurance on the role of the FCA, as did the noble Baroness, Lady Bowles. The FCA has a reputation for being an effective regulator and its experience of conduct and prudential regulation, alongside its extensive rule-making powers, will provide a solid basis for strengthening the regulatory framework for funeral plans. The Financial Ombudsman Service has experience of dealing with a wide range of types of complaints and was supported by a majority of respondents to the Government's consultation. Taken together, the FCA and the Financial Ombudsman Service will provide consumers with an effective and enforceable regulatory regime, and an effective dispute resolution mechanism. I thank the noble Lord, Lord Foulkes, for his support of the FCA's role in regulating this sector and provide reassurance to the noble Lord, Lord Davies, that the Treasury and the FCA have consulted, and will continue to consult, on the details of these regulations and the rules made under them. They will, of course, draw on the important advice of the FPA.

The noble Baroness, Lady Bowles, asked about the ongoing role of the FPA. As I said, it is my hope that the FPA will continue until the new regulatory regime comes into force and that providers will remain registered with the FPA, enabling it to continue functioning. I believe that these regulations are a welcome move to regulate a sector that is overdue for them.

Motion agreed.

The Deputy Chairman of Committees (Baroness Henig) (Lab): That completes the business before the Grand Committee this afternoon. I remind Members to sanitise their desks and chairs before leaving the Room. The Committee is adjourned.

Committee adjourned at 4.29 pm.