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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Tuesday 26 January 2021

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Gloucester.

Arrangement of Business

Announcement

12.07 pm

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

Housebuilding

Question

12.07 pm

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government what plans they have to increase the number of houses being built.

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): My Lords, I point to my residential and commercial interests as set out in the register. The Government are committed to supporting the supply of new homes; we delivered around 244,000 last year, the highest number in more than 30 years. We are bringing forward an ambitious nearly £20 billion investment that will include over £12 billion for affordable housing over five years and more than £7 billion to both unlock new land through the provision of infrastructure and to diversify the market through our national homebuilding fund. Alongside our reforms to the planning system, this will deliver the new homes the country needs.

Lord Roberts of Llandudno (LD) (V): While I welcome what has been done, does the Minister agree that we need something on a much larger scale—a Beveridge-scale programme for new affordable housing? That would provide the jobs needed for those who have possibly lost their jobs because of the pandemic. I would also suggest that there should be a Minister at Cabinet level with just one job—a Minister for housing. We should also co-operate with the Ministers for housing in Belfast, Edinburgh and Cardiff. I hope that he will agree with that and help to put it into operation.

Lord Greenhalgh (Con): My Lords, I would point out that housing is a devolved matter and I am not looking to tie the hands of the Prime Minister in how he prioritises this. I would also point out that we need to be very clear about the levers that the Government have to deliver new housing. The most important of those is the investment in infrastructure and the very substantial £12 billion commitment to affordable homes.

The Archbishop of Canterbury (V): My Lords, I declare non-financial interests in various Church lands through numerous charities of which I am a member. The Church will be publishing a housing, church and communities report in February. Can the Minister tell us what criteria Her Majesty's Government use to define affordable housing? Is it genuinely affordable in the sense that most people would use the word?

Lord Greenhalgh (Con): The definition of "affordable" that we use is taxpayer-subsidised housing. Of course, that is council housing as well as housing association and social housing but, importantly, it is housing that takes you on a pathway to home ownership—so it is immediate housing that is also discounted by the taxpayer.

Baroness Neville-Rolfe (Con) (V): My Lords, home ownership is a huge contributor to a prosperous and contented society, and I am glad to see the Minister's focus on this. What is the gross number of new homes that were built last year? I am not sure about the basis for the figure of 244,000 that he mentioned. How many were in existing buildings such as pubs, offices or shops?

Lord Greenhalgh (Con): My Lords, the gross figure for additional dwellings was 252,790. That figure was obtained by adding 243,770 net additional dwellings to 9,000 demolitions. Some 26,930 gains were made through change of use.

Lord Best (CB) (V): I congratulate the most reverend Primate the Archbishop of Canterbury on his appointment of a Church of England bishop for housing; that is a most helpful move. Does the Minister agree that now is the time to accept the excellent recommendations made by Sir Oliver Letwin to get more homes built by ending our dependence on the oligopoly of major housebuilders who corner the land market and build out at a speed that suits themselves? Instead, we should capture the land value through local authorities and thus ensure the building simultaneously of a variety of new homes, including social housing and retirement housing and so on, for every major site.

Lord Greenhalgh (Con): My Lords, there is a great deal of sense in that question. I would point out that the proposals to revise the National Planning Policy Framework make it clear that sites for substantial development should seek to include a variety of development types from different builders.

Baroness Bakewell (Lab) (V): My Lords, many charitable housing providers such as almshouses—for which I am an ambassador—are very small and are

[Baroness Bakewell]
not included with regulated social housing providers, so will the Government review Section 106 of the planning guidance to extend its benefits and allow almshouses and other charitable providers to extend their housing provision?

Lord Greenhalgh (Con): The use of Section 106 is a very important driver of the delivery of affordable housing. Perhaps I might take that point away and respond in writing.

Lord Hussain (LD) [V]: My Lords, I am sure that the Minister is aware of many local authorities such as Luton—my home town—which do not have much building land within their own boundaries; their housing waiting lists continue to run into thousands. In order to meet local needs, can he tell us how the Government plan to help such local authorities acquire land from neighbouring councils to build much-needed affordable social housing?

Lord Greenhalgh (Con): My Lords, I have pointed to a substantial amount of money—£12 billion—of which £11.2 billion is for the affordable homes programme. In addition, we have announced a new, £7.1 billion fund, which is designed to help precisely with land acquisition and to deal with the requisite infrastructure to enable the housing that the noble Lord describes.

Lord Moylan (Con): My Lords, small and medium housebuilders who build most of the existing housing stock have practically ceased to exist in the last few decades, in part because of the cost, time and risk involved in obtaining planning permission. Does my noble friend agree that there is a case for exempting small builders developing small sites from the need for planning permission, subject only to a pre-published design code?

Lord Greenhalgh (Con): My Lords, my noble friend is right that we are seeing the level of planning regulation deter small builders. It is important that, as part of our reform of the planning system, the Government take that into account and find ways to, let us say, level up the field to let the small players participate in the market and therefore deliver on the small sites the new homes that this country needs.

Baroness Wilcox of Newport (Lab) [V]: I speak as a vice-president of the LGA. With government targets continuously missed, the last time anywhere near 300,000 homes a year were built, councils contributed more than 40% of them. So the only way the Government could get back to building at this scale would be by supporting councils to build homes. What steps therefore are the Government taking to help local authorities build the homes they need to build?

Lord Greenhalgh (Con): My Lords, achieving the highest housebuilding target in over 30 years is a credible achievement. There is no doubt that the 300,000 target will be stretching, particularly in the light of the national Covid emergency. We will rely on councils to build; we have released the constraints on local authority finance and the ability to borrow, as well as providing a huge £12.2 billion programme for affordable housebuilding.

Lord Green of Deddington (CB) [V]: My Lords, these questions have been focused entirely on the supply of housing, but the future demand for housing is surely a key aspect. Is the Minister aware of the latest ONS household projections for England? They show that, over the next 20 years, just over half the extra homes needed for our projected population growth will be the result of immigration; that is, nearly 300 new homes every day. Surely we need action on demand as well as on supply.

Lord Greenhalgh (Con): My Lords, it is important that we think about both the demand and the supply of homes, but it is also important that we attract global talent to this country. It is about getting that right—but I am not the Minister for immigration policy.

Baroness Eaton (Con) [V]: My Lords, more than 1 million homes that have been given planning permission over the last decade are yet to be built. Does my noble friend agree that, for the Government to meet their aspirations on the number of new homes being built, giving councils tools to encourage developers to build on sites with permission would enable building in a swift and timely manner?

Lord Greenhalgh (Con): My noble friend will know that the Government want to see new homes built faster and to a higher-quality standard. Our planning White Paper proposes to introduce more speed and certainty into the planning system through the granting of automatic outline consents for growth areas. This will ensure that developers, authorities and communities can have greater clarity at an early stage of the process and will reduce unnecessary delays as those developments progress.

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

Covid-19: Night-time Economy

Question

12.18 pm

Asked by ***Baroness McIntosh of Pickering***

To ask Her Majesty's Government what assessment they have made of the impact of the restrictions put in place to address the COVID-19 pandemic on (1) the income of businesses working in, and (2) jobs related to, the night-time economy; and what steps they are taking to address any such impact.

Baroness McIntosh of Pickering (Con): I beg leave to ask the Question standing in my name on the Order Paper and refer to my interest as chairman of the Proof of Age Standards Scheme board.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): The night-time economy includes businesses operating between 6 pm and 6 am and is therefore very broad. BEIS and DCMS sponsor the hospitality, entertainment, arts and culture sectors, all of which play a significant role in the night-time economy. Over the course of the pandemic, the Government have worked closely with businesses from across these sectors to understand their concerns, and have responded with £280 billion of funding to support businesses, retain jobs and provide support on backdated rents.

Baroness McIntosh of Pickering (Con): I thank my noble friend for his Answer and for the support that the sector has received. I am delighted that he recognises the contribution that the night-time economy makes, in billions of pounds of revenue—in its heyday—and in accounting for 8% of the national workforce, with a high proportion of young people employed. Will he work closely with the Treasury to ensure that, going forward, specific support can be targeted on the fixed costs of those working in the night-time economy, such as rent, insurance, electricity and water, which amount to 15% of their turnover? To date, little targeted help in that regard has been given; this would be very warmly received and would ensure a return to a sustainable and vibrant future as soon as businesses are allowed to reopen.

Lord Callanan (Con): My noble friend makes some important points. We will of course work closely with the Treasury, as always. The support package that the Government have put in place is designed to help businesses with their fixed costs. It includes the business rates holiday, the job retention scheme and various grants, and introduces a moratorium on the eviction of commercial tenants. The Government keep all these support measures under constant review.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, the night-time economy also generates employment for freelance and self-employed musicians, actors and technicians. It is clear that DCMS funding for established building-based clients is not reaching this group, over half of whom have reported receiving no support. Will the Minister work with colleagues in DCMS to ensure that this issue is resolved quickly and for the future?

Lord Callanan (Con): The noble Lord makes an important point, as he so often does. The Government recognise the important role that freelancers, including musicians, play in the night-time economy. That is why we have put the Self-employment Income Support Scheme in place. We have funded Arts Council England to provide £26 million to support over 8,200 creative people. We have provided £6 million in benevolent funds to make direct awards, reaching almost 3,500 people so far, but of course we need to look at what more we can do to help.

Lord Mackenzie of Framwellgate (Non-Afl) [V]: My Lords, the night-time economy is essential to any city or town in the United Kingdom. Hospitality is a critical source of employment, particularly of young people starting out in life. Today, it is the highest unemployment sector. Successful theatres, pubs and restaurants contribute considerable amounts to the Exchequer every year. Does the Minister agree with me that there are also important and immeasurable social, mental and physical health benefits to the nation from people enjoying social interaction, which is clearly evidenced by its unhappy absence over the last 12 months?

Lord Callanan (Con): I do agree with the noble Lord. The night-time economy generates around £66 billion in UK revenues. It employs 1.3 million people, across a wide range of businesses, so the points that he has made are well received.

Baroness Altmann (Con) [V]: I wonder if my noble friend could update the House on the progress of the £1.57 billion Culture Recovery Fund, which was announced by the Government and is most welcome; I congratulate the Government. Does he agree with me that this sector of our economy is important not just economically, with 1.3 million people estimated to be employed, but culturally, socially and health-wise?

Lord Callanan (Con): My noble friend is correct. The Culture Recovery Fund is delivered through Arts Council England, the National Lottery Heritage Fund, Historic England and the British Film Institute. It covers charitable and private organisations of all sizes, in the arts, museums and heritage sectors, as well as music venues, festivals and independent cinemas. The Government continue to work closely with each of these sectors to understand what further support we can provide.

Lord Goddard of Stockport (LD): My Lords, I declare my interest as vice-chair of the APPG for the Night-Time Economy. In 2019, the annual revenue budget for the night-time economy nationally was £66 billion. Comparatively, the fishing industry, in 2018, was worth £784 million to the economy. That is about £60 billion less a year. Could the Minister explain, in pure economic terms, why people are asking me why the night-time economy has been abandoned by this Government in favour of protecting the fishing industry? Minister, I like fish, but not at the expense of Ronnie Scott's or the Band on the Wall in Manchester or thousands of other venues now on their knees. Many thousands of jobs are predicted to go permanently in our sector, if more financial support is not immediately forthcoming.

Lord Callanan (Con): I am not sure of the point that the noble Lord is making. It is not a choice of one or the other. Of course the fishing industry is important, but the night-time economy is vital also. I outlined earlier the many steps that we are taking to help them.

Baroness Warsi (Con) [V]: My Lords, black cabs and licensed Hackney carriage drivers are essential to the night-time economy. Is my noble friend familiar with offers from black cabs in London and licensed hackney carriage owners throughout the country to assist in the Government's response to the pandemic? What consideration have the Government given to this offer, specifically to deliver the pandemic vaccination programme?

Lord Callanan (Con): Not just black cabs but various private hire companies have offered to help. I will certainly pass on those comments to my colleague, Minister Zahawi, who is responsible for the vaccination programme.

Lord Berkeley of Knighton (CB) [V]: Although the Chancellor's support for the arts, already mentioned, has been vital and is much appreciated, I know that the Government accept that many freelancers, particularly musicians, have fallen through the support network if they have failed to qualify for universal credit or the SEISS. I wonder if the Minister and his colleagues could look at some kind of register, through the auspices of agencies such as the Musicians' Union and the Incorporated Society of Musicians, to identify and assist cases of real hardship, at a time when musicians cannot work and some are in dire straits.

Lord Callanan (Con): The noble Lord makes an important point. I understand his concerns. In my answer to the noble Lord, Lord Stevenson, I outlined the support that we are providing to the sector, but I am sure that my colleagues in DCMS will work closely with the sector to understand its concerns and see what more we can do to help.

Lord Jones of Cheltenham (LD) [V]: My Lords, UK Music tells us that almost three-quarters of musicians are thinking of quitting due to the drop in income and opportunities. The legendary rock drummer Bob Henrit says that we are in danger of losing a whole generation of talent. Are the Government happy about losing the tax revenues that these people are likely to generate in the future?

Lord Callanan (Con): No, of course we are not happy about it. We are not happy about any of the measures that have we have been forced to put in place because of the pandemic. We want to see these venues reopening, as soon as it is safe.

The Earl of Clancarty (CB): My Lords, live events are a significant aspect of the night-time economy. The need for a Government-backed insurance scheme to protect organisations against the cancellation of events due to Covid cannot be emphasised enough. Many organisations, including festivals, cannot survive much longer without such insurance, which has been granted to the film and TV sector.

Lord Callanan (Con): I outlined the support packages earlier. We want to take into account the concerns of many sectors, such as those that the noble Earl highlights. We will keep these matters under review and my colleagues in DCMS will continue to liaise closely with the sector.

Lord Taylor of Warwick (Non-Afl) [V]: The night-time economy accounts for 8% of the UK's employment, with revenues of £66 billion a year. Perhaps less well known is that 18% of the black community work at night, compared to 11% of the white community. Bearing in mind that Covid appears to have more of an adverse effect on the black community, what progress are the Government making into researching the reasons for this racial disparity?

Lord Callanan (Con): The noble Lord is tempting me to stray into matters beyond my brief. I know that considerable research is going on, from funding provided by the DHSC, to ascertain the precise impacts of the virus on different communities. The noble Lord is entirely right that the night-economy time is vital to the black community. Within the night-time economy, the hospitality sector alone employs around 2 million people, with 7% more BAME employees than the UK average of 12%. As I outlined earlier, we have taken steps to try to preserve as many of these jobs as possible.

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

Television Licence Evasion

Question

12.29 pm

Asked by ***Baroness Hoey***

To ask Her Majesty's Government what plans they have to introduce legislation to decriminalise television licence evasion.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, the Government's response to the consultation states that

"decriminalisation will remain under active consideration while more work is undertaken to understand the impact of alternative enforcement schemes."

We remain concerned that a criminal sanction for TV licence evasion is increasingly disproportionate and unfair in a modern public service broadcasting system. However, we recognise that changing the sanction would have wide-ranging impacts for licence fee payers and has the potential for significantly higher fines and costs for the small minority who evade.

Baroness Hoey (Non-Afl): My Lords, I am glad that the Minister repeated what the Secretary of State said last week—that he remained

"concerned that a criminal sanction for TV licence evasion is increasingly disproportionate and unfair in a modern public service broadcasting system."—[*Official Report*, Commons, 21/1/20; col. 48WS.]

How then can the Minister possibly justify the continued harassment, intimidation and bullying by Capita of the many elderly, vulnerable households just trying to survive in the midst of a pandemic? Is it not time that the Government recognised that older people are turning off the BBC, younger people have never even turned it on, and the licence fee itself represents a bygone age and should be abolished and replaced by a choice-based alternative?

Baroness Barran (Con): The noble Baroness covers a number of points. On her first point, I absolutely sympathise with the issue she raises, although we have to recognise that the BBC is independent in the way that it enforces and collects the licence fee, and that levels of evasion are the lowest in Europe.

Lord Moynihan (Con): My Lords, as so often, the noble Baroness, Lady Hoey, is right. I am glad that the Minister agrees that a criminal sanction, including cases of imprisonment for TV licence evasion, is disproportionate. Does she agree that it is regrettable that we live in an age where some 91 people have been given custodial sentences for failing to pay fines in respect of the non-payment of TV licences in recent years, and that a change to a civil penalty system should take place now, rather than wait until the licence fee review is completed?

Baroness Barran (Con): The figures that my noble friend refers to—the 91 people receiving a custodial sentence—are for the period 2015-18, and those numbers have declined significantly in recent years. In relation to a civil sanction, it needs to be sufficiently robust to underpin the legal requirement to hold a TV licence, and, as I mentioned, it might result in higher financial penalties. We are keeping this matter open for further review.

Lord Birt (CB) [V]: My Lords, in recent times we have seen a rapid decline in the funding of one of our greatest achievements as a country, admired and envied the world over: British public service broadcasting. Over the past 15 years, investment in original UK production has been cut by 30%. Does the Minister accept that addressing this massive decline should be top of the agenda when the BBC's licence fee is soon reviewed?

Baroness Barran (Con): The noble Lord makes an important point. In the review of the licence fee—which, as he knows, we are committed to until 2027—a very wide range of issues will be taken into account, including, of course, the importance of our independent production sector. As he understands better than I, it has been enormously successful and vibrant, thanks to a great deal of other investment as well as that from the BBC.

Baroness Blackstone (Ind Lab): My Lords, can the Minister say why on earth the Government intend to keep decriminalisation under consideration in the 2022-27 licence fee discussion? This is really perverse, since the Perry review said the current system of sanctions is "fair and proportionate" and that civil-based systems were not a viable alternative. Moreover, the overwhelming majority of those consulted recently opposed it. Does the Minister not agree that this is a distraction from the important reform agenda that the BBC is adopting?

Baroness Barran (Con): The noble Baroness is right that there is a very important reform agenda. In their responses, the general public were roughly split evenly; those reporting through campaign groups were definitely —though I see the noble Baroness is shaking her head —in favour of the status quo. But we will not allow this to distract us; there is a great deal of effort going into looking at the current reform programme at the BBC.

Lord McNally (LD) [V]: My Lords, does the Minister not agree that it is time to stop raiding the BBC licence fee for worthy causes when such actions do irreparable damage to the BBC's capacity to maintain its support of our creative industries? Would the noble Baroness, Lady Hoey, and the noble Lord, Lord Moynihan, not be better employed supporting the charity StepChange in its campaign to have Clause 34 in the upcoming Financial Services Bill 2019-21, which gives statutory support and advice to those who get into debt?

Baroness Barran (Con): My Lords, there is no raid going on of the BBC; quite the reverse. We are working towards much more transparency around the licence fee settlement and my right honourable friend the Secretary of State has written to the director-general of the BBC asking for a breakdown of spend against the five charter purposes, so that we can work with a transparent and clear focus.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, last week's announcement heaps uncertainty and unfairness on the BBC as it keeps the threat of a further loss of revenue in play, instead of following the clear message from the recent consultation and the Perry review that the current system is the most effective of the available options. Can the Minister confirm that no further action will be taken in this area until agreement has been reached between the Government and the BBC on the licence fee level for the remainder of the charter period?

Baroness Barran (Con): Perhaps it would help if I quote directly from the Government's response to the consultation in relation to the noble Lord's valid and important point. We said that:

> "The government considers that a future decision on decriminalising TV licence evasion would benefit from a clearer picture on the wider drivers of BBC income in the face of market and other trends."

So, we need a rounded picture of those issues on which to take a decision.

Lord Flight (Con) [V]: Do the Government agree that legislation decriminalising TV licence evasion would, in practice, render paying for a licence optional and constitute a halfway house towards getting rid of the licence?

Baroness Barran (Con): I do not entirely agree with my noble friend but he is right that it risks sending the wrong signal to the very small minority who seek to evade payment. We feel that it is more constructive to look at ways in which the BBC can support those on low incomes to pay the licence fee.

Viscount Colville of Culross (CB) [V]: Can the Minister confirm that the DCMS response to the decriminalisation of the licence fee found that, as of 20 June 2020, there were zero people in prison for failing to pay the fine in

[Viscount Colville of Culross]
respect of non-payment of the TV licence in England and Wales? Can she also confirm that the National Debtline advice to people who do not pay fines is that only in the most serious cases of non-payment and after every avenue is exhausted can a judge then send them to prison?

Baroness Barran (Con): The noble Viscount is right —my notes say 30 June rather than 20 June, but we will not argue about that. In relation to his second point, that is absolutely correct; about 0.6% of those non-payers were prosecuted, which is the lowest in Europe.

The Lord Speaker (Lord Fowler): I call the noble and learned Lord, Lord Morris of Aberavon. Lord Morris? No, he is not here. I call the noble Lord, Lord Foster of Bath.

Lord Foster of Bath (LD) [V]: My Lords, over the last few months the Rupert Murdoch-owned radio station talkRADIO has been using its broadcasting licence to wage war against the BBC licence fee and its collection. Last week saw a particularly egregious example, which was blatant and inaccurate propaganda, designed to pursue commercial self-interest. Does the Minister agree that if it is to maintain its reputation as the guardian of impartiality and accuracy in broadcasting, Ofcom should investigate and act?

Baroness Barran (Con): The noble Lord is right that it is absolutely Ofcom's responsibility to address issues such as the one he has just raised.

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

Workers' Rights

Question

12.40 pm

Asked by ***Lord Hendy***

To ask Her Majesty's Government what plans they have to review workers' rights.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, there is no government plan to reduce workers' rights. The UK has one of the best employment rights records in the world, and it is well known that in many areas of worker protections the UK goes much further than the EU. Now that we have left the EU, our Government and Parliament can decide what rules should apply and make improvements where they are needed.

Lord Hendy (Lab) [V]: The Government took power in the Brexit deal to degrade workers' rights. On 14 January, the *FT* reported that

"a package of deregulatory measures"

was being drawn up, particularly in relation to working time. Apparently,

"select business leaders have been sounded out on the plan."

The review was confirmed in the other place on 19 January. Yesterday and today, any intention to reduce workers' rights was denied. What is the scope of the review, who is being consulted, why are the TUC and trade unions excluded, and what of the employment Bill?

Lord Callanan (Con): I can only reiterate the Answer I just gave: there is no government plan to reduce workers' rights. Our manifesto promised, among other things, to get Brexit done and to maintain the existing level of protection for workers provided by our laws and regulations.

Lord Monks (Lab) [V]: Surprisingly, it did not take long after Brexit for the Government to consider shredding the working time directive, which deals with maximum hours, rest breaks and, importantly, minimum holidays. Instead of making vulnerable workers more vulnerable, when will the Government tackle abuses in the labour market, such as the growth of one-sided zero-hours contracts and other exploitative measures? These should be the priority targets, not attacks on workers' established rights.

Lord Callanan (Con): There is no plan to make vulnerable workers more vulnerable, as he put it. The House should be in no doubt that the Government will always stand behind workers and continue to stamp out unscrupulous practices where they occur.

Lord Fox (LD) [V]: My Lords, I know of no business organisation calling for the Government to cut back workers' rights, but no matter how much the Minister protests, the Government did sound the working time dog whistle to Back-Bench Tories. Business are calling for help to retain and recruit people through, for example, a cut in employers' national insurance contributions. Will the Minister undertake to redirect the activities of his department to ensure that the Treasury brings in this vital support to our businesses?

Lord Callanan (Con): I am sure the noble Lord is well aware that I cannot speculate on tax changes. They are a matter for the Chancellor. I would get myself into serious bother if I tried to pre-empt what he might decide to do.

Lord Randall of Uxbridge (Con) [V]: My Lords, does my noble friend agree that, in many areas, the United Kingdom goes further than the European Union on workers' protections?

Lord Callanan (Con): Indeed, my noble friend is correct. Our equalities legislation and our maternity and paternity entitlements are already much better than minimum EU standards. In the UK you get over five weeks' annual leave minimum; the EU requires only four weeks. I do not understand the Opposition's obsession with wanting to downgrade our standards to those of the EU.

Baroness Wheatcroft (CB) [V]: My Lords, the Transfer of Undertakings (Protection of Employment) Regulations have preserved the terms and conditions of many employees who find themselves working for a new employer after a transfer of business. With very many more businesses likely to change hands due to the effects of Covid, does the Minister believe that the TUPE rules are still fit for purpose?

Lord Callanan (Con): Yes, indeed I do.

Lord Stevenson of Balmacara (Lab) [V]: I thank the Minister for confirming that the Government have no plans to weaken employment rights. This will be a great relief to many people across the country. However, what about levelling up? Does he agree that there is still work to be done on, for example, the Taylor review, which is yet to be completed; the protections needed for employees on zero-hours contracts, as mentioned by my noble friend Lord Monks; the differences in rights between workers and employees; and the continuing need for vigilance about non-payment of the minimum wage?

Lord Callanan (Con): We will of course always clamp down on unscrupulous practices where they occur, including on those who do not pay the minimum wage. I am proud that it was a Conservative Government who banned exclusivity clauses in zero-hours contracts, giving gig economy workers more control over the hours that they work. We will look to go further where we can.

Baroness Ludford (LD) [V]: My Lords, as my noble friend Lord Fox said, there is no business demand for weakening job protections, but they would be severely hit by even worse border friction and possible tariffs. Can the Minister say how, in their review of employment rights, the Government are assessing the potential for EU trade sanctions under the level playing field provisions of the trade and co-operation agreement? Also, the tweet from the Conservative Party impliedly criticising the EU law for having no pay provisions is, as he knows, completely disingenuous, because the treaties bar the EU from having such provisions. The Conservatives would have been the first to complain if the treaty had such provisions.

Lord Callanan (Con): I am surprised that the noble Baroness is asking about the trade and co-operation agreement, because the Liberal Democrats voted against it and therefore would have preferred no deal, but it is the case that, under that trade agreement with the EU, either party can consider whether divergence on labour standards merits a rebalancing of the agreement. We will of course completely comply with our obligations, as we do under all trade agreements.

Lord Mann (Non-Afl): When I spoke at the rally at Staythorpe power station in 2009, it was European Union law that allowed foreign workers to be flown in and put in containers, stopping British workers getting those jobs. Why are the Government not changing our law to prohibit this undercutting of workers' rights?

Lord Callanan (Con): Indeed, the noble Lord makes an important point, but these are all now matters that we can decide for ourselves. Immigration laws are, of course, kept under review, and the new immigration Act will be in force shortly, but we are now allowed to decide these things for ourselves. The EU will no longer be dictating to us how we conduct our own affairs.

Lord Balfe (Con): My Lords, does the Minister agree that responsible trade unionism is valuable in protecting workers' rights? However, clearly from time to time the law needs updating, possibly in the way referred to by the noble Lord, Lord Mann. The Minister will know that in 13 years of Labour Governments none of the basic reforms of the Conservative Government who preceded them was repealed. Will the Minister argue for reforms that will be similarly widely accepted?

Lord Callanan (Con): My noble friend makes an important point. We remember that when we served in the European Parliament we were lobbied many times by UK Labour Governments to try to maintain existing flexibilities in the working time directive and others. Hopefully the Labour Party will return to that path of common sense soon. It is also important to bear in mind that most workers are not members of trade unions. We need to consult with trade unions where they represent workers but to bear in mind the rights of workers who are not represented by trade unions.

Lord Singh of Wimbledon (CB) [V]: My Lords, the Covid pandemic has severely tested the strengths and weaknesses of workers' rights and found them to be wanting in recognising the importance of childcare to family and national well-being. We have seen some employers using the pandemic as an excuse to fire workers and then re-engage them on lower pay and conditions. Does the Minister agree that strengthening and enhancing workers' rights is important in increasing productivity and national prosperity?

Lord Callanan (Con): In our manifesto we promised that we would enhance workers' rights where it was appropriate to do so, and we stick by that commitment. I think the noble Lord makes some important points.

Lord Davies of Brixton (Lab) [V]: My Lords, we are suffering the worst pandemic for a century. Now as much as ever the employment rights of workers who keep the economy going need to be protected. Will the Minister condemn employers who take advantage of the situation and tactics such as fire-and-hire, and commit the Government to a review of such pernicious practices?

Lord Callanan (Con): I understand that ACAS is currently conducting a review and, of course, the Government will listen carefully to any recommendations it makes. We want to provide support to employees at such a time, but we also need to recognise the very difficult time that many businesses and companies are going through at this unprecedented time during the pandemic.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked, which brings Question Time to an end.

Arrangement of Business

Announcement of Recess Dates

12.50 pm

Lord Ashton of Hyde (Con): My Lords, I thought this would be a convenient point to confirm the plan for the February half-term recess. There will be written confirmation of this in the Royal Gallery and in tomorrow's *Forthcoming Business*. Subject, as is always the case, to the progress of business, we will rise for half-term at the conclusion of proceedings on Thursday 11 February and return on Monday 22 February. I am afraid that I am not yet in a position to announce any further recess dates. I understand that certainty in respect of Easter would be welcome at the earliest opportunity, not least by the staff of the House, who continue to support us with such skill and dedication. I will make a further announcement as soon as I am able to.

12.52 pm

Sitting suspended.

Arrangement of Business

Announcement

1 pm

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

Serious Criminal Cases Backlog

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Wednesday 20 January.

"The Covid pandemic is truly unprecedented. It has affected every corner of our lives—from hospital operations delayed, to schools closed, to businesses struggling and even to how Parliament itself operates, we have seen Covid's effects. The court system is no different: bringing people safely into buildings for trials—especially jury trials—and hearings is a difficult thing to do. That is why so much has been done to keep delivering justice in these difficult times.

We have invested £142 million in upgrading court buildings and technology, alongside £110 million to increase capacity, making an investment of over a quarter of a billion pounds in court recovery this year. We are hiring 1,600 extra staff. We have opened 19 new Nightingale courts, with 35 new courtrooms. As of today, we have over 290 Covid-safe jury trial courtrooms—substantially more than before the pandemic. We have installed plexiglass screens in 450 courts to protect users. We have installed cloud video platform technology in 150 magistrates' courts and 70 Crown Courts, allowing 20,000 remote hearings per week.

In the first lockdown, and as these measures have been put into place, backlogs have, understandably, developed. That has been the case across the world. But the fruits of our labours are now being seen. We have been faster than almost every jurisdiction to recover and we believe that we were the first country in the world to restart jury trials, back in May. Since August, the magistrates' court backlog has been relentlessly reducing, month on month. Crown Court jury trials are obviously much harder, for reasons of social distancing, but even there, in the last four weeks before Christmas, Crown Court disposals exceeded receipts for the first time since Covid began. At this very moment, as we stand here, about 230 jury trials are taking place. The joint inspectors' report said earlier this week:

> 'It is a real testament to the criminal justice system that in spite of the pandemic … service was maintained.'

I pay tribute to the judges, magistrates, jurors, witnesses, victims, lawyers, court staff, Crown Prosecution Service staff and Ministry of Justice officials who have made that monumental effort to deliver justice in spite of Covid.

We will not rest. We are adding more courtrooms, further increasing remote hearings, and examining options for longer operating hours. We are also taking action to mitigate the impact on victims and witnesses, this year providing an extra £32 million of funding and next year an extra £25 million of funding, including for rape and domestic violence.

This year has been incredibly difficult in the courts, as in so many places, but through a monumental, collective effort the system is recovering. The recovery will gather strength and pace with every day that passes, and I know that everyone in the House will support that work."

1.01 pm

Lord Falconer of Thoroton (Lab) [V]: My Lords, by 2010 the system did 150,000 jury trials a year with about 47,000 waiting, about 30%. The median period between crime and court disposal was 240 days. By the time the pandemic started in March last year, jury trials were down to 100,000 a year with a median delay of 305 days, so fewer trials and longer waits. Now there are 54,000 cases awaiting a jury trial and rising. No one can blame the courts for Covid. The judges, court staff, defence and prosecutors have done bravely and well but the Ministry of Justice has overpromised and underdelivered. It said that there would be 200 Nightingale courts in which jury trials could be done; there are 20. Some 600 people in the last seven weeks have got Covid, from judges to court staff. There is no systematic testing. We have not made the necessary changes to preserve jury trials. What is the target for getting the backlog down and how is it going to be achieved?

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, the noble and learned Lord fails to put this information in context. In the Crown Court, prior to the Covid pandemic hitting in March last year, the outstanding caseload was 39,000, which was well within the range of 33,000 to 55,000 over the last decade. Immediately before the pandemic hit, we had increased the number

of sitting days in response to an incoming demand on the courts. He will be aware that we have taken various steps to ensure that delays are minimised. However, I agree with him on one point: that we should pay tribute to the judges, magistrates, jurors, witnesses, victims, lawyers, court staff, CPS staff and, if I may say so, MoJ officials who have made a monumental effort to deliver justice in very challenging times.

Lord Marks of Henley-on-Thames (LD) [V]: With respect to the answer just given by the noble Lord, the Secretary of State's response last week was complacent and lacked urgency. The four chief inspectors of probation, police, prisons and the CPS came together to produce a joint crisis report, expressing their grave concern about the "unprecedented and very serious" backlog of Crown Court trials—54,000-odd cases with trials scheduled into 2022—and the disastrous effects of these delays on victims, witnesses, youth offending teams, defendants and prosecutors. As long ago as July last year Caroline Goodwin, then chair of the Criminal Bar Association, pleaded with the Government to

"get serious and open up 50 more buildings and focus on criminal trials."

Now many more are needed, along with much more funding to stave off collapse. Yes, efforts have been made and in difficult circumstances, but why the self-congratulation? Where is the urgency? What are the Government now going to do?

Lord Wolfson of Tredegar (Con): My Lords, I assure the noble Lord that there is no complacency whatever. In fact, in September we published a crime recovery plan to which members from all groups involved in the criminal courts contributed. That plan was put together after significant consultation and collaboration. It is now being implemented. We now have more rooms for jury trials. We have plexiglass to enable social distancing and are using Nightingale courts including, I am pleased to say, St George's Hall in Liverpool, where I first saw justice in action. We are exceeding the goals in the plan. The target was 250 courts safe for jury trials by October; we have exceeded that number and are improving the position yet further.

Lord Garnier (Con) [V]: I warmly welcome my noble friend from the next-door chambers to mine in the Middle Temple, both to this House and to his place in government. Will he accept that the £250 million in court recovery money mentioned in the Answer to the Urgent Question is not new money but reannounced expenditure? Does he also agree that it might be more useful if we were told how many courtrooms were not being used at all, compared to the limited number of Nightingale courts in operation that cannot anyway deal with dangerous defendants on remand in custody —for example those on charges of homicide or rape?

Lord Wolfson of Tredegar (Con): My Lords, the MoJ has invested record amounts. There was an investment of £142 million to improve courts, tribunals, buildings and technology. That was, in fact, the single biggest investment in court estate maintenance for more than 20 years. Of course we will build on that, but it would be fair to say that everybody is doing their best in extremely challenging circumstances.

Lord Woolf (CB) [V]: My Lords, any backlog in the criminal justice system is worrying because it results in delays, and delays breed delays and result in injustice. They must not be allowed to fester because of the damage they can do to the justice system as a whole. This backlog is especially worrying because of its scale, its subject matter and because it is no doubt substantially due to Covid. What is required is a concerted effort to tackle the backlog and stop it festering and growing further out of control. There needs to be a plan to which all the criminal justice agencies sign up, including the Government, the judiciary and prosecution and defence lawyers, properly resourced to tackle the backlog as a matter of urgency. The Minister seems to suggest that there is such a plan. If so, when does he expect to see an improvement in the current situation and how is the plan being implemented?

Lord Wolfson of Tredegar (Con): My Lords, there is such a plan. I refer the noble and learned Lord to the answer I gave a few moments ago about the crime recovery plan that we set out in September last year. He is certainly correct: there is an old adage that justice delayed is justice denied. We are working very hard to make sure that there are no greater delays than those necessarily caused by the circumstances in which we are living.

The Lord Bishop of Gloucester: I draw attention to my interest on the register as the Anglican bishop for Her Majesty's prisons. The backlog of cases has a serious impact on offenders, victims and witnesses. On top of this, projections from the Ministry of Justice show that the prison population is expected to jump to almost 100,000 in 2026, which adversely affects prison staff as well as prisoners. Does the Minister agree that resources could be better spent on police-led diversion work and community-based provision, which could start now?

Lord Wolfson of Tredegar (Con): My Lords, when looking at the criminal justice system, I agree that it is mistake just to think about courts, sentencing and prisons. One has to look at it in a broader and wider context. To that extent, the points that the right reverend Prelate makes are well made.

Baroness Mallalieu (Lab) [V]: My Lords, there is clearly no quick fix for a backlog of this magnitude, but will the Government consider extending to other witnesses the existing provisions under Section 28 of the Youth Justice and Criminal Evidence Act? These currently enable vulnerable witnesses to record their evidence and be cross-examined away from the courtroom at an early stage before trial. That recording can be replayed later at trial, with the result that evidence is not forgotten and footfall at court is usually reduced when the case finally gets to trial.

Lord Wolfson of Tredegar (Con): My Lords, the noble Baroness raises an important point. This Government have taken a number of steps to ensure that vulnerable

[Lord Wolfson of Tredegar]
witnesses can give evidence in that way. Indeed, noble Lords will be aware of provisions that build on that in the Domestic Abuse Bill, which is going through Parliament at the moment. To take that point further would, I think, require more careful consideration, but I would be very happy to discuss that with the noble Baroness in due course.

Lord Hayward (Con): My Lords, will my noble friend and the Government please understand the toll that unacceptable delays in the criminal justice system takes on even provenly innocent individuals? I know from personal experience that delays in both the trials and sentencing of those who make false accusations can drive people to consider suicide. Sadly, I know of other cases where individuals did take their lives.

Lord Wolfson of Tredegar (Con): My Lords, the noble Lord is of course correct that delays in the criminal justice system can affect not only the defendant but others involved, including victims and witnesses. The listing of cases is ultimately a matter for the judiciary, not the Executive, so I am limited in what I can say. However, I can confirm, for example, that at the moment the majority of cases where a defendant is in custody have been listed for trial before July 2021.

Lord Pannick (CB) [V]: My Lords, are the Government considering two possible steps that would help to reduce the unacceptable backlog of cases in the Crown Courts? The first is to reduce the number of jurors to, say, seven, making it easier to ensure social distancing in court rooms, and the second is to allow defendants who are legally represented to choose trial by judge alone in some categories of cases where juries are currently required?

Lord Wolfson of Tredegar (Con): My Lords, trial by jury is a cornerstone of the criminal justice system in this jurisdiction. With the support of Public Health England and Public Health Wales, we have made adjustments to more than 290 court rooms and jury deliberation rooms so as to facilitate trial by jury. Reducing the size of the jury is therefore unlikely to free up an additional amount of space for jury trials, and it would also require primary legislation. As to the other point that the noble Lord makes about trial by judge alone, that would, I think, require a significant change in our criminal justice system, and therefore very careful consideration would be required before embarking on that change.

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, unfortunately, the time allowed for this Question has elapsed. I will pause a moment or two for those who wish to escape the Chamber and those who wish to come in.

Skills for Jobs White Paper

Statement

The following Statement was made in the House of Commons on Thursday 21 January.

"With permission, Madam Deputy Speaker, I would like to make a Statement on the publication of a skills for jobs White Paper on the next steps for post-16 education reform.

Last October, I notified the House of our plans to introduce a dynamic programme of measures to reshape this country's further and technical education landscape, which is a key part of our mission to empower everyone in this country and level up those areas that have been overlooked and underresourced for too long.

I informed honourable and right honourable Members that the details of how we would do this would be spelled out in a White Paper, and I am pleased to announce its publication today.

The House needs no reminding that this country stands at a critical point in its history. We have some enormous challenges ahead. There is an urgent need to rebuild an economy injured by the Covid pandemic. We have already outlined an unprecedented support package to protect jobs and offer retraining to those who have lost theirs due to Covid-19, but beyond Covid we must also forge a new identity as an independent trading nation. Both those challenges have exposed our need for a strong and flourishing technical education sector to fire up the jobs of the future.

This White Paper is our blueprint for that future. It will play a pivotal role in creating jobs and rebuilding our economy. Through the lifetime skills guarantee, we will help people train and retrain at any stage of their lives. Our new flexible digital skills bootcamp training will give people the technical skills they need for great jobs through 12 to 16-week courses, and those bootcamps will expand into other sectors, such as engineering. From this April, tens of thousands of adults will be able to benefit from almost 400 free courses, which will be the first phase in the lifetime skills guarantee. These fully funded courses, which range from engineering to healthcare and conservation, will be available to adults without a full qualification at A-level equivalent or above, to help them gain skills that are in demand and that will open up exciting job opportunities for them.

In April, we will also kick-start the expansion of higher technical education, as we work towards making it as easy to get a loan for an approved higher technical qualification as it is for a full-length degree. We will also introduce pilots to encourage more flexible and modular provision, so that courses are more accessible and convenient. Lifelong loan entitlement will be up and running from 2025 and will build on the changes we are bringing in through this White Paper. Learners will be able to fit study around work, family and personal commitments and retrain as their circumstances and the economy change.

This White Paper is going to put employers firmly at the centre of our local skills systems, working in partnership with colleges and key local stakeholders to shape technical skills provision, so that it better supports the local economy. It will introduce German-style local skills improvement plans, which will be led by business organisations such as local chambers of commerce. Those plans will identify the skills that an area needs and spell out what needs to change to make training more responsive to employers' needs. In turn,

our further education colleges will shape the courses they offer to meet those skills needs, and we will make strategic development funding available to help them do that. We will start the ball rolling with a small number of trailblazer areas this year, and we will pilot a strategic development fund of £65 million in 2021-22 to help providers reshape provision to meet local employers' needs.

By putting the employer voice at the heart of skills provision, we will ensure that technical education and training gives people the skills they need to get great jobs in sectors that the economy needs and boost this country's productivity. We will back this through £1.5 billion of capital funding to upgrade our further education colleges. Today we announced the next phase of the FE capital transformation fund, and last week we made the next wave of capital funding for T-level providers available, with £135 million available to those delivering them in September 2022.

As far as long-term plans are concerned, we are going to move to a more coherent, simpler funding model that we will design together with the sector, and we will consult on it later in the spring. It will ensure a far more focused approach to funding. The consultation will be guided by the principles of high value, greater flexibility for providers, and enhanced accountability, which will see providers taking greater responsibility for their results. By 2030, we expect nearly all technical courses to follow employer-led standards, so that we ensure that the education and training people receive are directly linked to the skills that they will need to get a job.

We will continue with our existing programme of reforms in areas such as employer-led apprenticeships and our T-level programme. All apprenticeship starts are now on employer-designed standards. We will support employers in making greater use of their levy contributions by improving the transfer system and having more flexible training models.

The White Paper will also extend our network of institutes of technology to every region of the country, and we will see a corresponding increase in higher-level technical skills in science, technology, engineering and maths. In this way, we will future-proof our workforce, so that we are ready to deal with a constantly evolving economic landscape.

All our reforms depend on our ability to recruit and retain top-quality teaching staff in the further education sector, so we will launch a national recruitment campaign for further education teachers, strengthen initial teacher education, improve the support that new teachers receive, and help to provide more opportunities for improved training and development, such as work experience, as part of our industry exchange programme.

When the Prime Minister announced the lifetime skills guarantee last year, he spoke of how we will align our further and higher education sectors. I can tell the House that we have published the interim conclusion of the review of post-18 education and funding, which addresses some of the key recommendations made by Dr Philip Augar in his report from 2019. I have laid copies of the report of Dame Shirley Pearce's independent review of the teaching excellence and student outcomes framework, and the Government's response, before both Houses of Parliament. Today I have also published the post-qualifications admission reform consultation, which seeks views on whether to change the system of higher education admissions and move to a system of post-qualification admissions.

Our proposed reform to the teaching grant for the academic year 2021-22 will allocate funding in a way that delivers value for money for students and the taxpayer, and increases support for strategic subjects such as engineering and medicine, while slashing the taxpayer subsidy for such subjects as media studies. We want to ensure that our small and specialist providers, including some of our top music and arts providers, receive additional support, and that grant funding is used to support students effectively as well.

This spring, we will consult on further reforms to the higher education system, including the introduction of minimum entry requirements to higher education institutions and addressing the high cost of foundation years, before setting out a full response to the report, and a final conclusion to the review of post-18 education and funding, alongside the next comprehensive spending review.

The White Paper is a step change in how this country prepares people for their working lives. I know there is enormous cross-party consensus, and a real will on all sides of the House to make a real change in this sector—a change that has been needed for so long. I very much hope that all Members will work together to ensure that we can deliver on this. These proposals will ensure that people can learn the skills they need to get a great job and have control over the means of ensuring a more fulfilling and productive life. This White Paper will be the lever to unleash our nation's creativity and talents, and will make this country an economic force to be reckoned with. I commend this Statement to the House."

1.13 pm

Lord Bassam of Brighton (Lab) [V]: My Lords, I welcome this White Paper—it is not often that I say that—and I am glad that the Government have finally recognised the importance of further and technical education, especially after a decade of cuts to the FE budget. This is particularly welcome within the current context of Covid-19, with the ONS announcing today that unemployment has risen to 5%. Many people will need to retrain to re-enter the workforce, and the Government have to act fast to address the uncertainty in our economy.

With that in mind, what sectors will be included in the lifetime skills guarantee, and how will this change depending on the needs of the economy? What support will be available to those who are already qualified to level 3 but need to train for jobs in a new industry, or those who are not qualified to level 2?

In the year when the UK is hosting COP 26, I was saddened to see that climate change is not mentioned once in the White Paper. How does it align with the UK's net-zero target?

We also got within this package of announcements the "interim conclusion" to the Augar review, which promises four new consultations on reforms to higher education, the lifelong loan entitlement, modularisation and the TEF. When will these conclude?

[Lord Bassam of Brighton]

The legacy of 10 years of cuts will not end with this paper, and the Association of Colleges has even said that, despite recent uplifts, funding remains inadequate. I echo that. When will the education sector be given the long-term funding settlement that it needs?

I reflect that, if Covid has taught us one thing, it is that the care sector needs more training and support. FE is well placed to upskill this sector, and I had hoped that we might have seen some specifics on how this might be achieved. That was an opportunity missed.

I also implore the Minister not to forget about universities, with many facing job cuts. Can she confirm that new support for higher education will be provided in the upcoming Budget? Given the uncertainties of the last year, this sector requires stability and commitment, so why have the Government decided to cut support for London's world-class institutions, and why have they not given more thought to integrating support for upskilling using the university sector and getting better integration between and across the sectors?

Parity of esteem between HE and FE is long overdue, so this White Paper goes in the right direction but not far enough. Finally, when will FE stop—[*Inaudible*]—of our education sector and be given the long-term funding settlement that it deserves?

The Deputy Speaker (Lord Duncan of Springbank) (Con): We lost the last part of those remarks, but I will call the next speaker, the noble Lord, Lord Storey.

Lord Storey (LD) [V]: I very much welcome the Statement and the *Skills for Jobs* White Paper. As the noble Lord, Lord Bassam, said, we have seen further education become almost the Cinderella of the education service, and it is really welcome that at long last we are now realising its importance in terms of capital investment in plant and sites and revenue investment. However, on the latter, I ask the Minister to consider the point made by Sir Ian Diamond's commission: that colleges need three-year grant settlements to give them room to develop and that one year is not sufficient.

As a country, we face a whole host of challenges to do with training and skills—not least the climate emergency, the effects of Brexit and changes in the world of work—and of course a demographic time bomb is ticking away, with demand outstripping the supply of young people entering the labour market. We have already seen this in sections of our economy—the construction industry, for example. It is a sobering thought that by 2030 the number of people aged 65 and above is projected to increase by 42%, while the number of those aged 14 to 64 is forecast to grow by only 3%. It is clear that we need to be nimble in how we respond to skills shortages and skills development, and not get caught up in structures.

The ambition to open funding and finance to everyone throughout their lives is welcome. Many earners face additional barriers to accessing education, so we need to ensure that finance is available to meet those demands. Why are these loans are not being introduced until 2025—and why loans, not grants? We know that adults are more averse to taking on debt. We should review the limits on accessing education and training while in receipt of universal credit, with the principle that individuals should not be penalised for engaging in education and training.

The careers service, careers advice, careers education and careers guidance should be of high quality and given face to face, not micromanaged from the top. The proposed careers hubs have to have the support and expertise that is much needed. Can the Government ensure that we look also at building the skills that are needed for the green economy? They have focused a lot of support on people who do not have level 3 qualifications, but what about those who have not completed level 2? Do the Government not accept that they, too, will need support and help?

Finally, I am attracted to the suggestion by the Association of Colleges that the Government should form a cross-departmental ministerial task force to oversee a new government 10-year strategy for education and skills to drive industrial strategy and other priorities, working with employers and other key stakeholders.

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, I thank the noble Lord, Lord Bassam, for welcoming this report. It is good at this time of crisis to have good news and to know that in the past year, £600 million has been invested in the FE sector and £1.5 billion of capital is committed over the next few years.

The noble Lord correctly highlights the fact that at the moment people need to retrain, and quickly. That is why we have acted very quickly on the national skills fund so that the level 3 entitlement, which enables every adult to get their first full level 3 qualification, is in place. We have also had the first round of boot camps, which enable people to do eight-week to 12-week training courses and give them a fast-track route to an interview. We need to be nimble, which is why those initiatives have been introduced as part of the national skills fund before consultation on the rest of it is complete.

That is also why the Government will introduce local skills improvement plans and, because of the need for nimbleness in retraining, why the lifelong loan entitlement will be for four years. People who already have an undergraduate degree may then want to do a level 4 or a level 5 higher technical qualification. That will be introduced in 2025.

On conservation, I can tell the noble Lord that 400 courses have been made available under the level 3 entitlement, and they are focused on skills that we believe will lead quickly to jobs. Conservation is included in the level 3 entitlement.

The noble Lord referred to various aspects of the Augar review. Many of its recommendations have already been delivered: the level 3 entitlement; the investment in the FE estate, as I have outlined; the capital investment in new places for 16 to 19 year-olds to meet demographic changes; and the lifelong loan entitlement. There will be a consultation on other aspects of the Augar review in the spring, including the minimum entry requirements for higher education, and a full and comprehensive response to coincide with the next comprehensive spending review. Augar is a dynamic piece of work that will help us respond to the current crisis.

With regard to colleges, there will also be consultation around the need, identified in the Augar review, to consider multiyear settlements for FE colleges. We recognise that one of the issues facing them is the year-on-year funding so we are looking to address that.

On higher education funding, we are ready to implement restructuring should any of the HE sector need it, and we are closely monitoring the finances of those autonomous institutions. On the noble Lord's point about the teaching grant, or T-grant, the other main source of income for universities, that is being redirected to strategic subjects. Obviously, these currently include subjects in the area of healthcare, but also certain arts subjects that we believe are not getting adequate funding. Those subjects are crucial to the labour market but we do not believe that the additional weighting given to London is the best way to fund that, and it is not consistent with the Government's wider aim of levelling up different areas of the country. However, universities are dynamic partners in many of the institutes of technology which focus on STEM subjects, 11 of which are now open. It is good to see them working with the FE colleges and local employers on that initiative. There were perhaps a couple of final points from the noble Lord, but unfortunately the connection was interrupted. I apologise for missing those.

The noble Lord, Lord Storey, raised the issue of the accountability and funding of the FE sector. As I have said, we are looking into Augar's recommendations on that, and it is also part of the remit of the FE commissioner —that role will be looking at the sustainability of the FE estate across the country, which is a vital part of reskilling people.

On the matters around the construction industry that the noble Lord raised, we have introduced a T-level in that sector, one of the first for 16 to 19 year-olds. With regard to the noble Lord's point about demographics, he divides the population into, I think, people under and over 64, but we now know that people are working longer and their careers may involve more than one sector. Hence our concern with flexibility: levels 4 and 5 are more modular, and access to those qualifications will help people to train, and retrain, as will the four-year loan entitlement.

The noble Lord specifically raised the issue of entitlement to benefits while learning. We are alert to this issue in relation to people claiming universal credit. People can take part in eight weeks of full-time learning and maintain their entitlement to benefit, and there is no restriction on part-time learning. For people who have particular vulnerabilities and are at risk of long-term unemployment, that period of training can be longer.

On funding support, particularly for 16 to 19 year-olds, there are residential bursary funds to enable students to access specialist provision that is not available within their normal travelling range. Such funds are distributed by the FE sector. We are therefore aware of the need of those on benefits to have flexibility with regard to training. Careers advice is of course also a vital part of this package: £100 million is being invested in the careers service, much of which is targeted at face-to-face provision. Enterprise advisers are being rolled out by the Careers and Enterprise Company, which helps schools.

The noble Lord mentioned the need for net zero carbon. The Skills and Productivity Board provides a national picture of our economy. Its advice is given to the Secretary of State in accordance with the industrial strategy, so we are linking them up. At the local level, however, it is important that the local skills improvement plans will be employer-led, respond to local economic need and involve the devolved authorities. We then have a strategic development fund to enable the colleges to design the content of the courses that local employers are asking for. The overall ambition is that by 2030, almost all technical qualifications will be based on the employer-led standards that have informed the apprenticeships and the T-levels, so that the level of qualifications is high.

Finally, the noble Lord mentioned level 2 qualifications. As noble Lords will probably be aware, there is a second -stage consultation on level 3 about what qualifications we need to continue funding that are not T-levels or A-levels. There is also a call for evidence on level 2. We are particularly aware of young people who are further away and may not have got qualifications during their 11 to 16 years education and how we can enable them to get level 2 or level 3 qualifications and get on the qualifications ladder. The country needs a higher level of technical skills and enhanced respect for that sector, because men and women who have level 4 or 5 qualifications earn, on average, more than those with a level 6 undergraduate degree. This change has been overdue for decades in this country: to give as much respect to technical qualifications as we do to academic ones.

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, we now come to the 20 minutes allocated to Back-Bench questions. I ask that questions and answers be as short and sweet as possible so that we can call as many speakers as possible. I apologise to the noble Lord, Lord Baker of Dorking, for the kerfuffle that led him to appear early during the discussion, and I call him now.

1.30 pm

Lord Baker of Dorking (Con) [V]: My Lords, I am very disappointed that university technical colleges are not mentioned at all in the White Paper for 16 to 18. We fulfil the very first sentence of the White Paper, which reads:

> "Putting employers at the heart of the system so that education and training leads to jobs that can improve productivity and fill skills gaps."

We are supported by over 500 companies. Employers come in and teach, and they produce projects for students to work on in teams. There are 48 university technical colleges with 16,000 students, and we have the lowest level of youth unemployment of any schools in the country. To fulfil the hopes of this White Paper, we need more university technical colleges.

Baroness Berridge (Con): My Lords, I hope my noble friend Lord Baker will think that this answer is sweet for him. We as a Government support a strong cadre of university technical colleges. Indeed, one opened with the full support of the sector and the local authority in Doncaster in September. There are UTCs

[Baroness Berridge]
that Ofsted has rated as outstanding, such as the Ron Dearing UTC, and obviously that forms part of the name of the Baker Dearing Educational Trust. When there are further free school applications, we look forward to any applications that are put forward for UTCs. We want to see a strong cadre of UTCs.

Baroness Coussins (CB) [V]: My Lords, the White Paper focuses on English, STEM and digital skills, but employers and the British Chambers of Commerce also say that the UK's deficit in foreign language skills damages the economy and inhibits recruitment across all sectors and at all levels. Languages are not just an academic discipline; they are a vital technical skill that can boost export growth and social mobility. So will the Minister agree to look at how to integrate foreign language skills into the plans for technical education and the remit of the careers hubs?

Baroness Berridge (Con): My Lords, the noble Baroness is correct about the importance of modern languages, which is why they are part of the English baccalaureate and why we have given £4.8 million to fund the modern foreign language pedagogy pilot, which is looking at the attainment of languages at levels 3 and 4. However, I suggest to the noble Baroness that, when employers are leading on the local skills improvement plans, if the employers in a region say, "Actually, what we need in addition to that technical skill is a language—for instance, Polish or any other language", it is open to them to say, "This is a skill that we need in the local area." Then, as I have said, the strategic development funds will help the colleges to have the content of courses to match that skills improvement fund. If employers need those skills, we hope to see the need for foreign languages coming in as part of many higher technical qualifications and integrate it in that way. I invite the noble Baroness to make sure that employers are doing that as these plans are developed.

Lord Young of Norwood Green (Lab) [V]: My Lords, I welcome the Government's White Paper but I share some of the concerns expressed by my noble friend Lord Bassam. Implementing many of the Augar report's recommendations is important, although personally I think that instead of talking about loans we should be talking about a graduate tax, which is a much more progressive approach.

I have two points that I want to raise. First, there is a recognition that the Government have to increase the number of apprenticeships. If that is the case, they have to look at the application of the apprenticeship levy in a way that encourages many more SMEs to take on apprentices. At the moment SMEs are saying they find the scheme complex and an administrative burden. We need to ensure that we remove that complexity and encourage many more SMEs. Secondly, does the Minister recognise the importance of a government National Careers Service website that could become a single source of assured career information for young people and adults?

Baroness Berridge (Con): My Lords, I am grateful for the noble Lord's introduction regarding apprenticeships. The levy has now been in existence for five years. It has enabled significantly more workplace-based training and, I would say, has enhanced the reputation of apprenticeships as an alternative to academic study.

As I am sure the noble Lord is aware, we have offered £2,000 for any new apprenticeship start, which is for a younger person who is under the age of 24, or 25 if they have any HCP, and £1,500 for any other apprenticeship start. However, he is right that the apprenticeship service has been a work in progress. The SMEs now have access to the service via a website that should enable them to access the training that they want, rather than only being able to access training from contracts with providers that were entered into centrally. They can go on that website and reserve the training places that they want to have, and SMEs have been given a small number of guaranteed places.

We are also looking at the development of the levy and at easing the transition and the payment of the levy down the supply chain, which often involves making the levy available to small and medium-sized enterprises. We hope that the introduction of the apprenticeship service to SMEs will help with some of the bureaucratic issues that the noble Lord outlines.

Baroness Garden of Frognal (LD): My Lords, there is much to welcome in the White Paper, but why do the Government constantly betray their ignorance in claiming originality for employers being at the heart of this? Employers have always been the drivers for work-based skills and qualifications. However, as previous Governments have discovered to their cost, it is essential to have input from teaching experts, namely colleges, and assessment experts—that is, awarding bodies. I declare an interest as a vice-president of City and Guilds, for which I worked for 20 years. What input is anticipated from colleges and awarding bodies to ensure that these skills are fit for purpose?

Baroness Berridge (Con): My Lords, the key aspect of this is that employers are involved in setting the standards in relation to these qualifications. They will be at the heart of producing the local skills improvement plans, but they will work with the colleges. We recognise that the status of FE employees has not perhaps been what it might have been so we are investing in that workforce, in enhanced initial teacher training for it and in industry exchanges. So while the employer-led bodies will form those plans, they will work closely with the FE colleges and I am sure they will consult the awarding bodies that the noble Baroness makes reference to.

Viscount Eccles (Con): My Lords, obviously I welcome the White Paper, but it worries me to a large extent because there must be limits to what central government can do to match the skills of people to the jobs available. Things move very fast. Throughout the White Paper, the theme emerges of what employers want. This may be strange, but I am slightly suspicious of employers and what they want. It is easily said, but who are these employers? Big ones, presumably. Who represents them? Is not the really important question: what are these employers doing to help themselves?

That brings me to the general position of the noble Lord, Lord Baker, regarding the relationship between education and training. In my opinion the White Paper

is very weak on where the boundary lies between education and training. I urge my noble friend on the Front Bench to think very carefully. It is not possible for any education service to make employees oven-ready for employers, as it were. They can take them so far but the employers have to do the rest. There should be a lot more concentration on the duties and responsibilities of employers for training.

Baroness Berridge (Con): My Lords, there is a limit to central government, which is why the key strategy here is local skills improvement panels, working closely with colleges and the devolved authorities. That is matched by the Skills and Productivity Board, which will give a national picture. In relation to the question of who these employers are, when one looks at what is happening with apprenticeships, there are trail-blazer groups of employers. This is not just picking one person. The Institute for Apprenticeships and Technical Education oversees these trail-blazer groups. They include small and medium-sized enterprises and we are so encouraged that, as my noble friend made reference to education and training, much more is now taking place in the workplace. When one looks at apprenticeships, one sees that they have good training in the workplace as well as time out of the workplace to do that training. There are workplace placements for T-levels as well, so that those young people have a period of weeks in the workplace. So my noble friend is right that employers have a responsibility, and that is why employer-led bodies such as chambers of commerce are going to be involved with the local skills improvement plans.

Lord Bilimoria (CB) [V]: My Lords, I was a member of the Centenary Commission on Adult Education, which reported in November 2019. I welcome the Skills for Jobs White Paper. It confirms the importance of collaboration between businesses and colleges for improving people's career prospects. Putting employers at the heart of new qualifications right across England will build on the success of these local partnerships. They will ensure courses remain in lock-step with industry need and give learners confidence they are gaining skills that lead to jobs. Would the Minster agree that new technologies mean that nine in 10 employees will need to learn new skills by 2030, and the Government commitment to delivering the flexible learner entitlement, boosting access to modular learning, is hugely welcome and will support more adults into training? Would the Minister agree that this should be backed up by turning the apprenticeship levy into a flexible skills levy at Budget?

Baroness Berridge (Con): The noble Lord is correct that one of the areas where we lack productivity and we know we have a skills gap is the digital sector. That is why digital has been a focus of those eight to 12-week bootcamps that I outlined, with a fast track to an interview. So the noble Lord is entirely right in relation to that. I will take his suggestion about the levy back to the Minister for Apprenticeships and Skills.

Lord McNicol of West Kilbride (Lab): My Lords, as one of the few in your Lordships' House with a Higher National Diploma qualification from a technical institution, rather than a university degree, this is an issue of great importance to me. The aspiration and language used in the ministerial Statement is to be welcomed. However, the most important aspect now is delivering on the words in the White Paper. I therefore ask the Minister: while it is right and, as we heard from my noble friend Lord Bassam, overdue that FE and apprenticeships receive additional investment, is it not a reality that universities also play a vital role in the delivery of technical skills, and that the divide between academic and technical education is far more complex than some would acknowledge? What is the Minister's vision for a more integrated tertiary education that incentivises apprenticeship providers, FE and HE to work collaboratively to deliver choice, flexibility and clear pathways for students, young and old?

Baroness Berridge (Con): I am grateful to hear the noble Lord's own career history. I think the institutes of technology are the first examples we have of the HE sector working with the FE sector in STEM with local employers. He is right that we want to see parity of esteem, but the situation we are dealing with is that for decades this country has not been like many of our European partners in valuing these technical qualifications. That is what we need to level up at the moment. There are degree apprentices, and I believe that Minister Keegan is the only Member of the other place with a degree apprenticeship. It is important that we got T-levels validated for UCAS points, so that they are also an access point, and you will see them merging in. This is a work in progress, but the most important thing in this country is that we respect technical qualifications. That is the first job we need to do and a clear ambition of the White Paper.

Lord Addington (LD): My Lords, I should first remind the House of my declared interests in the field of education. There is a great deal here about bootcamps to get people ready for study. I believe these are designed to help with things such as basic skills as well. Will some consideration be given to those with special educational needs in how these are structured? Anybody who was around when we did the last Education Bill knows how much time we spent making sure the dyslexics and others were allowed to actually get apprenticeships, while also having some realistic form of saying that for the English qualification you have got to get through. In this world, when we talk about technical skills, the answer is usually on a programme that is built into your computer software. That is there. Are we going to accept that that is used to acquire these skills, and will we make sure that when we are training people in technical IT skills they know how to access and integrate it?

Baroness Berridge (Con): My Lords, in relation to special educational needs, I will go back and look at that. We are into the second procurement phase of the bootcamps and I will make sure that he is given the details in relation to special educational needs. In relation to what we are trying to focus on with level 4 and 5 qualifications, employers will be in the lead on the standards. I want to be very clear to the noble Lord that if what they outline for that qualification is

[Baroness Berridge]
to give the learner the knowledge, skills and behaviours to do that job and there is no additional English and maths requirement, that will be the framework. I hope that encourages the noble Lord that it will not be the case that "You must have passed x exam". With the employer in the lead looking at those qualifications, if they say those are the functions and what you need for the job, there is to be no additional English and maths requirement.

Lord Aberdare (CB): I was pleased that the White Paper recognises the importance of high-quality, impartial careers advice and guidance and seeks to create a clear careers system catering for all ages. Can the Minister tell us about how the Government will bring about the proposed alignment between the Careers & Enterprise Company and the National Careers Service to achieve this, including the four principles they say they plan to follow? What plans are there to provide the funding required, so that everyone who needs it has access to qualified personal careers guidance—something notably missing from the White Paper—perhaps as part of a new lifelong careers strategy?

Baroness Berridge (Con): My Lords, as I have outlined, there is going to be £100 million invested in the enterprise advisers—which I believe are part of the Careers & Enterprise Company—and more into National Careers Service guidance and a new website in relation to that. One must not forget as well that nearly £1 billion has been invested in work coaches at the DWP, who are also a vital part of the careers strategy.

We are aware through the Careers & Enterprise Company that, particularly in relation to technical education, it is important that local employers are brought into our schools, so that all the opportunities available, particularly careers and apprenticeships that might not be part of the secondary school workforce experience, are brought in front of young people so that they know all the options that are open to them.

Lord Mackay of Clashfern (Con) [V]: My Lords, I welcome this White Paper. Is it important to emphasise, using the Baker clause, that those considering their careers should be fully aware of careers open to them which do not require them to go to an academic course?

Baroness Berridge (Con): My Lords, there are requirements on the local authority, and indeed on provider schools, to make sure that their young people are aware of the opportunities for them, so that if they choose to go down the route of a UTC or studio school, many of which have an entry point at 14, they are made aware of that. It is the role of the Careers & Enterprise Company to make sure that other roles and occupations are brought in front of young people, so that they know the full options before them in terms of academic and technical qualifications and career routes.

Baroness Uddin (Non-Afl) [V]: My Lords, in my communities there are thousands of well-qualified young people, who have lived in the shadows of successful corporate business organisations in Canary Wharf and the City with a palpable record of providing few opportunities for work, other than in paltry numbers in the poorly paid hospitality-based sector, causing continued disparities. Therefore, I welcome the Statement and the paper and its focus on local skills improvement plans, on strengthening the statutory footing on which business organisations will be expected to participate and on improving local skills and so increase access to jobs. Given the deepening current unemployment crisis, can the Minister say what further steps the Government will take immediately to increase the number of industry and sector-based paid apprenticeships? I urge the Government to reconsider their loans into grants, if they are really serious about upskilling the population.

Baroness Berridge (Con): My Lords, it is inspiring to hear the noble Baroness. When one thinks about being in those parts of east London, I believe, that she makes reference to, it is interesting to look from where people live and see Canary Wharf and those buildings at the end of Whitechapel Road. From a local skills improvement plan point of view, obviously it will involve the London Mayor, but actually having those career opportunities and the local skills that are needed for those young people to access those jobs, which they can see in those institutions visible to them, is part of this strategy. We are pleased that, with the full maintenance loans that are also available, we have seen record numbers of disadvantaged students going into higher education. The largest increase has been within the British black African cohort who have been accessing universities, so we are seeing improvements there.

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, the time allowed for this question is now up. Before we move on to the next business, we will pause for a moment or two to allow people to get in and out.

Arrangement of Business

Announcement

1.52 pm

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, for Committee stage of the Counter-Terrorism and Sentencing Bill, I will call Members to speak in the order listed in the annexe to today's list. Members are not permitted to intervene spontaneously; the Chair calls each speaker. Interventions during speeches or "before the noble Lord sits down" are not permitted. During the debate on each group, I invite Members, including Members in the Chamber, to email the clerk if they wish to speak after the Minister. I will call Members to speak in order of request and will call the Minister to reply each time. The 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 a 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.

Counter-Terrorism and Sentencing Bill

Committee (1st Day)

1.52 pm

Clause 1: Offences aggravated by terrorist connection

Debate on whether Clause 1 should stand part of the Bill.

Lord Marks of Henley-on-Thames (LD) [V]: My Lords, in opening this debate, on the first day of Committee on this Bill, it might be sensible for me to outline our approach. This is particularly so, because I was not able to be present for the Second Reading debate on 21 September—for which I apologise but I was involved in a court hearing.

All on these Benches—and, I believe, all across the House—regard terrorist offences as particularly serious and deserving of the highest condemnation. This Bill was a response to two appalling terrorist attacks. The first was the attack in and outside Fishmongers' Hall in November 2019, when Usman Khan, who had been released on licence after serving half of a 16-year sentence for terrorist offences the previous December, stabbed five people, killing two of them, after attending a prisoner rehabilitation programme, before being shot dead by police. The second was the attack on Streatham High Road in February last year, when Sudesh Amman, a terrorist who was under surveillance and had been released a month or so previously from a three year and four month prison sentence for disseminating terrorist material, stabbed and injured two people before being shot dead by police. As the noble Lord, Lord Parkinson of Whitley Bay, rightly pointed out at Second Reading, both of those attacks were carried out by offenders who had been released half way through their sentences. The central feature of Part 1 of this responsive Bill is to make the sentencing regime tougher, both for offences that are considered by their nature to be terrorist offences and for offences deemed to have a terrorist connection.

Our concern, in considering this Bill at Committee stage, is to ensure that damage is not done, by the perceived requirement to respond severely to terrorist offences, to consistent and long-held principles of our criminal law. Clause 1, broadly, extends the range of offences that can be deemed to have a terrorist connection to include any offence, committed after the Act comes into force, that is punishable with imprisonment for more than two years. The terrorist connection need not be determined by the judge in the case of a number of specific terrorist offences listed in Schedule A1, effectively because it is presumed. Otherwise, it is for the judge to determine and state in open court that an offence has such a connection. A finding that an offence does have a terrorist connection, requires a sentencing judge to treat that terrorist connection as an aggravating factor when imposing sentence by reason of Section 69 of the Sentencing Code. For the purpose of that section, an offence has a terrorist connection if the offence

"is, or takes place in the course of, an act of terrorism; or … is committed for the purposes of terrorism."

I note in passing that the code does not require that the offender was a knowing party to the planning, objectives or implementation of the act of terrorism, actual or intended, that was in fact committed. Furthermore—and this is our central point on Clause 1—the decision that the offence has a terrorist connection is to be taken by the court at the sentencing stage, even though such a decision inevitably fundamentally changes the nature of the offence for which the offender has been convicted. The decision that is then made involves a factual determination of great significance to the criminality of the defendant and of the offence, yet it is taken by the judge alone without the involvement of a jury. Because the category of offences that may give rise to such a finding is so wide—that is, any offence that carries a maximum prison sentence of more than two years—the offences include a very wide range, such as causing criminal damage over £5,000, assault occasioning actual bodily harm, theft and many others, some of which would often be quite minor if committed without a terrorist connection.

Terrorism as an aggravating factor in sentencing was introduced by the Counter-Terrorism Act 2008. By Section 30 of that Act, where a person was found guilty of an offence listed in Schedule 2 to that Act and the court found that the offence had a terrorist connection, the judge was bound to treat the terrorist connection as an aggravating factor. The mechanism was the same as is proposed under this legislation, but the Schedule 2 offences under the 2008 Act were of the utmost severity. They included murder, kidnapping, Section 18 wounding with intent to cause grievous bodily harm, a number of serious explosives offences, hijacking, biological weapons offences, hostage taking and serious aviation offences.

A determination that an offence has terrorist connections has implications beyond sentencing, as it also triggers a number of forfeiture provisions and the terrorism notification requirements that apply. Under the Terrorist Offenders (Restriction of Early Release) Act 2020—the emergency legislation we passed last year to prevent terrorist offenders being released after serving half their sentences—any offender whose offence came under the prescribed list of serious offences, and had been determined by a judge to have a terrorist connection, was subject to the rules in that legislation against release at the halfway point but, again, that Act involved a list of serious prescribed offences.

2 pm

The reason we are concerned by Clause 1, and its radical extension of the offences for which a terrorist connection is an aggravating factor in sentencing, is that its real effect is to introduce an entirely new and very wide range of aggravated offences. I cite as an example what is to be a new aggravated offence: assault occasioning actual bodily harm for the purposes of terrorism. Yet the defendant is not to be tried for the aggravated offence as he would be if charged, for example, with aggravated burglary—broadly, burglary while in possession of an offensive weapon. In an aggravated burglary case, the defendant would be charged with that offence and tried for it on indictment, on the evidence relating to the aggravated feature of carrying an offensive weapon, as well as on the evidence of the basic offence. If he were convicted by a jury or pleaded

[Lord Marks of Henley-on-Thames]
guilty to the aggravated offence, he would be sentenced by the judge for that aggravated offence: but not so, here.

The legislation is complex, and I often wish that we would legislate less by cross-referencing and more by clearly stating the effect of what we do. Our point in opposing this clause stand part question is simple: in the rush to introduce tougher sentences for offences with a terrorist connection, the Bill proposes effectively to deny defendants a right to a trial for the offences of which they are accused. In each such case, the real offence of which the defendant stands accused is the aggravated offence of committing the basic offence in the course of an act of terrorism or for the purposes of terrorism. Applying fundamental principles of English criminal justice, that defendant should be charged with that offence, tried for it on the evidence—including the evidence of the aggravating terrorist connection—by a jury of his peers and, if convicted, or on a plea of guilty, sentenced accordingly. He should not be tried, as the Bill proposes, and convicted for the basic offence only, and only then be tried effectively by a judge alone for the aggravated offence.

Lord Naseby (Con) [V]: My Lords, I have a very different view from the opponent of the clause standing part. The UK Government, regardless of who is in power, obviously recognise at this point in time that the fundamental dimensions of this Bill are about the safety of the United Kingdom against terrorism. Our problem is that we are still a very open nation.

Whether it is in Afghanistan, the Middle East or Asia, in all those parts of the world we take an active role in promoting democracy. We see it occasionally with refugees who come to this country. Genuine refugees are welcome, but hidden within the alleged genuine refugees are, too often, terrorists or quasi-terrorists. It is against that background that my noble friend on the Front Bench is rightly introducing this Bill in Committee. If people think I am exaggerating, I have had personal death threats from the IRA. I happened to represent Northampton South, which had an IRA cell in the early 70s. Colleagues may know that I have been deeply involved in Sri Lanka for 50 years, and I am sorry to report that some number of illegal entrants to our country were active members of the LTTE Tamil Tigers. So the challenge is there, and we need to recognise it.

I praise those in our party who have decided the time has come to look again at the sentencing of terrorism. The problem is made worse by the misunderstanding—whether it be genuine or otherwise—of the difference between human rights and the original European Convention on Human Rights, which, of course, was the basis of our Human Rights Act. That is fine, but it should not cover elements where a war took place. Again, I cite Sri Lanka, because that was a ghastly war between a democratically elected Government and a terrorist movement, proscribed by the United Kingdom Government in in its last few months in 2001. The law that looks after the rights in that context is international humanitarian law.

It may surprise colleagues to know that under the generosity of previous Governments, we in the UK allowed the number two man running the Tamil Tigers to have an office in Camden. Okay, he was a British citizen, but he was in charge throughout the period when I was involved, and his wife—an Australian lady, now, obviously, with joint British citizenship—was involved in recruiting child soldiers. We had these people living in our midst. I say to my noble friend on the Front Bench: well done in bringing the Bill forward. Clause 1, to me, is absolutely fundamental to it, and I wish it a safe and swift passage.

Lord Thomas of Gresford (LD) [V]: My Lords, it is a privilege, as always, to follow the noble Lord. I respect his point of view and the experiences he has had. I am sure he will appreciate we are concerned with the rule of law and preserving the reputation this country has for justice done in the proper way.

Terrorist activity is an aggravating factor in sentencing. Section 30 of the Counter-Terrorism Act 2008 enables courts to increase the sentence if it is established that the offence has a terrorist element. But the 2008 Act limited the use of this provision to the specific offences in Schedule 2, which were those most commonly connected with terrorist attacks or ancillary to them. The primary offences listed involved murder, manslaughter, violence to the person and explosives, nuclear, biological material and hijacking offences. The proposal in Clause 1 extends the offences that can be aggravated by a terrorist element to include any offence in the whole criminal calendar punishable with imprisonment for more than two years. This is an enormous widening of the provisions of the 2008 Act. The main feature of these provisions is that the issue of whether there is a terrorist element in an offence is not determined by a jury, notwithstanding the fact that these cases will inevitably be heard on indictment in the Crown Court.

The decision that there is a terrorist connection becomes part of the sentencing process, to be determined by the trial judge alone after conviction. Could the Minister explain the process the Government envisage? Would it be the equivalent of a Newton hearing, with a separate trial of the issue in which evidence is called and arguments heard on which the judge's decision is based, or would the judge be entitled to come to a conclusion based on the evidence he has heard in the trial before the jury? It is an important decision. It is not just that his finding will add years of imprisonment to the individual defendant but, as my noble friend Lord Marks said a moment ago, it will trigger the terrorism notification requirements and the restrictions on early release contained in the Terrorist Offenders (Restriction of Early Release) Act 2020.

Surely, in the traditions of the criminal law of this country, a suspect believed to be involved in terrorist offences should be charged with those offences. It should be for the jury to decide whether there is sufficient evidence to sustain such charges. It cannot be right to charge the suspect with lesser offences and allow the judge to add the icing to the cake. There is no way in which this clause can be satisfactorily amended; consequently, the only thing to do is throw it out.

Let me give a pertinent example which everybody will understand after the events of last year. Suppose a jury finds a Whitehall protestor guilty of occasioning actual bodily harm to a rival protestor outside the

gates of Downing Street, by punching him on the nose and stealing his flag. Under this clause, the judge could find proved, after the jury's verdict, that the use of force to influence the UK Government and intimidate the public was for the purpose of advancing an ideological cause and therefore well within the definition of terrorism in the pursuit of, shall we say, exiting the European Union. Does the Minister—whom I welcome to his seat in the House of Lords—agree?

Lord Falconer of Thoroton (Lab) [V]: I join noble Lords in welcoming the noble Lord, Lord Wolfson of Tredegar, to his place in the House of Lords. I am sure he will make an enormous series of contributions to our debates on justice issues—not just criminal justice, but civil justice. He is very welcome.

This is a very important Bill. I think everyone in the House, certainly on this side, is very keen that the Government be given legitimate tools to fight terrorism as hard as possible. One legitimate tool must be the use of greater sentences, where appropriate, for people who commit terrorist offences. In principle, we on this side are not against the idea of expanding the circumstances in which an offence can be regarded as aggravated because of a terrorist connection, which is what Clause 1 does.

Also, in principle, I do not think it necessarily wrong for the judge to be given very substantial powers to make judgments on what the appropriate sentence may be. The most obvious example of this relates to murder, where the judge in effect has the power to determine whether the offender should be given a whole life sentence, which will obviously have huge ramifications for what happens to that defendant. Indeed, such a decision had to be made quite recently on the conspirator convicted in relation to the Manchester Arena bombings —he was given a whole-life sentence by Mr Justice Baker. That was a very significant occasion.

I am very keen to discover precisely what process the Government have in mind for how a decision will be made on what are more or less serious offences than the normal ones. What process is envisaged in which a judge can decide whether an offence is aggravated by terrorism in the sense envisaged by Clause 1? In principle, I think a fair process can be envisaged and it may not be wrong for the judge to decide that rather than the jury. However, I am very interested to hear what the Government have to say about it.

2.15 pm

Lord Parkinson of Whitley Bay (Con): My Lords, I thank the noble Lord, Lord Marks of Henley-on-Thames, for reminding the Committee of the two terrorist offences at Fishmongers' Hall and at Streatham, which formed the backdrop to this Bill. They were rightly mentioned at Second Reading; it is correct that we have them in our minds as we embark on Committee today.

Clause 1 addresses a limitation in the existing legislation to ensure that no terrorist-related offenders fall through the cracks. As the noble Lord, Lord Marks, set out, at present the courts are expressly required to consider whether there is a terrorist connection at the point of sentencing only in relation to a defined list of non-terrorism offences set out in Schedule 1 to the Sentencing Code for England and Wales and Schedule 2 to the Counter-Terrorism Act 2008 for Northern Ireland and Scotland.

Clause 1 removes this defined list of non-terrorism offences from Schedule 1 to the Sentencing Code and Schedule 2 to the 2008 Act. This is an important step, though not quite as radical as the noble Lord, Lord Marks, suggests. It will expressly require the courts, in cases where it appears that any non-terrorism offence with a maximum penalty of more than two years was committed in the course of an act of terrorism or for the purposes of terrorism, actively to consider whether the offence was committed with a terrorist connection and should be aggravated as such. Closing this loophole provides a necessary flexibility in the legislation, reflecting the fact that terrorist offending takes a wide variety of forms.

On Second Reading we noted that, sadly, the terrorist threat is constantly evolving; offenders prove themselves rather inventive, alas, and it is right that the legislation keeps pace. I am glad for my noble friend Lord Naseby's support, who sadly spoke with personal experience. I also welcome the support of the noble and learned Lord, Lord Falconer of Thoroton, for this important step in expanding the list of offences.

This clause also ensures that the consequences of a terrorist connection are applied consistently to all offenders. The identification of a terrorist connection by the courts has a wide-ranging impact. First, it must be treated as an aggravating factor when sentencing. This will help ensure that terrorist offenders receive punishment befitting the severity of their offending and the risk they pose to public safety. Secondly, the change will also result in the offenders being subject to the registered terrorist offender notification requirements following their release from prison, meaning that they are required to notify specified information to the police. That information supports the police to manage an offender's risk on release much more effectively. Thirdly, once the Bill receives Royal Assent—as we hope it will—offenders convicted with a terrorist connection will be subject to a minimum of 12 months on licence following their release and will be eligible to have certain licence conditions imposed on them to assist in the effective management of their risk, for instance polygraph testing.

It might help the Committee if I offer a hypothetical example to demonstrate how this change will work in practice, as noble Lords asked for. Today, someone convicted of possessing a firearm with intent to endanger life would not be guaranteed to have their sentence aggravated, even where the court has identified a terrorist connection. They would also not be subject to the restriction on early release provisions or the registered terrorist offender notification requirements upon release. That is because this offence is not listed in Schedule 1 to the Sentencing Code or Schedule 2 to the Counter-Terrorism Act 2008. Clause 1 will address this inconsistency in the current legislation by requiring the court to consider whether there is a terrorist connection and treat it as an aggravating factor if such a finding is made. It will also ensure that appropriate risk management tools, such as the notification requirements, apply following the offender's release from prison.

[Lord Parkinson of Whitley Bay]

I emphasise that, as is the case currently, courts will be required to apply the criminal standard of proof—that is, beyond reasonable doubt—when determining a terrorist connection at the point of sentencing. The noble Lord, Lord Thomas of Gresford, asked about this. Judges routinely have to consider whether offences which they are sentencing have been committed with aggravating factors and, in doing so, they apply the criminal standard of proof and must be satisfied that they are made out beyond reasonable doubt. I hope that addresses the question that he and others raised about the process.

It is also important that the Committee notes what the Independent Reviewer of Terrorism Legislation said in public about the Bill and these provisions, including during the oral evidence that he provided to the Public Bill Committee in another place. Asked by my honourable friend the Member for Derbyshire Dales which provision in the Bill, in his professional view, would have the biggest effect on making our citizens safer, he said that it was this one:

"That is a really welcome change, which makes people safer."—[*Official Report*, Commons, Counter-Terrorism and Sentencing Bill Committee, 25/6/20; col. 16.]

The Bill contains a comprehensive package of measures, of which this change is an important part. It will help to establish confidence in the sentencing framework by ensuring that those who commit terrorist-related crimes receive punishments commensurate with those crimes, spend longer in custody and are subject to appropriate risk management processes following their release.

Lord Marks of Henley-on-Thames (LD) [V]: My Lords, I should have opened my earlier speech by welcoming the noble Lord, Lord Wolfson of Tredegar, to his position and to the House. He has been extremely helpful to me in relation to the Domestic Abuse Bill and its provisions and I have seen him virtually on a number of occasions, so I have not completely appreciated that this is the first time that we have been together on a Bill. I also thank all noble Lords who have spoken and in particular the noble Lord, Lord Parkinson, for his response.

I listened carefully to all that the noble Lord, Lord Naseby, said. Of course we all, throughout the House, deplore terrorism and agree that it is crucial that we make our country safe from terrorism and treat terrorist offences with extreme severity. The point that I made, echoed by my noble friend Lord Thomas and, to a certain extent, by the noble and learned Lord, Lord Falconer, is that, in the effort to set up that severe framework, we must not abandon important principles of English criminal justice.

The noble Lord, Lord Parkinson of Whitley Bay, has not answered the point made by me and by my noble friend Lord Thomas and, to a lesser extent, by the noble and learned Lord, Lord Falconer, that the fact-finding process by which the aggravation of an offence carrying a sentence of more than two years' imprisonment is to be proved has not been defined in the Bill, is taken out of the hands of the jury by the Bill and put into the hands of the judge, and does not satisfy the basic requirement of English law that the findings of fact about an offence are for the jury, and the sentencing is for the judge.

Of course I take the point made by the noble and learned Lord, Lord Falconer, that the judge has discretion in many cases—including the offence of murder, which the noble and learned Lord mentioned—to increase or reduce a sentence in accordance with his view of the evidence. However, that does not answer the central point that what we have here is the creation of a raft of new aggravated offences, and the position that it is for the judge alone to decide whether he is dealing with an aggravated offence or a basic offence; and the basic offence can be quite a minor offence in general terms.

The noble Lord, Lord Parkinson of Whitley Bay, has not answered the question from my noble friend Lord Thomas as to whether there would or would not be a Newton hearing. He has not answered the noble and learned Lord, Lord Falconer, about how the judge makes a determination that the offence is to be treated as aggravated. I invite the noble Lord to go back and discuss with his colleagues in government how this point can be dealt with so as to ensure that the aggravated offence is either charged, tried and convicted in accordance with our principles of law by the jury, or how it is to be determined on proper evidence, if not by the jury then by the judge.

The clause as it stands is unacceptable. For that reason, I maintain the questions that I have about it.

Clause 1 agreed.

Schedule 1 agreed.

Clause 2 agreed.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): We now come to the group consisting of Amendment 1. I remind noble Lords that anyone wishing to speak after the Minister's reply should email the clerk during the debate. Anyone wishing to press this amendment to a Division must make that clear in the debate.

Schedule 2: Serious Terrorism Offences: England and Wales

Amendment 1

Moved by ***Lord Wolfson of Tredegar***

1: Schedule 2, page 52, leave out lines 27 to 35

Member's explanatory statement

This amendment removes references to offences in the Space Industry Act 2018 from Schedule 17A to the Sentencing Code (serious terrorism offences). References to those offences will instead be inserted on their commencement by Schedule 22 to the Sentencing Act 2020 (see the amendment at page 108, line 11) so that they are dealt with consistently by the Sentencing Act 2020.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, I hope that the Committee will allow me to take a moment to thank the noble Lords, Lord Thomas of Gresford and Lord Marks of Henley-on-Thames, and the noble and learned Lord, Lord Falconer of Thoroton, for their very warm words of welcome, which I appreciate.

Amendment 1 is a minor technical amendment that removes references to offences in the Space Industry Act 2018 from Schedule 17A to the Sentencing Code,

which deals with serious terrorism offences. References to those offences will instead be inserted, on their commencement, by Schedule 22 to the Sentencing Act 2020 so that they are dealt with consistently by that Act. I beg to move.

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, I understand from the Minister that this is a minor amendment. I too welcome him to his position. He has been very helpful to me both on this Bill and on the Domestic Abuse Bill, with which we are dealing almost simultaneously. I have a couple of minor questions for him. First, what would happen if this amendment were not put in place? How would that have affected the position, and what could the consequences have been? Secondly, what level of consultation has he done externally to ensure consistency in Sentencing Codes and parliamentary Acts?

Lord Wolfson of Tredegar (Con): My Lords, I am grateful for the words of the noble Lord. To answer his two questions, I say that this is essentially a tidying-up matter because of the different pace of legislation going through Parliament at the moment. The question of what would happen if this amendment were not made is an interesting one. At the very least we would be left with inelegant legislation, and I know from my previous incarnation that inelegant legislation is bad for Parliament but very good for lawyers, so let us try to make it as elegant as we can while we are at it. Much of the consultation on this matter preceded my involvement in this Bill and indeed my introduction to this House, but I am aware that there has been very significant consultation. Of course, if the noble Lord wishes to raise any particular points with me, my door is always open to him.

Amendment 1 agreed.

Schedule 2, as amended, agreed.

Clause 3 agreed.

2.30 pm

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): We now come to the group beginning with Amendment 2. I remind noble Lords that anyone wishing to speak after the Minister's reply should email the clerk during the debate. Anyone wishing to press this or anything else in the group to a Division must make that clear in the debate.

Schedule 3: Offences for the purposes of this Act: Northern Ireland

Amendment 2

Moved by ***Lord Wolfson of Tredegar***

2: Schedule 3, page 53, line 41, leave out "Articles 20A and 24A" and insert "Article 20A"

Member's explanatory statement

This amendment and the amendments at page 53, line 44, page 95, line 4 and page 95, line 37 are consequential on the removal of Clause 34.

Lord Wolfson of Tredegar (Con): My Lords, I will also speak to Amendments 3, 17, 18, 21, 22, 23, 24, 25, 26, 73, 74 and 75. I will also signal my intention to propose the removal of Clauses 33, 34 and 35.

Clause 33 was intended to provide explicit provision so that Scottish Ministers might impose a polygraph condition as a licence condition for specified released terrorist offenders. Clause 34 was intended to provide explicit provision so that the Northern Ireland Department of Justice might impose a polygraph condition as a licence condition for specified released terrorist offenders. Scotland does not currently have express provision for polygraph testing, but Scottish Ministers have broad powers to set licence conditions under Section 12(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993. Northern Ireland does not currently have express provision for polygraph testing, but the Department of Justice has broad powers to set licence conditions under Article 24 of the Criminal Justice (Northern Ireland) Order 2008 and Rule 3(2)(e) of the Criminal Justice (Sentencing) (Licence Conditions) (Northern Ireland) Rules 2009.

Through discussions on the legislative consent of the Scottish Parliament and the Northern Ireland Assembly on the provisions of the Bill, it became apparent that while this clause would enable a fully comparable UK-wide approach to polygraph testing on licence, pursuit of this provision in Scotland and Northern Ireland was not strictly necessary and could result in Scottish and Northern Irish Ministers withholding their consent for the Bill. The Government remain of the view that polygraph examinations are a useful additional tool in supporting the effective management of terrorist offenders, and we hope that the Scottish Parliament and the Northern Ireland Assembly will see the demonstrable benefits of its introduction in England and Wales.

This Government will continue to legislate on reserved matters but, as an expression of our respect for the existing powers of the Scottish Government and the Northern Ireland Assembly in relation to the setting of licence conditions, and as a demonstration of this Government's reasonable approach to those discussions, we have now agreed to remove the provision on the clear understanding that, should this Scottish Parliament or Northern Ireland Assembly or a future one change its view on polygraph testing, it will be able to implement the measure without additional legislation being required.

Clause 35 was intended primarily to provide supplementary provisions to Clauses 33 and 34 that would restrict the circumstances in which the devolved Administrations could impose mandatory polygraph examinations as a licence condition for certain terrorist offenders. As a result of the removal of Clauses 33 and 34 from the Bill, Clause 35 is no longer needed. The clause was intended to ensure that regulations could be made to ensure that polygraph conditions were confined only to those offenders' licences where it was necessary and proportionate to do so, to ensure standards for the examinations and that appropriate records and reports kept in relation to testing were consistent across the UK. Polygraph examinations are already carried out on sexual offenders in England and Wales. The conduct of those polygraph examinations is governed

[Lord Wolfson of Tredegar]
by rules made under Section 29(6) of the Offender Management Act 2007. Amendments 2, 3, 17, 18, 21 to 26 and 75 are consequential on the removal of Clauses 33 to 35.

Amendment 73 is necessary to ensure that the measures that permit introduction of polygraph testing in a licence condition for terrorist offenders in England and Wales are commenced two months after the Bill receives Royal Assent. Previously, when explicit provision was sought and set out for Scotland and Northern Ireland as well as for England and Wales, we had agreed that the provision should be commenced via regulation to allow sufficient time to develop the relevant infrastructure in those jurisdictions. As explicit provision is no longer made for those jurisdictions through this Bill, and polygraph testing is already used by the probation service for sex offenders in England and Wales, the same delay is not now required. As such, the usual commencement of two months after Royal Assent is appropriate. I beg to move.

Lord Thomas of Gresford (LD) [V]: My Lords, I have many reservations about the value of polygraph tests. They rely on measuring several physiological processes—pulse rate, blood pressure, perspiration and so on, the changes that may take place in the course of questioning. However, the emotional and physiological responses recorded may arise from such factors as simple anxiety about being tested or fear of being judged deceptive, or a host of things—perhaps the state of one's digestion after food. There is an inherent ambiguity in the physiological responses. The reluctance to use polygraph evidence is precisely because the response may mimic the response expected of a person seeking to deceive.

What is meant by "failing" the polygraph test? Failing the test means exhibiting a certain physiological response to a question. What is truth? The examiner cannot know whether that response means that the answer is a lie. However, there is no punishment for failing the test—whatever that means—or for exhibiting that response. That does not breach the terms of the offender's licence. The individual will not be returned to prison. Alterations may, however, take place in the conditions of his licence, and those could be onerous.

The irony is that, in the course of questioning, the person being questioned may provide information truthfully that will have an adverse effect on him. He has not failed the test because his body does not react to his telling the truth, but he has provided information that may lead to his punishment. He has of course lost his right to silence, a right first developed in the late 17th century as a check to arbitrary rule. It has been regarded over centuries as fundamental to the fairness of the criminal law in this country and in the common-law countries all over the world.

Faced with the terrorist atrocities that we have seen in this country, the loss of the right to silence may seem a worthwhile price. Obviously that is not the immediate view in Scotland, nor in Northern Ireland. Let us face the dilemma: the proposals for England and Wales do not involve imprisonment for a lie but possible imprisonment for telling the truth or, since it is mandatory to answer the questions, even for remaining silent. Faced with legal and moral issues such as this, the drafters of the Domestic Abuse Bill, which is proceeding this week here also, as the Minister will know, decided that it was appropriate to proceed with a three-year pilot before finally rolling out the use of polygraphs generally in that field. Why is a different approach taken in this concurrent Bill?

It is interesting to note that the case studies in the MoJ memorandum on these proposals indicate that the information provided led to warrants being issued and physical evidence obtained in the offenders' respective homes to contradict what they had said. However, there is no indication how often that has occurred or how many times such activity has proved nothing, and nothing has come of it. Will the Minister deal with that in his reply?

Lord Falconer of Thoroton (Lab) [V]: Like the noble Lord, Lord Thomas of Gresford, I too have considerable doubts about the reliability of polygraph material. This series of government amendments tabled by the noble Lord, Lord Wolfson of Tredegar, indicate some degree of shambles on the part of the Government. They are withdrawing the polygraph provisions for Scotland and Northern Ireland. Had they consulted the Scottish Government and the Northern Ireland Executive prior to the initial publication of the Bill, they would have seen what the Scottish Government and the Northern Ireland Executive had to say about them.

In the light of what was said by those two Governments, why did the UK Government introduce these provisions? It is plain from what the noble Lord, Lord Wolfson, is saying that the Scottish and Northern Irish Administrations do not want them. There is a reference to the various provisions that might allow them to introduce them as licence conditions. However, neither of the Administrations have indicated that they want these powers, so why on earth were they introduced in the first place and when was it that the UK Government decided to respect those views? If they did not consult those two Administrations before, why not?

Separate to that, on the use of polygraphs, what advice have the Government sought from police forces in England and Wales? To what extent would those police forces be confident about using polygraph testing?

Moving on, the effect of Amendment 73 would be that Clause 32, which sets out the conditions for polygraph testing for terrorist offenders in England and Wales, would come into force two months after Royal Assent rather than by regulations. Why have the Government reduced the degree of scrutiny available to the introduction of polygraphs by removing the need for regulations? Separately, what provisions are available in the Bill to stop the use of polygraphs if they prove to be ineffective?

Lord Wolfson of Tredegar (Con): My Lords, I am grateful to noble Lords for setting out their various points. I turn first to those made by the noble Lord, Lord Thomas. On the effectiveness of polygraphs, as I said in my introductory remarks, they are used elsewhere in English law in relation to sex offenders. There is therefore a body of evidence as to their utility. On

what "failing" means and the consequences of failure, it is important to remember, as I think the noble Lord appreciates, that offenders who are subject to testing cannot be recalled to custody for failing a polygraph test. They can be recalled for making disclosures during the test that reveal that they have breached other licence conditions, or that their risk has escalated to a level at which they can no longer be managed safely in the community.

On the right to silence and other Human Rights Act rights, I am sure that the noble Lord will recall that during the course of the sex offender pilot of the polygraph system, an offender challenged the imposition of testing on Article 8 grounds, but that was rejected by the courts. No further challenges have been made since then and we are therefore confident that this is compliant with the Human Rights Act and the rights contained therein.

On the remark that there is to be no pilot scheme, I will make two points. First, this is not the initial use of polygraphs in English law because they are already used in connection with sexual offences. Secondly, it is unlikely that there will be sufficient numbers of relevant offenders to carry out a pilot that would produce meaningful results.

I turn to the points made by the noble and learned Lord, Lord Falconer. It is rather odd to be accused of presiding over a shambles when we have actually listened to the Scottish Government and the Northern Ireland Assembly in our discussions with them. On whether police forces are able and ready to use polygraphs, they are of course already being used in circumstances related to sexual offenders. Therefore, this testing is not entirely new to them. The regulations that will govern polygraph testing have been set out and we do not think that it will be an ineffective tool.

I hope that I have responded to the various points raised. If noble Lords feel that I should provide further information on any of them, they know that we will of course continue to have discussions about these matters.

Amendment 2 agreed.

2.45 pm

Amendment 3

Moved by ***Lord Wolfson of Tredegar***

3: Schedule 3, page 53, line 44, leave out "those Articles" and insert "Article 20A"

Member's explanatory statement

See the explanatory statement for the amendment at page 53, line 41.

Amendment 3 agreed.

Schedule 3, as amended, agreed.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): We now come to the group beginning with Amendment 4. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in this group to a Division must make that clear in the debate.

Clause 4: Serious terrorism sentence for adults aged under 21: England and Wales

Amendment 4

Moved by ***Lord Marks of Henley-on-Thames***

4: Clause 4, page 5, line 39, leave out "14" and insert "10"

Member's explanatory statement

This amendment probes the balance between custody and licence for young offenders.

Lord Marks of Henley-on-Thames (LD) [V]: My Lords, Clause 4 and my Amendments 4 and 5 concern the imposition of serious terrorism sentences of detention in a young offender institution for offenders aged 18 or over when the offence was committed and under 21 when convicted. A serious terrorism offence is defined in Clause 2 and that definition is carried into the Sentencing Code through new Schedule 17A. Part 1 of the new schedule lists a number of very serious terrorism offences, while Part 2 lists other broadly serious offences where the judge determines that there is a terrorism connection. On Part 2, I repeat the points I made earlier on Clause 1, although here they are applied with less force because the offences are, by and large, much more serious so the aggravation of the sentence is likely to be less severe.

The structure of the sentence for a serious terrorism offence for young offenders is defined, as it is for adults aged over 21, as the aggregate of a custodial term and an extension period during which the offender is to be subject to a licence. A serious terrorism sentence is to be imposed where there is a significant risk to the public of serious harm caused by the offender in future terrorism offences where the court does not impose a life sentence and where the multiple deaths condition as defined in the Bill is met, so these are indeed very serious offences. The term of the sentence is defined as a minimum custodial period of 14 years and an extension period of between seven and 25 years. There is a very limited exception to the requirement to impose a serious terrorism sentence on detention where there are exceptional circumstances that relate to the offence or to the offender which justify not imposing the sentence.

I accept entirely that these are very serious offences so the sentences are very serious indeed, but for young offenders aged 18 they are what might be called "no hope" sentences. A period of 14 years in prison in a young offender institution would take the young offender to the age of 32.

There may be many cases where such a sentence is justified, but there are—or may be—others where it is simply too great. Our Amendment 4 would provide for a minimum term of 10 years instead of 14 years, without affecting the judge's discretion in an appropriate case to impose a custodial term of longer than 10 years if that would be the appropriate sentence for the offence under the general provision of the Sentencing Code. Amendment 4 is balanced by Amendment 5, which adjusts the minimum term on licence upwards from seven years to 10 years.

The rationale behind these amendments is that there is a wealth of evidence for a number of propositions. For younger people in particular, the effect of very

[Lord Marks of Henley-on-Thames]
long custodial terms is particularly destructive, depriving them of their chances of education and building productive lives. For young people in particular, even those convicted of terrorist offences, there is hope of rehabilitation, deradicalisation and using educational opportunities to help turn their lives around and give them chances to make worthwhile lives for themselves even at the end of a long custodial sentence. Young people in particular benefit from the help and support to be offered by the probation service and others to offenders released on licence, and may benefit to a greater extent than older offenders from both deradicalisation programmes and education—vocational and general—which they might undertake on licence to help them come to terms with the real world on their release after what is anyway a very long sentence.

I therefore suggest that it would be of advantage to society, and to us all, to rebalance the division of a serious terrorism sentence, so as to have a greater period on licence to follow a minimum period in custody, which, while still very long, would be somewhat less draconian than presently proposed, and would not affect the right of the judge to impose a longer sentence in an appropriate case. I beg to move.

Lord Thomas of Gresford (LD) [V]: My Lords, I am always intrigued by the thought processes that must be brought into play in fixing a minimum sentence in a Bill. I would like the Minister to outline what consultation there has been concerning the minimum sentence of 14 years for a young offender between the ages of 18 and 21—a "no-hope sentence", as my noble friend Lord Marks described it a moment ago, and I completely concur with everything that he said. I cannot imagine that it is a Minister who initially chooses the minimum number of years for imprisonment. Somebody in the Ministry of Justice must have drunk his cup of coffee and plumped for a figure to put in for the Minister to sign off on. I do not suppose he will ever have met a young offender—"Let's just say 14 years sounds good."

I want to contrast this with the role of a sentencing judge whose sentencing discretion is not bound by statute. The judge sitting in a serious case of terrorism would not be there if he had not had a lifetime of experience in the criminal courts, developing his instinct and his trained capacity to weigh the seriousness of one case against another. Other experienced practitioners and academics who have studied criminology have provided the judge with sentencing guidelines. They give him a guide to the accepted range and indicate what aggravating or mitigating factors he should have in mind. In addition, the judge will have the benefit of counsel's submissions and a probation report from an experienced officer that will give him an insight into the background of the defendant. There may also be medical reports and, sometimes, witnesses prepared to speak up on the young man's behalf.

This clause introduces an arbitrary minimum sentence as the guideline unless there are "exceptional circumstances". There are no guidelines as to what those exceptional circumstances are: if the past is any guide, we will have to wait for the Court of Appeal to lay them down. The minimum sentence is chosen by a civil servant who, in all probability, has never been inside a court. So we get an arbitrary 14-year minimum sentence and an arbitrary seven years on licence. What is the evidence that this is the correct balance? Who said that? Why cannot a judge be left to do his job?

It seems to me that the only purpose of a minimum sentence is to make a single day's headlines to the effect that the Government are being tough on crime, and specifically on terrorism. There is no question of looking at the individual who is before the court, and considering his future, his welfare, his rehabilitation or whatever. In putting forward this amendment, my noble friend is testing the rationale for the balance in the Bill, and I look forward to a full exposition from the Minister in due course.

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, the noble Lord, Lord Thomas of Gresford, concluded his remarks by saying that the amendment was "testing the rationale" of these sentences, and that is indeed clearly the case. The first amendment reduces the minimum term in custody and the second increases the period on licence. Both the noble Lords, Lord Thomas and Lord Marks, referred to these as "no-hope sentences". I understand the sentiment they expressed on these extremely long and very serious sentences being given to children—but they are not really no-hope sentences, are they? YOT and, more likely, probation and the Prison Service will have been working with these people for many years to give them hope that, when they get out of prison and are on licence and, eventually, off licence, they can go on to lead a constructive life.

Now this is a very tall hurdle. I understand that; we are dealing with the most serious sentences that one can imagine. Nevertheless, that is the role of probation and it is very important, I would say, for the young person to see that there is hope at the end of the period, because it is far more likely that, if they see that hope, they will engage constructively with people in prison and carry on that constructive intervention when they leave on licence. So I have some questions for the Minister. What assessment has been done of the likelihood of reform of offenders—is there any data on that? Also, what is the number of young offenders now in custody who are likely to be in custody as a result of this legislation? Are there any examples of where longer custodial sentences have helped young people to go on to lead lives in which they no longer offend?

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, it is a privilege to stand and answer points made by the noble Lords who have spoken. I first acknowledge their great experience and wisdom in the field, and the evident compassion that underpinned their observations to the Committee. I know that at least two of them have had the experience that I have of acting for a very young person charged with a crime of the greatest magnitude and severity. I can tell from the way in which their questions were framed that they are aware of the extreme sadness at the loss of potential that the advocate finds when acting for a person in such a position. I hope that noble Lords appreciate that I am fully aware, from the perspective of legislation, of the awkwardness and difficulties attendant upon arriving at an appropriate sentence for these most serious of crimes.

3 pm

As the noble Lord, Lord Marks, has explained, these amendments are intended to reduce the minimum custodial term that may be imposed on an offender aged between 18 and 20 sentenced to a serious terrorism sentence from 14 to 10 years, and to increase the minimum licence period that may be imposed in such a case from seven to 10 years. I respectfully disagree that such changes are appropriate or necessary. The Government are determined to ensure that those who commit serious acts of terror and put members of the public at risk of death serve sentences that properly reflect the harm that they cause. In answer to the noble Lord, Lord Thomas of Gresford, while headlines may be a consequence of the imposition of such a sentence, the sentence is selected not to generate such headlines.

The serious terrorism sentence, introduced by Clauses 4 and 5 of the Bill, will strengthen the current sentencing framework to ensure that terrorists, who put lives in danger, are given sentences that reflect the severity of their crimes. These amendments seek to draw a distinction in sentencing policy between those aged 21 and over and those aged between 18 and 20. While the new serious terrorism sentence is structured so as to distinguish those two groups, this is simply to reflect the existing sentencing structure.

At the commencement of his remarks, the noble Lord, Lord Marks of Henley-on-Thames, accepted that this sentence will be imposed in the gravest of circumstances. To remind your Lordships, the sentence may be imposed only when a set of conditions is met. The offence must be serious enough to attract a life sentence but the court has decided not to impose one in this case. The offender must be found to be dangerous by the court. The offender must or ought to have been aware that the offending was very likely to result in or contribute to multiple deaths. When these conditions are met, it is right that a lengthy minimum term should be served in prison and in full, and an extension period should be served on licence. This should be consistent for anyone to whom the serious terrorism sentence applies.

We have carefully considered the right balance between the custodial terms and the licence period for this sentence, and are satisfied that 14 and seven years are appropriate, with the licence period being at least half the time that the offender would have served in custody. But it will be for the sentencing judge to determine this length, up to a maximum of 25 years, according to their judgment of the need to protect the public from the risk of serious harm that the offender poses.

The noble Lord, Lord Thomas of Gresford, sought to know the extent of the consultation procedure that went into selecting 14 years as the appropriate period. It was not simply plucked out of thin air; it was arrived at as a result of deliberation on the nature of the crime, the extent of the offending and the need to protect the public. The noble Lord can be satisfied, if he wishes for further elucidation of the identity of persons with whom consultation took place, that I will write to him to explain the nature of the consultation process or the thinking that underpinned the sentence.

I echo the formulation of the noble Lord, Lord Marks of Henley-on-Thames, that this is a rebalancing. However, the Government are content that the current balance is correct.

The noble Lord, Lord Ponsonby of Shulbrede, sought to know about the assessment that has been carried out on the likelihood of reform of persons on whom sentences of this sort are imposed. He asked about the number of young offenders in custody in relation to these matters and sought examples of situations when lengthy custodial sentences have led to reform. I propose to touch on these matters on other amendments. By way of advertisement of what I will be saying, I can tell the Committee that, while data on these matters is available, is it difficult, given the small quantity of data and the evolving understanding of matters, to use it precisely to arrive at conclusions. I hope that that answers the noble Lord's point, albeit it is necessarily doing so by reference to things that will be said on forthcoming amendments.

I believe that these measures are necessary and appropriate. I therefore urge the noble Lord to withdraw his amendment.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): I have received one request to speak after the Minister from the noble Baroness, Lady Hamwee.

Baroness Hamwee (LD) [V]: The noble and learned Lord very briefly answered the questions on consultation from my noble friend Lord Thomas. I hope he has in his brief the answer to the headline question of whether consultation was undertaken with probation and what its views were on the balance between custody and licence.

Lord Stewart of Dirleton (Con): Will the noble Baroness confirm that she is referring to the probation service?

Baroness Hamwee (LD) [V]: I appreciate that there are levels and areas of probation. The question extends to all parts of those who provide probation services, but the central probation service, offender management, is probably more relevant to this than local probation services.

Lord Stewart of Dirleton (Con): If I may, I will respond to the noble Baroness's question in writing.

Lord Marks of Henley-on-Thames (LD) [V]: My Lords, again I thank all who have spoken on these amendments, in particular the noble and learned Lord, Lord Stewart of Dirleton. His response was sympathetic, in that he fully recognises the position of young offenders exposed to these extremely long sentences. In return, as he recognised, we accept the seriousness of the offences that are to be visited by these serious terrorist sentences. It is right that they merit an extremely serious response. But even for the most serious offences there ought to be room in a scheme of punishment for

[Lord Marks of Henley-on-Thames]
rehabilitation, particularly of young offenders who commit these offences in their youth but are serving sentences for many years to come.

My noble friend Lord Thomas of Gresford spoke of, and asked about, the arbitrariness of the choice of the 14-year term. Of course, he has had a lifetime of practising in the criminal courts. He has many years of experience of judges exercising their discretion, and those years have left him with a favourable view of judicial discretion—a view which I share.

The noble Lord, Lord Ponsonby, questioned the formulation that my noble friend Lord Thomas of Gresford and I put that a sentence of 14 years of immediate custody offers no hope, because, he said, of the availability of help within a custodial setting. I regret that I do not agree with his optimism. Very long periods in custody allow offenders in custody no hope, or very little hope indeed. It is otherwise with time spent on licence, when a great deal of help in rebuilding their lives is available to offenders, from the probation service and other services and, we would hope, also from services to help deradicalise young offenders.

The question of rebalancing, which the Minister also accepted that these amendments were about, was explored and will be explored further between the Minister and my noble friend Lady Hamwee. I invite the Minister and the Government to consider whether more discretion could be left to the sentencing judge to permit that judge to impose a minimum term in custody of less than 14 years—we suggest 10—and to recognise that there is scope for a longer period on licence to enable young, or young middle-aged lives at that stage, to be rebuilt. In urging the Government to take that position, I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Amendment 5 not moved.

Clause 4 agreed.

Clauses 5 and 6 agreed.

Schedule 4 agreed.

Clauses 7 to 10 agreed.

Clause 11: Minimum term order for serious terrorism offenders: England and Wales

Amendment 6

Moved by ***Lord Marks of Henley-on-Thames***

6: Clause 11, page 12, line 33, leave out "exceptional" and insert "significant"

Member's explanatory statement

This amendment would give the courts more discretion when applying the minimum term.

Lord Marks of Henley-on-Thames (LD) [V]: My Lords, we spoke in the previous group about young offenders, but there is in Clause 4 a very limited exception to the requirement to impose a serious terrorism sentence of detention where there are exceptional circumstances which relate to the offence or the offender which justify not imposing the serious terrorism sentence. This amendment relates to a precisely similar provision in Clause 11 relating to the imposition of such an offence on adult offenders under Clause 11(5). I should have tabled a similar amendment in relation to Clause 4, and for that I apologise, but the omission can be made good, if necessary, on Report.

3.15 pm

The point of this amendment is simply to broaden the judge's discretion to refrain from imposing a serious terrorism sentence where the circumstances demand it. The replacement of the word "exceptional" with the word "significant" would permit the judge to take into account circumstances that he views as sufficient to alter his view of the offender or of the offence so as to justify the imposition of a lesser sentence. The use of the word "significant" allows the judge an element of subjectivity about what seems to him to be important enough to justify that departure.

We believe in judicial discretion, for all the reasons mentioned by my noble friend Lord Thomas of Gresford in relation to the previous group, and for all the reasons which we discussed in the previous short debate. We do not believe that Parliament or any Minister can foresee what circumstances might persuade a judge to exercise less severity in these very serious offences. However, I suggest that the use of the word "exceptional" introduces a straitjacket, and I make that suggestion on the authorities because the use of the word "exceptional" places the judge in the position of having to make a finding that the circumstances are exceptional: that is, that they are so far away from the norm as to justify a finding, effectively, of fact that they are an exception. Without such a finding, he cannot use any discretion. The lack of discretion, I suggest, can be inimical to the interests of justice, and for that reason I invite the Committee to agree ultimately to a different formulation and invite the Government to consider a formulation that allows just a bit more flexibility than the Bill as drafted permits. I beg to move.

Lord Thomas of Gresford (LD) [V]: [*Inaudible*]—is in relation to the necessity for the judge at trial to have full discretion in passing sentence. I do not wish to repeat that, but I will add a particular comment. When a judge is faced with a provision such as this, he has to define those circumstances which influence him. He has to set out in his sentencing remarks precisely what factors influence him. Things have moved very considerably over the decades away from the swift disposal of a defendant by a judge with very little comment. What he says is important not just for the defendant to understand why he is being sentenced in that way but of course, if there should be any appeal on sentence, for the Court of Appeal to understand precisely what it was at the time that the judge had in mind. "Exceptional" circumstances is too great an imposition on the judge's discretion and I believe that my noble friend's proposal that it should be "significant" is right.

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, the noble Lords, Lord Marks and Lord Thomas, have explained their thinking behind the amendment to

replace "exceptional" with "significant" to give more discretion to the judge. As the noble Lord, Lord Thomas, said, in any event a judge will explain the reason for finding exceptional or significant reasons for reducing a sentence.

My questions are for the Minister. What does he believe are exceptional circumstances, and what exceptional circumstances would justify a lesser sentence? In what circumstances would such lesser sentences be appropriate?

Lord Wolfson of Tredegar (Con): My Lords, as the noble Lord, Lord Marks of Henley-on-Thames, explained, this amendment seeks to amend and change the circumstances in which a sentencing court could impose less than the 14-year minimum term for a discretionary life sentence imposed in a serious terrorism case by changing the circumstances from "exceptional" to "significant". I respectfully agree with the noble Lord that the logic of his amendment would also apply to Clause 4. However, I respectfully disagree over whether such an amendment is appropriate.

The purpose of Clause 11 is to ensure a consistency of approach when sentencing those convicted of serious terrorism offences. It would not be appropriate for a court to be able to impose a life sentence with a lower minimum term for a serious terrorism offence other than where there are exceptional circumstances. If the circumstances of the offence and offending are such that the court imposes a life sentence, and unless there are exceptional circumstances, there should be no possibility of the offender being released earlier than someone given a serious terrorism sentence. That is what Clause 11 achieves.

By contrast, the amendment would remove that consistency, so that the court could consider a wider range of circumstances when setting the minimum term in a discretionary life sentence than when doing so for a serious terrorism sentence, although all other circumstances would be the same. While I accept that there is a distinction, in that the prisoner serving a life sentence may be considered for release only after the minimum term is served, it would be unprincipled for him or her to be released earlier than a counterpart serving a serious terrorism sentence.

A number of questions were asked about "exceptional circumstances". That is a principle already established in sentencing legislation. It is used, for example, in connection with minimum terms that can apply to certain firearm offences. I must respectfully decline the invitation of the noble Lord, Lord Ponsonby, for a Minister to gloss from the Dispatch Box what "exceptional circumstances" might or might not be. It is a phrase used elsewhere in statute and known in law. Those are straightforward English words and it would not be appropriate or even helpful for me to gloss them on my feet at the Dispatch Box.

By contrast, I respectfully point out to the noble Lord, Lord Marks, that as far as my research has indicated—I am happy to be corrected if I am wrong—there is no existing "significant circumstances" principle in sentencing legislation. Therefore, if accepted, the amendment would create an entirely new test, which in our view is unwarranted and likely to lead to litigation, which cannot be in our interests as parliamentarians in passing this Bill.

As far as the point made by the noble Lord, Lord Thomas of Gresford, is concerned on judicial discretion, we are really talking about the extent of the judicial discretion and whether the test should be "exceptional" or "significant" circumstances. The question is not to the existence but to the extent of judicial discretion. As part of the Government's recent White Paper, *A Smarter Approach to Sentencing*, we have committed to changing the criteria for other minimum terms for repeat offences to reduce the occasions on which the court may depart from the minimum custodial length.

For those reasons, I do not consider the amendment to be necessary or appropriate, and I respectfully invite the noble Lord to withdraw it.

Lord Marks of Henley-on-Thames (LD) [V]: My Lords, I am grateful to those who have spoken, and to the Minister for his response. However, I am bound to say that I found it disappointing. He is absolutely right to state that "exceptional" has a clear meaning in law and is used elsewhere. It was to that meaning that I alluded when I said that the use of "exceptional" puts the judge in a straitjacket. It is for that reason that my noble friend Lord Thomas of Gresford is right to seek a little more latitude, because the sentence is so long and the circumstances may be very varied.

The Minister did not deal with the point that the circumstances can relate not only to the offence but to the offender. They may cover a very wide range. Therefore, it is our position that more discretion is called for. He is right that it is the ambit of the discretion with which this amendment is concerned. I invite him to reconsider it. While he does, I beg leave to withdraw the amendment.

Amendment 6 withdrawn.

Clauses 11 to 15 agreed.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): We now come to the group consisting of Amendment 7. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this amendment to a Division must make that clear in debate.

Clause 16: Increase in extension period for serious terrorism offenders aged under 18: England and Wales

Amendment 7

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

7: Clause 16, page 16, line 33, at end insert—

"( ) Section 255 of the Sentencing Code (extended sentence of detention: availability) is amended as follows.

( ) After subsection (2) insert—

"(3) The pre-sentence report must in the case of a serious terrorism offence under section 256(4)(b)(iii)—

(a) take account of the offender's age;

(b) consider whether options other than an extension period of eight to ten years might be more effective at—

(i) reducing the risk of serious harm to members of the public, or

(ii) rehabilitating the offender.

(4) The court must take account of any points made by the pre-sentence report in relation to the matters in subsection (3)."

( ) The Secretary of State must at least once a year conduct and lay before Parliament a review of the effectiveness of the provisions of this section and their impact upon offenders.

( ) The report of the first review must be laid before Parliament within one year of this Act being passed."

Lord Falconer of Thoroton (Lab) [V]: Through this amendment, before the court considered whether to apply an extended sentenced of eight to 10 years to somebody aged under 18 at the time of conviction it would have to consider a pre-sentence report. That report should specifically address the age of the defendant and whether there are alternatives to the extended sentence of eight to 10 years. If the pre-sentence report considers that there are alternatives, the court is then obliged to consider that. It can reject it, but it has at least to consider it.

The amendment reflects our belief that for young adults, or people who might not even be adults, there may be, on the particular facts of a particular case, other ways better to protect a community than an extended detention period of eight to 10 years. The amendment would not require a court to accept that, but it would ensure that there is proper focus on whether there are better ways of protecting the community. I beg to move.

Lord Woolf (CB) [V]: My Lords, I adopt what the noble and learned Lord, Lord Falconer, said and will add a few words. Although it was not accepted, I suggest that, from a practical point of view, the other provisions of the Bill would fall within what the Secretary of State might want to consider in reviewing the effectiveness of the section once a year has passed. That makes such a review highly desirable.

It is always possible for something to be thought of as exceptional, which, in fact, cannot be shown to fall within that limitation. It is a very healthy safeguard if the matter has to come before the Secretary of State as indicated in the proposed amendment, because that will give an opportunity to reconsider based on the experience of actually seeing the provisions of the Bill being implemented in the Act of Parliament, which in due course will be passed.

3.30 pm

Lord Robathan (Con): My Lords, I congratulate my noble friend Lord Wolfson of Tredegar on what I think is his first outing with the Bill. I know where Tredegar is, but I am not sure I have ever been there. I do know, rather too well, the Brecon Beacons, just to the north, which are very beautiful but also extremely wet and cold, as I recall.

I enter this debate with some trepidation because we have a lot of clever lawyers taking part. On this occasion, I do not mean that in any derogatory sense; this is legislation, and we need it to be examined by clever lawyers who are lawmakers, but I speak only as a layman. We know what the issues are, and in this, as in so much, there is a need for balance. I heard what the noble and learned Lord, Lord Falconer of Thoroton, said, but we need to not be starry-eyed when thinking that a young person might not be perfectly capable of being radicalised early and remaining radicalised. We need to look at how the judiciary and the legal process can keep tabs on people who have been radicalised. That is why, in this particular case, I am certainly on the side of community safety rather than the rights of offenders.

Religious fanaticism is not, of course, confined to Islam. People inspired by ideology do not always respond well, whatever their ages. In December, Jonathan Hall said that deradicalisation using monitoring and theological programmes does not work. Therefore, we need, in exceptional cases—and there will be very few—to give courts the right, and indeed the duty, to ensure that society is protected, over and above the rights of some very unfortunate young people—young men, almost exclusively—who have transgressed in these terrorist actions.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): I call the next speaker, the noble and learned Lord, Lord Morris of Aberavon. I think we are having some problems with him, so I call the noble Baroness, Lady Jones of Moulsecoomb.

Baroness Jones of Moulsecoomb (GP): My Lords, I have a slightly embarrassing confession to make. When I first decided to get involved with this Bill, I thought it was a completely different Bill. Having realised what is was about, I then realised that it is one of those bits of legislation that is a bit rushed. It reminds me of the Dangerous Dogs Act 1991, which was rushed through Parliament because of public concern about, I think, 11 very dangerous and nasty incidents of people being savaged by dogs. It proved to be, first, a not very effective piece of legislation, and then, a not very popular one. I also had not realised there would be so many eminent lawyers involved in this debate, and I feel slightly uneasy, because I am coming into this as a member of society who has a very practical reaction to this sort of legislation. I do not believe that locking people up and throwing away the key is the best way of treating them, for all sorts of reasons. I do not mean for them, necessarily, but for society and the whole prison system.

This amendment goes to the heart of what we are trying to achieve when we sentence terrorist offenders. Are we locking up monsters and not letting them out again in the hope that prison is going to crush or contain them, or whatever? Or are we locking people away to protect society for as long as it takes to teach them the error of their ways and, perhaps, confront them with the consequences of their actions and return them to society as re-engaged citizens?

Statistics suggest that only a tiny percentage of people who have been locked up for terrorist offences come out and reoffend. We need to look at that and be practical about what we are trying to achieve. It is easy for the Government to appear to be tough on crime, throw red meat to the tabloids and satisfy the people who think that anything less than the death penalty for almost every crime is being soft on crime. I think

there might be people on the Government Benches who think like that. But it is much harder for the Government to do the tough work of reintegration into society, which is a much more effective use not only of money but of resources. Locking people up in an extremely expensive prison service just teaches people to be better at crime while they are there.

As we have seen in the United States, extremist ideologies have spread among our own western societies. The so-called QAnon conspiracies, fuelled by Donald Trump, and promulgated across the internet, TV, and among the Republican Party, led people to hope for mass arrests and the execution of their political opponents. This is a domestic terrorism movement, which is growing and exists here in Britain. We are going to be encountering a completely different sort of terrorist: a white terrorist, just for starters. The Government have to step up. The problem is growing, and the solution is not just to lock more people up but to learn how to deal with this at source and also once people have offended. The Government need to rethink this a little bit, and be a bit more practical, and less reactive to perhaps transitory public opinion.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): The noble and learned Lord, Lord Morris of Aberavon, has withdrawn from this group, so I call the noble Lord, Lord Marks of Henley-on-Thames.

Lord Marks of Henley-on-Thames (LD) [V]: My Lords, I agree with the noble and learned Lord, Lord Falconer of Thoroton, about the benefits of pre-sentence reports. They are, and always have been, when available, important in the context of sentencing generally. They are a sophisticated tool, bringing before a court matters that may not be known to the sentencing judge in the absence of a detailed report on the background and motivation of an offender, and their potential to be rehabilitated in future. In not requiring such a report, which covers all the matters mentioned in this amendment, Parliament would be taking a retrograde step and excluding elements that may be important in determining the length of any sentence or extension period.

The amendment complements Amendment 6 that I introduced earlier, by giving the judge not only increased discretion in passing sentence, but also the material on which he can correctly and sensibly exercise that discretion. I agree with the noble and learned Lord, Lord Woolf, who described such a report as a very healthy safeguard. I urge the Government to accept the amendment for that reason. It is a question of giving the sentencing court the material upon which to make an informed and sensible decision from everybody's point of view.

Finally, I commend the words in the amendment that provide for a review of the workings of the clause, including the amendment. I fear that we are legislating in some haste in relation to the Bill, and a review of how it is working, particularly this clause, would be extremely helpful.

Lord Wolfson of Tredegar (Con): My Lords, I am grateful to the noble and learned Lord, Lord Falconer of Thoroton, for introducing this amendment, although I hope to persuade him that it is in fact misconceived.

The amendment deals with Clause 16, which relates to an increase in the extension period for terrorism offenders aged under 18. As my noble and learned friend Lord Stewart of Dirleton said a few moments ago, I am sure it is common ground across the Committee that when dealing with such young adults one has to have the greatest care and consideration. Having said that, as my noble friend Lord Robathan reminded us, this is a matter of public safety. I respectfully endorse nearly all the comments that he made; I say "nearly all" because, in a debate where so many lawyers are speaking, I understand the temptation for someone who is not a lawyer to say that they are "only a layman", but my noble friend is not "only" anything. With that slight quibble, I respectfully take on board everything that he said.

The amendment would require the pre-sentence report to take account of the offender's age and consider whether options other than an extension period of eight to 10 years might be more suitable than an extended sentence of detention. The amendment would also require the Secretary of State to report to Parliament each year on the effectiveness of increasing the maximum extension period of the extended sentence of detention from eight to 10 years.

The nature of an extended sentence is that it comprises a custodial term and an extension period for the purposes of public protection, as defined in Section 256 of the Sentencing Code. The effect of the amendment would be fundamentally to alter the nature of the sentence by proposing an alternative to that extension period.

The amendment is also not necessary and, I say with respect, perhaps misunderstands the provision. I assure the noble and learned Lord, Lord Falconer, that the clause simply provides for a new maximum licence period of 10 years in serious terrorism cases rather than the current eight. This is not mandatory; it is available for use at the court's discretion, and it will remain possible to apply a licence period of any length between 12 months and 10 years.

For a youth offender to receive an extended sentence for a serious terrorism offence, the court will be required to consider a pre-sentence report. I therefore agree to that extent with the noble Lord, Lord Marks of Henley-on-Thames, and the noble and learned Lord, Lord Woolf, about the utility of such reports. In preparing the pre-sentence report, the youth offending team officer will always consider the offender's age and circumstances in order to recommend an appropriate sentence. The Bill does not change the way in which pre-sentence reports are done.

However, time spent on licence is crucial for both monitoring and managing offenders in the community as well as giving them the opportunity to change their behaviour. Therefore, providing the courts with the option of imposing a longer period of supervision on licence for the most serious terrorist offenders is an important element and component of the Government's efforts to protect the public from the risks that terrorist offenders pose while enabling a longer period to support rehabilitation.

In that context, I assure the noble Baroness, Lady Jones of Moulsecoomb, that I am not in the business of throwing red meat to anyone or anything, be it dangerous dogs or the tabloids. This, however, is a proper and

[Lord Wolfson of Tredegar]
proportionate response to the very significant danger that some offenders present. I therefore invite the noble and learned Lord, Lord Falconer of Thoroton, to withdraw the amendment.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): I have received one request to speak after the Minister from the noble Lord, Lord Paddick, so I call him.

Lord Paddick (LD) [V]: My Lords, I am very grateful to the Minister for his comments. Yesterday, in debating the Domestic Abuse Bill, the Government declined to include child offenders in the definition of "domestic abuse" because, as the Minister said, the Government did not want to criminalise children. In this Bill, however, they seem to be taking a hard line when it comes to child offenders. What is the difference in approach? Is it because the Government think that domestic abuse is not a serious offence where the public need to be protected but terrorism is?

3.45 pm

Lord Wolfson of Tredegar (Con): My Lords, there is a strong connection between the Domestic Abuse Bill and this Bill to the extent that both lie on my desk and I have the honour and privilege of dealing with both in your Lordships' House. However, they present very different issues. I do not want to talk too much now about the Domestic Abuse Bill, but the structure of that Bill, which encompasses both civil and criminal consequences, is very different—indeed, I might say vastly different—from the subject matter of this Bill, which is extremely serious terrorism offences. If the noble Lord has any particular comments on the interrelationship between the two Bills, I am dealing with them both, as I say, and I am very happy to speak to him further about that. However, that is my response on the particular point that he has raised. My respectful suggestion to your Lordships' Committee is that the analogy, while tempting, is false.

Lord Falconer of Thoroton (Lab) [V]: My Lords, I am grateful to everyone who has participated in this short debate. I am very grateful to those who have supported my position, particularly the noble and learned Lord, Lord Woolf, the noble Baroness, Lady Jones, and the noble Lord, Lord Marks. Although he did not intend to, I think the noble Lord, Lord Robathan, also supported my position but was very keen to establish how clear-eyed he was. I do not think that people like myself—who are saying that, before a court sentences someone who is under 18, it should have the benefit of a pre-sentence report that asks the question, "Having regard to the person's age, are there better ways to provide public protection?"—are necessarily that starry-eyed.

I was very hopeful that the Minister would persuade me that I was wrong, but I am not sure that he fully grasped the nature of the amendment. Section 255(1) of the Sentencing Code says that an extended sentence of detention for someone under 18 is available, while Section 255(2) says that the pre-sentence report requirements apply as they normally would in relation to sentencing someone under 18. My proposal is not to change the basis of the sentence; it is to say that, in that pre-sentence report, the pre-sentence reporter should have regard to the question of whether there are alternatives that could provide better public safety. If there are, the pre-sentence reporter should refer to them and the judge should take them into account.

I also agree strongly with the noble and learned Lord, Lord Woolf, that in an area like this it is useful for the Secretary of State to consider how well or badly a particular sentence is going so that they consider what should happen to it in future.

I very much hope that the Minister will consider what I have said about what the actual import of my amendment is, because he appeared to be dealing with an amendment that had a different import. I very much hope that he will reconsider his position. In the meantime, I beg leave to withdraw the amendment.

Amendment 7 withdrawn.

Clause 16 agreed.

Clauses 17 to 19 agreed.

Schedule 5 agreed.

Clauses 20 and 21 agreed.

Schedule 6 agreed.

Clause 22 agreed.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): We now come to the group beginning with Amendment 8. I remind noble Lords that anyone wishing to speak after the Minister's reply should email the clerk during the debate. Anyone wishing to press this amendment or anything else in this group to a Division must make that clear in debate.

Clause 23: Terrorism sentence with fixed licence period: Scotland

Amendment 8

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

8: Clause 23, page 20, line 24, at end insert "(or a sentence of detention without limit of time so imposed)"

Member's explanatory statement

This amendment clarifies that new section 205ZC of the Criminal Procedure (Scotland) Act 1995 does not apply where an offender aged under 18 is sentenced to detention without limit of time for a terrorism offence.

Lord Stewart of Dirleton (Con): My Lords, I shall speak also to Amendment 9 in this group. Both are minor technical amendments to Clause 23. Amendment 8 would make a minor amendment to Clause 23, which introduces the terrorism sentence with fixed licence period in Scotland. The amendment would add the sentence of detention without time limit to the "waterfall" list of sentences of imprisonment and detention that a court can impose in relation to an offence. This would ensure that the new terrorism sentence was available

only where a court did not impose a sentence in this list, which includes the indeterminate sentence of detention under Section 208, making the order of sentencing options clear.

Amendment 9 would simply remove a now redundant reference to new Section 205ZC(6) in subsection (4) relating to the new terrorism sentence introduced in Clause 23 due to an amendment to that provision on Report in the Commons. Subsection (4) defines the meaning of the aggregate term in relation to a sentence of detention in respect of the new terrorism sentence in Scotland, as it applies to offenders of at least 16 years of age but under 21. I beg to move.

Lord Thomas of Gresford (LD) [V]: My Lords, the Minister's words brought to mind many waterfalls that I know and love in Scotland, but I will forgo the opportunity to comment on Scottish criminal law. I am sure that both these minor and technical amendments are perfectly justified and I have no more to say about them.

Lord Falconer of Thoroton (Lab) [V]: I am grateful to the noble and learned Lord, Lord Stewart of Dirleton, for the clarity with which he introduced these two technical amendments. Perhaps I may ask two questions. First, on Amendment 8, what would the implications have been had this amendment not been made? I was not clear from what he said whether it would change any position. Secondly, in relation to Amendment 9, how many further convictions would have been included without the decision to limit the availability of the new sentence to cases of conviction on indictment?

Lord Stewart of Dirleton (Con): My Lords, the purpose of the amendment was to reflect the approach adopted across England and Wales, and Northern Ireland. The "waterfall" approach means that courts can impose the new sentence only where they do not impose, for example, a life sentence or an extended sentence. Within the Scottish sentencing framework, this waterfall includes the sentence of detention without time limit, which was unintentionally omitted during initial drafting of the clause. As I said earlier, subsection (6) in the previous version of the Bill was amended during the Commons debate. The amendment would simply remove a reference to a provision that no longer exists.

Just as the noble Lord, Lord Thomas of Gresford, is aware of attractive waterfalls in Scotland, I am aware of attractive waterfalls in Wales. I hope that some day soon we will be permitted to discuss them in a friendly fashion together.

Amendment 8 agreed.

Amendment 9

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

9: Clause 23, page 21, line 2, leave out "or (6)"

Member's explanatory statement

This is a consequential amendment required as a result of the amendments already made to the Bill to limit the availability of the new terrorism sentence introduced by Clause 23 to cases of conviction on indictment.

Amendment 9 agreed.

Clause 23, as amended, agreed.

Schedule 7 agreed.

Clauses 24 and 25 agreed.

Schedule 8 agreed.

Clause 26 agreed.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): We now come to the group beginning with Amendment 10. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in this group to a Division must make that clear in the debate.

Amendment 10

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

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

"Rehabilitation and de-radicalisation programme

Within six months of this Act coming into force, the Secretary of State must—

(a) publish a strategy setting out how a programme of rehabilitation and de-radicalisation is to be applied to those sentenced under Part 1 of this Act; and

(b) lay a copy of the programme before Parliament."

Lord Hunt of Kings Heath (Lab) [V]: My Lords, first, I declare an interest, as my wife is an adviser on the Prevent programme in the further education sector. The importance of this amendment was driven home yesterday by comments from Jonathan Hall, the Independent Reviewer of Terrorism Legislation, when he said that terrorist prisoners are not being prosecuted for radicalising fellow inmates and that extremism is being encouraged behind closed doors in our prisons. Although I broadly support the major provisions of the Bill that are intended to ensure that serious and dangerous terrorist offenders spend longer in custody, they surely have to go hand in hand with a rigorous programme of rehabilitation and deradicalisation.

The Government's claim that longer sentences will allow more time in which to support disengagement and rehabilitation is, frankly, fanciful in the light of experience over the last few years. Even the impact assessment published alongside the Bill acknowledged that there is limited evidence of the impact of longer prison terms on reoffending and that there is a risk of offenders radicalising others during their stay in custody. So far, the Government have been less than convincing on how they are to tackle the evident problems in our prisons with terrorist offenders, so my amendment seeks to ensure that Ministers have to publish a strategy setting out how a programme of rehabilitation and deradicalisation is to be applied to those sentenced under Part 1 of the Bill.

The importance of gripping this was certainly underlined by Jonathan Hall yesterday, when he announced that he has decided to review terrorism in the prison estate in England and Wales. As he said,

[Lord Hunt of Kings Heath]
how terrorism is detected, policed, disrupted and prosecuted when it occurs within the prison estate is relevant to the overall effectiveness of terrorism legislation. Mr Hall said that he is particularly focused on acts within the prison estate that amount to criminal offences, such as encouraging terrorism or disseminating terrorist publications, the status and influence of convicted terrorist prisoners within the prison estate, and whether there is any connection to prison gangs. His review is of course highly relevant to my amendment, and particularly to its timing, but it does not detract in any way from the need for a concerted government strategy.

It is not as though Ministers did not know that they had real problems here. In 2016, the review by former prison governor Ian Acheson warned of a growing problem within prisons. Anti-terrorism legislation passed in the aftermath of 7/7 had led to a significant increase in conviction rates for terrorist offences. He identified that, progressively, more of those offenders were held outside the high security estate and that some were proceeding through the offender management system towards release into the community. Such prisoners extended the threat of radicalisation beyond those arrested for terrorist offences. Other prisoners, both Muslim and non-Muslim, serving sentences for crimes unrelated to terrorism were then vulnerable to radicalisation by Islamist extremists. Acheson argued, four years ago, that

"a central, comprehensive and coordinated strategy is required to monitor and counter it"

and

"focus on greater coordination with the police."

The Government responded in time by creating a new Security, Order and Counter Terrorism directorate. Specialist units were promised to allow greater separation and specialised management of the highest-risk individuals, with improved capacity for responding swiftly to serious violent incidents. Improved staff training, tightened vetting and removal of extremist literature were also promised, alongside greater focus on the safe management of corporate worship. For all those fine words, little progress has been made. Indeed, last week it emerged that only a handful of nearly 200 people in prison for terror-related offences were in the separation places recommended by Mr Acheson.

4 pm

These failures cannot be divorced from more general failings in our overcrowded and understaffed prisons. I come back to Ian Acheson because his more recent analysis in 2019 for the Centre for Social Justice pinpointed the issues faced. He said:

"Our prisons are in a terrible state … The most recent failings have been driven by a reduction in the number of prison officers working in our prisons, but longer-term failings have included a defeatist attitude towards tackling drugs and addiction, and a failure to keep the prison estate up-to-date and fit-for-purpose … Squalor, indolence and brutality have become normalised within the walls of many of our jails—particularly those local and medium security establishments that deal with short-term offenders … Ruinous cuts, inflicted on front line staff as the prison population increased, have made a mockery of a rehabilitation culture when staff routinely suffer serious assaults and cannot themselves feel safe at work".

This is hardly the atmosphere in which to conduct rehabilitation and a successful deradicalisation programme. It is abundantly clear that the Government do not have a cohesive and credible strategy and it is incumbent on them to recognise that and come forward with credible and funded programmes to turn this around.

My amendment, with the distinguished support of the noble Lords, Lord Carlile and Lord Ramsbotham, and the noble Baroness, Lady Hamwee, would require that within six months of the Act coming in to force, the Secretary of State must publish a strategy setting out how a programme of rehabilitation and deradicalisation is to be applied to those sentenced under Part 1.

I understand that Mr Hall's review announced yesterday will clearly be important in updating our understanding of the challenges and that a government strategy would clearly be informed by that and, to some extent, the timing of it. However, it is not credible nor right that the Government should seek to extend sentences for terrorists without a parallel determination to improve rehabilitation and deradicalisation programmes. I very much hope that the House will support this. I beg to move.

Lord Carlile of Berriew (CB) [V]: My Lords, I give my strong support to both amendments in the group: that moved by the noble Lord, Lord Hunt of King's Heath, and the one that will be spoken to later by my noble friend Lord Ponsonby of Shulbrede.

I want to start by thanking the joint strike force on the Government Front Bench—the noble Lord, Lord Wolfson, and the noble and learned Lord, Lord Stewart—who have brought a refreshingly clear and responsive attitude towards debates on quite complicated legal issues. I can say of both of them that their engagement with Members has been exemplary; the noble Lord, Lord Wolfson, has specialised in short, 20-minute conversations that cover everything in a relatively short time. I just hope that the noble Lords will not get over the open consultation they are giving to other Members of your Lordships' House. It is very welcome.

I too want to reflect on what was said by the Independent Reviewer of Terrorism Legislation, Jonathan Hall QC, yesterday. Obviously, he is very concerned about the efficacy, if such efficacy exists, of deradicalisation programmes in prisons. I am given to understand that the successor to my short-lived appointment as Independent Reviewer of Prevent will soon be appointed. I wonder whether this afternoon, as a piece of instant gratification to us all, the noble and learned Lord, Lord Stewart, in replying to this debate may be able to tell us who that is going to be and announce the appointment. I am given to understand that it may literally be imminent.

During my time in that role, just as I came to the end of it as a result of an unwelcome judicial review, I was about to start the sort of examination that has been announced by Jonathan Hall. There is a background to it. A whistleblower came to see me from the prison where Usman Khan, the Fishmongers' Hall terrorist, was held. On my advice, that person immediately spoke to officials at the Home Office and the Home Office was made aware of the problems. It is clear that deradicalisation programmes in prisons are not working at all well. Maybe some are working but nobody knows which ones are working and on whom.

I draw your Lordships' particular attention to proposed new subsection (2) in Amendment 35 from my noble friend Lord Ponsonby, which sets out six criteria that need to be examined to see how these programmes are working. When I was the Independent Reviewer of Prevent, I had a review carried out of all the academic literature on Prevent, including these programmes. It exposed that no real measurement is being made of such programmes—no surprise given that the Fishmongers' Hall terrorist was thought to have been totally reformed. Before the programmes are put in place, they need to be carefully analysed and verified by proper, academic and, where possible, neurological research in which polygraphs are not an answer in themselves but a legitimate neurological tool as part of the armoury of an assessor.

I hope that the Government will recognise that these two amendments raise some serious issues that require the closest of examination.

The Deputy Chairman of Committees (Baroness Henig) (Lab): The noble Lord, Lord Ramsbotham, has experienced computer problems, so we must move on to the noble Baroness, Lady Hamwee.

Baroness Hamwee (LD) [V]: My Lords, my name is to the amendment of the noble Lord, Lord Hunt. It would have been added to the amendment of the noble Lord, Lord Ponsonby, but I was caught out by the speed at which we suddenly arrived at these proceedings. I appreciate that there are differences between the amendments, including the time period for review, and the amendment of the noble Lord, Lord Ponsonby, is not confined to prisoners sentenced under Part 1. In particular, there is the criteria for assessment to which the noble Lord, Lord Carlile, referred.

Like others, I have been struck by Ian Acheson's work. One of the many things that he has said that has been quoted widely is that:

> "We cannot speak to dead terrorists. We can speak for dead victims. They demand that policymakers take risks to ensure that the people who wish to harm us through a corrupt ideology are engaged, not shunned. This should happen not because states are weak, but because they are confident the strength of their values will ultimately prevail."

He has, of course, described prisons as incubators of radical behaviour. They are incubators of crime of all sorts: Islamic extremism, right-wing extremism, drug crime and other organised crime. Are there hothouses within the incubators? Given that resources are not infinite, what is the best balance between work in prison and work in the community? To pick up a point made earlier this afternoon, I do not regard the rights of offenders versus the public as being the issue; both are about effective means of achieving the safety of the public.

Programmes must be assessed and, no doubt, evaluation and adaptation is not a one-off but a continuing process. All this has a context: the conditions in our prisons. That is hardly a novel point. How suitable are those places for rehabilitation? How well trained are staff? Do they have the capacity to spot the signs of how prisoners are affected by other prisoners and by their experience of imprisonment?

I have not seen mention, though I am sure it has been addressed, of the recruitment of staff from Muslim communities, who may be alert to what non-Muslims would not see. In the interests of balance, I should refer—although I am not sure how—to those who might be thought of, in a prejudiced, caricatured way, as having right-wing sympathies. I am not sure how you would do that, but I want to make it clear that this is not a single issue.

If terrorists are segregated from the rest of the prison population, does that reinforce their beliefs and attitudes? Is there a cumulative experience? What if the terrorism is rooted in different, opposing ideologies? What are the vulnerabilities of prisoners to becoming radicalised? How different is that process from being drawn further into, say, drugs crime or other violent crime? Indeed, may it not require more sophistication and knowledge to draw someone into Islamist extremism, which, as I understand it—others will know much more about it—involves much teaching and studying of the Koran?

None of this can be separated from what goes on outside prison, including when a prisoner is on licence. The skills required by the probation service are considerable, especially in the face of what I understand to be increasing sophistication on the part of prisoners on licence regarding how to game the system—the noble Lord, Lord Carlile, may have referred obliquely to that. I cannot begin to answer my questions, and there are not nearly enough of them, but this is the moment to ask them.

Lord Faulks (Non-Afl) [V]: My Lords, I join other noble Lords in welcoming my noble friend Lord Wolfson to his position. I can say from experience that it is a challenging but rewarding post.

It is well understood that deradicalisation programmes are particularly challenging to evaluate. There is nothing new about this. I remember attending meetings in Brussels to discuss with my fellow Justice Ministers the problem of radicalisation in prison and the best response to it. There was no real agreement on that but my clear impression was that in 2015, we were already adopting a much more sophisticated approach to the problem than were other countries within the European Union. This is not some tedious pro-Brexit point: the whole purpose of our meeting was to try to share intelligence and work out the best response. However, even the most enthusiastic supporter of the various deradicalisation initiatives would acknowledge the difficulty of assessing their success or otherwise.

As I understand it, there are already a number of programmes deployed in prisons that are targeted at terrorist offenders, and I expect the Minister to tell us a great deal more about them. I have read what Jonathan Hall said about what are, effectively, offences that are committed in prison by the radicalisation of prisoners by other prisoners. This may well have happened in the case of the murder of three men in Forbury Gardens in Reading, which many noble Lords will remember all too clearly.

In 2016, Ian Acheson made a number of recommendations. A number of noble Lords have said that little progress has been made. I await the Minister's comments on that, but I understood that quite a few

[LORD FAULKS]
initiatives had been taken, including training officers to spot signs of extremism and increasing the number of staff with specific counter-terrorism experience or knowledge.

4.15 pm

One of the most difficult decisions is whether to separate terrorists from other prisoners. I can see that the advantage of doing so is that it restricts the opportunities for proselytising. However, at the same time there is a real risk of giving terrorists some sort of quasi-political status. My fellow Ministers in the European Union considered that separation should be avoided at all costs, because conferring such a special status on terrorists could even increase the apparent respect in which prisoners are held in some quarters if they have been involved in terrorism. It could even become some form of rallying cry to others who are potentially susceptible to extreme views. Can the Minister tell us the Government's view on this issue? In particular, how many prisoners—so far as it is possible to say—do the Government think are in a position where they might affect those in prison who have the potential to be deradicalised? That would give us an idea of the scale of the problem.

I welcome this amendment as a way of probing the Government's plans with regard to deradicalisation. It is a challenging process, and one, as we have seen, where individuals can confound all those who genuinely hope to find out whether they have changed their ways. These ideas are deeply embedded in the psyche of many who have been radicalised. Like other noble Lords I look forward to Jonathan Hall QC's recommendations on radicalisation in prisons. However, while I welcome further elaboration, I am not convinced that these amendments are needed.

The Deputy Chairman of Committees (Baroness Henig) (Lab): The noble and learned Lord, Lord Morris of Aberavon, is not on the call, so I call the noble Baroness, Lady Jones of Moulsecoomb.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I would like to say everything I said on Amendment 7: we need effective rehabilitation, deradicalisation and reintegration of terrorist offenders. Right-wing extremism is growing. Research by HOPE not hate found that one in four people in Britain believe at least some element of QAnon conspiracy theories. These conspiracies allege that the world is run by satanic paedophiles who eat babies and want to kill 90% of the world's population. The only logical solution for anyone who believes that is to fight and kill the people in charge, to stop it happening. The attack on the Capitol was only the beginning of such madness.

We are likely to see violence here in the UK too as a natural consequence of growing belief in these conspiracy theories. However, whatever the motivation of terrorists, the common theme is that they have been brought into such a deeply flawed belief system that they are prepared to inflict severe harm on other people. The only option is to repair those belief systems so that the perceived wrongs are no longer so severe as to justify harming innocent people.

I hope the Government can see that this problem will happen and will expand. We need better legislation to cope with it, and better practices inside and outside prisons.

Lord Robathan (Con): My Lords, I listened carefully to the noble Lord, Lord Hunt, and agreed with a great deal of what he said—and I understood it all. I realised that that was because he is not a lawyer either. Nevertheless, even as just a layman, I think we all appreciate how hugely difficult this issue is. I also listened to the very sensible comments of the noble Lord, Lord Carlile; he has huge experience of this matter. It is terribly complicated, and wishful thinking will not make it go away.

The strategy we are talking about is very important, but this has been going on for at least two decades and I do not have total confidence in deradicalisation or rehabilitation. Neither does Jonathan Hall, who is currently carrying out his review. We talk about rehabilitation but Usman Khan—who the noble Lord, Lord Carlile, mentioned—killed his mentor, Jack Merritt, who believed in his redemption and had faith in his deradicalisation, because Khan managed to lie successfully. Do polygraphs and lie detectors find this out? I do not know.

I agree with many of the points made by the noble Lord, Lord Carlile, and others. This hugely complicated issue needs further thought and deep consideration of how, if at all, we can solve these problems. With religious fanaticism or a fanatic ideology, is it possible to deradicalise people? I do not know. Are we talking about what was mentioned earlier, those no-hope sentences? I hope not. Should we throw away the key as the noble Baroness, Lady Jones, suggested some of us want to do? I hope not, because I think people have to have some hope. However, I do think we need to have greater depth of thinking in this. I say to the Minister that we need to be looking at this in such depth that it may be we are still discussing it in a year's time.

Lord Woolf (CB) [V]: My Lords, in view of the speeches we have had from a number of noble Lords, there is nothing which I would want to detain noble Lords with regarding this amendment. I agree that it serves a useful purpose and particularly associate myself with the remarks made by the noble Lord, Lord Carlile, with regard to the openness of the Front Bench on behalf of the Government. Like him, I hope that will be something that will happily continue.

Lord Paddick (LD) [V]: My Lords, I welcome the noble Lord, Lord Wolfson of Tredegar, to his first Bill. In my limited contact with him, I think that he is more than a match for the challenge the noble Lord, Lord Faulks, alluded to. I completely agree with the noble Lord, Lord Hunt of Kings Heath, in his assessment of the current dangers of longer prison sentences in the absence of an effective programme of deradicalisation and rehabilitation. The noble Lord, Lord Carlile of Berriew, also mentioned the comments of the Independent Reviewer of Terrorism Legislation, Jonathan Hall QC. His concerns seem to chime with the concerns of all noble Lords who have spoken in this short debate. I do

not share the faith that noble Lords have in polygraph testing, for the reasons explained earlier by Lord Marks of Henley-on-Thames.

My noble friend Lady Hamwee rightly expressed concerns that prisons continue to be incubators, hothouses, or academies of crime—use which term you will—for crime generally, as well as places where vulnerable inmates are radicalised, whether by right wing extremists or by others. If ever there was evidence of the need for these amendments, it is what the Government describe as the

"range of tailored interventions available"—[*Official Report,* 21/9/20; col. 1650]

to the perpetrators of the Fishmongers' Hall and Streatham atrocities, that were designed to deradicalise and rehabilitate them while they were in prison. Unless and until the deradicalisation and rehabilitation of offenders is effectively applied to those sentenced under Part 1 of the Bill, and its impact is assessed, there is a real danger that the longer these terrorist offenders spend in prison, the greater the threat they pose to the safety of the public—whether by radicalising others in prison or directly upon their release. I intend to expand on these statements and the comments of the noble Baroness, Lady Jones of Moulsecoomb, which I agree with, when we come to the group beginning with Amendment 16.

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, my Amendment 35 is in this group. I agreed with everything my noble friend Lord Hunt said when he introduced his amendment. My amendment is different in detail, but the overall approach is the same—that is, to have a realistic and timed review of the various approaches to the Prevent programme which the Government is embarking upon.

I got an interesting briefing on this debate from the probation officers' trade union, Napo. It made a couple of points, which I will repeat. It said that in the offender management and custody model, it indicates that a high-risk offender should get one hour of individual contact per month with a probation officer. A probation office's staff have a minimum of 70 clients, so it is impossible for them to meet that requirement. The central point that Napo made in the briefing was that, when one reviews approaches and puts down procedures, the reviews need to result in practical change on the ground, otherwise they are destined to be repeated without effective change.

I was very interested to hear the contribution of the noble Lord, Lord Faulks, who was a very effective Minister. He talked about his experience in that role. He also, interestingly, talked about the status of prisoners when they are in prison. I occasionally visit prisons, and I have visited Belmarsh on a couple of occasions. Belmarsh is a prison within a prison and there is undoubtedly status for the people on the inside prison; you can tell it from the tone of voice of the prison officers when they talk about the facility they are involved in managing. There is status to be gained through the way you are treated while in prison. I unfortunately know that to be true through friends of friends whose children have ended up in prison. There is a status to be gained within prison, which sometimes young men cannot have when they are outside prison.

I welcome the review of terrorism legislation by Mr Hall. I also note that it is Mr William Shawcross who has been appointed to review the Prevent programme, and I know he has extensive experience on this matter. The purpose of both these amendments is to tease out the progress and practical changes which the Government hope to make through reviewing the Prevent programme.

Lord Stewart of Dirleton (Con): My Lords, I am grateful to both noble Lords for their amendments, which bring us to a very important set of issues. I discern that the Committee is united in believing that data is necessary in order that we might, as much as possible, develop and devise schemes by which deradicalisation can be accomplished. The Government do not think that a new strategy for rehabilitation and disengagement nor a review of the current delivery is beneficial at this time. However, to reassure noble Lords, I want to briefly set out the important work being done in prisons and probation to turn terrorist offenders away from extremism so that they can be released safely. The Government have a clear strategy for rehabilitation programmes for terrorist offenders. The important work in prison and probation here delivers against the Contest strategy, which was recently refreshed and published. Since then, significant work has been done to strengthen our approach to rehabilitation and disengagement of terrorism offenders. This strategy applies to all terrorism offenders, not only those who will receive the new serious terrorism sentence or be subject to the changes made by Part 1 of the Bill.

4.30 pm

Rehabilitation programmes are not the only way we manage and reduce the threat. These programmes operate in conjunction with our holistic approach to risk reduction through specialist case management, a network of counterterrorist specialists, multi-agency risk assessment and intelligence sharing, specialist counterterrorist staff training and operational controls. Work is ongoing.

Earlier this year, this Government announced a major improvement programme in the sector, the counterterrorism step-up programme, which includes the creation of a CT assessment and rehabilitation centre. This centre represents a major shift in our capability in these fields. It will build an evidence base of what works. As noble Lords have observed, it is notoriously difficult to prove what works in the rehabilitation of terrorist offenders. I refer particularly to the thoughtful observations of the noble Lord, Lord Faulks, on that subject. However, this centre will deploy specialists and use the best available evidence to inform what is delivered. That, in turn, will feed into policy. The CT assessment and rehabilitation centre will have greater capacity to respond to new threats.

For example, there is that growing threat—which the noble Baroness, Lady Jones of Moulsecoomb, identified and to which the noble Lord, Lord Paddick, also spoke—from extreme right-wing terrorists that needs to be addressed. Furthermore, more highly trained staff will be recruited to deliver current intervention programmes. This includes bolstering the cohort of

[Lord Stewart of Dirleton]
specialist psychologists and, in relation to the deformation of religious faith that can lead to terrorism, trained chaplains who deliver interventions.

Since 2010, significant work has taken place to develop and improve counterterrorism interventions. The primary intervention delivered with this cohort is the Healthy Identity Intervention, known by its initials HII. It is informed by ongoing evidence, including evidence gained from international partners, and it has been accredited by a panel of experts who confirmed it works in line with the best available evidence.

The direction and ambition of this work is clear, and it is the Government's view that a new strategy is unnecessary. What is required is for us to deliver this important agenda, and I trust noble Lords will be following that progress with interest. The impact of some measures in this Bill will take time to be considered through proper evaluation. A review in such a short timeframe as the amendments propose would not, I respectfully submit, be able to consider the effect of these programmes or the impact of this important Bill with proper depth and clarity. Instead, noble Lords will have an opportunity to review the Bill's impact in the usual way three years after it receives Royal Assent.

I said earlier, when referring to group 3 of amendments, that I would try to answer the questions raised by the noble Lord, Lord Ponsonby of Shulbrede, on the assessment and the value of interventions. I have anticipated what I will say in my remarks thus far. Let me go into some further detail.

Rehabilitation is the key to our approach, both in custody, in prison, and in the community, on licence out of the prison. More time in custody will mean more time to carry out targeted, tailored interventions with each offender. We have identified a range of interventions—physiological, theological and ideological—which take into account the risks and needs of each offender, while helping to encourage and facilitate the objectives of desistance and disengagement. Earlier this year, the Government announced the creation of the counterterrorism assessment and rehabilitation centre to which I have referred.

Anxious questions were posed about the effectiveness of these rehabilitation programmes. In particular, we were reminded—and we have been reminded already this afternoon—of the terrible events arising at Fishmongers' Hall. Her Majesty's Prison Service delivers a formal and accredited programme in custody and the community: that is the Healthy Identity Intervention programme. There is also the prison strand of the Desistance and Disengagement Programme, rolled out in 2018. That programme provides a range of intensive, tailored interventions and practical support designed to help intervention. These intervention programmes have a robust research and evaluation mechanism built into them. That will be at the heart of the work of the new CT assessment and rehabilitation centre.

As I say—again in answer to the noble Lord, Lord Ponsonby of Shulbrede—we appreciate that measuring changes in behaviour is notoriously hard, especially in such a small cohort relative to the size of the prison and probation population in England and Wales, and for that matter elsewhere in the United Kingdom. All terrorist prisoners are managed through a specialist case management process. This includes standardised tools for assessing and grading offender risk and needs, with a strong and regular multi-agency governance of the cases. We have a range of rehabilitative tools in prison. These tools assist in support of the management of risk and the needs of each individual offender. As I say, there is a holistic approach to rehabilitation that seeks to allow us to manage effectively and reduce the threat.

Turning again to remarks by the noble Lord, Lord Faulks, most extremist prisoners can be managed in the mainstream prison population, with appropriate conditions and controls underpinned by a specialist multi-agency counterterrorism risk management process, which allows risk assessments and intelligence to be shared appropriately with the partners. Separation centres were never intended for use with all or significant numbers of terrorist offenders. If we were to put all, or a significant proportion of, those with terror convictions, extremist views or susceptibilities to radicalisation into them, it would—as I think the noble Lord appreciated from his comments—undermine their main purpose, which is to separate the most dangerous from those vulnerable to radicalisation or further radicalisation.

To add to my remarks about the nature and quality of tools used in prison in this difficult and challenging field, I refer the Committee to the Extremism Risk Guidance 22+. This is the principal tool used to assess extremist offending by specially trained psychologists or probation officers. This requires the assessor to consider 22 factors, and any additional factors, to understand an individual's pathway to engagement in extremism, how they overcame inhibitions against offending and their capability to contribute to, or to commit a further extremist offence. It contributes to decision-making by a multidisciplinary team about the individual concerned.

I refer the Committee to the Healthy Identity Intervention. This is a one-on-one programme that supports desistance and disengagement from extremism by targeting the social and psychological drivers of extremist offending. The central aims are to reduce an individual's willingness to offend on behalf of an extremist group, cause or ideology and to promote and facilitate disengagement from an extremist group, cause or ideology. It is neither ideologically focused nor intended to re-educate participants in a particular set of beliefs or doctrine. Rather, it aims to encourage individuals to reflect on and re-evaluate their commitments, beliefs and values. It has been subject to scrutiny by the Correctional Services Accreditation and Advice Panel, and specialists from the field of extremism research. The purpose of this was to ensure that the intervention is informed by the most current evidence base. The Ministry of Justice is committed to conducting evaluations of accredited programmes to assess delivery and impact on reoffending and other related outcomes.

With special reference to radicalisation in the context of faith or belief, the desistance and disengagement programme includes a theological and ideological intervention programme. In January 2019, a small group of 23 prison chaplains was trained to deliver this with prisoners. In its first year, the programme has received

47 referrals via the case management system. I am told that it has seen some early successes, with a number of chaplaincies and their wider case management teams reporting prisoners beginning to show signs of questioning, and even rejecting, extremist ideology.

Noble Lords will appreciate that none of that is intended to suggest that the Government think the answers are there and have been accomplished. I hope noble Lords will not think me complacent in rehearsing them; I seek to provide assurance that the Government are aware of the extent and complexity of the problem to which the Committee has alluded, and we are seeking to advance solutions in a number of ways.

The noble Lord, Lord Hunt of Kings Heath, drew to the Committee's attention the remarks of the Independent Reviewer of Terrorism Legislation, Jonathan Hall QC. The Government welcome his review on this important issue. I think I speak for the whole House in saying that I am sure he will bring his rigour, authority and independence to the task. The Lord Chancellor has asked officials to give him the support and access that he needs. The Government will consider carefully his findings and recommendations once they are available.

I am grateful to the noble Lord, Lord Carlile of Berriew, for his description of my noble friend Lord Wolfson and me as the "joint strike force". I am particularly happy with this, as it suggests a dynamism on my part which others have often failed to identify. I hope the whole House will accept our assurance—I think I speak for my noble friend in this—that we will seek to live up to the noble Lord's very kind words and maintain his favourable opinion. I say that also with reference to the kind remarks of the noble and learned Lord, Lord Woolf.

The noble Lord, Lord Carlile, referred to the absence of real measurement in place, to the necessity of academic and neurological research and to providing the tools for assessors in dealing with these exceptionally difficult and complex problems. I hope the outline I have given of the programmes already in place has gone some way to satisfying him as to the importance with which the Government treat these matters. I also hope he will accept my assurance that in no sense do we on this side of the House consider that these have reached an end; rather, they are part of an evolving understanding of the problem and, equally, an evolving series of strategies to deal with it.

4.45 pm

The noble Baroness, Lady Hamwee, also referred to recruitment and radicalisation in prisons. I refer her to my earlier remarks on the recruitment of specialist chaplains; imams are also trained within that group to provide interventions within the programme to which I spoke. I agree with her that the issues are indeed complex.

The noble Lord, Lord Faulks, was concerned that little progress appears to have been made. I hope that what I have said will reassure him that, while we appreciate the ultimate objective is a long way from being reached—indeed, such is the nature of the difficulty, it may never be reached; we may always be pursuing and trying to catch up with an evolving threat—none the less, serious thought is given to the matter. Preparation to deal with it is in hand.

The noble Baroness, Lady Jones of Moulsecoomb, and others referred to the evolving and growing risk of right-wing terrorism and radical views such as she described. I am sure she will agree that part of the answer to this is robust and vigorous debate within freedom of speech to challenge such unpalatable, harmful and criminal views as they arise.

The noble Lord, Lord Robathan, mentioned the complexities of the matter and spoke about the means by which these objectives of deradicalisation may be followed. He referred to polygraphs; to echo some of the remarks made earlier by the other wing of the joint strike force, polygraphs are merely part of a battery of measures to be deployed in assessing these matters. He asks whether it is possible ultimately to succeed in deradicalising; I have made some remarks on that already. I say again that our understanding of the problem, and of where potential solutions may arise, is evolving.

I say to the noble Lord, Lord Paddick, that the effectiveness of the strategies which the Government have in place is bound to improve. Methodologies will improve as time goes on and data is collected and studied.

In real terms, I do not disagree with anything the noble Lord, Lord Ponsonby of Shulbrede, said about the need for a review of the operation of these measures. However, is it realistic to call for such a review within the short time for which the amendments call? For the reasons I have discussed concerning the acknowledged difficulties around collecting and examining data, I say that it is not.

Against that background and in light of the assurances I have sought to give, I hope the noble Lord, Lord Hunt, will see fit to withdraw his amendment, and that in due course the noble Lord, Lord Ponsonby, will see fit not to press his.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, I am grateful to all noble Lords who have taken part in what has been an important and fascinating debate. The noble Lord, Lord Carlile, backed up by the noble and learned Lord, Lord Woolf, and the noble Lord, Lord Paddick, paid tribute to the noble and learned Lord, Lord Stewart, and the noble Lord, Lord Wolfson, for their approach from the Front Bench. We have seen from the full reply of the noble and learned Lord, Lord Stewart, that that is endorsed by me and other Members of your Lordships' House.

I do not pretend that this is easy. As both the noble Lords, Lord Carlile and Lord Faulks, said, deradicalisation programmes are difficult to evaluate, and we should not underestimate the challenge that any Government would face. But, as the noble Baroness, Lady Hamwee, said, there are some pertinent questions to be asked about the deliverability of the current programmes in relation to deradicalisation and the skills required by staff in prison.

The noble Baroness, Lady Jones, mentioned the importance of considering right-wing extremism as terrorism too, and I endorse that. I also endorse the implication from the noble Lord, Lord Robathan, that we as lay people have something to say in these matters. Indeed we do, and I always believe it right that in

[Lord Hunt of Kings Heath]
some of these technical debates we hear from lay people and not just people within the legal and policing professions.

My visits to prisons in my two years as Minister in the Ministry of Justice some years ago taught me about the power of good rehabilitation programmes, which is why I am so keen that the Government have a proper cohesive strategy for taking this forward. I also believe that, as a lay person, I bring a strong sense, as the noble Lord, Lord Paddick, said, that it is not right for the House to agree to these longer sentences without having some guarantees of the cohesive programme of rehabilitation and deradicalisation that needs to go with it.

I welcome Amendment 35, tabled by my noble friend Lord Ponsonby. It is different in detail but, as he said, overall our approach is the same. He was right to point out some of the practical issues involved, such as the fact that probation officers' workload is so heavy, and the real issue in prisons: the cuts to front-line staff, which have caused such a problem to the whole estate and undermined the rehabilitation culture.

The noble and learned Lord, Lord Stewart, in his long, generous wind-up, emphasised the importance of data. He also set out some of the initiatives that the Government have taken since Ian Acheson's report. I was grateful to him. He also referred to a number of achievements. The question is whether those are sufficient. From my point of view, I doubt that they are. Clearly Mr Hall's review is a potential game-changer, and it is sensible to see its outcome. None the less, the Bill is an opportunity to ensure that, whatever that outcome, there is a requirement on the Government to come forward with a cohesive strategy. I think we ought to return to this on Report. Having said that, I thank all noble Lords and beg leave to withdraw my amendment.

Amendment 10 withdrawn.

The Deputy Chairman of Committees (Baroness Henig) (Lab): We now come to the group beginning with Amendment 11. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Clause 27: Removal of early release for dangerous terrorist prisoners: England and Wales

Amendment 11

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

11: Clause 27, page 24, line 5, at end insert—

"and the prisoner was aged 21 or above at the time of their conviction"

Lord Falconer of Thoroton (Lab) [V]: These are three simple amendments dealing with the sentencing framework for England, Scotland and Northern Ireland. The Bill as drafted removes the chance of parole for anybody, irrespective of their age, if they have committed a dangerous terrorist offence. As I have made clear, we on this side of the House are keen that there be strong penalties, because the aim is to prevent terrorism. However, we do not think it right that the possibility of parole be removed altogether for those people convicted when they are under the age of 21.

There are three reasons for that. First, the possibility of change must be higher when you are under 21. We are not starry-eyed about this, but that possibility should be there. Secondly, it will make prisoner management easier, as all prison governors attest. Thirdly, you avoid the possibility of the detention of someone over a very long period of time, and the sense that that person has served his sentence will create a recruiting sergeant in certain communities.

Each case has to be looked at on its merits; release would occur only when the Parole Board was satisfied. Occasions when mistakes have been made are all too well known and, indeed, have inspired this Bill. But if the aim is to provide as much security as possible for the community as a whole, then removing the chance of parole for anybody under 21—and it is only a chance of parole—is a mistake. I beg to move.

Lord Thomas of Gresford (LD) [V]: The law has always distinguished between the adult and the young offender in many ways. Policy has always been to make every effort to rehabilitate the young before they become hardened criminals. It is even more important not to turn them into hardened terrorists.

"What works?" asked the noble and learned Lord, Lord Stewart of Dirleton—the Scottish wing of the strike force. A large incentive when persuading offenders to amend their ways is the fact that they have their chance, before the Parole Board, to have release if it is appropriate and safe.

The outcome of prison is the person who walks out of the gate at the end of the sentence. What has happened to him inside? Has he been radicalised or rehabilitated? Some go in with no particular ideology and are radicalised. Others go in radicalised and must be given the opportunity to change their lives. They should be managed with the personnel and tools described by the noble and learned Lord, Lord Stewart.

Young people can rehabilitate if they are given the courses and programmes that exist to enable them to gain skills to support themselves outside the prison environment. The longer the sentence, the more difficult that is. Prisoners convicted of terrorist offences provide a further problem. Have they retained the beliefs that got them into trouble in the first place? Or are they still radicalised? I was pleased to hear of the theological and ideological interventions that are promised to deal with problems such as those.

I support these amendments, because I believe we should continue that long-held view that young people should be treated differently and given a chance to turn their lives in a different direction.

5 pm

Lord Wolfson of Tredegar (Con): My Lords, as the noble and learned Lord, Lord Falconer of Thoroton, explained, Amendments 11, 13 and 14 are intended to

retain the current release provisions for under-21s sentenced to an extended determinate sentence for a serious terrorism offence. As has been mentioned, the Fishmonger's Hall and Streatham attacks revealed the devastating consequences of releasing terrorist prisoners too early. In the Bill, we are changing the release arrangements for all offenders convicted of serious terrorism offences to ensure that the most dangerous and serious terrorist offenders serve their full custodial term, essentially for two reasons—first, to reflect the severity of their crimes but, secondly and perhaps more importantly, the intention to preserve lives.

The amendment seeks to draw a distinction in release policy between those aged over 21 and those younger. However, the Bill will introduce changes to release for both adult and youth offenders sentenced for serious terrorism offences. The extended determinate sentence already operates in the same way for adults and youths in every other aspect, and because the nature of the offending and the threat posed is so severe, these changes should align with that pre-existing approach.

For those aged under 18, instances of terrorist acts occur, although, thankfully, they are rare. I shall come back to that point later. Among those under-18s are some who are capable of extremely serious offending and present a real threat to the public. They are the dangerous few youth offenders that these provisions aim to capture. This measure, therefore, is about offenders who have been deemed dangerous by the court. That also means that, when sentencing the offender to an extended determinate sentence, the judge would have already taken into account age and other relevant factors.

In that context, I turn to the points raised by the noble and learned Lord, Lord Falconer. As to the possibility of change, one has to remember that this measure is about public protection and applies only to the most serious young offenders who have committed terrorist offences that carry a maximum sentence of life and have been deemed dangerous by the court.

We are alert to the point on prisoner management and have carefully considered it. There are a number of programmes within prison to make sure that the sentences proposed here do not adversely affect prison management within the institution. Although, as the noble and learned Lord, Lord Falconer, correctly said, the prisoner is likely to end his sentence as an adult, the fact is that even when sentenced at the time, the nature of the offences mandate the sort of sentence we now propose.

As to the point made by the noble Lord, Lord Thomas of Gresford, on radicalisation in the prison system, there are, as my noble and learned friend Lord Stewart pointed out, a number of interventions in the prison system designed to prevent radicalisation. They are extensive. I will not go over the points that he made earlier but I repeat and endorse them. As I said—I said that I would come back to this point—the number of young offenders in this regard who have been radicalised in prison is extremely small. We are alive to the noble Lord's point, but do not believe that that is a reason not to proceed in the way in which the Bill is currently drafted.

Finally, and only because I wish to reassure the noble and learned Lord, Lord Falconer of Thoroton, that I read all his amendments with extreme care, these seem to be technically defective, given that the wording is to be added after the close of quotation marks and, on the face of it, would appear to apply only to new Section (2A)(iv), and affect only the provisions related to service personnel. However, I hope that I have approached his amendments on their merits. For those substantive reasons that I have set out, I respectfully invite the noble and learned Lord to withdraw or not move his amendments.

Lord Falconer of Thoroton (Lab) [V]: I am grateful to the noble Lord, Lord Wolfson of Tredegar, for the careful way in which he dealt with my amendments. I fully accept and am guilty of the technical error he identified. He was kind to deal with the merits of the three amendments. I very much hope that the Government will reflect on what I and the noble Lord, Lord Thomas of Gresford, said because it is a considerable mistake to treat the under-21s the same as those who are 21 or over, particularly with regard to public safety. We will return to this matter at a later stage. With the leave of the Committee, I will withdraw my amendment.

Amendment 11 withdrawn.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): We now come to the group consisting of Amendment 12. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this amendment to a Division must make that clear in the debate.

Amendment 12

Moved by ***Baroness Prashar***

12: Clause 27, leave out Clause 27 and insert the following new Clause—

"Release on licence for prisoners serving a serious terrorism sentence: England and Wales

(1) The Criminal Justice Act 2003 is amended as follows.

(2) In section 244(1) (duty to release prisoners on licence) after "247A" insert ", 247B".

(3) After section 247A insert—

"247B Release on licence of prisoners serving a serious terrorism sentence

(1) This section applies to a prisoner ("P") who is serving a serious terrorism sentence under section 268A or 282A of the Sentencing Code.

(2) It is the duty of the Secretary of State to release P on licence in accordance with subsections (3) to (6).

(3) The Secretary of State must refer P's case to the Board—

(a) as soon as P has served the requisite custodial period, and

(b) where there has been a previous reference of P's case to the Board under this subsection and the Board did not direct P's release, not later than the second anniversary of the disposal of that reference.

(4) It is the duty of the Secretary of State to release P on licence under this section as soon as—

(a) P has served the requisite custodial period, and

(b) the Board has directed P's release under this section.

(5) The Board must not give a direction under subsection (4) unless—

(a) the Secretary of State has referred P's case to the Board, and

(b) the Board is satisfied that it is no longer necessary for the protection of the public that P should be confined.

(6) It is the duty of the Secretary of State to release P on licence under this section as soon as P has served the appropriate custodial term, unless P has previously been released on licence under this section and recalled under section 254 (provision for the release of such persons being made by section 255C).

(7) For the purposes of this section—

"appropriate custodial term" has the meaning given in section 268C of the Sentencing Code in relation to a sentence under section 268A of the Code, and in section 282C of the Sentencing Code in relation to a sentence under section 282A of the Code;

"the requisite custodial period" means—

(a) in relation to a person serving one sentence, two-thirds of the appropriate custodial term, and

(b) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under sections 263(2) and 264(2).""

Baroness Prashar (CB) [V]: My Lords, the principle aim of the amendment is to ensure that the Parole Board retains its vital role in assessing risk to determine the safe release of terrorist offenders given a serious terrorism sentence or an extended sentence. I am grateful to the noble Lords, Lord Anderson and Lord Ramsbotham, for supporting the amendment.

The amendment would remove Clause 27 and replace it with a new clause, which would provide for parole-authorised release for terrorist offenders given a serious terrorism sentence in England and Wales. The amendment is modelled on equivalent provisions on the extended sentences contained in Section 125 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. In line with these provisions, an offender sentenced to a serious terrorism sentence would become eligible for parole-authorised release at the two-thirds point in their sentence. The release test applied is the same as those for other sentences for dangerous offenders, whereby the board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined. If that test is not met, the amendment provides for the offender to be retained in prison until the end of the custodial term. During that period, the offender is entitled to a parole hearing to reconsider their case every two years.

It should be noted that the changes to serious terrorism sentences introduced by the amendment would apply only in England and Wales. Equivalent provisions for Scotland and Northern Ireland would need to be drafted for the changes to be fully workable. The amendment would also remove the changes to the release arrangements for terrorist offenders given an extended sentence in England and Wales introduced by Clause 27. Following the deletion of Clauses 28 and 31, other amendments would be needed to make equivalent changes to extended sentences in Scotland and Northern Ireland. This would mean that convicted terrorist offenders sentenced to an extended sentence for which the maximum penalty is life would continue to be eligible for parole-authorised release at the two-thirds point.

This amendment addresses the concerns raised by the Independent Reviewer of Terrorism Legislation, Jonathan Hall, as well as by me and a number of other Peers on Second Reading. They relate principally to how the new serious terrorism sentence and the changes to the extended sentence will result in a loss of the benefits of both a risk assessment and an incentive to reform which the parole process provides.

The parole process contributes to public protection in a number of important ways. First, it helps to ensure that dangerous people are not released when they would represent an unacceptable risk to the public. The Parole Board deals with some of the most serious and complex cases in the justice system. It rightly takes a cautious approach when assessing whether the statutory release test by Parliament is met. However, it also decides that around 10,000 prisoners need to stay in prison for the protection of the public. This means that fewer than one in four prisoners meets the Parole Board's stringent release tests.

Secondly, parole hearings provide an opportunity to give careful consideration to the risk presented by an individual and to put in place arrangements to mitigate the risk, if they are authorised for release. While no system for assessing future risk can ever be perfect, the Parole Board has an excellent track record when it comes to limiting the dangers posed by offenders on release. As Jonathan Hall has stated, with the new serious terrorism sentence and changes to the release arrangements for terrorist offenders serving extended sentences,

"the opportunity to understand current and future risk at Parole Board hearings has been removed."

Thirdly, the parole process provides hope and incentive for good behaviour and rehabilitation, particularly for offenders serving lengthy sentences. It can act as an encouragement for prisoners in the often difficult work of rehabilitation and reform. Poor behaviour and lack of engagement inevitably lessen the chance of release at parole hearings. Removing parole-authorised release removes a clear incentive for prisoners or authorities to engage in efforts to address their offending behaviour. It also reduces incentives for prisoners to comply with the prison regime more generally, which could put staff at risk of violence.

The changes introduced in the Bill also give rise to some significant anomalies in the sentencing framework for terrorist offenders. Under the provisions of the Bill, a life sentence will continue to be the most severe penalty available to courts. Unless an offender is given a whole-life sentence—there are currently just 62 prisoners with this sentence—these prisoners will be ineligible for consideration by the Parole Board once their punishment period is served. However, under the new serious terrorism sentence, an offender receives a 14-year minimum sentence, which must be served in full. Once that term is served, the prisoner is released automatically on an extended licence, without a risk assessment. Similarly, a terrorist offender given an extended determinate sentence, convicted of an offence for which the maximum penalty is life imprisonment, would have to serve the entire custodial term. However, once that term is served, they are released automatically on an extended licence—again without a risk assessment.

These provisions are also more confusing given the welcome changes that the Government have made elsewhere to strengthen the role of the Parole Board in its risk assessment of less serious terrorist offenders. In February 2020, the Terrorist Offenders (Restriction of Early Release) Act ended the automatic release of terrorist offenders at the halfway point of their sentence. Under this Act, these prisoners will be released only at the two-thirds point of their sentence if they can satisfy the Parole Board that their risk can be safely managed in the community.

It is surely worth considering parole participation in these new sentences to ensure that the benefits of both risk assessment and incentives to reform afforded by the parole process are not lost. As chairman of the Parole Board from 1997 to 2000, I have seen the incentives that parole provides at first hand. I too welcome the two new Ministers to the Front Bench and the open way in which they have engaged in Committee. I look forward to the Minister's response, and I hope that he spells out for me the rationale for removing parole from this set of offenders.

5.15 pm

Lord Anderson of Ipswich (CB) [V]: My Lords, it was an honour to put my name to this amendment, moved by the noble Baroness, Lady Prashar, with her experience as a former executive chair of the Parole Board for England and Wales. As she said, Clause 27, which this amendment would replace, aims to remove the role of the Parole Board in the case of certain dangerous terrorist offenders who have been given a determinate sentence. Clause 27 would do this by amending Section 247A of the Criminal Justice Act 2003, itself dating from only last year, which currently requires the Secretary of State to refer terrorist offenders serving any determinate sentence to the Parole Board at the two-thirds point of the custodial term.

There are instinctive attractions—including, no doubt, electoral attractions—in providing for all dangerous terrorist offenders to serve their entire sentences in prison. But the notion that such offenders are uniquely incorrigible is not supported by the facts. I remind the Minister of a Written Answer that I received from the noble and learned Lord, Lord Keen, last February, revealing that, of the 196 terrorist offenders released from prison in England and Wales in the seven years from January 2013, only six—barely 3%—had committed another terrorist offence by the end of that period. This illustrates a pattern of surprisingly low terrorist recidivism rates around the world, expertly analysed by Andrew Silke and John Morrison in an ICCT policy brief of September 2020 aptly entitled *Re-offending by Released Terrorist Prisoners: Separating Hype from Reality*.

This is not an argument for complacency. It most certainly does not mean that all is well in our prisons, but it is something to consider before we dispense with the Parole Board in the circumstances that Clause 27 would effect.

My successor but one as Independent Reviewer of Terrorism Legislation, Jonathan Hall QC, has been referred to today with wholly justified approval by at least two Ministers and numerous other noble Lords, so we should listen to the three reservations that he has voiced on Clause 27. First, it would remove the possibility of early release

"as a spur to good behaviour and reform for offenders who are going to spend the longest time in custody".

At the same time, it would deprive the prison authorities of an important tool for prisoner management. Secondly, it would remove the opportunity to explore current and future risk at Parole Board hearings. Thirdly, it would remove the opportunity for early release of

"child terrorist offenders, whose risk may be considered most susceptible to change as they mature into adults".

I endorse what the noble and learned Lord, Lord Falconer, said about that and the public safety implications in the last group.

Those reservations are addressed by this amendment and by the following group. I look forward to hearing what the Minister, whom I welcome warmly to his place, has to say about them.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): We have been unable to reach the noble Lord, Lord Ramsbotham, so we now move to the noble Lord, Lord Faulks.

Lord Faulks (Non-Afl) [V]: My Lords, the Bill has been broadly welcomed, in light of the Fishmongers' Hall and Streatham attacks, by noble Lords across the House. One could add to that sad litany of attacks the murder of three men in Forbury Gardens, Reading. Noble Lords accepted the need for legislation such as this with something of a heavy heart. There have been anxieties expressed in Committee today and at Second Reading about some aspects of the Bill. I particularly noted the comments at Second Reading of the noble Baroness, Lady Prashar, and the noble Lord, Lord Ramsbotham, who described himself as "horrified" by the reduced role of the Parole Board.

I share, I am sure, with all noble Lords very considerable respect for what the Parole Board does. Decisions about serious offenders are particularly challenging. The boards, which have enormous experience, are given a great deal of material to make their decision, which they do with scrupulous care. I do not see that the purpose of the Bill in any way excludes or marginalises the board. The purpose, surely, is to ensure that serious terrorist offenders spend longer in prison and longer on licence, and it is that fact that removes the Parole Board from the picture, not any lack of respect for what it does.

I listened carefully to what the noble Lord, Lord Anderson, said about the statistics on reoffending by terrorist offenders who are released, and I am sure that he is absolutely right to make that point. I would add just one gentle caveat, in the sense that a terrorist who commits another offence, maybe of the most extraordinary gravity, is not comparable to, say, a burglar who breaks into a house repeatedly, serious though that can be.

The offenders who will no longer be susceptible to review by the Parole Board will have their licence condition, when they are released, set by prison governors on behalf of the Secretary of State. As I understand their position, prison governors will be informed by the probation service, the multi-agency public protection

[LORD FAULKS]
panels, and presumably by information gathered about the prisoners in the prison or prisons where they have served their sentence, which will be something of an incentive for them to behave well. Prison governors have much experience of this process.

The Bill is certainly concerned with the protection of the public. Keeping the most serious offenders in prison for longer and removing their opportunity for early release is what causes the reduced role of the Parole Board. The removal of its involvement for what I understand is likely to be a very small cohort of 50 or so—perhaps the Minister can help—seems to be justified in the public interest.

Lord Carlile of Berriew (CB) [V]: My Lords, I agree with the noble Lord, Lord Faulks, that we are dealing with the determination of licence conditions in the context of terrorist prisoners having been sentenced to longer sentences. However, I agree with the noble Baroness, Lady Prashar, who has very considerable and relevant experience, and with my noble friend Lord Anderson of Ipswich that the Parole Board has an important potential role to play in these cases.

It is said that the determination of licence conditions can adequately be dealt with by prison governors. That may be true in some cases, but prison governors do not have the range of expertise, the judicial discipline and the clear legal accountability of the Parole Board. It is therefore my view that this task should be undertaken by the Parole Board, which has all the relevant qualifications to do it. If the Parole Board was placed in that position it would command the confidence of the public. Indeed, those who believe that too much control is being taken of prisoners by government would be able to see that there was a thoroughly independent, accountable, quasi-judicial organisation dealing with these cases empirically and on their merits.

Lord Marks of Henley-on-Thames (LD) [V]: My Lords, this amendment incorporates significant changes to Clause 27. In particular, as pointed out by the noble Baroness, Lady Prashar, with all her experience of the Parole Board, and by other speakers, the suggested replacement for Clause 27 would preserve the Parole Board's role. I regard the amendment as entirely helpful on the basis that, with some exceptions, the Parole Board has had an extremely good record of balancing the safety of the public with the need to rehabilitate offenders in society.

I will largely cover what I have to say on the principles involved in this amendment in my part in the next group. However, it seems to me that the noble Baroness, Lady Prashar, made the very important point that Clause 27, as drafted, involves automatic release on licence without any assessment of the safety of that release by the Parole Board. I accept that prison governors would be involved, but that, in my view, is no substitute.

In summary, it is my view that this amendment would be an entirely acceptable way to address the problems with Clause 27 as drafted, the most important of which are its removal of the involvement of the Parole Board from the release process altogether and the concomitant results that offenders under Clause 27 would be automatically released, less likely to be rehabilitated and also more difficult to manage while in prison.

Lord Falconer of Thoroton (Lab) [V]: This is a significant debate. There are two circumstances that one has to consider. First, when one is dealing with a terrorist prisoner who is over 21, should the Parole Board, in the circumstances set out in Clause 27, have the power to direct early release? As I understand it, the effect of the Bill is that in certain specified circumstances early release is not possible for over-21s. Although it is hard, we are dealing with very dangerous situations. I am not sure that we would object to that, but I would like it to be clear: are we dealing in this amendment with the possibility of early release? If we are, then apart from those who are under 21 at the date of conviction, we would not wish to change the provisions of the Bill.

The second situation is where what the Parole Board is being asked to do is to either determine or advise on what the release conditions should be for somebody who is going to be released in any event. In those circumstances it would seem sensible for the expert risk assessors to determine not whether they should be released but what the conditions should be. I would be interested in the Minister's views on both situations I have posited: one where we are dealing with early release, the other where we are dealing with conditions only.

Lord Wolfson of Tredegar (Con): My Lords, in this amendment the noble Baroness, Lady Prashar, whose experience in this area is profound, proposes replacing Clause 27 with an amended set of provisions. Certainly as I read them, their effect—and to deal immediately with the point raised by the noble and learned Lord, Lord Falconer of Thoroton—is to provide that all prisoners subject to an extended determinate sentence or a serious terrorism sentence would be eligible for relief by the Parole Board at the two-thirds point of their custodial term. In concept, therefore, this is similar to the intention tabled by the noble Lord, Lord Marks of Henley-on-Thames, which he referred to—we will come to it shortly—as he opposes Clause 27 standing part of the Bill. With this amendment, the noble Baroness goes further: to replace Clause 27 with a new provision. If I may say respectfully, the noble Baroness is correct to identify that without Clause 27 there must be some replacement provision included to provide the legislative authority to release those sentenced to the new serious terrorism sentence.

5.30 pm

That said, I do not agree that Clause 27 should be removed from the Bill. It is an integral part of the overall architecture of the Bill and ensures that the most serious terrorist offenders serve a sentence that reflects the gravity of their offending. It is for that reason that the Government have decided such offenders should not be eligible for early discretionary release and instead must serve their entire custodial period in prison before being released on an extended period of licence. I will not repeat what I have said on previous

amendments before the Committee, but I make it clear that I am of the view that it is entirely proportionate for those found guilty of such serious offending to be denied access to early release. We must recall that this applies only to offenders who have been found dangerous by the court, have risked multiple deaths and have been convicted of a serious terrorism offence but where a life sentence was not then imposed.

I shall deal with some particular points raised by speakers in this interesting debate. The noble Baroness, Lady Prashar, made an important point about the effect of parole on behaviour. Of course one accepts that one has to have the prospect of proper intervention and support for those in custody and, as my noble and learned friend the Advocate-General mentioned earlier, we have a number of interventions—psychological, ideological and theological—to help to encourage and facilitate desistence and disengagement, support reintegration into society and reduce the risks of further offending. That is plainly in our minds. However, at the same time, one has to recognise that the prospect of early release by the Parole Board could incentivise false compliance. Those who are determined to play the system can attempt to pull the wool over its eyes.

To pick up on the point made by the noble Lord, Lord Anderson, we certainly do not take the view that such offenders are—to use his phrase, if I noted it down correctly—"uniquely incorrigible". We have not given up on these offenders. Indeed, we have announced this year the creation of the counterterrorism assessment and rehabilitation centre, which will transform our approach to the research, evaluation and delivery of rehabilitation interventions in prison and probation, which underlines the Government's commitment in this area.

I take a moment to add my name to the Jonathan Hall QC fan club. We may not agree with everything he says, but the dedication and exemplary approach that he brings to his work can only be commended, and we will continue to engage with him on all the points he raises.

I hope that what I have said so far reinforces the point raised by the noble Lord, Lord Faulks, that this approach is nothing to do with any concern with or denigration of the Parole Board. On the contrary, it is a consequence of the sentencing structure in this Bill.

That brings me to the point made by the noble Lords, Lord Carlile of Berriew and Lord Marks of Henley-upon-Thames, about how licence conditions will be set. The information collection process for prison governors when they are setting licence conditions is exactly the same as preparation for a Parole Board hearing. As with parole cases, the community offender manager will gather all the relevant information for setting the licence conditions, including risk assessments, intelligence from other agencies and, where appropriate, input from MAPPA, the multi-agency public protection arrangements. That would inform their recommendation of necessary and proportionate licence conditions for release from prison. Indeed, for the vast majority of terrorist cases, a MAPPA meeting would review the licence conditions and can suggest changes. There is an explicit requirement in such meetings to give active consideration to whether each condition is necessary and proportionate. Where release is automatic—touching again on the point raised by the noble and learned Lord, Lord Falconer of Thoroton—at the end of the custodial part of a sentence the governor is responsible for the final check that the proposed conditions are necessary and proportionate and where bespoke conditions have been applied that they are endorsed by the relevant authority before they are approved.

It is a matter of public protection and public confidence in the justice system that this extremely serious type of terrorist offender is not granted the privilege of early release from the custodial sentence. While I have no doubt that we will continue to consider these matters in this House and in discussions outside it, for those reasons I urge the noble Baroness to withdraw her amendment.

Baroness Prashar (CB) [V]: My Lords, I thank the Minister for a very open response and all other noble Lords who have spoken in this debate. I support and agree with my noble friends Lord Anderson and Lord Carlile and the noble Lord, Lord Marks, because the points they made reinforce the points I was making. I respectfully disagree with my noble friend Lord Faulks about governors setting the licence conditions. Although the Minister explained carefully how that will be done, I do not see why that should replace an assessment made by the Parole Board, which has a great deal of experience in assessing risk.

Having said that, I think the principles of why parole is an essential part of our criminal justice system have been rehearsed. It is about public protection and the better management of prisoners. I do not think that it is fair to say that early release could lead to false compliance, because those who assess risk are very familiar and can assess whether the prisoner is serious or it is a false claim. I very much hope that the Government will consider the points made in the course of this debate. I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Debate on whether Clause 27 should stand part of the Bill.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): Noble Lords should be aware that the noble Lord, Lord Paddick, and the noble Baroness, Lady Hamwee, have withdrawn from this debate, so the speaker after the noble Lord, Lord Marks, will be the noble Baroness, Lady Prashar. I call the noble Lord, Lord Marks.

Lord Marks of Henley-on-Thames (LD) [V]: My Lords, as was said on the previous group, Clause 27 as it stands would mean that offenders serving serious terrorism offences sentences and those serving extended determinate sentences for an offence carrying a possible sentence of life imprisonment would be excluded from the operation of subsections (3) to (5) of Section 247A of the Criminal Justice Act 2003. Those subsections presently govern the involvement of the Parole Board in the release of offenders at the two-thirds point of their custodial term.

In answer to some who spoke about early release in the debate we have just had, the description of release at the two-thirds point, which is what is largely envisaged,

[LORD MARKS OF HENLEY-ON-THAMES]
is not, on our traditional understanding, early release. We have long recognised that there is a benefit in a remission system whereby release generally takes place at the two-thirds point of a custodial term before the offender's sentence has been concluded.

As the noble Lord, Lord Anderson, pointed out, subsections (3) to (5)—the present arrangements—were themselves the result of the Terrorist Offenders (Restriction of Early Release) Act, the so-called TORER Act, which we passed last year, ending release on licence after the halfway point in an offender's sentence. However, in the section concerned, we preserved the role of the Parole Board in cases where generally an offender had served two-thirds of his custodial term. That was emergency legislation. I invite the Minister to explain what has changed to justify removing the Parole Board's involvement since that emergency legislation, which retained it. I venture to suggest that no further justification has arisen since we passed that Act.

Subsections (3) to (5) presently require referral by the Secretary of State to the board for consideration after the completion of two-thirds of the required custodial period, then consideration by the board as to whether it is satisfied that it is no longer necessary for the protection of the public that the prisoner be detained. Only if it is so satisfied does the board direct release on licence. The effect of Clause 27 on the offences to which it applies is that release before the conclusion of the custodial term is excluded altogether and the Parole Board is not to be involved in relevant offenders' release. Clause 28 and Schedule 10 apply similar provisions to Scotland, and Clause 31 to Northern Ireland.

One effect of removing the prospect of early release is that the Bill removes an incentive to behave acceptably in prison, which makes offender management in prisons far more difficult. It also makes it less likely that prisoners will engage with deradicalisation programmes within prisons—partly because there will be less incentive for them to do so, but also because deradicalisation, like rehabilitation more generally, is advanced by hope and inhibited by hopelessness. It would increase, in those subject to these sentences, the sense of hopelessness, powerlessness and hostility in prison from all around; I urge those who argue that hope and some sense of power in a prisoner's own destiny are important to the welfare of society at large to accept the weakness of that position.

One reason why I make these points is that all those subject to these sentences will be released one day, unless their sentences outlast their lives; for that reason, their rehabilitation is important. Nor should we forget that the reoffending rates for terrorist offences are in fact low, as the noble Lord, Lord Anderson, pointed out when he referred to the response to the Question he raised last February, in which the Ministry of Justice calculated a recidivism rate of 3.06% for terrorist offences, as opposed to a rate of 28% for other offences. Of course I take the point made by the noble Lord, Lord Faulks, that any reoffending by a terrorist offender is or may be disastrous, but I venture to suggest that excluding any involvement of the Parole Board, with its wealth of experience in weighing up risks to public safety, would be an unhelpful way of improving public safety; indeed, it would not improve public safety at all.

The central question that the Parole Board is directed to consider is whether continued detention is required by a continuing risk to the safety of the public. The noble Baroness, Lady Prashar, repeatedly described this as risk assessment; that was the correct description. She rightly highlighted the importance in this process of the Parole Board and its hearings. Of course I accept in all this the point made in response to her amendment by the noble Lord, Lord Wolfson, that a replacement for Clause 27 would be required if that clause were to go. Whether or not that would have been the replacement proposed in Amendment 12 by the noble Baroness and others matters not. What does matter is that the present proposal does not help public safety, and has very serious adverse ramifications.

5.45 pm

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): I call the next speaker, the noble Baroness, Lady Prashar. No? We will come back to her. Let us try the noble Lord, Lord Anderson of Ipswich.

Lord Anderson of Ipswich (CB) [V]: My Lords, I have once again signed up to the amendments tabled by the noble Baroness, Lady Prashar. I do not want to repeat what I said on the last grouping, so I will raise just two additional points. The first is the risk of inconsistency that Clause 27 and its companions could bring into the law. They of course apply only to determinate sentences, so does this not raise what the independent reviewer has described in a recent series of tweets as the

"uncomfortable possibility that offenders may be 'better off' if sentenced to life imprisonment than extended sentences"?

He illustrated that observation with the case of the Anzac Day plotter—recently released on the recommendation of the Parole Board, having been convicted at the age of 15—and the decision last week of the Court of Appeal in the case of the St Paul's suicide bomb plotter. The Minister and others might want to reflect on those cases, and on the observations of the independent reviewer before Report, when I suspect that we may need to come back to this.

Secondly, since the Minister accepts that the prisoners who would be affected by Clause 27 are not always incorrigibly violent, and since he does not take issue with what I said about the very low terrorist recidivism rates, is he not tempted to accept that there might be cases—perhaps rare—in which the Parole Board would feel able to recommend their release?

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): We still cannot reach the noble Lord, Lord Ramsbotham, so I call the noble Lord, Lord Naseby.

Lord Naseby (Con) [V]: My Lords, the Bill makes a welcome change to the sentencing, release and monitoring of terrorism offenders by toughening up the law. This is a time of higher risk—something that has not been referred to by our noble friends the lawyers. I am no lawyer, but I study the Middle East and south Asia in some depth, and I have lived abroad for a number of

years. I have very good contacts in those parts of the world and, in my judgment, the risk of terrorism at this time is higher than we have ever experienced.

I might say as a side issue that I get concerned when organisations such as Human Rights Watch, Amnesty International and others call vociferously for the deletion of Clauses 37, 38 and 40. I am, frankly, not impressed by their objectivity. I wish I could be, but they and others I could mention, such as Freedom from Torture, do not in my experience bring objectivity to these types of cases. I contrast that with the work of the International Committee of the Red Cross, the ICRC—although it is not involved in these cases on the whole—and Médecins Sans Frontières, both of which are involved in issues relating to torture, and they are very objective in their assessments.

It is objectivity that one wants. The British public has to understand and be convinced that any change that is made will help to deal with terrorism. I think, on having looked at the Bill, that Clause 27 is right. It is all very well for noble Lords to say that the numbers who abscond or the cases where people are released early are small, but the number of people who were killed in Manchester was not small. In most places where there is terrorist activity, the numbers are not small. I see my role in the upper House as being one where I look after the British public. It is not a risk assessment. The only risk is that someone will reoffend. When facing the challenge of that situation, I do not think that we can suggest to the British public that some of these men and women who have carried out heinous crimes should be released early on an objective risk assessment.

I make one other point. As it happens, I am doing a bit of work on national service, something which older Members of your Lordships' House may well have done in the Army, the Royal Navy or the Royal Air Force. In my case, I was a pilot in the air force. I think of myself at the age of 21. We were all 18 years old when we did our national service. We were young men who were risking our lives and we were ready to fight; many lost their lives. I wonder whether 21 is too high an age; I personally would drop it to 18, which was the age at which you had to do your national service. However, that goes rather wider than what we are considering here.

As far as I am concerned, the Government are taking absolutely the right road. We have to toughen up on sentencing and we have to toughen up on early release and the monitoring of offenders because the risks at this point in time are very real.

Lord Thomas of Gresford (LD) (V): My Lords, by coincidence I am once again following the noble Lord, Lord Naseby. I would remind him that there have been high-risk periods before. His words reminded me of the Brighton bomb case, in which I took a part. The person I represented had been involved in a bombing campaign that covered some 28 seaside resorts, and the Brighton bomb case was the final one. When I look at Clause 31, I reflect on that case, because that clause, like the other clauses we are dealing with, is the one which says that there should be no parole for terrorism offences committed in Northern Ireland. In the Brighton bomb case, those who were convicted and sent to prison within weeks of the Belfast agreement were returned to Northern Ireland to serve out their sentences there—and within a very short time they were released. We have faced problems like this before.

The benefits of a two-thirds release system have been outlined by previous speakers: they encourage people to behave while in prison and to engage in deradicalisation and rehabilitation courses. That is done to persuade the Parole Board that the individual is safe to be released—to advance by hope and decrease hopelessness, as my noble friend Lord Marks put it. The Parole Board ought to have a role in this, and I was impressed by the views expressed by the noble and learned Lord, Lord Falconer, that perhaps the Parole Board should at least have a role in advising on the conditions of release as opposed to the governor taking on the role, as is being proposed.

There are dangers in automatic release at the end of a sentence. No doubt the full sentence has been completed, but the automatic release at the end of that time without any Parole Board involvement is a danger, as my noble friend Lord Marks and the noble Baroness, Lady Prashar, have argued. I do not think that the solutions that have been developed and put into the Bill are necessarily the right ones, so I support my noble friend in his attempt to have these clauses removed.

Lord Ponsonby of Shulbrede (Lab) (V): My Lords, we have had interesting debates on both this and the previous group. In closing the previous group, the Minister said that the proposed lack of involvement of the probation service in this particular group of prisoners was a consequence of the sentencing structure and was not a reflection on the Parole Board itself. I understand the point he has made, but what has been said repeatedly on both groups is that there is expertise in the Parole Board. My noble and learned friend Lord Falconer asked whether there were two elements here. One is the possibility of early release, while the second is a point raised again just now by the noble Lord, Lord Thomas, about the conditions of release for a prisoner who has served their whole term. I do not understand why that level of expertise should not be accessed when considering these types of prisoners.

I shall make a couple of other brief points which are different from those which have been made by other noble Lords. They arise from briefings that I have had from the trade unions. The Prison Officers' Association believes that removing hope from prisoners puts its staff at risk. It is a point that the association makes repeatedly and is an important one to feed into this debate. The second point has been made by the National Association of Probation Officers—that is that the workload of probation staff working on the ground in prisons is so high that they are not managing to deliver to their required standards. They are being allocated around 70 prisoners each. I understand that the Minister has talked about these various programmes, and I know that we are talking about a very extreme group of prisoners. Nevertheless there is the practical working position of prison officers, probation staff and others in prisons to consider in trying to make these institutions work and to reduce recidivism when prisoners are released.

[Lord Ponsonby of Shulbrede]

Even so, both the group of amendments we are speaking to now and the previous group illustrate the potential for changing the Bill to bring the Parole Board back in. That would reduce the potential risk to the public.

Lord Wolfson of Tredegar (Con): My Lords, the Committee will appreciate that there is a significant overlap between this and the previous group. I hope that the noble Lord, Lord Marks of Henley-on-Thames, and indeed no other participant in this debate, will regard it as discourteous if on some occasions I take as read, as it were, points that I made in the previous debate. If the Committee finds it helpful, I propose to say a few words about each of the clauses and schedules to which objection has been taken and then come back to address some of the particular points raised by participants in the debate.

6 pm

Clause 27 removes the prospect of early release for the most dangerous terrorist offenders in England and Wales. The provision is central to one of the core aims of the Bill—namely, to ensure that the most dangerous terrorist offenders are serving sentences that truly reflect the serious nature of their crimes. It does that by amending Section 247A of the Criminal Justice Act 2003, under which all relevant terrorist offenders are currently referred to the Parole Board at the two-thirds point of their custodial term to be considered for discretionary early release. The clause would therefore ensure that offenders who receive an extended sentence for a terrorist or terrorist-related offence which carries a maximum penalty of life will instead serve their full custodial term before being released on extended licence. It also provides a release mechanism for those sentenced to the new serious terrorism offence.

Critically, the clause ensures that no offender sentenced for a serious terrorism offence would be eligible for discretionary early release but would be required to serve the whole custodial term imposed by the sentencing court. In that context, I reiterate the point that I made in the previous debate that the purpose of this clause and architecture is not to remove the role of the Parole Board per se, which I understand several Members of the Committee who spoke were concerned about; it is about removing any possibility of early release for this most serious and dangerous cohort of offenders.

Ensuring that those offenders serve their whole custodial term will protect the public, by incapacitating these offenders for longer. It will give the public greater confidence in the sentencing framework and maximise the time that various services have to work with offenders. I appreciate and acknowledge the point made by the noble Lord, Lord Ponsonby, about the importance of that work and the workload that it imposes on people—we are paying attention to that. The longer sentence maximises the time that services have to work with offenders, giving them more time in which to rehabilitate and disengage them from their often deeply entrenched ideological views.

This cohort of offenders is also subject to an extended period on licence, which for an extended sentence could be up to 10 years and for a serious terrorism sentence could be up to 25 years. That period enables services to mitigate the risk the offender poses to the community and supports their successful reintegration into society, which is, we recognise, an integral part of this process. I explained in the previous debate the way licence conditions would be determined by prison governors on behalf of the Secretary of State, and I hope that no discourtesy is perceived if I merely refer back to what I said in that debate. For those reasons, I am satisfied that Clause 27 and its effect on the release of the most serious and dangerous terrorist offenders is both proportionate and robust.

Schedule 9 sets out the offences relevant for the provisions in the Bill relating to England and Wales in three parts. It will be substituted for Schedule 19ZA to the Criminal Justice Act 2003. Part 1 lists all UK terrorism offences for which the maximum penalty is life imprisonment. Part 3 specifies other non-terrorist offences with a maximum penalty of life which are eligible to be designated with a terrorism connection at the point of sentencing. Together, Parts 1 and 3 set out the offences for which a serious terrorism sentence may be imposed, or, if an extended determinate sentence is imposed, set out that the offender will serve the whole of the appropriate custodial period in prison. That will be critical for the courts in determining which offences are eligible for the new serious terrorism sentence for England and Wales introduced by Clause 5 of the Bill and for the extended determinate sentence where the custodial period is to be served in full, set out in Clause 27.

Part 2 covers all other UK terrorism offences carrying a maximum penalty of more than two years' imprisonment. These are further offences which will be subject to restrictions on early release under Section 247A of the 2003 Act, as introduced by the Terrorist Offenders (Restriction of Early Release) Act 2020. This part ensures that all terrorist offenders convicted for an offence under the part will not be eligible for release until two-thirds of the way through their custodial sentence, at which point they will be referred to the Parole Board to decide whether they are safe to release before the end of their custodial term.

Therefore, the removal of Schedules 9 and 10 would undermine many of the measures introduced by the Bill. We recognise the importance of licence periods in managing the risk associated with terrorist prisoners being released once they have served their appropriate custodial term, which is why we are extending the range of offences that can attract a sentence for offenders of particular concern. This will ensure that terrorist offenders are released with a minimum supervision period of 12 months, even if the Parole Board does not release them before the end of their custodial term. Schedule 9 fulfils both those purposes. It also has another function, which is that, where terrorist offenders are convicted and sentenced elsewhere in the UK but transferred during their sentence to England and Wales, they serve the appropriate custodial term and are not released early, or are subject to restricted early release, depending on the sentence.

I should perhaps say a word about Clause 28, to which challenge is also made in this group of amendments. This clause creates the equivalent provision for Scotland of that made by Clause 27 for England and Wales by amending Section 1AB of the Prisoners and Criminal

Proceedings (Scotland) Act 1993. It has the same substantive effect and thus ensures consistency across Scotland and the rest of the UK, which means that the British public are better protected, no matter where they live. Schedule 10 makes the corresponding changes for Section 28 as are made by Schedule 9—this time for the Scottish regime—and it is structured in the same way. Clause 31 creates the equivalent provision for Northern Ireland to that made by Clause 27 for England and Wales and Clause 28 for Scotland, as I have just said. That is the structure of these clauses, and we consider that they must remain part of the Bill.

The noble Lord, Lord Marks, asked me what has changed. As I understood his question, he was asking what has changed since the TORER Act 2020 that motivates the changes to release of early determinate sentence offenders. The change is intended to capture a more serious cohort of prisoners than those we sought to capture with the changes under the TORER Act. The removal of early release set out in the Bill will apply only to those sentenced to an extended sentence or a serious terrorism sentence for a serious terrorism offence—that is, one that could attract a life sentence. By contrast, the TORER Act primarily sought to remove the automatic early release of terrorist offenders sentenced to a standard determinate sentence who, before that Act was introduced, were entitled to automatic release on licence at the halfway point of their sentence.

To respond to the points made by the noble Baroness, Lady Prashar, I hope that she will allow me to refer back to the points that I made in the previous debate, which she instigated.

The noble Lord, Lord Anderson, put a couple of points to me. The first concerned an inconsistency which he said had been identified by Jonathan Hall QC in the material that he put out—I cannot remember whether it was in his report or in a tweet. I am sure that this is something that we can continue to discuss, but my immediate response is that the provisions of Clause 27 may remove the prospect of early release, but those subject to those provisions retain automatic release at the end of their custodial term, unlike those sentenced to a life sentence. At the conclusion of their extended licence, they will no longer be subject to statutory supervision or potential recall to custody, while those on life licences are subject to that for the rest of their lives. I therefore respectfully take issue with the noble Lord, and perhaps with Mr Jonathan Hall QC, that you are necessarily better off if you are sentenced to a life sentence, but I have no doubt that that is something that we can continue to discuss.

The noble Lord, Lord Anderson, also invited me to conclude that it was a necessary consequence of my comments at the end of the last debate that there would be rare cases, to use his phrase, in which the Parole Board might recommend release. I respectfully say that there is nothing inconsistent in how I have approached this part of Committee and the previous debate. The important point is that removing the prospect of early release of these offenders sends a clear message that this Government will treat this kind of offending seriously. That is not inconsistent with saying that these offenders are, to use the words in a previous debate, incorrigible.

In that regard, I respectfully agree with my noble friend Lord Naseby, who reminds us that the nature of the offences that we are dealing with here are such that the carnage wrought by a single offender can be extremely significant. That is a salutary reminder that, when we are asking ourselves, as a number of noble Lords have, how many offenders we are dealing with, that might not always be the correct question to ask.

The noble Lord, Lord Thomas of Gresford, made some points which I hope he will not regard me as discourteous for saying that I hope that I have covered in my responses to this and the last debate. If there is anything that I have not covered, I will of course be happy to discuss it with him.

On the point made by the noble Lord, Lord Ponsonby, regarding the practicality of the work that must be done, we are very aware of, and recognise with appreciation, the work done by prison officers and probation officers. Others in my department are very focused on that part of the criminal justice system.

For those reasons, I respectfully invite the noble Lord, Lord Marks of Henley-on-Thames, not to press these various amendments.

Lord Marks of Henley-on-Thames (LD) [V]: My Lords, we have had two serious and thoughtful debates on the last two groups, and I am very grateful to all noble Lords who have spoken and to the Minister, who, on his first outing on a Bill, has undoubtedly impressed us all with the care and the courtesy with which he has approached the amendments discussed today. We have one further group today, but nevertheless I express the hope that further consideration between now and Report will persuade him and some of his colleagues in government to compromise when they see the faults of some of these amendments.

All of us—and I say to the noble Lord, Lord Naseby, not only those who see Clause 27 as an unmitigated, good toughening-up of terrorist sentencing—approach these issues from the perspective of what is best for public safety. That involves consideration of how to improve behaviour, and with behaviour the atmosphere, in prison.

I take the important point made by the noble Lord, Lord Ponsonby, about the safety of prison staff. It involves consideration of how to avoid reoffending, how to rehabilitate and deradicalise even terrorist prisoners, and how to ensure fundamentally that when prisoners are released, that release is safe.

The Minister responded to my question on what has changed since the TORER Act to justify the removal of consideration by the Parole Board of the release of offenders, or removal of release at the two-thirds point, but for the moment I am not sure that I accept the distinction that he made, though I will read what he said with care.

6.15 pm

What the noble Lord has not explained, however, is how the Government can justify moving to a system of automatic release at the conclusion of a term without any risk assessment being made by the Parole Board and justify that as an improvement to public safety, rather than the reverse, which is what I fear it is. In the

[Lord Marks of Henley-on-Thames]
hope that the Government will reconsider this clause between now and Report, I beg leave to withdraw my opposition to the clause standing part.

Clause 27 agreed.

Schedule 9 agreed.

Clause 28: Removal of early release for dangerous terrorist prisoners: Scotland

Amendment 13 not moved.

Clause 28 agreed.

Schedule 10 agreed.

Clauses 29 and 30 agreed.

Clause 31: Removal of early release for dangerous terrorist prisoners: Northern Ireland

Amendment 14 not moved.

Clause 31 agreed.

The Deputy Chairman of Committees (Baroness Henig) (Lab): We now come to the group consisting of Amendment 15. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this amendment to a Division must make that clear in debate.

Amendment 15

Moved by ***Lord Ponsonby of Shulbrede***

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

"Parole Board

(1) The Secretary of State must, within three years of this Act being passed, lay before Parliament a report on whether the removal of the Parole Board from considering certain types of terrorist offences leads to bad behaviour in prisons.

(2) A Minister of the Crown must make an oral statement in the House of Commons on his or her plan to address any issues identified in the report no later than three months after it has been laid before Parliament."

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, I will be very brief on this amendment. The two previous groups have been groups of substance, and serious questions have been asked about the way forward. The amendment in my name would create provisions for a review of whether the removal of the Parole Board from considering certain types of terrorist offences leads to bad behaviour. That is a central point in many ways in the last two groups, but it has also been mentioned as an issue in many of the amendments that we have discussed today. I beg to move.

Baroness Jones of Moulsecoomb (GP): My Lords, I welcome the noble Lord, Lord Wolfson of Tredegar, to our House. It is brave of him to start his parliamentary career in your Lordships' House by going up against so many noble and learned Lords. It is going to be absolutely fascinating watching that.

I congratulate the noble Lord, Lord Ponsonby of Shulbrede, for bringing this amendment. I wish I had signed it, because it is very good. It is about whether we want to rehabilitate prisoners and bring them back into society or just want them to rot away and hope they disappear.

I am sure noble Lords will know that the new independent reviewer of Prevent has been announced. It is William Shawcross, whom I do not know at all. As somebody who is a critic of Prevent—I have seen the good and the bad in it—I would say that the optics are not good. Having a white man from Eton and Oxford is possibly not the message that this Government should be sending out when you have critics of a programme that could have been fantastic.

I saw one case of a Prevent programme—in Birmingham, I think—where a young man had been recovered, or rehabilitated, from a radical programme. He had been a right-wing activist, but he responded to being found a job and a house. I am not saying it is always this easy, but rehabilitation was based on taking him out of poverty and deprivation. That is something that we do not see enough of.

However, to return to the amendment, it would require the Government to review the situation and report to Parliament, and I support it very strongly.

Lord Carlile of Berriew (CB) [V]: My Lords, the town of Tredegar is noted for its town clock, which was erected, or at least its plinth was, as a result of funds collected at a bazaar. I believe that information to be correct—and from my position in my home I think I can see the noble Lord, Lord Wolfson, nodding in agreement with those facts. The Tredegar clock is always regarded as a symbol of the stability of the town—a town that has been through thick and thin, having been a place where coal was mined and steel manufactured.

The Parole Board has become one of the pillars of our prison system, and the board is seen as being as reliable as that town clock as it has developed over the years. I therefore join the noble Lord, Lord Ponsonby of Shulbrede, in being really rather determined to persuade Ministers that they should take another look at the role of the Parole Board in the sentencing and licence provisions provided for by this important Bill, which I support in principle, as someone who believes that the sentences for terrorism should be long but subject to a proper, just and reasonable form of review that gives reasons if it finds against a prisoner.

I am happy to support the amendment tabled by the noble Lord, not for its content but for the principle that it raises, and I invite the Minister to reflect accordingly.

Lord Paddick (LD) [V]: My Lords, I apologise for any inconvenience caused by my noble friend Lady Hamwee and me not speaking in the last group, where our names were included in the speakers' list in error.

The amendment in the name of the noble Lord, Lord Ponsonby of Shulbrede, addresses the serious question of the impact on prisoners who have no

prospect of being released early or of being released at all, something that the noble Baroness, Lady Prashar, spoke about in an earlier group, as did my noble friend Lord Marks of Henley-on-Thames.

Some indication of the potential impact comes from a report in the *Times*, dated 20 January 2021, on inmates at the only remaining isolation unit for extremist prisoners in Her Majesty's Prison Frankland. These isolation units were designed to keep the most dangerous ideological prisoners away from the general prison population so that they could not radicalise vulnerable inmates, as other noble Lords have mentioned in today's debate. One of those units was mothballed before it was opened, another is empty, and the one at Frankland houses five prisoners out of a capacity of eight. There are currently about 200 terrorist prisoners in the UK.

According to the *Times*, a report by the independent monitoring board at the prison says that inmates in the unit have become more entrenched in their views, that they are refusing to co-operate or to engage in activities and programmes—except for the gym—and that they are distinguished from other prisoners by a lack of progression. They display antagonism and hostility to staff, with one of the prisoners responsible for a serious assault on a prison officer in the centre.

Locking people up with no incentive to behave or co-operate is likely to be counterproductive, and the *Times* report supports that assertion. We support the amendment.

Lord Stewart of Dirleton (Con): My Lords, this amendment would require the Government to report on whether the removal of Parole Board consideration of certain prisoners' release impacts their behaviour in prison. We return once again to the quite proper desire of the Committee for objective data to allow proper evaluation of the usefulness of measures. The point is an important one, but the Government do not think that a review and a report such as the amendment proposes would be practical or beneficial at this time. I will set out why in brief terms.

To carry out such an exercise would require there to be clearly defined factors influencing prisoner behaviour in custody, against which one could evaluate the distinct impact of the prospect of Parole Board consideration in a sentence. Such an evaluation method is simply not feasible. It would be impossible to measure the behavioural effect of a prisoner sentenced under provisions in this Bill expecting a future Parole Board hearing, compared to a counterfactual in which the Parole Board would consider the case. The amendment goes further, implying that the removal of Parole Board referral for some cases could impact on prisoner behaviour more widely. This would be even more impracticable to assess.

The policy intent across these measures is clear; the sentences available to the courts for terrorism offences should be proportionate to the gravity of these crimes and provide confidence for victims and the public. In some cases, this will mean that terrorist offenders spend longer in custody before release. To provide some reassurance further to what we have given from the Dispatch Box this afternoon about what will be done in that additional time in custody, I will make two remarks.

First, there is the hard work of prison staff with prisoners in their care, whatever their sentence or release arrangements. As your Lordships will have gathered, we deploy specialist counterterrorism staff to work with terrorist offenders, and we are recruiting more of these officers than ever before through the counterterrorism step up programme.

Secondly, the new counterterrorism assessment and rehabilitation centre, which your Lordships have heard about from the Dispatch Box, will drive the development, innovation and evidence-based delivery of our rehabilitative interventions. The centre will transform our capability to intervene effectively with terrorist offenders, including those sentenced under this Bill and those who will be released automatically. The Bill will be scrutinised in the usual way, including a statutory review after three years.

I now turn to contributions from Members in this short, but hopefully valuable, debate. I congratulate the noble Baroness, Lady Jones of Moulsecoomb; she succeeded in doing from her Benches what I was unable to do from the Dispatch Box earlier in answer to a direct request, by identifying Mr Shawcross in his new post. I hope the noble Baroness will accept my further assurances as to the seriousness with which the Government take the points she raised.

The noble Lord, Lord Carlile of Berriew, in an elegant allusion to the values of the town clock at Tredegar, drew our attention to the important work of the Parole Board. We on this side share the noble Lord's high estimation of the Parole Board. I promise, on behalf of myself and my noble friend and colleague, that we will reflect carefully on the observations made by the noble Lord and by others in the course of debate.

6.30 pm

The noble Lord, Lord Paddick, drew to our attention the report in the *Times*. I have already addressed the Committee on the work being carried out in the prison estate on rehabilitation and disengagement—the deradicalisation work to which both of us, speaking from the Dispatch Box, have made mention. I assure the Committee that I will consider what has been said in the report in the *Times* to which the noble Lord referred and will check that against the information I have already provided to the Committee.

In the light of the points made and the breadth of the Government's agenda in this area, I hope the noble Lord will agree to withdraw his amendment, but I say that with the following qualification. The noble Lord has indicated the nature of the report which he seeks. I have indicated why we do not consider it to be practicable or feasible. If he wishes to have us reconsider that view, in particular by drawing to our attention any matters that he does not think we have considered, then he can accept our assurance that he may contact us at any time. None the less, I hope that the noble Lord will, at this stage, agree to withdraw his amendment.

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, I thank all noble Lords who have taken part in this short debate. First, turning to the noble Baroness, Lady Jones, as a fellow layman I thought she gave a good summary of rehabilitation. I see rehabilitation as

[Lord Ponsonby of Shulbrede]
three things: to have something to do with your time, so either a job or education; to have a roof over your head; and to have stable relationships. Stable relationships are very important in all our lives. The problem we may be dealing with regarding this particular category of prisoners is stable relationships which are not conducive to people not reoffending. Nevertheless, I appreciated the noble Baroness's contribution.

Both the noble Lords, Lord Carlile and Lord Paddick, spoke about the principles of some sort of review. The *Times* article that the noble Lord, Lord Paddick, referred to reminded me of two or three visits I have made to prison gyms over the years. Absolutely invariably, I have been told by the officers who manage the prison gyms that there is never any trouble in a prison gym. That is because the prisoners know that that would be the first privilege they would lose, which they do not want to lose. So prison gyms, from what I have been told, are trouble-free areas.

The noble and learned Lord, Lord Stewart, gave quite a lengthy answer to my amendment. He described it as potentially counterfactual and impractical. I will have to read properly what he said. However, he slightly mitigated his view on the amendment by saying that he was happy to consider any further submissions I might make. I therefore know there is a potential open door for a later-stage amendment, and with that in mind, I beg leave to withdraw my amendment.

Amendment 15 withdrawn.

House resumed.

House adjourned at 6.35 pm.

Grand Committee

Tuesday 26 January 2021

The Grand Committee met in a hybrid proceeding.

Arrangement of Business

Announcement

2.30 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, others are participating remotely, but all Members will be treated equally. I 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.

Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2021

Considered in Grand Committee

2.31 pm

Moved by ***Lord Gardiner of Kimble***

That the Grand Committee do consider the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2021.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con) [V]: My Lords, I declare my farming interests as set out in the register.

This instrument has two main purposes. It makes technical amendments to the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019, which I will refer to as the exit SI, to correct deficiencies that have arisen in light of the Northern Ireland protocol. It also applies the provisions of the retained EU law version of Regulation (EC) No. 2003/2003 to Northern Ireland, subject to modifications. This will enable the marketing of UK fertilisers in Northern Ireland, which was the original intention of the exit SI before the Northern Ireland protocol was agreed. The exit SI made in 2019 amended the retained version of EU Regulation (EC) No. 2003/2003, so it operates effectively in the UK now, after EU exit. It replaced the "EC fertiliser" label with a new "UK fertiliser" label, which will function in the same way.

The UK fertiliser regime would have operated across the whole of the United Kingdom from the end of the transition period. However, it was made in February 2019, before the Northern Ireland protocol was agreed. As a consequence of the protocol, the EU law version of Regulation (EC) No. 2003/2003 and the EC fertiliser regime it provides for will continue to apply in Northern Ireland, and the UK fertiliser regime provided for in the retained EU law version of this regulation will not. I hope it will be helpful if I say that, to remedy this, this instrument applies the provisions of the retained EU law version of Regulation (EC) No. 2003/2003 in GB to Northern Ireland, subject to modifications, in order to enable UK fertilisers to continue to be marketed in Northern Ireland.

By way of context, the regulatory framework for the manufacture and sale of fertilisers is unusual, compared to other agricultural products, as fertilisers are partially harmonised at EU level. This means that member states can operate their own domestic regulatory regimes alongside the European regulation of the EC fertiliser regime provided for in the EU regulation. Accordingly, alongside the EC fertiliser regime, Great Britain and Northern Ireland have historically operated separate domestic regulatory regimes under the Fertilisers Regulations 1991 and the Fertilisers Regulations (Northern Ireland) 1992, respectively. Manufacturers in both Great Britain and Northern Ireland are free to choose which framework they use to market their products, although they must comply with the requirements of that regime—for example, they would need to be established within the EU or Northern Ireland to sell EC fertilisers in Northern Ireland.

The key provision of this instrument is to ensure that the retained GB version of EU Regulation (EC) No. 2003/2003, which allows products to be marketed as a UK fertiliser, applies in Northern Ireland, as was originally intended in the exit SI made in 2019. Because of the partial harmonisation of fertiliser legislation, making the UK fertiliser regime applicable in Northern Ireland does not affect the continued application of the EU version of Regulation (EC) No. 2003/2003, which will continue to apply in Northern Ireland by virtue of the protocol.

This statutory instrument is important, as a common route to market across the UK for fertilisers is required so that a manufacturer in Great Britain who trades only in the UK can market products across Great Britain and Northern Ireland and use one label to do this. If products labelled as UK fertiliser could no longer be marketed in Northern Ireland, there could be significant costs for businesses in an industry with low profit margins. There are particular concerns that, without this SI, the supply of certain products that are specifically regulated under this regime—for example, DMPSA, a nitrification inhibitor—would reduce, and this could impact on the sustainability of food production. Failure to provide for this may also result in a general reduction in the supply of fertiliser products to Northern Ireland from manufacturers who are established in Great Britain and who are no longer able to place EC fertilisers on the market. It is therefore necessary to ensure that UK fertilisers can be marketed in both Great Britain and in Northern Ireland.

In summary, the technical amendments this instrument makes relating to the Northern Ireland protocol are straightforward. Under the protocol, the EU law version of Regulation (EC) No. 2003/2003 continues to apply in Northern Ireland following the end of the transition period. This instrument reflects its GB application by

[Lord Gardiner of Kimble]
removing references to Northern Ireland that are no longer relevant from the retained EU law version, such as in the definitions of "appropriate authority" and "enforcement authority". The remaining provisions in this instrument enable the marketing of UK fertilisers in Northern Ireland.

We worked with the devolved Administrations on this statutory instrument, and they have given their consent. This instrument is necessary because it makes technical amendments in light of the Northern Ireland protocol and will ensure that we can continue to operate a unified fertiliser regime across the UK. I beg to move.

2.38 pm

Lord Clark of Windermere (Lab) [V]: I thank the Minister for providing the Grand Committee with a comprehensive explanation of this SI, which he has given in his normal courteous and lucid manner. As he said, this SI is not particularly controversial, but it is certainly fiendishly complicated in places. I am a great supporter of science having a major role in agriculture, horticulture and associated activities, but it is very important—I know the Minister agrees with me on this—that any such use is carefully monitored because there could be a knock-on effect into the future. I will come back to this point in a moment.

It is our task, as a legislature, to examine SIs and ensure that they match the Executive's declared intent. The Secondary Legislation Scrutiny Committee looked at this SI on 5 January and decided not to draw it to the attention of the House. That is a fair indication that it contains only what we believed to be there. Therefore, that is a second line of defence, and it gives us some guidance.

There is no impact assessment for this SI because, as stated, it has been judged that

"no significant, impact on the private, voluntary or public sector is foreseen."

Therefore, in the light of these assurances, I am inclined to accept the SI at face value, but there are a couple of things that I should like to raise with the Minister.

I was reassured that once we get past January 2023 and are dealing with only UK fertilisers, the language used will be English for all fertilisers sold in the UK. It is important that farmers can see how to use the fertilisers and at what levels. May I ask about a small point on that? What is the position in Northern Ireland? I understand that with the Northern Ireland protocol there is some distinction, but is any of the fertiliser which might be shipped from Great Britain to Northern Ireland likely to end up in the Republic of Ireland? If so, how does that affect the labelling?

My last point—I do not think I will take up my full time—is about ammonium nitrate, especially ammonium nitrate fertilisers, which may contain more than 28% nitrogen. I do not want to labour this too much but, bearing in mind the terrible explosion in Beirut, does the Minister feel that sufficient guidance is given in this SI and associated ones about the storage of ammonium nitrate fertilisers, which can have such devastating effects in terms of explosions, as opposed to in their use as fertilisers?

2.42 pm

Baroness McIntosh of Pickering (Con) [V]: My Lords, I am most grateful to my noble friend for presenting the regulations and his introduction to them. As the noble Lord, Lord Clark, just suggested, they are fiendishly complicated so I hope my noble friend will permit me to ask a couple of questions relating directly to how they will apply and on a couple of other matters relating to fertilisers more broadly.

Looking specifically at paragraph 7.3 of the Explanatory Memorandum, if my understanding is correct, this says clearly—and my noble friend referred to this—that an EU manufacturer must have a manufacturing base in the EU to be able to import into Northern Ireland, whereas a manufacturer in Great Britain will be able to continue to export to Northern Ireland but will have to produce one label for export to Northern Ireland and make separate provision for continuing to export to the rest of the European Union. Could my noble friend confirm that that is the case?

I was contacted by the AIC, which deals in seed and agricultural production. It suggested that there will be a two-year transitional period, during which businesses will be able to continue to manufacture and sell material labelled as an EC fertiliser under Regulation 2003/2003 for use in Great Britain, provided that those products conform to EU standards. Will my noble friend confirm that that is just for a two-year period and what happens at the end of it?

Also, will the UK fertiliser manufacturers hoping to export to the EU and Northern Ireland need to be established within the EU or Northern Ireland, as I mentioned, and will products have to be labelled accordingly with the EU-established manufacturer or importer as appropriate? Presumably that will be an additional cost to the UK fertiliser manufacturer. I ask because paragraph 3.1 of the Explanatory Memorandum clearly states that there should be not so much no increased costs, but no increased obligations on businesses. However, there would certainly seem to be the cost of producing these labels.

I have two rather more technical points. Detonation-resistance testing for the production and importation of high-concentration ammonium nitrate is a legal requirement, but this is now limited to a single UK-based laboratory, which apparently lacks the capacity to meet demand. The nature of the product additionally limits its easy transport between countries by courier. There is, I understand, a current derogation of two years to allow European-sourced ammonium nitrate to continue to be tested in EU accredited laboratories. Clearly this derogation must be extended to allow testing in any accredited ISO laboratory.

Finally, the UK now has oversight of its trade remedies through its countermeasures policy. Presumably our Trade Remedies Authority, when it is up and running, will be in charge of this. The application to the UK of existing trade remedies on urea ammonium nitrate from the USA, Russia and Trinidad and Tobago is due to terminate, so urea ammonium nitrate will not be subject to the EU-imposed anti-dumping duties, though I gather that the anti-dumping duty on ammonium nitrate from Russia will still apply. I understand that these latter two points probably go broader than Defra,

but I would be keen for my noble friend to write to me for our better understanding of how this applies to these regulations, particularly for those volatile products to which the noble Lord, Lord Clark, referred.

With those comments, I am delighted to consider the SI this afternoon and look forward to hearing my noble friend's response.

2.47 pm

Lord Dodds of Duncairn (DUP) [V]: I too thank the Minister for setting out clearly and in detail the purpose of these regulations and their application in Northern Ireland. I shall preface detailed consideration of the regulations with a couple of general remarks, which I am sure the Committee will understand.

While these regulations are highly technical, they are another piece of the jigsaw of legislation required purely as a result of the Northern Ireland protocol. They amend previous regulations which, as the Minister said, applied to the whole of the United Kingdom and were passed to take care of the situation in the event of a no-deal exit from the European Union. I remind noble Lords that many of us find the need for this kind of legislation—amending legislation that applies to the whole of the UK and making specific provision for Northern Ireland—deeply objectionable in principle, to put it mildly. It is having to be done to implement a protocol over which no one in Northern Ireland had any say or any vote. It is important to make that point over and over again on these regulations because they are important. Laws will be made in this Parliament of ours that will, effectively, mean that new regulations, in this and many other areas, can be made in Brussels. They will then come into force in Northern Ireland without anyone at Westminster or Stormont, in the Northern Ireland Assembly, having any input or vote on them. That is a bizarre and unacceptable way of making laws for part of the United Kingdom. It is certainly not taking back control.

Turning to the detail, these regulations do two things. First, they allow for the continued application in Northern Ireland of the European regulation on the EC fertiliser regime. Secondly, since under EU law there can, as the Minister said, be a dual regime for fertilisers, they enable UK fertilisers, so labelled, to be marketed in Northern Ireland. This part of the statutory instrument is very welcome—there will be a UK-wide regulatory regime for the marketing of UK fertilisers and it means that manufacturers in Great Britain can market their products across the United Kingdom, both in Great Britain and Northern Ireland. Of course, EC fertilisers can still be marketed in Northern Ireland alongside that.

I note that the devolved Administrations have been consulted and have consented to the making of the instrument. I further understand, having made some investigation in the matter, that officials are currently preparing an implementing instrument that will fully implement in Northern Ireland the provisions of the UK retained law to allow for both the manufacture and marketing of UK fertilisers in Northern Ireland.

I close by asking the Minister, given the degree of consensus on this instrument, and on a more general but relevant note, whether he anticipates being able to obviate and alleviate some of the difficulties. I put that mildly—there are really difficult consequences concerning movement of agriculture-related products between Great Britain and Northern Ireland. Can he give some reassurance that producers and consumers will get some relief from some of the current problems in moving such goods from Great Britain to Northern Ireland?

The situation since 1 January has, as noble Lords will know, caused considerable consternation to many, and extra cost and hardship. One reason the Minister gave for advocating these regulations was that they would save costs and keep products on the market in Northern Ireland. That should apply right across the board, so I would be grateful if the Government would commit to doing everything in their power to overcome the current obstructions and restrictions and permit unfettered trade between Great Britain and Northern Ireland.

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): The noble Lord, Lord Randall of Uxbridge, has withdrawn, so I call the noble Baroness, Lady Bennett of Manor Castle.

2.52 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I thank the Minister for his clear explanation of this SI. I have three brief sets of points to make. Given that the SI is about the management of fertilisers and ammonium nitrate material, an intensely environmental issue, I hope the Committee will forgive me if I take a minute to reflect on this morning's news about the delay of many months to the Environment Bill. My inbox is full of expressions of fury and disbelief. When we are the chair of COP 26, this can be described only as very depressing and embarrassing. There is a huge legislative lacuna, a gaping gap in UK law, and it sends a message about the importance with which the Government regard environmental issues in this hugely nature-depleted, polluted and contaminated land. Work on the Bill began in July 2018. We will potentially go into the biodiversity COP in October without that law, and it may even be a scrape to get it in before COP 26 itself starts.

I have two questions for the Minister, although I understand that he may not be able to answer them now. What will happen with the Office for Environmental Protection and what will happen about giving farmers certainty about applying the fertilisers we are talking about now, in terms of environmental land management schemes? My second question concerns the fact that we are now discussing artificial fertilisers. The Committee may remember my interest in soil science, so I hope Members will give me for venturing a little into that.

There was an old Italian proverb in the 1930s that said that artificial fertiliser was "good for the father and bad for the son". That was about the environmental damage—the level of soil damage—done by artificial fertilisers. Having just come out of the Oxford Real Farming Conference and heard lots of excellent things about soil, and having seen reports from its companion, the Oxford Farming Conference, there is increasing understanding of the impact of nitrogen fertilisers,

[Baroness Bennett of Manor Castle]
not just on the climate emergency—nitrous oxide has 298 times the global warming potential of carbon dioxide and stays in the atmosphere for an average of 114 years—but also on soil structure. In healthy soils, with low levels of nitrogen, one sees that microbes do not metabolise carbon compounds but instead excrete them as polymers that act as a glue holding the soil together. Of course, we are seeing, with the floods around the UK now, some of the huge damage that the loss of soils can do, when we do not have that soil structure.

I come to a specific point about this SI, and I follow the point made by the noble Baroness, Lady McIntosh of Pickering, who, with her customary depth and grasp of detail, asked some detailed and important questions. I particularly pick up the point she raised about paragraph 7.3 in the Explanatory Memorandum, which says:

"Manufacturers who currently market 'EC fertilisers' in Great Britain and in Northern Ireland will need to be established in the EU to continue to market 'EC fertilisers' in Northern Ireland".

This seems to be a pattern we often see, so what advice are the Government giving potential or current manufacturers? Are people being told to take their business out of the UK and to set up in the EU? Have the Government made any assessment of the economic and job impacts in this industry and more broadly?

I want to raise a related point with the Minister; I would be happy to share the source with him later. There is a report from the *Belfast News Letter* which reflects some of the questions of the noble Lord, Lord Dodds. It is about peat and it quotes Robin Mercer from the Hillmount Garden Centre, who said that it is

"now illegal to import a plant which contains on its roots any soil or bark-based peat-free compost",

but legal to import, albeit with lots of paperwork, plants that are contained within peat. I am sure the Minister is well aware of the issues around peat and the need to move away from peat-based compost. Will he look into this and see whether there is any way to ensure that we are not encouraging, through this and other statutory instruments relating to the end of the Brexit transition period, environmental damage through agricultural practices?

2.57 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady Bennett of Manor Castle, and I too thank the Minister for his detailed and comprehensive explanation of these regulations, which are a direct result of the UK leaving the European Union—that is the plain and simple fact. I have several questions for the Minister. If he cannot provide answers today, I will be content to get them in writing.

Like the noble Lord, Lord Dodds, I have a concern about unfettered access for imports from Britain to Northern Ireland. I fully recognise that the protocol has to be fully implemented, so what work are the UK Government carrying out with the EU and the Northern Ireland Executive, plus Assembly, to ensure that there are no further wrinkles or problems to be encountered by importers or local businesses in Northern Ireland? That will simply add further costs and burdens for many retailers and consumers. What will be the exact role of the Northern Ireland Executive and DAERA in overseeing the implementation of the regulations?

A Defra consultation document on reducing ammonia emissions from solid urea fertilisers, published in November 2020, is due to be concluded today—26 January. Have there been many responses? How does it fit into this statutory instrument? Will there be further legislation as a result of this document and any ensuing measures? Will an amending SI be needed? I would be grateful if the Minister could clarify this further.

The consultation document sought views on proposals designed to reduce ammonia emissions, 87% of which come from UK agriculture. As the noble Baroness, Lady Bennett, has already said, this is good because it will protect the soil and our environment, specifically from the use of solid urea fertilisers.

It recommends three options: a ban on solid urea fertilisers, which the Government favour; a requirement to stabilise solid urea fertilisers; and a requirement to restrict their spreading to a two-month window from 15 January to 31 March each year. Can the Minister update the Committee? Is the SI just a temporary measure to be followed by amending legislation to reflect the recommendations, including a possible ban? Or does this intersection with the Northern Ireland protocol cut across all this and ensure that it will not happen?

Finally, with the protocol in place, what will be the position in Northern Ireland regarding reducing urea fertilisers? I presume this will be an issue for DAERA and the Northern Ireland Executive. I look forward to the Minister's answers.

3.02 pm

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, I thank the Minister for his introduction and for his time and that of his officials in providing a briefing on this statutory instrument. I share the dismay of the noble Baroness, Lady Bennett, about the Environment Bill and agree with many of her comments.

Our farming and horticulture sectors have come to rely on fertilisers to ensure that their businesses thrive. However, many of the chemicals contained in fertilisers do not improve soil quality—quite the opposite. The Government rightly set great store by not only improving soil quality but preventing runoff from land, which can carry topsoil away.

As I understand it, this SI has two parts: one relates only to the Northern Ireland protocol—as the original SI was implemented in February 2019, before the protocol was in place—and the other to labelling. Again, if I have understood it correctly, the "UK fertiliser" label can be used in Northern Ireland. However, as the noble Baroness, Lady McIntosh of Pickering, said, producers who do not currently trade with the EU and are based in the UK cannot use the same label.

I understand that the Agriculture Act now allows the UK to set a different set of standards for fertilisers from those being used in the EU. Are these differing standards stricter in the UK than in the EU, or are the EU ones tighter?

I am aware that a radical review of fertilisers is being undertaken both in the EU and the UK. The UK review is an ambitious programme to change and modernise the use of fertilisers. How long with this review take and when will its findings be published? Is it likely to be completed before the end of July this year?

I note that the devolved Administrations have been consulted on this SI. Are they also to be consulted on the ongoing review of the use and type of fertilisers? It will be important to harmonise fertiliser use across the country and not have different practices in different devolved Administrations. The noble Lord, Lord Dodds, referred to the lack of consultation and agreement with Northern Ireland. This is unacceptable.

Widening the subject, I am encouraged that some of our waste will be recycled into soil enhancers. Can the Minister say more about plastics contamination in waste products which are to be used in this way? Like him, I am in favour of a circular economy, and delighted that we may be able to use our waste from both recycled green, on-farm composting and from water boards as soil enhancers and improvers. However, antibiotics from water board waste are entering the soil. In the past, the overuse of antibiotics has been widespread in the treatment of both human and animal diseases. Can the Minister reassure the Committee that the level of antibiotics in the soil improvers will be closely monitored?

Overall, I am happy to support this SI. As other noble Lords have said, it is very complex. I look forward to the Minister's response to the questions which I and others have posed.

3.06 pm

Baroness Jones of Whitchurch (Lab) [V]: My Lords, I thank the Minister for his introduction and for the helpful briefing beforehand. As noble Lords have said, this is a hugely complicated issue. We accept that this SI in its current form is necessary to ensure that the marketing and trade of fertilisers with Northern Ireland can continue effectively in the short term.

We accept that it is important that UK manufacturers can trade products across GB and Northern Ireland using the same label. Can the Minister clarify that the existing regulatory standards will remain the same in GB and Northern Ireland? Can he also update the Committee on the checks currently taking place on the Northern Ireland border? We all have some sympathy with the points made by the noble Lord, Lord Dodds, and the noble Baroness, Lady Ritchie, about the problems occurring on the Northern Ireland border. I hope the Minister can assure us that urgent action is being taken to iron out some of the blocks and complexities at the border and that these will be resolved in short order.

The Minister has explained that we are in a period of transition regarding controls over future fertiliser policy and that a consultation is being drawn up. Although it goes beyond the scope of this SI, we would welcome such a review and an opportunity to ensure that the regulations are fit for purpose. As the noble Baroness, Lady Bennett, and other noble Lords have said, there is clearly potential for modernisation, based on the best science available, together with a greater understanding of the need to protect and enhance our soils. Can the Minister reassure us that any new proposals will maintain our commitment to the precautionary principle and to our high environmental standards?

As this is the first SI with which I have been concerned since the trade and co-operation agreement was signed in December, I wonder if the Minister can help me on a couple of other issues. Can he say how that detailed agreement will be dealt with going forward? Will it require us to revisit many of the SIs that we have already agreed? As noble Lords know, the trade and co-operation agreement is a very long document. Will its content have to be broken down in due course into primary and secondary legislation? In other words, will we have to go into the detail of this agreement at some point or will it be signed off as a whole? We are interested in the Defra elements, but it has a much wider spread. We would appreciate it if the Minister could help us regarding the state of that document, and I look forward to his response.

3.10 pm

Lord Gardiner of Kimble (Con) [V]: My Lords, I am most grateful to all noble Lords for a compelling debate. I agree with the Lord, Lord Clark of Windermere, that it is complicated and intricate.

Clearly, we are dealing with materials that we need to treat extremely cautiously, so I wanted to take the opportunity to address the safety of ammonium nitrate and its storage. Ammonium nitrate is classed by the Government as a controlled good, which means that there are extremely strict rules on its handling in GB. Its import and handling are covered by the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2020.

The noble Lord also asked about fertiliser shipped from GB to Northern Ireland and labelling, if it were to end up in the Republic. We have updated the published guidance to reflect the changes and new actions needed to market fertilisers in GB, Northern Ireland and Europe from 1 January this year, and circulated the changes to industry before publication. The Agricultural Industries Confederation published guidance for its members based on our updated GOV.UK guidance. On this basis, there is clarity over labelling and where fertilising products can be sold.

The noble Baronesses, Lady Bennett and Lady Bakewell, raised environmental issues. Again, I should like to address a key point. In having fertilisers to enhance agricultural production, feed the nation and feed the world, we need to be extremely conscious of the environmental issues. Although it is essential to maintain and, wherever we can, increase yields for both food and non-food use, fertilisers can have a significant negative impact on air quality, water quality and emissions, as well as habitats and soils.

That is why the Government are very clear about the need to uphold high standards now that we have left. This will be reflected in any new regulatory regime for fertilisers introduced under the new powers included in the Agriculture Act 2020. The powers in the Act allow for the establishment of an assessment, monitoring and enforcement regime to ensure fertilisers' compliance with composition, content and function requirements that will be set out in regulations, and for otherwise

[Lord Gardiner of Kimble]
mitigating risks to human, animal or plant health or the environment presented by fertilisers. I absolutely recognise the dynamics of what we need to do and that, as has been said, the careful monitoring of fertilisers' use is well known by those who will use them.

My noble friend Lady McIntosh mentioned cost. The whole purpose of the GB, Northern Ireland and UK fertiliser label was to minimise manufacturing costs. She mentioned, as I have, the Agricultural Industries Confederation. It is very much aware of and content with the provisions of the original exit SI that created the UK fertiliser label. As I said, the policy objective of this SI is to maintain that common route to market across the UK in the light of the Northern Ireland protocol.

I am also very conscious of what the noble Baroness, Lady Ritchie of Downpatrick, and the noble Lord, Lord Dodds, said about the difficulties. That is why not just Defra but the Government as a collective are doing everything we can, case by case, in the Defra areas and beyond, to work with producers, hauliers and Governments to ensure that these issues are resolved company by company. I know, as will noble Lords, from the work we have done on many Northern Ireland regulations over time, of the very strong relationship that Defra has with DAERA. I register for all noble Lords, particularly those from Northern Ireland, that I am acutely aware of some of the difficulties. Yes, we want a smooth passage of trade, but we need to recognise —as we do—that there are requirements because of the protocol. We seek to ensure a pragmatic approach within the principles of the protocol so that businesses in all parts of the United Kingdom can thrive and consumers get the goods that they need and get them speedily.

The noble Baroness, Lady Jones of Whitchurch, mentioned the importance of UK standards and asked about any differences with what may be EU standards. At the moment, the retained UK fertiliser regime will adopt the same standards as the EU. That is our position. The EU is implementing a new fertiliser products regulation to improve standards, and this new law will become fully operational in July 2022. As I mentioned, we have taken powers under the Agriculture Act to ensure that we, too, can modernise our domestic system and improve standards in fertiliser regulation.

As the noble Baroness, Lady Ritchie, mentioned, there is a consultation on urea fertiliser that will close today. We launched a consultation on reducing ammonia emissions from the use of solid urea fertilisers because ammonia emissions are harmful to sensitive habitats as well as to human health, with 87% of ammonia emissions coming from farming. We need to address that, and the farming industry is very conscious of it. I do not have any further detail, I am afraid, because the consultation closed today.

My noble friend Lady McIntosh raised a point on labelling. This SI will implement a unifying label for the UK. Both Northern Ireland and GB can trade under EU regulation as long as they comply with those requirements.

On any new system of assessment under the regulations, raised by the noble Baroness, Lady Bakewell, and others, we have already started moving towards adopting conformity assessment for fertilisers, a risk-based system commonly used for manufactured products. This means that we can use appropriate testing standards depending on the risk posed to the consumer and the environment. It offers regulatory assurance for consumers that fertilisers deliver the nutrient efficiency claimed by manufacturers, but also allows us to set limits for contaminants, such as plastics, in organic products. This will ensure that products not currently regulated, such as soil improvers, will be safe for the consumer and the environment. It should stimulate both demand and development for less polluting types of fertilisers, such as biostimulants.

I also say to the noble Baroness, Lady Bennett, that we will use every opportunity we can in a new Session of Parliament to get the Environment Bill before your Lordships as soon as possible. We will be working to reduce peat. I will take that away and work on all other points that were made. As I said, the role of DAERA is extremely important, and it will be for the Northern Ireland Administration to work on these matters, but we will co-operate on matters such as the reduction of use of urea.

I fear my Whip is sending me a message that means I may have gone beyond the time allocated, but noble Lords raised some very important points. I will write fully on some of the more detailed points but, in the meantime, I commend the regulations. They are important for the whole purpose of what we want to do within the United Kingdom and working with our Northern Ireland colleagues.

Motion agreed.

3.20 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, while 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.

Operation of Air Services (Amendment) (EU Exit) Regulations 2020

Considered in Grand Committee

3.46 pm

Moved by ***Baroness Vere of Norbiton***

That the Grand Committee do consider the Operation of Air Services (Amendment) (EU Exit) Regulations 2020.

Relevant document: 41st Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, these regulations are made under the powers conferred by the European Union (Withdrawal) Act 2018. They amend EU Regulation 1008/2008, which sets out common rules for the operation of air services. These regulations ensure that Regulation 1008/2008 continues to function correctly in UK law after the transition period. They do so by amending the Operation of Air Services (Amendment etc.) (EU Exit) Regulations 2018.

This SI is necessary because the EU amended Regulation 1008/2008 after the UK's 2018 regulations were made. EU Regulation 1008/2008 was amended in May last year by EU Regulation 2020/696, which inserted provisions to address problems caused by the sharp decline in air passengers resulting from the Covid-19 pandemic. It also inserted powers for the Commission to extend the new provisions by delegated acts. The Commission used these powers and made further amendments to Regulation 1008/2008 via two delegated regulations adopted on 16 December 2020. These extended two of the new provisions until the end of 2021. The earlier amendment made in May would have seen them expire at the end of 2020.

This SI was made using the "made affirmative" procedure as the only means of bringing it into force before the end of the transition period while ensuring parliamentary scrutiny. As I have noted, the most recent EU amendments were not adopted until 16 December; only then was it possible to determine the precise content of this SI. The SI was laid on 23 December, the earliest opportunity after the Commission's adoption of the delegated regulations.

I will now describe the provisions in more detail. They allow airlines in financial difficulty to retain their operating licences, subject to certain conditions, and allow airports to urgently replace ground-handling providers should they suddenly cease trading. Both provisions will apply until the end of 2021.

Regulation 1008/2008 requires the Civil Aviation Authority—the CAA—to revoke or suspend the operating licence of an air carrier in financial difficulty; it may replace it with a temporary licence. Such action risks the integrity of the air carrier in the eyes of investors and customers. It would raise concerns about the airline's viability and could, in turn, lead to deeper financial problems. Normally, such actions are justified to regulate tightly carriers in financial difficulty but, during the Covid-19 pandemic, all air carriers have suffered significant decreases in revenues and a more flexible response is required.

Regulation 2020/696 inserted a new provision allowing regulators not to revoke or suspend operating licences where the carrier is in financial difficulty providing that a financial assessment is undertaken, safety is not at risk and there is a realistic prospect of financial reconstruction within 12 months. The CAA is the UK regulator in this respect.

The second provision concerns ground handling at UK airports where ground-handling suppliers are restricted; for example, on safety grounds. Where a ground handler has ceased trading before the end of its contract, the new provision allows airports to choose a new provider directly for a limited period rather than undertaking a tender process.

Reduced passenger demand at airports has severely impacted the ground-handling sector and increased the risk of sudden failure of ground-handling companies. The new provision ensures that airports where ground handlers are restricted can select replacement providers quickly and minimise disruption to users of the airport.

The withdrawal Act retained EU Regulation 1008/2008 in its entirety on exit day. The amendment makes the changes necessary so that this EU regulation continues to function correctly alongside the Operation of Air Services (Amendment etc.) (EU Exit) Regulations 2018.

The SI amends Regulation 1008/2008 to fix deficiencies arising from the amendments made by subsequent regulations and Commission delegated regulations. For example, "Union air carrier" is replaced by "UK air carrier", and references to the ground-handling directive are replaced by references to the Airports (Groundhandling) Regulation 1997, which transposed the directive. Provisions relating to the Commission's delegated powers are revoked because they are no longer relevant to the UK.

The impact of the Covid-19 pandemic will continue for some time. The provisions that I have described provide the CAA and airports with additional flexibility to respond. I commend the regulations to the Committee. I beg to move.

3.51 pm

Lord Berkeley (Lab) [V]: My Lords, I am grateful for the opportunity to respond to the Minister, who has given us a comprehensive introduction to the regulations. I suspect, as she hinted, that the Covid situation causing the massive lack in demand for air services will go on for some time and that we will have many such debates on air regulations before the year is out.

I have just one or two questions for the Minister. First, it appears from reading the Explanatory Memorandum that the regulations apply only to the UK and to UK-registered carriers—obviously, it is just the UK—but how do foreign carriers get registered to operate in the UK?

Secondly, I have noted that a UK air carrier must have its principal place of business in the UK, which is perfectly reasonable, but are there any restrictions on the shareholding or ownership or on where those operators might be registered, be they in the UK, within the European Union or elsewhere?

I am also interested in bilateral air services agreements. How many, if any, have been agreed with EU member states and came into force at Brexit? If those agreements are not complete, when will they be—they must be done individually, I believe—and what happens in the meantime? Are we just hoping for the best, or are there some interim arrangements?

Finally, on qualifying air operators being eligible for PSOs—I am obviously interested in PSOs from where I live in Cornwall and the Isles of Scilly—I understand PSOs being limited to EU carriers, but do any EU carriers have cabotage rights to operate in the UK? Would they then be able to bid for PSOs in the same way as UK-registered air carriers?

[Lord Berkeley]

That is enough from me. I look forward to the Minister's answers.

3.54 pm

Lord Bradshaw (LD) [V]: My Lords, I join the noble Lord, Lord Berkeley, in thanking the Minister for her explanation. He is probably quite right that this will be the first of many such sessions.

I think I understand the regulations, but I am concerned about the activities of operators such as Ryanair, which now register their businesses on the continent. How are they covered? Are they now counted as a UK carrier, or are they a foreign carrier? We can see quite a lot of that sort of movement in the industry, where it will be quite difficult to determine who is what. Otherwise, I think I understand the regulations and the way in which ground-handling services have been bundled together with air operations. Like the noble Lord, I look forward to—or, rather, I can foresee—many more occasions when we might return to this subject.

3.56 pm

Lord Bilimoria (CB) [V]: My Lords, the trade agreement between the UK and the EU was concluded on Christmas Eve last year and came into force on 31 December, four and a half years after the vote for Brexit. It is almost 1,500 pages, 26 of which deal with aviation. There were major concerns that the existing conditions would be worsened, but this has largely been avoided. Of course, there is some risk of divergence over time, but, as of now, compared with the threat of no deal, we are in a very good place in spite of being out of Europe's single aviation market. The traffic rights have been preserved. Ownership and control restrictions allow UK airlines to be EU-owned, and there is close co-operation on safety and security, so, on the whole, this is very good news.

However, as has been said, the UK aviation industry has suffered greatly. Industry groups warned in a recent article that there was only so long that airports could "run on fumes". There are now the new quarantine rules and a requirement to isolate for 10 days, and all travel corridors are closed. The Airport Operators Association is grateful for the £8 million in rates relief for airports, but airports such as Heathrow, whose rates are £100 million in a year, have suffered hugely—at times, the airlines' and airports' business has been down by more than 90%. Does the Minister agree that the support needs to continue and that, in particular, the furlough scheme should be extended beyond April until at least the end of June?

There is now talk of the possibility of travellers being forced to quarantine in hotels when they arrive in the UK. Can the Minister inform us as to whether this will happen? Aviation leaders have warned that tougher border controls would be catastrophic. On the other hand, everyone in business understands that health has to come first. As the Prime Minister said, there is a theoretical risk of a new, vaccine-busting variant of the virus, which we have to be able to keep under control. Thankfully, the vaccine looks to be progressing extremely well. Does the Minister agree that we should have a testing regime which comprises not only a PCR test 72 hours before boarding a flight but a lateral flow test on arrival as is the case in the UAE, as well as another lateral flow test five days later, which would avoid the need for quarantine as we look ahead to when the vaccines have been rolled out?

3.59 pm

Lord Empey (UUP) [V]: My Lords, the Minister in her opening remarks referred to safety. Obviously, when airlines are not flying at normal levels and get in financial difficulty, sometimes safety is short-circuited and maintenance is put off to save money. Perhaps the Minister could tell us how safety is being maintained given these circumstances.

Secondly, I wanted to ask about the difference between what are called "foreign carriers" and "British carriers". Airlines are owned internationally these days; they are not normally owned by a particular country, and what is a principal place of business is a matter often in the eye of the beholder. I am not quite clear how these arrangements are entered into. The other important point is that they should be reciprocal. How is that going to be rolled out over future years?

My third point, on the PSO, has already been referred to. The Minister will be aware that there are a number in the UK—in Cornwall, I believe, and I know there are others. We certainly have at least one in Northern Ireland. Given that Northern Ireland is still subject to state aid rules, how will the application of PSOs be looked at in terms of the agreement with the European Union? People could argue that unfair advantages are being given if PSOs are designated in particular areas; and of course, there is also our concern for the social and economic development of more remote regions. Perhaps the Minister could tell us how these issues will be judged. In Northern Ireland we at least have one operational PSO and are still subject to state aid; where is the interface between that and potential PSO rules in Great Britain?

4.02 pm

Baroness McIntosh of Pickering (Con) [V]: My Lords, I thank my noble friend the Minister for bringing forward these regulations today—they go to the heart of the sustainability and resilience of the industry. At its height, the aviation sector enjoyed a turnover of over £60 billion, contributed over £22 billion a year to the UK economy and employed almost 1 million people either directly or indirectly. My thoughts are with all those who have been involved and who may have lost their jobs in the airline sector and the aviation industry at this time.

I particularly welcome the fact that this statutory instrument allows air carriers to retain licences in the event of passenger numbers falling, subject to the conditions that my noble friend set out, and allows, in the circumstances of a ground handler ceasing to trade before the end of the contract, airports to choose a new provider directly for a limited period to enable them to continue without a tender process at that time.

My noble friend set out the conditions which have to be met in the event of an operating carrier experiencing financial difficulties. If the airline operator cannot

meet those criteria at this time and until December this year, what happens to the licences which are released and what procedure is to be followed in those circumstances? It would be very helpful for us and those affected to know.

I also echo the thanks given by the noble Lord, Lord Bilimoria, for the support enjoyed by the airline sector and other industries. But does my noble friend agree that airlines need further economic support at this time, over and above the support they have already enjoyed? Of course, most of the loans have to be paid back, and it may be some time before we enjoy the level of activity that we saw between 2016 and 2018 to enable the airlines to repay those loans. Will my noble friend look at my request to end the current air passenger duty anomaly, which is effectively subjecting UK domestic flights to double taxation?

Those are my two specific questions, in addition to what happens to the licences: what further support might be extended, and can the vexed question of air passenger duty and double jeopardy be tackled?

4.05 pm

Lord Bowness (Non-Afl) [V]: I thank the Minister for her introduction of the instrument, and I hope she will forgive me if I look a little wider than provisions for financial difficulties—of which I fear there are many and will be many more if we are not careful—and for changes to ground staff handling.

If you take airline travel as the beginning of a chain which links airlines, airports, their employees and suppliers, the aerospace industry and its suppliers, and the communities dependent upon them, there is a long chain of jobs dependent upon the functioning of the air travel industry. For this reason, I urge the Government and the Prime Minister to note and act upon the open letter sent by ABTA to the Prime Minister asking for an aviation, travel and tourism recovery package. We know it cannot take place now, but we need to plan for when it is possible and not wait until it is possible. We will need plans for inward travel, made in conjunction with not only the European Union but other jurisdictions. We will need to know what testing is to be available, where and when and at what cost. What role will vaccination certificates play? A few countries have already indicated unrestricted access for those who have been vaccinated, but how is that going to be proved by individuals?

Lastly—and I hope the Minister will forgive me—I raise yet again, after many questions, European Union regulation 261 on passenger compensation in the event of cancellation or delay. The Minister previously helped me on this point, and I am grateful for her assurance that it remained in force after 31 December. But, while in no way doubting her integrity on the matter, is it in a suitable form post our exit from the European Union on 31 December? Did it not need amendment to reflect this? If so, has it been done, and where?

4.07 pm

Baroness Randerson (LD) [V]: My Lords, first, I thank the Minister for her introductory explanation. This SI extends temporary provisions to disapply the usual rules for airlines which get into financial difficulty. In normal circumstances, their operating licence is revoked or replaced by a temporary licence. The SI recognises that previously financially healthy airlines are financially at risk while travel restrictions are in place, meaning that they can continue operating without revocation or suspension of their licence so long as they were previously financially stable, safety is not at risk and there is a realistic prospect of restructuring. Similarly, it allows airports to replace ground-handling service providers without going out to tender. These seem sensible measures at the moment, but I have some questions about the detail.

First, week after week there is fresh news of crises among airlines worldwide. Most have responded by downsizing their fleets and personnel, but many clearly face serious financial difficulties still. Can the Minister tell us how many airlines in the UK have been accorded the special measures briefly described by me and referred to in the regulations? Have they been allowed to continue operating when, in normal circumstances, they could have lost their licence?

The process is subject to conditions relating to previous financial viability. Can the Minister explain how those tests are applied in the UK? Is this done by the CAA, the CMA or another government agency? Many airlines, as previous speakers have pointed out, have shareholders in the UK, the EU and across the world; what international co-operation and liaison is there between licensing authorities in such cases? Can the Minister explain how they are dealt with? On ground handling, have there been any instances of airports using the non-tender approach allowed?

Finally, I will ask about the general situation for aviation and, indeed, the travel sector generally, as several other noble Lords have. We seem to be heading towards tighter restrictions in relation to quarantine hotels, which are a very sensible response to the situation. Last month, the ONS published data that shows that the travel sector has been the hardest hit sector in the UK economy. It contributes £65 billion a year to our GVA and sustains 1 million jobs, but the Government are still providing no support targeted specifically to the travel industry; there has been no Eat Out to Help Out for it.

The Minister knows about this—I have asked about it on numerous occasions—and she always refers me to the standard package of measures available for businesses generally, but will she now accept that airlines, airports and all those companies that support them and the travel industry as a whole now need a dedicated package of support? Their request is that the Global Travel Taskforce be reconvened so that the travel industry works closely with government to tackle this very specific problem.

The measures in this SI reflect that, very early on in this pandemic, the EU specifically recognised that airlines and support companies, such as ground handlers, would face financial crises. Almost a year on, the travel industry urgently needs the UK Government to show similar awareness of it as a whole.

4.12 pm

Lord Tunnicliffe (Lab) [V]: My Lords, I welcome the introduction of this instrument to transfer EU regulations into UK statute and to ensure continuity

[Lord Tunnicliffe]
in relation to airlines and their operating licences. Of course, there is much work to be done to ensure that airline finances are more resilient, but this instrument is none the less a welcome contribution towards that. On that note, considering that part of these regulations relates to insolvencies of suppliers of ground-handling services, can the Minister update the Committee on what steps the Government are taking to avoid insolvencies in the near future?

Moving on to the instrument itself, the Minister will recall that, in November 2020, the European Commission stated that the periods for which the previous provisions apply will be extended by 12 months until 31 December 2021. Do the Government expect the European Commission to extend the timeframe further, beyond the current deadline—and, if so, will the UK extend the timeframe to reflect this? In regard to the drafting of this specific instrument, I am pleased that the Government have stated that the CAA supports these regulations. Can the Minister confirm who else the Government have consulted as part of the drafting of the regulations?

Finally, looking to the future operation of regulations in this area, can the Minister detail how the Department for Transport is currently engaging with the European Commission to support airlines? Does the Minister expect the European Commission to introduce any further provisions in this area? As I said, I welcome the introduction of this instrument and I am pleased that the Government are seeking continuity for airlines.

4.15 pm

Baroness Vere of Norbiton (Con): My Lords, I thank all noble Lords for their consideration of these regulations. As ever, I give my special thanks to those who were in touch beforehand to raise any issues or questions with me. It always amazes me, but probably in a good way, that noble Lords are able to raise issues far beyond the scope of the SI. I will do my best to respond, but I will focus on those issues that are directly relevant, while I still have time.

The noble Lord, Lord Tunnicliffe, talked about consultation and engagement. I hope he will recognise that this SI was put in place very rapidly, as the developments came out of the European Commission. We consulted the CAA and key ground-handling companies, but we were not able to consult as widely as we would ordinarily have liked. However, of course, we speak to the aviation sector as a whole, and I am not aware that there were any significant concerns about these regulations.

I turn to the point raised by my noble friend Lady McIntosh about what happens to the licences. There is not a finite supply of them. If the test cannot be met, the CAA can suspend or revoke an airline's operating licence, or it could issue a temporary operating licence—these procedures are very well understood. I return to what is in the SI: the three tests that the CAA has to put in place are rigorous, and it will be able to assess whether a licence needs to be suspended or revoked.

I turn briefly to the second of the three points, which is about confirming that the financial problem poses no safety risk, and I will pick up the point that the noble Lord, Lord Empey, raised. Of course, safety is our highest priority in aviation; there has been no change to the regulation in relation to it, and there has been no change to the enforcement of safety regulations—that remains the case, and I reassure him on that.

The noble Baroness, Lady Randerson, asked whether these powers have been used, and the noble Lord, Lord Tunnicliffe, asked whether they might be extended in the future. I am not aware that these powers have been used since they became available in May 2020, and, obviously, I hope that they do not have to be used in 2021 either—but they provide the flexibility, should we need it.

On the issue of ground handlers, we are, of course, transposing, or matching our regulations to, things that were set out by the European Commission, as is the case under the withdrawal Act. At the moment, no airports in the UK have a limitation on the number of ground handlers to no more than two on safety grounds, so the ground-handler side of things would not currently be needed. However, on the airline side, it certainly gives the sector some comfort that there is the appropriate flexibility, should it be needed.

Of course, in the first instance, we are looking to the end of 2021, which is why we had to get these powers in quite quickly at the end of last year. I hope that we do not need to extend them in 2022, but we will continue to talk to the industry about this. If we need to consider extending them, this will require primary legislation. As for what the European Commission may do, obviously, we will watch with great interest, but the UK will make these decisions for itself.

This slightly leads into the question of what a UK airline and a foreign airline are. The latter needs to have an air operator certificate and a route licence from the CAA to operate in the UK. A UK airline must have a principal place of business in, and be regulated by, the UK. As such, to a certain extent, an airline decides where its principal place of business is and, therefore, who it is regulated by. Of course, within the EU and, to the largest extent, the UK, it probably does not really matter because you are mostly dealing with the same regulation—so Ryanair is not a UK carrier because its principal place of business is not in the UK and, therefore, it is not regulated by the CAA.

The noble Lord, Lord Berkeley, also asked about new bilateral agreements following the trade and co-operation agreement, which we entered into at the end of last year. There do not need to be any bilateral agreements now, so there will be no new ones with EU member states because the new air services agreement within the TCA covers the entirety of the EU.

Turning to the point made by the noble Lord, Lord Empey, about PSOs, the Northern Ireland protocol applies only to trade in goods, whereas public service obligations are a service. They are therefore not subject to state aid rules and can be considered in the broader context of regional connectivity. The PSOs were put in place under Regulation 1008/2008; as I said, this regulation has been retained in UK law. Indeed, Article 3.5 of the EU TCA makes specific mention of PSOs as an allowed subsidy, which is positive. Decisions on PSOs are made on a case-by-case basis. I believe that the noble

Lord, Lord Berkeley, asked whether an EU carrier would be able to undertake one. If no UK airline was interested in providing a PSO, an EU airline could be given greater cabotage rights so that it could then provide the service.

We in government have come up with a good package that covers many types of business in the economy. I will not go through this in detail as I am sure noble Lords have heard it mentioned many times before, but the air transport sector as a whole has received around £3 billion of support from the Covid Corporate Financing Facility and the job retention scheme alone. Noble Lords will be well aware that the airport and ground operations support scheme has been announced by the Government; that should be helpful in reducing cash burn, particularly for small and medium-sized airports. It could also unlock further shareholder and lender support.

It is worth mentioning that further cross-economy measures are available to businesses in the aviation sector if they are eligible. In January 2021—this month—easyJet announced that it had signed a £1.4 billion loan facility with a syndicate of banks, partially guaranteed by UK Export Finance. British Airways also secured a similar commitment for £2 billion, which, again, will be partially guaranteed by UK Export Finance. A lot is going on to make sure that our aviation sector is secure for the future. Also in January, the Chancellor announced the Additional Restrictions Grant. Again, that may be appropriate for some businesses, but we are well aware that, like so many sectors of our economy at the moment, aviation is struggling.

We are now focused on getting a plan together—the noble Baroness, Lady Randerson, mentioned this—for how we will help the sector recover. We are doing a lot of work in this area. The expert steering group, which we originally set up right at the outset of the pandemic, was reconvened in September to focus specifically on recovery work. It includes representative bodies such as the Airport Operators Association and Airlines UK, airlines such as easyJet, IAG, Virgin and Wizz Air, airports, ground handlers, a freight representative, the Association of British Travel Agents—the noble Baroness, Lady Randerson, name-checked it, I think; it is actually involved in the recovery work so I hope that it will share its thoughts with the group—and the CAA. The steering group is working with the department to come up with a recovery plan for the aviation sector. It will explore all sorts of different things relevant to aviation; a specific example is looking at how we can make sure that we maintain our regional connectivity.

The noble Lord, Lord Bilimoria, mentioned border closures. I thank him for his suggestion about testing. As noble Lords know, this is a live issue at the moment. The Government always have it under review and are always thinking about how we can strengthen it.

My noble friend Lady McIntosh mentioned air passenger duty—not for the first time. I am always grateful to her for doing so. As I believe I have said, we take great interest in air passenger duty. The Treasury always keeps taxes under review. The Government have committed to consulting on aviation tax reform. We recognise the issue mentioned by the noble Baroness. I very much hope that, now that the workload around the initial response to Covid-19 has declined somewhat, we will be able to move the consultation forward more quickly.

Finally, on the point made by the noble Lord, Lord Bowness, about Regulation 261 and passenger compensation, I am afraid I can go no further. As I said, it is a functioning regulation and we do not believe that it needs to be updated, but I will ask officials to write to the noble Lord if further detail would be helpful.

Motion agreed.

4.25 pm

Sitting suspended.

Drivers' Hours and Tachographs (Amendment) Regulations 2020

Considered in Grand Committee

5 pm

Moved by ***Baroness Vere of Norbiton***

That the Grand Committee do consider the Drivers' Hours and Tachographs (Amendment) Regulations 2020.

Relevant document: 41st Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, these regulations are the first to be made under the powers conferred by Section 31 of the European Union (Future Relationship) Act 2020. By reason of urgency, it was necessary to make these regulations without a draft being laid and approved by both Houses of Parliament. The urgency was that these regulations needed to be made and to come into force before the end of the transition period on 31 December 2020, to ensure that the rules relating to drivers' hours and tachographs could continue to be enforced in Great Britain and Northern Ireland, in respect of vehicles engaged in commercial road transport, under the terms of the EU-UK Trade and Cooperation Agreement, or TCA.

Drivers' hours rules are central to keeping our roads safe and protecting driver welfare. They set maximum driving times and minimum break and rest times for most commercial drivers of both lorries and coaches. For example, the rules mean that after 4.5 hours driving, a driver must take a 45-minute break, and daily driving time is normally limited to nine hours. The consequences of driving any vehicle when fatigued can, of course, be catastrophic, and the potential risks associated with heavy commercial vehicles are particularly severe.

These rules are enforced by the Driver and Vehicle Standards Agency at targeted roadside checks, but also by visiting operators' premises. The principal tool used by enforcement officers is the record generated by the tachograph, a device installed in relevant vehicles that records the driving, rest and break times of individual vehicles and drivers. The regulations amend domestic legislation to ensure that the roads chapter of the

[Baroness Vere of Norbiton]
TCA, which covers the drivers' hours and tachograph rules applicable to journeys between the UK and EU from 1 January 2021, can be enforced. They do this by providing that the EU drivers' hours regulation and the EU tachographs regulation, which are retained in domestic legislation by the EU withdrawal Act, will apply to journeys between the UK and the EU, as well as domestic journeys in the UK. The regulations also clarify that the AETR rules apply to journeys between the UK and countries that are not EU member states.

As I said, the drivers' hours and tachograph rules are important to public safety, and this instrument is required to ensure that such rules can continue to be enforced effectively. The policy area of drivers' hours is devolved with respect to Northern Ireland. While, for the sake of efficiency, this SI makes amendments to the retained EU regulations on a UK-wide basis, this does not affect the devolved nature of the policy.

To conclude, keeping these regulations in force is essential for ensuring that the drivers' hours and the tachograph rules applicable to journeys between the UK and EU member states under the TCA are enforceable. These rules are at the heart of the road safety regime for commercial vehicles. I beg to move.

5.03 pm

Lord Berkeley (Lab) [V]: My Lords, I am grateful to the noble Baroness for introducing these very important regulations. I agree that it is necessary to keep enforcement at the top of the list, because it is all to do with road safety, and I welcome these regulations without question, apart from that of enforcement. There is nothing new about our discussion of enforcement, but it is worth asking the Minister a few questions about how it is done, because we have had issues recently about number plate recognition. Apparently, the system that recognises number plates, for congestion charges and such things, no longer links with the systems in the rest of Europe, so it looks to me as if any truck, car, coach or anything with non-UK registered number plates will probably get away with no enforcement at all, because it will be too difficult, time-consuming and labour-intensive to chase them up.

I have a few questions for the Minister. One is simple; she outlined the answer, which we should probably all know. How does the DVLA monitor tachographs? Obviously, it can be done at people's premises, although I do not imagine an army of several thousand DVLA staff is employed to do this. Is it ever done at motorway service areas or at ports where lorries congregate? It would be nice to know how much monitoring takes place and how often it happens.

The regulations say that some 500 offences are reported to the DVLA every month. This is quite a high figure. I assume that a large proportion of these offences relate to long-distance trucks, many of which have probably come from or are going to the continent and may be in a hurry. It is well known that about 80% of them have non-UK number plates and non-UK drivers. How do the Government think they can be followed up, given that the number plate recognition service is going back to manual? What are the reciprocal arrangements for British-registered trucks going to the continent? Will they also be subject to enforcement? As we have often noted, in places such as France, they will stop you if they feel like it and ask questions afterwards.

A few years ago, I had a friend who was a long-distance driver working for a truck delivery company. On one occasion he was asked by his employer to drive a truck from the south-west to Glasgow, another from Glasgow to the south-west, and a third from the south-west to Glasgow, all within 24 hours. He had more than one tachograph. How is such a situation enforced? The number of trucks does not matter. Driving for this length of time is highly dangerous without the usual rest period.

Finally, will the Minister comment on the headline in last Sunday's *Observer* about the DVLA's failure to protect its workers from coronavirus. Apparently, 500 cases were reported out of a staff of 1,800. Staff were refused permission to work at home and were told to turn off their test and trace apps so that they would not make a noise. Do the Government think that this is an example of good employment practice? I look forward to the Minister's comments.

5.08 pm

Baroness Gardner of Parkes (Con) [V]: My Lords, I support these regulations. Using tachographs to control drivers' hours is highly beneficial and helps to reduce accidents caused by lack of sleep or overwork.

When my daughter was a trainee solicitor, one of the partners at her law firm was known as the prince of tachographs because he was instrumental in advising lorry drivers on their use in the late 1980s, when they were first introduced. I am pleased to say that he now sits as Lord Justice Hickinbottom in the High Court.

While it is reassuring to see legislation on the continued use and enforcement of tachographs, what extra measures have the Government introduced, or could consider implementing to assist lorry drivers in using their tachographs to help alleviate the delays they are now facing as they cross to and from Europe with deliveries? I have heard of drivers, who are invariably paid by the delivery, refusing to take deliveries abroad due to the sheer amount of time they take—at least double or more. I suspect that those drivers' hours are also playing a part in those delays.

I seek assurance that the Government are considering the impact of the tachograph regulations on our current trading arrangements with Europe by lorry and whether relaxing or amending the rules on tachographs could help to alleviate the delays we are seeing to goods. It is important to the UK that we keep deliveries free-flowing and do not impede trade elsewhere. Perhaps, where helpful and appropriate, the use of tachographs could be moderated to lessen those delays until a smoother system is in place.

5.11 pm

Baroness Randerson (LD) [V]: My Lords, I endorse the comments of the noble Lord, Lord Berkeley, about enforcement now that we do not have such good access to international information on number plates. That is a particular issue because 85% of lorry drivers going across to mainland Europe are not UK-based, so enforcement is key.

I also endorse the noble Lord's comments about conditions at the DVLA in Swansea. Will the Government ensure that there is a full investigation into why so many employees have caught the virus, and into employment practices that do not seem to be in line with government guidance?

The regulations are another example of the legislative contortions that we have got ourselves into by being outside both the EU and the single market, but at the same time wanting to mirror EU standards. I cite one sentence from paragraph 2.7 of the Explanatory Memorandum:

"Although the EU Exit Regulations will come into force on IP completion day"—

which, by the way, has passed—

"because the Mobility Package came into force after the EU Exit Regulations were made, the EU Exit Regulations do not remedy these deficiencies."

A great deal of concentration was required to understand what the Explanatory Memorandum was trying to explain.

The desire to track EU regulations is very understandable—especially on logistics, where smooth liaison for drivers operating internationally is essential. The experience of the past few weeks has already revealed many problems with the day-to-day operation of Brexit that were overlooked by its advocates. One has to wonder whether the experts—the drivers and haulage companies—could have been engaged earlier to try to find solutions to these problems.

I wonder how we will keep this up in the long term. The EU has recently announced 82 transport policy and legislative proposals for the coming year—all part of its green deal. I know that the Government are anxious to make their mark on climate change issues, so I assume that the UK will want to at least keep pace with that. It will be extremely difficult to keep pace with changes in EU regulations in this field and in many others.

I have a question about tachographs. Paragraph 2.8 of the Explanatory Memorandum refers to clarifying the types of tachograph applicable in the UK. If a lorry is to be driven in the EU, will the tachograph have in future to conform to EU standards too? I tend to assume that it will, but I should like the Minister's confirmation. What will be the situation for drivers in Northern Ireland?

Before Christmas, when lorries were queuing through Kent because of restrictions due to the outbreak of the new strain of Covid, the Government suspended the restrictions on drivers' hours and required rest periods. Is the lifting of restrictions still in force? If so, why? Are the delays still significant enough to require this? I ask because, as the noble Lord, Lord Berkeley, said, drivers' hours regulations are so important to road safety generally and the lifting of the rules was general and not specific to Kent.

Finally, do the Government have any plans to vary these rules? Recent news suggests that they intend to lower employment regulations and reduce standards. The example of tachographs and drivers' hours is a classic case of regulations that benefit individual employees but are also of great importance to our safety and security generally.

5.17 pm

Lord Rosser (Lab) [V]: I thank the Minister for her concise explanation of the content and purpose of these regulations. I must say, I also found the Explanatory Memorandum heavy going.

These regulations ensure that the drivers' hours and tachograph rules for commercial road transport, lorries and coaches in the trade and co-operation agreement are applicable to journeys between the UK and the EU and can be enforced. They were laid under the "made affirmative" procedure, meaning that they applied instantly when they were laid shortly after the trade and co-operation agreement with the EU was concluded late last month. That agreement made no changes to the drivers' hours and tachograph rules applicable to journeys between the UK and EU.

The Government have said that these regulations are needed urgently to ensure that the drivers' hours and tachograph rules can continue to be enforced under the terms of the trade and co-operation agreement, and that the urgency arose because there was such a short period of time—a few days—between the conclusion of the agreement and the end of the transition period on 31 December 2020.

Due to the tight deadline for making these legislative changes, and with the agreement of the Department for Infrastructure in Northern Ireland, these regulations include changes affecting Northern Ireland even though the drivers' hours and tachograph rules are a transferred matter for Northern Ireland. Indeed, such was tightness of the deadlines that, on top of the regulations being made under the "made affirmative" procedure, there was no time for consultation on them, for an impact assessment or to update an earlier impact assessment that was apparently completed.

We are not opposed to the regulations since they do not represent a change to the drivers' hours and tachograph rules; we accept their necessity. However, Parliament's role in scrutinising this legislation has been marginalised, to say the least. In the debate so far, a number of questions have been asked and issues raised.

I note what the Minister said about the importance, safety-wise, of the regulations on drivers' hours and the potentially serious consequences for the drivers concerned and other road users if they are not adhered to.

As has already been said, we gather that the Government are reviewing legislation on workers' rights and protections even though we have barely cut our ties with the EU. Could the Minister say if the drivers' hours rules applicable in Great Britain are currently under review and, if so, whether consultation will be somewhat greater than it has been in respect of these regulations? Have there been any discussions with the road haulage industry and coach industry on drivers' hours regulations, or have the Government sought their opinions and views? Have the trade unions representing drivers been involved in any such discussions or been approached for their opinions and views? What is the view of the Department for Transport on the existing drivers' hours regulations and whether they should be changed, and, if so, in what direction and in what way?

[Lord Rosser]

The drivers' hours regulations can be enforced through the use of tachographs. In recent years, there have been a number of high-profile cases of tachograph falsification. In light of the importance the Minister rightly attaches to adhering to the drivers' hours regulations, do the Government have any further steps in mind to clamp down on such tachograph falsifications? My noble friend Lord Berkeley referred to some practices that seem to take place.

Hauliers have played a key role over many months in the provision and availability of essential supplies during the current pandemic. They both need and deserve the protections the current regulations provide if properly enforced—as they should be.

The Government have introduced a temporary relaxation, until the end of March, of the enforcement of the retained EU drivers' hours rules in England, Scotland and Wales for drivers involved in the international carriage of goods by road and between Great Britain and Northern Ireland. These measures include extending the EU daily driving limit and reducing the daily rest requirements. This has been largely necessitated by the prospect of delays at our borders following our withdrawal from the EU and the lack of government notice and guidance to the haulage industry—or indeed anybody else affected—on what needed to be done to adapt to the changes arising from our withdrawal. What impact, if any, do these regulations have on the current relaxation and enforcement of EU drivers' hours rules, and what impact does the current relaxation of EU drivers' hours rules have on the application and enforcement of these regulations?

Finally, in light of noble Lords' comments on enforcement, safety and Brexit during this debate, what assessment was made of the safety implications of temporarily extending the EU daily driving limit and reducing the daily rest requirements? Could the temporary relaxation of EU drivers' hours rules have been made while we were members of the EU, or was it possible only because we cut all ties with the EU at the end of last month?

5.24 pm

Baroness Vere of Norbiton (Con): My Lords, we have a small but perfectly formed group considering these regulations today and I am grateful for all contributions. I shall endeavour to answer as many questions as I can in the time available.

On the point raised by my noble friend Lady Gardner, the roads chapter of the TCA specifies that the drivers' hours and tachograph rules applicable between the UK and the EU are consistent with those set out in the EU drivers' hours regulation and the EU tachographs regulation, which have been retained from EU law. As I am sure my noble friend will appreciate, this means that the flow of drivers and their trucks either way between the UK and EU is facilitated by the work that noble Lords are doing today. Therefore, she should feel reassured that no delays at the border are caused by tachograph issues. I am pleased to say that, at the moment, there are very few delays at the border anyway. That is because we have seen greater trader and haulier readiness than, certainly, I was expecting, which is positive. That is even in the context of the slight curveball that the French and, latterly, the Dutch threw by requiring testing for hauliers as well. While it was a difficult time after the testing regime was implemented, it has all calmed down significantly now. I am pleasantly surprised at the amount of readiness out there, which just goes to show that, sometimes, when the Government encourage people to do something, they really do it.

I also reassure noble Lords that the TCA means that a new generation of tachographs will be installed in UK vehicles used internationally when they are ready. Drivers' hours and tachograph rules will also be applied to some light goods vehicles, which we think will help road safety too. So, there is a lot of co-operation between the UK and the EU particularly in respect of these international movements, drivers' hours and tachographs.

I turn briefly to fines, non-compliance and enforcement. We take this incredibly seriously. I think that it was the noble Lord, Lord Berkeley, who asked whether there was an army of enforcement officers waiting at the roadside to catch recalcitrant hauliers. Yes, there is; that is exactly what we have. Data for 2019-20 from the Driver and Vehicle Standards Agency, the DVSA, show that officers stopped more than 66,000 vehicles on the road. From those encounters, they issued more than 12,000 fixed penalty notices for drivers' hours and tachograph offences. One driver might have got several of those, so it is not necessarily the case that a high proportion of people are doing wrong. However, I am afraid that it was foreign drivers who picked up most of those fixed penalties—77.2% went to non-UK drivers. That is why the regulations are so important.

A range of fines can be applied to the driver. For UK drivers, it is a fixed penalty notice; for non-UK drivers, financial penalty deposits also play an important part in the enforcement regime. That means that the driver has to pay the fine there and then, the DVSA being well versed in collecting the appropriate funds at the roadside to ensure effective enforcement for those who do not follow the rules.

The noble Lord, Lord Berkeley, requested more information on the DVSA and its activities. It has a large group of enforcement officers out on the roadside. They go to motorway service areas, ports, venues and other places—anywhere where one would imagine there is a significant number of hauliers. Visits to operators are often done on a risk-based system. DVSA has some quite good computer software which looks for those who are likely not to be following the rules as much as others.

The noble Lord was worried about the number plate recognition system. I reassure him that the national NPR system works for registration numbers irrespective of where the vehicle originates. DVSA probably has a bit more information on UK vehicles than non-UK ones, but that does not mean that the NPR system does not work; we can identify those vehicles. Virtually all vehicles now have digital tachographs. The driver inserts their own card, which they then transfer from vehicle to vehicle, meaning that the DVSA can compare the two to see whether a driver has been driving without using a card. The noble Lord told the Committee about his pesky friend who seemed to be doing something

that was not entirely within the law—I hope that he has ceased and desisted from doing that now. Drivers who use more than one card are usually easy to identify because the DVSA has the IT systems to check card validity.

On the issue of tachographs, we are always looking at how we can improve enforcement, particularly around tachograph falsification. The Department for Transport is preliminarily considering developing an additional range of sanctions, including in the context of non-UK operators' responsibilities. We will take that work forward in due course.

The noble Baroness, Lady Randerson, mentioned the lack of access to EU systems, but that is not the case here. The UK remains connected to the TACHOnet system, which is used by the DVLA—the Driver and Vehicle Licensing Agency, which is different from the DVSA—when it processes tachograph card applications at the outset. Basically, this prevents a driver having more than one tachograph. It is also used by the DVSA when doing its roadside checks so that it can get access to the EU information.

The noble Baroness mentioned the EU mobility package changes, and I apologise for the state of the Explanatory Memorandum and its being unclear; I will take that back to the department, and perhaps we will be able to improve it for the next time. I reassure her that work is already under way on the mobility package amendments: a draft negative resolution was laid for sifting in Parliament in early January. Unlike this SI, the changes are not operation-critical.

There is currently a relaxation of drivers' hours; indeed, we have had a number of these, as we have had discussions with the haulage industry and the freight sector about how they feel freight and goods are flowing, the impact of Covid-19 on staff absences and whether specific issues within the system are causing goods to back up. We feel that there is a risk of continued disruption to the supply chain, so we extended the relaxations until 31 March. However, the understanding is very clear: they can be withdrawn earlier if circumstances change—so we do keep it under review. We are very cognisant of driver welfare and road safety, and we are very clear that normal drivers' hours rules are to be followed unless it is absolutely necessary not to do so.

The noble Lord, Lord Rosser, and the noble Baroness, Lady Randerson, asked about reducing workers' rights. This Government recognise the importance of drivers' hours rules to driver welfare and road safety. I am not aware of any proposals in this area, so there has been no engagement or consultation, except for talk about temporary relaxations. The Government have no long-term plans to reduce workers' rights.

In closing, I reassure the noble Lord, Lord Berkeley, and the noble Baroness, Lady Randerson, about things that they may have read about the DVLA in the *Observer*. I say to them: do not believe everything that you read in the media. I speak to the CEO of the DVLA very frequently: I last spoke to her on Sunday, and we went through all the allegations in the *Observer*. There are some very interesting comments, and all I can say is that I do not recognise them.

The noble Lord, Lord Berkeley, may be interested to know that the CEO, Julie Lennard, will be at the Transport Select Committee tomorrow. I believe that she will put his mind at rest: the DVLA has the very highest standards on staff welfare. It follows the guidance from Public Health Wales and the Welsh Government to the letter, has frequent conversations and discussions with Public Health Wales and shares its plans with it. As such, I am reassured that DVLA staff are being looked after as well as possible. We must also recognise that the services it provides are critical to the functioning of our economy, and to enabling people to get to medical appointments and undertake essential journeys. I am sure there will be more on that at the TSC tomorrow.

That was a slight diversion from the SI before the Committee, but I commend the regulations.

Motion agreed.

5.34 pm

Sitting suspended.

Arrangement of Business

Announcement

6.15 pm

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): My Lords, the hybrid Grand Committee will now resume. Some Members are here in person, respecting social distancing, while others are participating remotely, but all Members will be treated equally. I 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 debate on the following statutory instrument is one hour.

West Yorkshire Combined Authority (Election of Mayor and Functions) Order 2021

Considered in Grand Committee

6.15 pm

Moved by ***Lord Greenhalgh***

That the Grand Committee do consider the West Yorkshire Combined Authority (Election of Mayor and Functions) Order 2021.

Relevant document: 41st Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): My Lords, this order was laid before Parliament on 17 December and, if approved by both Houses, will implement the devolution deal agreed between the Government and the West Yorkshire Combined Authority and announced by the Chancellor at the Budget on 11 March 2020. It will establish the office of Mayor of West Yorkshire, with the first election to take place on 6 May 2021. The mayor will be chair of the West Yorkshire Combined Authority,

[Lord Greenhalgh]
which comprises the constituent councils of Bradford, Calderdale, Kirklees, Leeds and Wakefield. The order also transfers the police and crime commissioner functions for West Yorkshire to the combined authority, to be exercised by the mayor. Additionally, the mayor and combined authority will be conferred a range of other significant powers, as agreed in the devolution deal. These include education and skills, housing, regeneration and planning, the mayoral development corporation and transport.

The order also amends some of the combined authority's governance arrangements to reflect these powers and the role of the mayor. If this order is approved and made, West Yorkshire will benefit from significant funding, which was agreed for the area as part of the deal. The largest element of this is the £38 million of annual investment funding for West Yorkshire for the next 30 years, comprising more than £1.1 billion in total, to be invested by West Yorkshire to drive growth and take forward its priorities. It also includes other significant funding, such as £317 million from the Transforming Cities Fund, £101 million for flood risk management, a £25 million heritage fund and £500,000 for a Bradford station masterplan. In addition, the deal provides the area with flexibilities on spending, as well as control of the annual education budget.

As other combined authorities have shown, there is good evidence that devolution to geographies that reflect a functional economic area enhances economic performance, fiscal efficiency and policy delivery at both national and local levels by making government action more coherent locally and enhancing local government's contribution to solving problems in areas falling between individual policy fields. By conferring the powers on the combined authority, the provision of local services will be better aligned with locally determined priorities and there will be less complexity as the delivery of public services within the combined authority area is streamlined. The deal provides that West Yorkshire will monitor and evaluate the deal in order to demonstrate and report on progress.

As I am sure noble Lords will agree, these powers and this funding will be a vital element of the city region's economic and social recovery from the Covid-19 pandemic. Together, they will drive growth and create opportunities for people who live and work in West Yorkshire. At this point, I am keen to recognise and thank the local leaders and their councils for all that they have done and are continuing to do to support the area and local people as they face the challenges of the pandemic.

This order will be made under the Local Democracy, Economic Development and Construction Act 2009, as amended by the Cities and Local Government Devolution Act 2016. As required by the 2016 Act, along with this order we have made a Section 105B report which provides details about the public authority functions, such as adult education functions and responsibility for a devolved and consolidated local transport budget, which we are devolving to the combined authority. Some of these functions, such as the power to pay grants to constituent councils for exercising highways functions, will be exercisable by the mayor.

The statutory origin of this order is in a governance review and scheme adopted in April 2020 by the combined authority with its five constituent councils in accordance with the requirements of the 2009 Act. The scheme proposed additional functions to be conferred on the combined authority, as envisaged in the devolution deal. It specified those that would be exercised by the mayor and made certain amendments to governance arrangements.

The combined authority and the councils consulted on the proposals in their scheme. The public consultation was promoted widely through a range of platforms. Responses were accepted through the combined authority website as well as via email, letter and a hard-copy form. It ran from 25 May to 20 July 2020. In total, 4,413 people responded. The combined authority provided the Secretary of State with a summary of the responses to the consultation on 14 September.

Overall, there were eight questions, on all of which there was strong support from the public and stakeholders. Indeed, the leading question, which asked whether the respondent agreed or disagreed with the proposals for the revised arrangements for the combined authority, was supported by almost 70% of respondents. Specific questions on the powers to be conferred under transport, skills, employment, housing and planning garnered similar levels of support. Some 60% of respondents supported the proposal to transfer police and crime commissioner functions to the mayor. I can confidently say that, overall, there was strong support from the people of West Yorkshire.

In laying this draft order before Parliament, the Secretary of State is satisfied that the statutory tests in the 2009 Act are met—that no further consultation is necessary and that conferring the proposed powers would likely improve the exercise of statutory functions in the combined authority area—and are appropriate, having regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government, and that, where the functions are local authority functions, they can be appropriately exercised by the combined authority. Furthermore, as required by statute, the combined authority and the five constituent councils have consented to the making of this order.

The order before noble Lords will give effect to the provisions of the devolution deal, which I will briefly summarise. PCC functions will be transferred to the WYCA for exercise by the mayor. The order is clear that the mayor's role as the holder of PCC functions is carved out, meaning that decisions around police property, rights and liabilities are the mayor's responsibility and there remains a distinct precept. All money relating to policing must be paid into and out of the police fund, and that money can be spent only on policing and matters related to the mayor's PCC functions.

A new police and crime panel is to be created, which will exercise broadly the same functions as under the PCC model. The financial year of the PCC and chief constable of West Yorkshire is to be extended from 31 March to 9 May 2021 to rationalise accounting processes and avoid preparing additional accounts for the one-month interim period. Any receipts will be paid to the police fund to ensure that police funding is protected.

The combined authority will take on many education functions for its area. This will also enable it to establish adult education provision and manage its devolved adult education budget from 2021-22. This can be better aligned to locally determined priorities and help boost economic growth.

To improve the supply and quality of housing and facilitate the regeneration of West Yorkshire, the combined authority will be conferred housing, regeneration, land acquisition and disposal powers. These powers will be exercised concurrently with Homes England, enabling the combined authority, working closely with Homes England, to promote housing and regeneration.

The compulsory purchase of land will be a mayoral function and any decision will require consent from the combined authority member whose local government area contains any parts of the proposed land. This order will also give the mayor a power to designate mayoral development areas in the combined authority area to support the delivery of strategic sites in West Yorkshire. This is the first step in establishing a mayoral development corporation, or MDC, in the combined authority area. A further order will be necessary to create such a body. The relevant powers concerning MDCs are conferred on the combined authority to be exercised by the major. These decisions will require the consent of the respective combined authority members whose council areas contain any parts of the designated area and of the Peak District National Park Authority if any part of the designated area sits within the national park.

While strategic planning powers and strategic infrastructure tariffs were agreed in the devolution deal, these are not being conferred at this stage. The Government have committed to confer these powers or their equivalent once the way forward on the reforms to the overall planning system is clear.

The mayor will have control over a consolidated and devolved transport budget, with a power to pay grants to the five constituent councils in relation to the exercise of their highways functions to improve and maintain roads. The mayor may pay grants to bus service operators or eligible bus services operating within the combined authority area. Grants must be calculated in accordance with any regulation methods made by the Secretary of State.

The order also includes constitutional provisions reflecting the powers conferred on the role of the mayor. There is a provision on voting arrangements so that any decision of the combined authority about its new powers conferred through the order must include the mayor among the majority of members in favour of that decision. It also provides for the establishment of an independent remuneration panel to recommend the allowances of the mayor and the deputy mayor.

The mayor and the combined authority will be scrutinised and held to account by the combined authority's overview and scrutiny committee. The overview and scrutiny arrangements that the combined authority has currently established will be retained, subject to any amendments required to reflect the introduction of the mayor and any statutory provisions. Under the terms of the deals, the mayor and the combined authority may also seek to enhance scrutiny and develop their wider conference with all elected members of the combined authority's areas to engage on key issues.

This order, which is supported locally, is a significant step forward for West Yorkshire and its businesses and communities. It is key to the city region's economic recovery. I commend this instrument to the Committee.

6.26 pm

Lord Blunkett (Lab): My Lords, in three minutes, I can touch on only one or two key issues. I welcome the order and the elevation of the leader of Leeds City Council, Judith Blake, to this House. I know that she will make a great contribution.

In winding up, could the Minister touch on when we might have the long-promised White Paper on devolution? How might it deal with the inconsistencies and incoherence of having different powers for different city regions and their mayors; the creation of powers for mayors to have the police and crime commissioner function in some areas but not in others; and the way in which the resources he referred to, combined as they were in the Autumn Statement, have been cut and the structural funds originally available from the European Union have disappeared? They now look more like the towns fund, which became a slush fund for individual Members of Parliament. How might that be avoided in these circumstances?

I want to touch particularly on the importance of Yorkshire getting its act together to collaborate, have its voice heard and ensure that it is not discriminated against as it has been so blatantly in recent years. If the Sheffield City Region—I hope that it will stop arguing about the name—and the newly created West Yorkshire mayoral authority, together with the leaders in the remainder of Yorkshire, can combine as they have done in the last few days with those in the East Midlands to make their voices heard on the HS2 scandal, some good will certainly have come out of this. Others will mention HS2; it is interesting that the briefing from HS2 always refers to the Crewe and Manchester leg as connecting to the north, as though the north were just the north-west. It is time that Yorkshire got its act together and collaborated.

That will involve the Government supporting the universities in Yorkshire to combine to counterweight the golden triangle of Imperial, Oxford and Cambridge. It will involve the local authorities, as well as the city mayors, being able to see where their voice can be heard, for instance in the present maldistribution of vaccines—parts of Yorkshire have done so well in distribution that they are now being rationed—to ensure above all that the work done at the local level can be properly supported and a coherent policy developed from central government.

Given what is happening with Scotland and in Ireland, and given the failure to have any coherent policy for the English regions, confirmation of the West Yorkshire Combined Authority is way overdue. Since, uniquely, the region has two major cities—because Bradford is the size of Bristol—this will be a step forward in ensuring that the voice of the great, historic county of Yorkshire can at last be heard just as loudly as the voice of the north-west of England.

6.30 pm

Baroness Pinnock (LD) [V]: My Lords, I have a direct interest in this matter as a councillor in Kirklees and as a vice-president of the Local Government Association.

As we have heard, there are five constituent councils in West Yorkshire, representing 2.5 million people. Again, as we have heard, it is the only region with three cities: Bradford, Wakefield and Leeds. It has not been easy for the councils to give their agreement to this deal. There were only 4,400 responses to the consultation, which is hardly representative, and three of the constituent councils failed to achieve unanimity on the deal.

There is a healthy degree of scepticism in West Yorkshire about the mayoral model. This is compounded by the ability of the mayor to appoint both a political adviser, paid from the public purse, and a deputy mayor for policing—again, a political appointee paid from the public purse. Yorkshire residents are rightly suspicious of mayors' ability to add to their council tax bills and of the lack of ongoing, direct accountability for their decisions. The Secondary Legislation Scrutiny Committee highlighted the fact that

"operational efficiencies … could lead to reduced costs".

However, it concluded that the MHCLG was not able to provide evidence to support that assertion. I wonder whether the Minister will be able to do so.

This agreement is hailed as devolution but it falls at the first hurdle. The agreement that was originally reached has been undermined unilaterally by the Government at the very last minute. As the Minister has said, strategic planning powers and powers for a strategic infrastructure tariff have been removed from the agreed deal by the Government on the whimsy that they may be compromised by a government planning Bill. So much for devolution. The Government have cocked a collective snook at West Yorkshire; the Covid vaccine supply debacle has just compounded that sentiment.

As for funding, the promise of £1.1 billion over 30 years is not guaranteed; £38 million a year is all the extra that is provided for. Given that the five councils have had more than £500 million cut from their spending every year, this puts the financial offer into a proper perspective. However, on the basis that half a loaf is better than none at all, I am willing to accept this instrument.

6.33 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, it is a great pleasure to follow the noble Baroness, Lady Pinnock, who obviously has a great personal interest in this draft order given her strong role in Kirklees.

I thank my noble friend the Minister for setting out the terms of the order. I certainly welcome it. Until now, West Yorkshire has been the most obvious omission from the pattern of combined authorities and metro mayors in England. The Conservative manifesto committed the Government to a successful devolution of powers to city region mayors and to a White Paper on devolution in 2020. I understand the reasons for the delay but the Government confirmed last week that the English devolution and local recovery White Paper would be published "in due course"—three words with which we are all familiar and which have been used by successive Governments. Can I press my noble friend to indicate with perhaps more clarity the precise timetable of that happening?

The draft order, based on the devolution deal, has been agreed by the councils of the area and the West Yorkshire Combined Authority, and a public consultation has been carried out, as detailed in the Explanatory Memorandum. Although all consultations for combined authorities have not had a flood of responses, this one has had the largest, as noted by the leader of Leeds City Council, Judith Blake. Like the noble Lord, Lord Blunkett, I very much congratulate her on the announcement of her Peerage, and I look forward to her presence and contributions in your Lordships' House. The consultation demonstrates considerable support for the content of the order, from 59% on finance to 75% on transport. I am pleased to see that it very much involved the universities of the area.

Like the noble Baroness, Lady Pinnock, I note that planning and strategic infrastructure have not been conferred and that the Government are committed to conferring planning, at least in future. Could my noble friend outline the timeframe for that to happen and perhaps also explain why infrastructure has not been included?

Finally, I ask my noble friend about the elections that we all hope and expect to take place in May, as he mentioned—not just in West Yorkshire, of course. When will the guidelines be issued for the conduct of those elections? What discussions have there been with the devolved Administrations, particularly Wales, where there will be some elections on that day governed by the National Assembly for Wales—namely, the Senedd elections—and some by Westminster: namely, the police and crime commissioner elections? Clearly, those guidelines need to be dovetailed so that they say the same things. I look forward to my noble friend's response.

6.37 pm

Baroness Taylor of Bolton (Lab) [V]: My Lords, I start by declaring an interest, as I will have a vote in the West Yorkshire mayoral elections. I also endorse what my noble friend Lord Blunkett said about the urgency with which we need to see the White Paper and the more comprehensive approach to devolved institutions.

I will talk not about the powers but about the practicalities of the election. The noble Lord, Lord Bourne, has just said that we should have clear guidelines as soon as possible. We would all like the elections to go ahead, but we have to be realistic and make sure that there are proper preparations. We do not want a last-minute decision to postpone them elections, and we are in danger of seeing that if we do not have better preparations at a very early point.

We are only a matter of weeks from candidates having to go around getting people to sign their nomination forms, which would be difficult. We would normally see volunteers putting leaflets through, and knocking on, doors, which will not be possible. Telephone canvassing is not a good substitute.

The Government have said that polling stations will be Covid-safe, but many schools are polling stations. Will they have to close the day before and after for

deep cleans? All those things need looking at. Where will returning officers will get their polling staff from—and will they be vaccinated? Will they be vaccinated three weeks or three months in advance? We are running out of time.

However, my biggest concern is for the count, because the practicalities are clear to anyone who has been a candidate in an election. Counts are busy; they are in big halls, many of which are being used for vaccinations, so they may not be available. How can a scrutineer stand two metres apart from other scrutineers and the people counting and have total confidence that they are doing a good job?

There is a real difficulty here because I do not think that the Government have fully taken on board all the practical difficulties. If they are going to go ahead with those elections on the due date, they have to have closer and more detailed conversations with both returning officers and local authority leaders. Those leaders have had a lot to put up with in the past few months, as the noble Baroness, Lady Pinnock, who is a councillor, was saying. They have very scarce resources: we do not want them to have to spend money making preparations for elections that get called very late and at the last minute.

Finally, I acknowledge the work that has gone on in the lead-up to this situation. I particularly pay tribute to Councillor Susan Hinchcliffe, who has been the chair of the West Yorkshire Combined Authority and has helped to keep all the local authorities working so well together during recent difficult times.

6.40 pm

Lord Shipley (LD) [V]: My Lords, this order represents another small step in decentralising England. The additional powers, over skills and training and strategic housing and regeneration, in particular, are important, if limited. But, of course, there is little extra money.

I shall leave it to colleagues who live in Yorkshire to comment further on the detail of the order, but I want to make the point that what is being introduced is in practice a centralised structure. It is not just that the duties of an elected Police and Crime Commissioner are to be taken over by the mayor, it is also that there will be no assembly, as in London. There, the Assembly exists to hold the mayor to account and make sure that the mayor's policies, actions and strategies are in the public interest.

Scrutiny matters. We need to look carefully at how scrutiny has worked in all mayoral authorities—not just combined authorities—to assess how each is performing and what we can learn from their achievements or failures. When combined authorities were first introduced, their bespoke nature was understandable, because it meant that different approaches to spreading power in England could be tested. That approach has been useful, but now we need to review how well each of the combined authorities has worked and how more power and responsibility might be devolved from Whitehall and Westminster—and not just to those existing combined authorities. That could take place in the context of the promise by the Government of a White Paper on English devolution, which was due last year, as we have heard from other noble Lords and Baronesses this evening.

At the last election, the Conservative manifesto contained a commitment to a constitution, democracy and rights commission. That is welcome, but, in my view, we need a proper constitutional convention that looks towards creating a federal structure for the United Kingdom. This is because the question of whether to hold another referendum on independence for Scotland should be seen in the context of the UK as a whole. That must surely include the constituent parts of England. It could prove key to helping the levelling up agenda, because I think levelling up, if it is to be successful, will require constitutional reform.

The Covid pandemic is teaching us many things. One is that England is too centralised. There will be a public inquiry, but we need more. We need a constitutional convention to spread power and responsibility much more widely.

6.43 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it is a pleasure to follow the powerful remarks of the noble Lord, Lord Shipley, and I associate myself with his and others' questions about when we can expect the devolution White Paper. We know the slogan "Take back control" was at the forefront in 2016; I do not believe it has any less resonance today—I suggest it has more, given the loss of the democratic oversight and opportunities of the European Parliament.

I declare my position as a vice-president of the Local Government Association and the input of the Yorkshire & the Humber Green Party into these questions. Most of them concern democracy. The Minister referred in his introductory remarks to the consent for these plans and the percentage of people who indicated agreement to the lead question. So I ask the Minister: what alternative was offered to people? Would it have meant a loss of money to the region, as I understand it would? Were people given the alternative to show support for the One Yorkshire plan that, in 2019, 18 of the 20 councils of the regions backed? Where is the Government's evidence for the support of the people? Why was a referendum not held, as has occurred in the past?

As other noble Lords have said, London has an elected Assembly that scrutinises the work of the mayor—perhaps not as strongly as we might like but it none the less exists and has the opportunity to question and challenge. Why does Yorkshire not have a similar assembly or, given its scale, a parliament? Can one person really represent 2.5 million people? Will there not be a democratic loss through the loss of the elected police and crime commissioner and making the deputy mayor for policing a political appointee, as the noble Baroness, Lady Pinnock, said? Across West Yorkshire, more than 8% of elected councillors are from parties other than Labour, the Conservatives or the Liberal Democrats. How are the voices of those other voters going to be properly represented on the combined authority?

Briefly, in the time available to me, I have some questions. There is a low level of participation in adult education across the region of 30%. The lowest level nationally is 29% in the south-west. Are there enough resources for the new mayor to be able to make a difference? Given that housing is such a huge issue in the area, perhaps the Minister could now, or at some

[Baroness Bennett of Manor Castle]
point in the future, say whether the Government have considered allowing the mayor to suspend the right to buy in West Yorkshire and specify higher levels of energy efficiency as part of the mayor's powers.

6.46 pm

Lord Liddle (Lab) [V]: My Lords, I thank the noble Lord, Lord Greenhalgh, for his clear explanation of the powers that the authority will have and what it can do. I also declare an interest as a member of Cumbria County Council. I am a member of that council because I believe in local government, and it is a key part of the levelling-up agenda to have stronger, more effective local government in the north of England.

I should like to put three points to the Minister. First, as my noble friend Lord Blunkett, the noble Lord, Lord Shipley, and others have pointed out, there are inconsistencies and deficiencies in the way in which this devolution process has been handled. We need a White Paper, more consistency and to strengthen not weaken devolution. When are those proposals going to come?

Secondly, until now, the focus has been on strengthening the voice of the big metropolitan areas in the north of England but there are, of course, more rural and scattered hinterlands. The Government are considering local government reorganisation proposals for the hinterland in the north-west of my native Cumbria, in the hinterland of West Yorkshire and in North Yorkshire. I strongly support the creation of single strategic authorities in those areas. The district councils are iffy about this, but we can deal with their concerns through effective devolution within a strategic authority to towns and groups of parishes. That would be a better answer.

Thirdly, a stronger voice for Yorkshire is desperately needed as the Government contemplate the decision to put the eastern leg of HS2 on the back burner, which would be catastrophic for the north. It would create gross inequality between the north-west and Yorkshire and Humber and the north-east that would get worse and worse as the decades went on. It cannot be allowed to happen. I know that this is not the Minister's direct responsibility but that of the Department for Transport, but the Local Government Minister must give attention to this desperately important issue.

6.49 pm

Lord Scriven (LD) [V]: As somebody born and raised in Huddersfield and whose family still lives there, now calling Sheffield my home, I feel I have a little knowledge about West Yorkshire and the devolution deal in a White Rose county. As a vice-president of the LGA, I welcome the order, but start with a word of caution as I look up the M1. Do not fall for the hype that these devolution deals are a way to solve the decades of underinvestment and lack of opportunities for Yorkshire's people and the infrastructure required for future well-being and prosperity.

Although welcome, these deals do not deliver the powers and responsibilities that each area needs to shape their destiny. In reality, this is decentralisation, not true devolution. We have seen over the past few months that the real powers on game-changing investment will continue to sit with the iron fist of the Treasury, fixed and rooted in Whitehall. One of the significant schemes for West and South Yorkshire is HS2: both are on the eastern leg of the line. The Government have gone cold, and plans from the National Infrastructure Commission now appear to either kick the eastern leg into the long grass or scrap it altogether.

Support for future opportunities by linking the people and businesses of the great towns and cities of Yorkshire and the north via an integrated transport system is also needed. We have been told to lower our horizons. Whitehall has cut the budget for Transport for the North. London still has the real levers over money and strategic decisions. These devolution deals give us some crumbs at our tables, while the bread machine and loaf-makers stay in Whitehall. No innovative money-raising powers or exciting and significant fiscal incentives for the economic and social improvements at the scale that West Yorkshire requires are in this deal. The pandemic has made the task even harder. As this week's annual study by the Centre for Cities shows, the number of people seeking work in parts of Yorkshire has increased fivefold in the wake of Covid, with many facing the prospect of years in the job wilderness unless the Government recognise the scale of the unfolding economic crisis that we face.

Although the deal is welcome, the Government must be honest with people in West Yorkshire. The vital levers of power and fiscal control to make the significant changes required are not part of this deal. Small changes can be made by the metro mayor, but the game-changing levers for people, communities and the local economy will still be in the grip of Whitehall. Levelling up will be a soundbite until we get meaningful devolution leading to a more federal England that can truly unleash the full potential of Yorkshire and its people.

6.52 pm

Lord Mann (Non-Afl): My Lords, it looks like half of Sheffield has turned up today, but then the interest is rather big because they need to go to West Yorkshire in order to see a goal or two, and the noble Lord, Lord Blunkett, and I will be able to catch up on a very good goal after this session. It would also be good if there was a high-speed link to aid the speed there and to bring county cricket back to Sheffield, so that there was some reverse travel as well, combining the old with the new.

I warn the Government of a potential political own-goal of significance to which I have been alerted only today. That is something I warned about when the South Yorkshire mayoral order was passed and we got assurances. I am not sure whether it is relevant to this, but I seek clarification from the Minister on that. That is the alignment of health bodies and this new, strengthened system of local government.

I made the point in relation to the Sheffield mayor that not all health authorities follow the same boundaries. The Doncaster and Bassetlaw health authority has, without question, been the top-performing health authority over the last 30 years, particularly in primary care—as, I predict, will be witnessed when statistics come out on Covid vaccination. However, it is about

to be undone by bureaucratic meddling as people take their eye off the ball, combining the two—in other words, separating the funding from existing health systems. It makes Doncaster hospital unviable and closes down the accident and emergency department in Bassetlaw.

The constituencies directly affected are Newark, Bassetlaw, Bolsover, the top of Mansfield, Rother Valley and Don Valley. The impact is pretty significant and I ask the Minister to talk to his colleagues in health. Modernising and reforming—I would say "strengthening" —local government, and trying to shift well-established, successful health boundaries and shove them under the same authority is something that, even if thought sensible, should be done over a decade, not in a few minutes as a whim, with the mantra "We've got to do everything through public health". If the Government get that wrong, I can tell noble Lords that voters in six constituencies—or perhaps seven, as you could add a number of voters from Brigg and Goole—will not forgive them.

So, in doing good by bringing in these mayoralties and devolving power, we should not allow others to undermine that good work by messing around with the health structures. Such changes should be slow, gradual and thought through, not rushed, but there is a danger that that is happening at this moment.

6.56 pm

Lord Adonis (Lab): My Lords, the key issue that has come out of this debate is whether this new mayor and the combined authority will have the powers to make a fundamental difference. We all accept that we need it to be able to make a fundamental difference to level up and give the people of West Yorkshire the dynamic future that they need.

The noble Lord, Lord Bourne, put his finger on a key policy issue, to which we would welcome an answer from the Minister: why has the mayor not been given responsibility for strategic infrastructure? Given that the mayoral authorities are intended to be strategic and West Yorkshire needs a plan for the future, the absence of a power to plan strategic infrastructure is a gaping hole in this order.

That links directly to the point about HS2 made by the noble Lord, Lord Scriven, and my noble friends Lord Blunkett and Lord Liddle. I suggest that HS2 is the single most important piece of infrastructure for the strategic future of West Yorkshire. If it happens, it will produce a transformation in connectivity, but there will be a real crisis from the comparative lack of connectivity if, as my noble friend Lord Blunkett said, HS2 goes to the north-west in the extension from Birmingham to Crewe and Manchester but does not go to the east Midlands and on to Sheffield and Leeds and continue into the north-east. That is hugely important for the area about which the noble Lord, Lord Shipley, has spoken.

I am sure that the Minister, whom we hold in high regard, will repeat the words that have been repeated many times in both Houses about the eastern leg of HS2: that the Government are in principle committed to it, that they wish to see the benefits of HS2 shared with Yorkshire and the north-east, and that the integrated rail plan will be coming soon. We have heard all that before. The problem is that those things do not commit the Government to producing and progressing with the eastern leg of HS2 at all—because it could be delayed indefinitely—let alone on the same timescale as proposed for Crewe and Manchester.

Therefore, rather than get another recital of the brief, perhaps I may ask the Minister to take two specific points back to his right honourable friends the Chancellor and the Prime Minister, who will be the key decision-makers in this respect. The first is that the Government have now said that, because of delays due to Covid and logjams in the Department for Transport, the legislation to extend HS2 from Crewe to Manchester will be introduced not this year but next year. That means that there is now an opportunity to revert to the original plan for phase 2b of HS2 and put the whole of the eastern leg in it.

Secondly, will the Minister take back to the Chancellor and the Prime Minister the strong view of all local authority leaders in the east Midlands and Yorkshire, as well as Members of Parliament and of this House, that if we are going to have a high-speed line, 21st-century technology, for the western part of the country but leave the eastern part of the country still subject to Victorian technology, it would be the equivalent of our great Victorian forebears building the railways to go up to Birmingham and Manchester but leaving canals to serve Derby, Nottingham, Sheffield and Leeds? As a strategic future for the country, that would be a disaster.

7 pm

Lord Wallace of Saltaire (LD) [V]: My Lords, I would add, on the railway system, that the new trans-Pennine link is as important as the eastern leg of HS2 and is particularly important for Bradford. I remind everyone that Leeds is now the biggest conurbation in Europe lacking a mass transit link.

I welcome the conclusion of this deal, but with qualifications. It provides West Yorkshire with some of the additional funds it needs. It builds on the constructive co-operation of the councils over the past 15 years. It provides for a spokesman for the region, in the shape of an elected mayor, but it does not fulfil the promise of the 2019 Conservative manifesto, which set out the aim of

"full devolution across England … so that every part of our country has the power to shape its own destiny".

The funds this deal provides are conditional, and in a number of separate packages, subject to continuing central oversight and partisan ministerial interference—slush funds, as the noble Lord, Lord Blunkett, said. The mayor will join other city mayors across England without any institutionalised structure for representing their concerns to Whitehall, as we have seen in ministerial resistance to intervention from existing mayors over recent months. I understand that some Conservative MPs are now opposed to devolution as such, and that a few may even oppose this order in the Commons tomorrow. In today's *Yorkshire Post*, Philip Rycroft, formerly a senior official concerned with constitutional issues, called what the Government are proposing "a mess".

[Lord Wallace of Saltaire]

We should have had a devolution White Paper by now, setting out the Government's plans for the whole of England, as others have mentioned. Instead, we have had plans to parcel up bits of Whitehall departments and scatter them across the country, taking directions still from Whitehall. The commission on democracy that the manifesto promised has disappeared. This deal is not what councils in Yorkshire asked for. They wanted a Yorkshire regional authority. The Government are forcing city mayors on unwilling communities. A Populus poll last year showed 27% of voters in Yorkshire supported a full rollout of city mayors, while 31% preferred the established collective council model and 30% were not sure. That is hardly a vote of confidence.

Throughout this year, we watched the Government bypass local councils, giving generous contracts to consultancies and outsourcing companies to set up test and trace schemes while ignoring the local expertise and experience that councils possess. People in Yorkshire have noticed UK Ministers consulting the three devolved Administrations in detail while failing even to inform existing mayors and local councils of shifting plans for lockdowns for schools. There is, and the Minister must realise this, a growing consensus across England that we would be better governed if there were real devolution within England rather than detailed central control, with favoured deals for Conservative target seats from Cabinet Ministers.

So, I welcome this only as an interim arrangement. It transfers funds to West Yorkshire to improve transport, manage flood risk, support local business and improve adult education, but it is not enough. If this Conservative Government are to fulfil their promise to level up this country, as the Prime Minister regularly repeats, the centre will have to transfer substantial powers and financial autonomy to cities and regions outside the south-east. The Prime Minister waffles on about promoting the Anglo-Saxon model of democracy across the world, yet, around us, this country is moving towards a constitutional crisis. Our voters are increasingly disillusioned with all parties. Ministers are attempting to bully the Electoral Commission and to raise sharply the limit for campaign spending. The Prime Minister has misused the royal prerogative against Parliament and overridden the House of Lords Appointments Commission. Scotland and Northern Ireland are beginning to move away from the union. Against that challenge, this modest improvement in funds transferred to West Yorkshire, with a mayor whose voice is likely to count for little at the centre, deserves, at best, a lukewarm welcome.

7.05 pm

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

I am pleased that the order is before the Grand Committee today. It is progress in delivering another devolution deal, as the Government like to call them, but several issues need raising. I do not like this odd patchwork which the Government seem so keen on, and I am sure the noble Lord, Lord Bourne of Aberystwyth, will recall my many interventions in this regard. There is also the issue of where we go forward with this type of model in Yorkshire as a whole, and then there is the question of the powers and the small sums of money that accompany this type of arrangement.

But before I comment on any of that, I pay tribute to Mark Burns-Williamson OBE, the police and crime commissioner for West Yorkshire. He will be standing down when his term comes to an end, as this deal transfers the office and powers of the police and crime commissioner to the new mayor of West Yorkshire. Mark has done an excellent job since his election as the PCC in 2012, and prior to that he served as the chair of the West Yorkshire Police Authority and as an elected councillor.

Looking at this model, I am not sure how much power is devolved, and it feels a lot like the powers that the former West Yorkshire County Council had prior to its abolition in 1986. That is not a view that only I have expressed; I saw that Michael Meadowcroft, the former Liberal MP for Leeds West, had the same view. I also think that at least 20 of the 22 authorities in Yorkshire have expressed support for the One Yorkshire model, which the Government will have to address at some point. This feels to me like a very temporary arrangement.

I am very much in support of proper devolution of power, and this is something the Government will have to focus on if they want to keep the United Kingdom intact. That means giving up power at the centre and giving it to the regions and nations that make up the United Kingdom, but I do not feel that they are ready to do that yet.

The sums of money on offer are also very small—£38 million is all that is actually on offer—and it will cause significant problems for whoever is elected as the first Mayor of West Yorkshire. I hope that it will be my honourable friend in the other place, Tracy Brabin—the Member for Batley and Spen who is the Labour and Co-operative candidate for West Yorkshire—but whoever is elected, I wish them well in this important role.

I agree with the comments of my noble friend Lord Blunkett and the noble Lord, Lord Bourne, in looking forward to the leader of Leeds City Council, my friend councillor Judith Blake, joining the Labour Benches in the next few weeks.

The noble Baroness, Lady Pinnock, raised important points about the consultation. Again, I have raised these points many times before. If you look at the number of people who engage in these consultations, they are small—I think it was 4,000 people, but 2.5 million people live in this area. These are very small numbers to gauge, and the Government must look better at how to get more consultation. As I said, all that is guaranteed is funding of £38 million a year.

The noble Lord, Lord Bourne, and my noble friend Lord Adonis raised the issue of why the planning infrastructure powers have not been devolved, and I hope the noble Lord, Lord Greenhalgh, can give us a full response there. I also agree with the concerns raised by a number of noble Lords about the issue of HS2 and the eastern leg possibly being dropped or delayed. That would do immense damage. I lived for many years in the East Midlands, and the thought that

the eastern part of our country will not get the same attention as the western part is, I think, of concern to many noble Lords.

My noble friend Lady Taylor of Bolton raised again the issue of the practicality of the elections and the count afterwards. I hope the noble Lord will take these points back to his colleagues in government and make some clear announcements urgently, because otherwise it risks another shambles, with last-minute panic changes. Thinking particularly about the count, that was a really important point my noble friend raised; I tabled some parliamentary Questions on these issues yesterday. We have to get this right, because there would be no point announcing these things if the elections are postponed at the last minute. Candidates, councils and returning officers need to know what is going on.

The noble Lord, Lord Wallace of Saltaire, is right about the east-west connectivity in terms of Leeds and Bradford. They desperately need a mass transit system to deliver that.

In conclusion, it is good as far as it goes, and, in that sense, I will support the order before the Grand Committee today. However, major issues have been raised by a number of noble Lords which we need to look at as we move forward. This certainly cannot be seen as the end; it can only be the start of a process to level up our country.

7.10 pm

Lord Greenhalgh (Con): My Lords, we have had a very constructive debate this evening involving thoughtful contributions from real experts—two former leaders of Sheffield City Council and a former leader of Kirklees Council. I will take the opportunity to respond to some of the points raised.

All I can say to the noble Lord, Lord Blunkett, is that the English devolution and local recovery White Paper will come forward in due course, and I am sure that will be clarified. I accept his support and that of the noble Lord, Lord Scriven, for this devolution, and that of the noble Baroness, Lady Pinnock, who I think gave half a loaf of support. I also accept the lukewarm support of the noble Lord, Lord Kennedy; that is better than no support at all.

Turning to an issue raised by my noble friend Lord Bourne and others, on 29 October 2020 the consultation on the *Planning for the Future* White Paper closed, having received 40,000 responses, which are currently being considered. Should legislation be required following consideration of these responses, we will look to bring that forward in the autumn.

The noble Baroness, Lady Taylor, raised a number of issues about the difficulties of holding elections, which were also referred to by the noble Lord, Lord Kennedy. The Prime Minister has been very clear that postponing elections needs a high bar. The legislation clearly provides for the elections to take place in May, and that remains the position, although it will be kept under review. Advice will be provided to returning officers to ensure that polling stations are safe and Covid secure for voting, and we are considering options to support voters who are instructed to self-isolate shortly before or on the day of the poll.

The noble Baroness, Lady Bennett, referred to the approach and asked whether there are options. The approach was that of a consultation, and there were some 4,000 responses—the largest number to any combined authority consultation of this kind. In fact, the Consultation Institute gave a commendation of good practice to the combined authority that carried out the consultation.

I also point out to the noble Baroness, Lady Bennett, and the noble Lord, Lord Shipley, that the London Assembly model is the only one that has a level of government above the level of councils with responsibility for asking questions of the mayor. What we have here is the norm: a combined authority where local government—the five councils, in this case—is hard-wired in with the mayor and the mayoral combined authority. That operates very successfully in Greater Manchester, the West Midlands and all the other places where we have mayoral combined authorities. London is a unique model in having a tier of government that gets to ask questions of the mayor. Personally, I am not sure that that is the way to go.

The noble Lord, Lord Liddle, showed his strong support for single strategic authorities. It is well known that if you devolve clearly and effectively to a single decision-maker in the form of a mayor and they cover a functional economic area, that has huge benefits in driving the performance of a particular region—in this case, a city region. We continue to develop that. City region-type devolution now covers 41% of English residents, and that is a substantial figure to build upon.

The noble Baroness, Lady Bennett, raised the issue of adult education, which enables the West Yorkshire Combined Authority to develop the skills that local employers need, reducing skills shortages, boosting productivity and economic prosperity and improving well-being in communities.

I point out to the noble Lord, Lord Adonis, that regional transport decisions are devolved to the mayor. It is not the case that we will ever see national infrastructure devolved, although strategic planning and the strategic infrastructure levy will begin to operate when the position on planning reform is clear. We are committed to phase 2b of High Speed 2 and I am happy to recommit to our commitment, if that will help in any way.

This order, which is widely welcomed by the people of West Yorkshire, is a significant development for the city region and will make a significant contribution to the future prosperity of West Yorkshire, enabling it to action vital economic recovery following this Covid-19 pandemic. I commend the order to the Committee.

Motion agreed.

Committee adjourned at 7.15 pm.