Vol. 809
No. 183

Tuesday
2 February 2021

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

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

House of Lords

Tuesday 2 February 2021

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Salisbury.

Introduction: Lord Benyon

12.08 pm

The right honourable Richard Henry Ronald Benyon, having been created Baron Benyon, of Englefield in the Royal County of Berkshire, was introduced and took the oath, supported by Lord Strathclyde and Lord Goldsmith of Richmond Park, and signed an undertaking to abide by the Code of Conduct.

Introduction: Lord Cruddas

12.12 pm

Peter Andrew Cruddas, having been created Baron Cruddas, of Shoreditch in the London Borough of Hackney, was introduced and took the oath, supported by Lord Leigh of Hurley and Baroness Stuart of Edgbaston, and signed an undertaking to abide by the Code of Conduct.

Arrangement of Business

Announcement

12.17 pm

The Deputy Speaker (Baroness Garden of Frognal) (LD): The Hybrid Sitting of the House will now begin. I am sure that we all wish the Lord Speaker a very happy birthday. Some Members are here in the Chamber, while others are participating remotely, but all Members will be treated equally. I ask all Members to respect social distancing. If the capacity of the Chamber is exceeded, I will immediately adjourn the House. Oral Questions will now commence. Please can those asking supplementary questions keep them to no longer than 30 seconds and no more than two points? I ask that Ministers' answers are also brief.

Schools: Online Learning

Question

12.17 pm

Asked by ***Lord Storey***

To ask Her Majesty's Government what assessment they have made of the provision of online learning for school pupils, and, in particular, for disadvantaged pupils.

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, given the critical importance of ensuring that all children and young people continue to learn during the national lockdown, we have strengthened our expectations for remote education. We are investing more than £400 million to support access to remote education, including securing 1.3 million laptops and tablets and delivering 4G wireless routers for disadvantaged children. As of 1 February, 927,000 laptops and tablets had been delivered to schools, trusts and local authorities.

Lord Storey (LD) [V]: My Lords, I am sure that the Minister agrees that all pupils must have access to broadband and laptops to enable them to learn remotely. Can she give us the exact position on the provision of laptops and broadband in schools? It appears that 800,000 computers have been delivered, the majority of them last year, from the 1.3 million promised—little more than the 750,000 that the Minister claimed on 7 January. Is she saying that those 1.3 million laptops are now in schools and available for children? What plans do the Government have for the future provision of laptops? The rollout is very slow, which can be a disaster for children.

Baroness Berridge (Con): My Lords, I outlined the number that had been delivered as of Monday: 927,000. That is in addition to the 2.9 million laptops and tablets that were already in schools before the pandemic began. Of course, we are supporting the rollout of gigabyte broadband with an investment of £5 billion through DCMS to ensure connectivity for schools.

Baroness Blower (Lab) [V]: My Lords, in summer 2020 the National Education Union published a plan, point 1 of which said:

"Disadvantaged children and young people and their families must be a key priority."

We know that child poverty and inequality limits life chances and is a significant factor in school achievement. Will the Government now speedily draw up and consult on a long-term national plan for children's education and well-being? It must be fully funded and draw on expertise in education, health, mental health and local authorities' children's services—a plan to avoid a generation being lost to the pandemic. Schools are doing a great job but they cannot do it alone.

Baroness Berridge (Con): My Lords, I am pleased to say that as of 21 January 41% of children who are in contact with a social worker were indeed in school. Having a school place is one of the best protective factors for vulnerable children during the pandemic. We have also announced as of last Wednesday another £300 million in catch-up for the national tutoring programme, and catch-up will be a focus during the remainder of this Parliament.

Lord Clement-Jones (LD) [V]: My Lords, what specific guidance has the department given to schools and developers, and what standards has it set, for the design, procurement and operation of remote online learning services in terms of ethics, transparency and the sharing and use of sensitive personal data? This appears not to be covered at all in the review guidance of January. Does the DfE understand at all many of the issues involved with the digital world?

Baroness Berridge (Con): My Lords, we have given comprehensive guidance in *Get Help with Remote Education* for teachers and the workforce. Yes, cybercrime issues are a focus for the Department for Education. We are aware that that is part of what we must help schools to procure in future to ensure that the networks are secure.

Lord Risby (Con): My Lords, while I very much welcome the contribution that the Government are making to online learning and indeed to internet access, the Minister will be aware of the great mental pressures on families and young people in this regard. Does she have any plans to support supplementary strengthening services for young people, such as the National Citizen Service or indeed any other schemes specifically aimed at supporting young people?

Baroness Berridge (Con): My Lord, as well as the priority of getting children back into school as soon as possible, obviously, we want them to be taking part in those kinds of activities, and physical education was a key part of the guidance. DCMS has given £16.5 million to a Youth Covid-19 Support Fund to support grass-roots and national youth organisations at this time.

Lord Singh of Wimbledon (CB) [V]: My Lords, while open discussion in the classroom motivates the majority of pupils, it can also induce reticence in slower learners. Does the Minister agree that, given the necessary resources, remote learning without the pressure of competition can help slower learners and SEN pupils to progress at their own pace? Does she also agree that, despite best efforts, tailored classes will be necessary after the lockdown to meet the catch-up needs of those who have not had full access to resources and support?

Baroness Berridge (Con): My Lords, in relation to SEND pupils, we have given additional funding to the national Star Academies to make sure that through the peer-to-peer support for schools they have the best practice to share. Yes, the effects of remote learning are quite disparate, and there are certain pupils who may have been distracted by pupils in the classroom whom teachers report are engaging better, but it is not a standard picture. We recognise that catch-up will have to be individualised for pupils. Schools know those pupils best, which is why £650 million is going out to schools.

Lord Watson of Invergowrie (Lab) [V]: My Lords, based on the figures just given by the Minister, of the 1.3 million laptops promised by the Government, one-quarter are yet to be delivered. At the current rollout pace of some 75,000 a week, many schools face having to wait for their laptops to be delivered until the second week of March—ironically, when the Prime Minister has said that he hopes schools will begin to reopen. The chair of the Education Select Committee has echoed the call by the Education Policy Institute for resources to be provided direct to schools to enable them to source IT equipment themselves. What consideration have the Government given to the feasibility of adopting that approach in order to reduce the amount of lost learning time?

Baroness Berridge (Con): My Lords, at a time when supply was massively disrupted, for the department's commercial team to procure this number of laptops was actually quite a feat, in this climate where everyone wants a laptop. Some 350,000 were delivered in January alone. Yes, schools have been using additional resources to purchase laptops as well, which they can do from their Covid catch-up money.

Baroness Jolly (LD) [V]: My Lords, for those with the capacity, parental support and infrastructure, online learning is great, typically at home. What technical support will be available for families who struggle? Is there a standardised support offer, or does it vary from school to school and from pupil to pupil?

Baroness Berridge (Con): My Lords, the temporary continuity direction makes clear to parents the number of hours a day that should be delivered by their school. However, we recognise that it is not just about devices, as the noble Baroness outlines; it is parental supervision of the education that is important. If a school is aware that for whatever reason, a child is struggling to engage with their education, it has the discretion and the guidance to classify the child as vulnerable and accept them back into the school setting. It is schools' professional judgment that we trust.

Lord Austin of Dudley (Non-Afl) [V]: My Lords, Sutton Trust research shows that poorer children are half as likely to take part in online lessons. Only half of middle-class children and just one-third from poorer families spend four hours on schoolwork a day, while 40% of state schoolchildren are not completing their work. This is a disaster for children, particularly those from poor or overcrowded homes or with special needs. It will affect the rest of their lives, so the Government must make education the country's number one priority for public spending after the pandemic.

Baroness Berridge (Con): My Lords, we made it part of the continuity direction that schools must monitor daily whether children are engaging with education. In addition to devices, we have given the connectivity that children need. We have also set up the national tutoring programme, which is aimed at just the children the noble Lord outlines. The Government have announced a further £300 million for that programme in this financial year. He is right, and catch-up will be a priority for the rest of this Parliament.

Baroness Sanderson of Welton (Con): My Lords, the Government are providing further laptops for more than a million schoolchildren, but how are they working with other organisations such as Deloitte, which has donated 5,000 laptops, Raspberry Pi, which has gifted to Catch22 250 kits for its most in-need students, and Mail Force, the *Daily Mail*'s charitable arm, which is providing new laptops and helping companies to recycle old computers for school use?

This seems to be an area where government and business really can work hand in hand to help improve children's life chances.

Baroness Berridge (Con): My Lords, we welcome these initiatives because obviously, this is a time of a national pandemic when we all need to work together. I was pleased to learn that the *Daily Mail* campaign, through which businesses donate a minimum of 50 computers to be recycled, is being done by Computacenter, which is the department's commercial procurement partner. It was a pleasure to meet, along with the noble Lord, Lord Watson, representatives of Catch22, who highlighted individuals who may have fallen through cracks and how we can get those devices to the children who need them most.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, the time allowed for this Question has elapsed. I apologise to the noble Lords, Lord Curry of Kirkharle and Lord Blunkett, that there was not time to take their questions.

Brexit: Farmers

Question

12.29 pm

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

To ask Her Majesty's Government what steps they are taking to ensure that farmers continue to receive financial support following the United Kingdom's departure from the European Union.

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. In 2019 the Government made a manifesto commitment to maintain the current annual budget to UK farmers of £3.6 billion. This was honoured in the 2021-22 spending review. The commitment is being achieved through a combination of Exchequer funding and remaining EU funding.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, could the Minister give a commitment that there will be adequate and sufficient funding for farmers to develop their enterprises for the purposes of economic and environmental sustainability over the next five to 10 years, way beyond the 2021-22 financial year, thus allowing farmers to adapt and plan for the future?

Lord Gardiner of Kimble (Con) [V]: That is very important. We seek in the agriculture transitional plan to ensure that there is certainty and a vibrant future. Our manifesto commitment takes us up to 2024; obviously, we cannot bind further Parliaments but that is a sign of our bona fides. I think any incoming Government would clearly want to continue to enable that important agricultural production, as well as environmental enhancement.

The Earl of Shrewsbury (Con): My Lords, I declare an interest as a member of the National Farmers' Union. For many years, the delivery of single farm payments has been fraught with problems. Is my noble friend able to provide an assurance to British farmers that, having left the bungling bureaucracy of the EU, every opportunity and effort will be taken to maximise the efficiency and punctual delivery of support payments to farmers?

Lord Gardiner of Kimble (Con) [V]: Yes, my Lords, punctuality is very important, which is why I am very pleased that the RPA achieved a 98% payment last December. Going forward, it is important to codesign the schemes with farmers so that there is a modern approach to assurance and regulation with streamlining but no undue bureaucracy.

Lord Palmer (CB): My Lords, I declare an interest as I farm in the Scottish borders. What discussions has the Minister had with the devolved Administrations, in that agriculture is indeed devolved?

Lord Gardiner of Kimble (Con) [V]: My Lords, there is not only considerable dialogue between Defra Ministers and devolved Administration Ministers as part of the regular inter-ministerial group for EFRA meetings but, on funding matters, there is consideration by the devolved Administrations' Finance Ministers and the Chief Secretary to the Treasury. These matters have been on the agenda at the recent Finance Ministers quadrilateral meetings.

Lord McNicol of West Kilbride (Lab): My Lords, can I try again to get a little more clarity on the question of the noble Baroness, Lady Ritchie? We all agree with the statement behind "public money for public good" with regards to farming. Planting trees and nurturing wildlife should be commended, but surely the Government's primary duty must be our ability to feed our nation and to do that healthily. These are not mutually exclusive, so can the Minister outline Her Majesty's Government's plan to ensure that, at the end of the transition period, there is proper balance between those two priorities?

Lord Gardiner of Kimble (Con) [V]: Not only at the end of the transition period but throughout this process, it is essential that farmers in this country produce very good food for the nation and for abroad, while working in collaboration to enhance the environment. That is our purpose throughout the transition and beyond.

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, biodiversity is key to ensuring the success of ELMS and the Government's whole strategy, as set out in the 25-year environment plan. There is, however, no clear rationale for how ELMS will provide financial recompense for those farmers changing from the countryside stewardship scheme to that scheme. Can the Minister now provide some badly needed clarity to reassure farmers?

Lord Gardiner of Kimble (Con) [V]: I agree with the noble Baroness that it is important to provide that certainty. For instance, the national pilot on ELM will be available for applications during this year. Information on payments and supporting guidance will be a key part of that because, clearly, we want eventually to have a very considerable number of farmers engaged in agri-environmental schemes, and for those farmers to be paid properly, adequately and punctually for them.

Baroness Hoey (Non-Afl) [V]: My Lords, I very much welcome the Government's new approach to sustainable farming. Does the Minister agree that it is quite possible to farm in a way that produces good food and protects welfare? Will he look at the Countryside Restoration Trust, which has successfully pioneered farming for food and wildlife over the last 27 years? Perhaps he could use his influence to ask the Secretary of State to visit Lark Rise Farm in Cambridgeshire to see for himself just how easy it is to make that happen.

Lord Gardiner of Kimble (Con) [V]: My Lords, what has been done on that farm in Cambridgeshire, where Robin Page has been so strongly engaged for such a long time, is about the essential nature of the harmony between farming and the environment. I am very pleased that, as part of our forward plans, we are establishing an animal health and welfare pathway so that we improve the husbandry and welfare of our farm animals. That is a key part of our reforms.

Lord Dobbs (Con) [V]: My Lords, the common agricultural policy is an extraordinary testament to waste and inefficiency. However, there are plenty of challenges facing British farmers after Brexit. We encourage —we almost insist—that our farmers become more competitive and productive, squeezing more out of the land, yet at the same time they are supposed to protect and enhance our environment, so we need to square that circle. May I pursue some of the questions we heard earlier and ask whether my noble friend is satisfied that we already have an advisory and support system that is fit for purpose in this area, or whether there is more work to be done? Can he tell us what specific help might be available to older farmers, who may decide the time has come to step aside and make way for the next generation?

Lord Gardiner of Kimble (Con) [V]: My Lords, it is important that we have new entrants coming into farming. That is why we will consult and work on plans to introduce exit schemes for farmers who wish to retire, along with schemes to support new entrants. As part of the much wider advice and guidance, we will enhance the support to farmers, particularly as we champion skills and innovation. Many schemes are coming forward and it is very important that farmers understand what is available.

Baroness Jones of Whitchurch (Lab) [V]: My Lords, when launching the sustainable farming statement in December, the Government said:

"The changes will be designed to ensure that by 2028, farmers in England can sustainably produce healthy food profitably without subsidy".

Is it this Government's intention that 2028 will mark the end of subsidies for English farming, to be replaced by reliance on the market?

Lord Gardiner of Kimble (Con) [V]: What we said was that that would be the end of the direct payments system. We are now concentrating on a system of agri-environment and other support mechanisms, which we think are value for money. They will reward farmers for the provision of public goods.

Lord Carrington (CB) [V]: My Lords, I draw attention to my interests as set out in the register. I am comforted by the Minister's response but, sadly, the world does not stand still as we await details. Bearing in mind the topical issue of flooding, I am concerned that, without specific government support, farming profitability will be insufficient to finance the renewal of field drains that are reaching the end of their life. These are so important to flood prevention and farm productivity. Please can the Minister confirm that this necessary expenditure will be covered by ELMS?

Lord Gardiner of Kimble (Con) [V]: My Lords, on flooding, particularly of agricultural land, a lot of work is going on and I will look into that matter.

The Deputy Speaker (Baroness Garden of Frognal) (LD): I call the noble Earl, Lord Caithness.

I do not think we have the noble Earl, in which case the time allowed for this Question has—ah, he is there.

The Earl of Caithness (Con) [V]: I have been unmuted now. I was not unmuted, which is why I could not be heard. May I complete my question?

The Deputy Speaker (Baroness Garden of Frognal) (LD): Yes, please continue.

The Earl of Caithness (Con) [V]: Thank you very much. At what exchange rate are the payments being made, and does the 10% cut in the CAP budget mean that our farmers are going to get a 10% cut?

Lord Gardiner of Kimble (Con) [V]: That is an interesting point. We decided that we would use the 2019 exchange rates; against the 2015 exchange rates, there is a 22% advantage in using the 2019 exchange rates and I suggest that that is a very good thing for our farmers. I would also say that my noble friend is absolutely right: the EU CAP budget for 2021 to 2027 is going to be cut by 10%. Our manifesto pledge was to maintain £3.6 billion for UK farmers. That is our commitment and we continue with that.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, the time allowed for this Question has now elapsed. I apologise to the noble Lord, Lord Roberts of Llandudno, that we did not have time for his question.

Covid-19: Youth Unemployment

Question

12.40 pm

Asked by ***Lord Rose of Monewden***

To ask Her Majesty's Government what assessment they have made of the impact of the COVID-19 pandemic on the employment of young people; and what steps they are taking to address youth unemployment.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): Let me assure the House and the noble Lord that the Government are committed to providing support to help young people move into work in these difficult times. Such support will help avoid the scarring effects of unemployment, and our £30 billion plan for jobs includes specific interventions targeted at young people. The Youth Offer and Kickstart schemes have been designed to move young people towards meaningful and sustained employment.

Lord Rose of Monewden (Con) [V]: I thank the Minister for her reply. The unemployment rate for young people aged between 16 and 24 is, at 14.2%, almost three times higher than the general rate of 5%. I applaud the Government for their Kickstart and apprenticeship programmes, which will, I hope, supported by industry, provide work-based learning and experience to give our young people the skills and confidence necessary to be successful in gaining work. Will the Minister join me in applauding the Fashion Retail Academy? Also supported by industry, it provides employer-led training and qualifications relevant to the current and future needs of our beleaguered retail sector.

Baroness Stedman-Scott (Con): I agree with the noble Lord that young people today face an unprecedented challenge in accessing the world of work, as well as the skills they need to help them succeed. We are working closely with DfE to clarify the relationship between skills and employment provision. The DWP and DfE have put guidance in place to ensure that young apprentices made redundant due to Covid-19 can continue their learning. I thank the noble Lord for raising the excellent work of the Fashion Retail Academy. There are many other sector work-based academies doing great work to help young people in these difficult times.

Lord Touhig (Lab) [V]: I declare an interest as a vice-president of the National Autistic Society. Just 15 in every 100 people with autism get a job, so good education is vitally important. Since the Covid outbreak, seven in 10 autistic children are having difficulty understanding or completing schoolwork and around half—half, my Lords—will see their academic progress suffer. Can the Minister say something about what the Government are doing to mitigate this, so that in the years ahead we do not see even fewer people with autism getting a job?

Baroness Stedman-Scott (Con): The noble Lord is well-known and well-respected for his commitment to this particular difficulty that people face. I would like to assure the House that we are committed to helping everyone into work, including those who need extra and intensive support due to autism. In respect of educational input, I will speak to my noble friend Lady Berridge, and we will jointly come back to him to answer the specifics of that question. However, I can tell noble Lords this: we have recruited 150 employability coaches across Great Britain, and I have heard a number of success stories. These work coaches work particularly with vulnerable people. I can tell noble Lords that a youth employability coach in Dartford has supported a claimant with Asperger's syndrome, helping him to secure an apprenticeship in tech support. We understand the challenge and we are on the case.

The Lord Bishop of Winchester [V]: My Lords, in a recent survey by the Prince's Trust, 21% of those aged 16 to 24 said that they felt their skills and training were no longer useful as a result of the pandemic. Given that about only 2,000 young people secured roles out of 120,000 approved placements in the Kickstart scheme, can the Minister say what action Her Majesty's Government are taking to increase the numbers enrolled on placements and to ensure that they are all high quality?

Baroness Stedman-Scott (Con): I thank the right reverend Prelate for his question, which is really valid. We have over 100,000 vacancies in Kickstart and I can assure him that everyone in the department is working at pace to secure good-quality outlets for young people. We are doing everything we can. We are working with the Prince's Trust and all sorts of other organisations, and noble Lords will see Kickstart come into its own in the near future.

Lord Baker of Dorking (Con) [V]: Is the Minister aware—[*Inaudible.*]

The Deputy Speaker (Lord Bates) (Con): My Lords, we are having some difficulties connecting to the noble Lord, Lord Baker, we will move to the next—

Lord Baker of Dorking (Con) [V]: [*Inaudible*]—apprenticeships concerned, 70% were postponed or cancelled. Can I be heard or not? It says: "Your internet connection is unstable". Shall I continue?

The Deputy Speaker (Lord Bates) (Con): I am afraid there is a problem with the connection, so we will move to the next speaker. I call the noble Baroness, Lady Janke.

Baroness Janke (LD) [V]: My Lords, businesses in the creative, media and digital industries are typically very small and do not have the resources to support apprentices, internships and work experience. What plans do the Government have to support and enable these businesses to provide skills, training and experience to young people in this essential area?

Baroness Stedman-Scott (Con): The creative industries are very important to our economy. I was in a meeting only yesterday with some people who are very significant in the industry and they told us about the number of

[Baroness Stedman-Scott]
jobs they need to fill, which is quite significant. We were talking about getting people skilled, not just in the big cities but across the board, so that we can meet our levelling-up agenda. This is another thing that we are focusing on.

Baroness Fall (Con) [V]: My Lords, while our focus has been rightly on trying to save the lives of those most vulnerable in our society, we are in danger of forgetting the huge sacrifices we have asked from young people. They have been shut up at home, had exams cancelled and missed out on precious university experiences. Now they face a grim economic outlook as they look to start their working lives. I first commend the Government on their Kickstart initiative and echo other questions in asking why the rate of take-up has been so low. Also, while we support existing jobs through the furlough scheme, I wonder if we could be doing more to encourage businesses not to press cancel on a generation of young recruits. These are relatively low-cost hires who are nevertheless the future of their businesses and our country.

Baroness Stedman-Scott (Con): I have already referred to Kickstart and the progress we have made. Another point I will make is that there is a very intensive quality assurance programme for the vacancies to go through, but employers are doing their bit and falling into line with the programme, and we have great hopes for it. I agree with the noble Baroness that, as a country, we need to do all we can to help the younger generation to progress. I would be delighted to see business continue to work alongside government to achieve this aim, particularly in relation to internships.

The Deputy Speaker (Lord Bates) (Con): We will now try the noble Lord, Lord Baker of Dorking, again.

Lord Baker of Dorking (Con) [V]: Is the Minister aware that youth unemployment was discovered to be at 20% by the Resolution Foundation last September? The Sutton Trust has said that graduate unemployment is at 45% and that the number of apprenticeships this year has been reduced by 70% or postponed. A recent government White Paper never mentioned youth unemployment. When will the Government realise that this is a major crisis that is rising and is going to get much worse, and that measures are needed?

Baroness Stedman-Scott (Con): The noble Lord is right to point out the level of unemployment among young people and graduates; I take no argument with that. But he asks when the Government will recognise this: we are working flat out to ensure that young people get the help they need to get a meaningful job and the skills they need to compete effectively in the job market. I can assure the noble Lord and the whole House that we are working at pace to achieve this.

Baroness Wheatcroft (CB) [V]: My Lords, one thing that has become apparent during Covid is that initiatives work best when they are local rather than national. Needs for skills and therefore for training are also often local rather national. For instance, the noble Baroness, Lady Janke, referred to the creative industries. In this country film production is thriving in Yorkshire, while Leamington Spa is the capital of video games. So can the Minister reassure me that local authorities will have much more say in what training schemes are made available and how they will be funded locally?

Baroness Stedman-Scott (Con): My noble friend raises a number of relevant points. As I have said, we are working with local authorities and businesses. There is absolute mileage in all my noble friend says about things being done locally, because people know one another best in their local community. My strapline for all that we are doing is "To be known nationally but felt locally".

Baroness Sherlock (Lab) [V]: [*Inaudible*]—about the scale of the crisis. The Government want 250,000 placements but, as the right reverend Prelate pointed out, not even 2,000 young people are in place and, by November, nearly 600,000 young people were claiming unemployment benefits. So when will 250,000 young people actually be in jobs and what are the Government doing to help the other 350,000 young people who cannot access Kickstart?

Baroness Stedman-Scott (Con): Let me be clear again that we are working at pace with employers to get the vacancies we need in Kickstart. We have started people, and that take-up will accelerate in the coming days. There is no lessening of effort on that. In terms of our offer, we have the youth unemployment programme; we have youth hubs—which are helping people; and we have our youth employability coaches as well as work coaches in jobcentres. With all those efforts combined we will do as much as we can to get as many as possible of the young people referred to by the noble Baroness back into work.

The Deputy Speaker (Lord Bates) (Con): My Lords, the time allowed for this Question has now elapsed. I apologise to those whom I was unable to call. We now move to the fourth Oral Question.

Schools: Exam-year Pupils

Question

12.52 pm

Asked by ***Lord Addington***

To ask Her Majesty's Government what plans they have to permit exam year pupils affected by the disruption caused by the COVID-19 pandemic to repeat that year of study.

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, the department and Ofqual are working at pace to provide clarity to the sector on how grades will be fairly awarded to all pupils following the decision that exams will not go ahead as planned. The Government will also collaborate with the education sector to develop specific initiatives

for summer schools and a Covid premium, alongside developing a long-term plan to support pupils to catch up during this Parliament.

Lord Addington (LD): I thank the Minister for that Answer. Does she agree that everybody has experienced disruption in their schooling and that it has been worst, as was referred to in the first Question today, for those on the lowest incomes, who often have least access to online capacity? If there is a need for people to retake the year, will the Government make sure that such pupils can access the help that they would have got—for instance, from the state through child benefit and other methods? Will they make sure that such help is available for those groups who have the lowest economic status and who will probably need the help most?

Baroness Berridge (Con): My Lords, the noble Lord is correct. That is why part of the catch-up premium will be made available to all schools, recognising that all children will be affected. However, the effects are disparate, and some vulnerable children have been in school for the entirety of the school year. Under the system at the moment, head teachers in exceptional circumstances can allow a child to repeat a year and that remains the position. I am sure that noble Lords will be aware of the complexity that would arise if cohorts were to repeat an academic year.

Lord Randall of Uxbridge (Con) [V]: My Lords, retaking a year is a good idea in principle, but the practicalities would be difficult to work out. One of the many questions would be: what provision would be made for individual schools hoping to have a normal intake and have students repeating a year?

Baroness Berridge (Con): My Lords, my noble friend outlines one of the implications. We are also expecting a population bulge through secondary schools, which will be another consideration, as well as the fact that any repetition of a year when children in England transition at 16 would have implications for FE, while, at 18, it would have implications for higher education. This is not a simple proposal to consider.

Lord Loomba (CB) [V]: My Lords, we are aware that children suffered greatly last year due to the school closures that were necessary to contain Covid-19. However, it is likely to have increased further the educational divide between children of richer and educated parents, who are likely to have had better-quality home schooling, and children in deprived areas. What steps are the Government taking to help these unfortunate children catch up before the next school year?

Baroness Berridge (Con): My Lords, the Government have given some £650 million to the national tutoring programme, which is for disadvantaged pupils. Within that, for the cohorts of the most disadvantaged pupils and schools in the most disadvantaged areas, Teach First is leading on academic mentors—that is, a full-time employee for the school. Some 700 of the 1,000 mentors that we are anticipating are now in schools, supporting catch-up provision.

Lord Adonis (Lab): My Lords, does the Minister accept that the Covid-19 crisis is itself a highly exceptional circumstance and therefore that there may be many occasions where it would be in the interest of the pupil to repeat a year? The job of the Government is to make that possible, including putting in place the logistical and funding arrangements that are necessary. Does she not accept that, for pupils who drop out and do not get the exam grades and qualifications they need, the long-term impact, including the impact on society and the direct costs that we will have to bear in due course, may be much greater than those of making arrangements for pupils to repeat another year?

Baroness Berridge (Con): My Lords, the noble Lord is correct. Catch-up is for this Parliament, as I have outlined. We are looking at summer schools and at the immediate catch-up that pupils need, but the necessary arrangements are longer-term and for the duration for this Parliament. Yes, we also need to look at individual cases. No idea is ruled out and off the table but, as I have outlined, there are very serious implications if whole cohorts of pupils repeat an academic year.

Baroness Garden of Frognal (LD): My Lords, it is not just in schools where studies have been disrupted. What discussions have the Government had with universities about offering a free additional term or terms to enable students to experience face-to-face teaching and other aspects of student life that have been denied them in lockdown?

Baroness Berridge (Con): My Lords, there is close collaboration between Minister Donelan and the higher education sector. That sector is offering remote learning until at least 8 March, except for critical care workers. But of course arrangements for the experience that university students are given is a matter for students and their providers.

Lord Watson of Invergowrie (Lab) [V]: My Lords, by half-term next week, the total loss in face-to-time in school will amount to around half a normal school year. The Government urgently need to provide exceptional support to these students. Allowing a limited number to repeat the school year if it is in their best interest should be considered, together with extending the school year, lengthening the school day, and the widespread use of summer schools. In the current circumstances, thinking outside the box is not a luxury; it is an essential. So are the Government up for that?

Baroness Berridge (Con): My Lords, the department welcomes all out-of-the-box or in-the-box ideas. It is a national priority to help these children catch up, which is why we are looking to stand up summer schools and at some form of Covid premium as well. The consultation in relation to the exams had more than 1,000 responses; by the end of February we will be informing the sector —or Ofqual will inform the sector—about the arrangement for examinations this year. All ideas are being considered but, of course, when it comes to lengthening the school day, with the workforce working flat out at the moment, we have to consider all those issues when looking at initiatives to catch up.

Lord Lexden (Con): Is not it essential that all school staff be vaccinated at the earliest possible opportunity?

Baroness Berridge (Con): My Lords, the JCVI has asked government to look at occupational roles in the next phase of the rollout. We are working across government to make the case for the teaching and education workforce generally; advice will be produced and then it will be for Ministers to decide on the next phase of vaccination.

Lord McConnell of Glenscorrodale (Lab): Both the UK and Scottish Governments failed to prepare last spring for the end of the first long period of lockdown and the need immediately to catch up with flexible solutions inside the school environment. Will the Government be better prepared now for the post-Easter period? I recognise that there are uncertainties between February and Easter but, for after Easter, can the sorts of solutions mentioned by other noble Lords today, including flexible school days and school weeks, the opportunity for more tutors to be inside schools helping with catch-up, and so on, be planned for in April rather than scraped at afterwards?

Baroness Berridge (Con): My Lords, some of the solutions that have been outlined by noble Lords, such as extending the school day, are possible for schools now. Many schools use certain tools that the department has made available so that they can deploy their workforce most efficiently and extend the school day—but of course there are also contractual implications if we were to require more from a teaching workforce that is flat out. Yes, we are planning, which is why we are focusing on summer schools at the moment because we can deliver that. The national tutoring programme has shown its flexibility as well, in that most of the providers could move online straightaway. We are looking at the more structural solutions as well as more immediate catch-up solutions.

Lord Goddard of Stockport (LD): With the exception of three weeks of relative respite last July, Greater Manchester has known some of the tightest restrictions in the country for more than 10 months, resulting in significantly greater disruption to young people's learning, which will impact on not only this exam cohort but next year's. The differential regional Covid and Covid restrictions have been mitigated with a differentiated regional policy. This consultation must ensure that children and young people are not disadvantaged by the lost learning time that they have experienced in comparison with their peers nationally.

Baroness Berridge (Con): My Lords, one of the matters in the consultation was around teacher assessment, which is why this year, for these exceptional circumstances, some form of teacher assessment will assess the performance of students. However, we are aware of the differential impact of Covid and are trying our best to train and support the teaching workforce to be able to deliver a fair qualification for students this year, for GCSEs, A-levels and technical qualifications as well.

Lord Moynihan (Con): My Lords, seven vice-chancellors this morning signed a letter to the Government highlighting unprecedented pressures on our students. Can my noble friend the Minister confirm that the Government will look to help those in need of financial support in exceptional circumstances, which may require resitting a year—for example, where there is limited access to digital devices and for those with special educational needs, and where this has the support of universities or school heads, depending on the cohort of students?

Baroness Berridge (Con): My Lords, I shall have to write to the noble Lord in relation to the department's response to that specific letter, but we have asked the Office for Students to make significant funds available for those students who are suffering hardship. Many providers have been excellent at providing for students who have had to remain on campus, because that is the only place they have to live and stay.

The Deputy Speaker (Lord Bates) (Con): My Lords, I am afraid that the time allowed for this Question has now elapsed.

Viscount Younger of Leckie (Con): My Lords, we seem to be missing the noble Lord, Lord Alton, for the next business. I propose that the House do now adjourn for five minutes until 1.08 pm.

1.03 pm

Sitting suspended.

Burma: Military Coup

Private Notice Question

1.08 pm

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what assessment they have made of the reported military coup in Burma.

Lord Alton of Liverpool (CB): My Lords, in begging leave to ask the Question standing in my name on the Order Paper, I declare that I am vice-chairman of the All-Party Parliamentary Group on Democracy in Burma.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, we wholeheartedly condemn this coup. The military seizure of power, detention of the State Counsellor and other political and civil society leaders, and attempts to undermine the legitimacy of recent election results are totally unacceptable. We are pressing for confirmation of Aung San Suu Kyi's safety, the urgent release of civilian leaders and the peaceful reconvening of the national assembly. The results of the 2020 election must be respected.

Lord Alton of Liverpool (CB): My Lords, I welcome the statement that the Minister has just made to the House. He is right robustly to condemn the military coup in Burma and the incarceration of Aung San

Suu Kyi. However, will he go further? What steps have Her Majesty's Government taken to make it clear to the military that, unless it reverses course, respects the election result, releases those who have been arrested, reinstates Ministers and returns to a constitutional parliamentary system, engaging in dialogue with the National League for Democracy to chart a peaceful course towards political progress in Burma, the UK will impose robust targeted sanctions not only on military leaders but on military enterprises and assets?

Lord Ahmad of Wimbledon (Con): My Lords, on the noble Lord's final point, he will be aware that the UK, along with other European partners, led on the sanctions that were imposed. Indeed, the current head of the military and his deputy have sanctions against them. Let me assure the noble Lord that we are looking at all actions. Later this afternoon we are convening, as president of the UN Security Council, an emergency meeting on the situation in Myanmar, and we are also talking to allies quite directly about further steps that can be taken.

Baroness Nye (Lab) [V]: My Lords, the Burma Campaign UK, in which I declare an interest as a board member, has received many messages from within Burma for concerted and robust international action. The Minister will know that the Magnitsky sanctions do not target the financial interests of the military but are, effectively, a holiday ban for 16 generals during the pandemic. Will the British Government join the new Biden Administration in the US and review our policy on economic sanctions as well as supporting a ban on all, but especially British, companies doing business with companies owned by the military, and work towards a coalition on a global arms embargo?

Lord Ahmad of Wimbledon (Con): My Lords, let me assure the noble Baroness that we are working closely with our allies, including the United States, in this respect. I have already outlined the first action that we have taken as president of the UN Security Council. On the issue of the international arms embargo in Myanmar, let me also assure the noble Baroness that, at the end of the transition period, the specific restrictions that applied as part of our membership of the EU were rolled forward into domestic law. Of course we will consider any further action that needs to be taken in this respect.

Baroness Northover (LD): My Lords, the military coup in Myanmar is hugely worrying, so can the noble Lord say more about how the Government are building a coalition of countries willing to impose embargos, as others have mentioned, and sanctions, and also protection for the Rohingya, who will now be in even greater danger, including by joining the genocide case at the International Court of Justice?

Lord Ahmad of Wimbledon (Con): My Lords, on the noble Baroness's final point, of course we are very supportive of the action at the ICJ, and we are looking at the situation of a formal intervention. Myanmar was supposed to come back in January, I believe, with its challenge to the action. We have not yet been formally been told of that, but I understand that it has been put in by Myanmar. In terms of international coalitions and actions, as I have already alluded to, we are working with international partners and directly with the Myanmar Government—yesterday my honourable friend the Minister for Asia summoned the Myanmar ambassador to convey the sentiments that I expressed in my original Answer.

Lord Sarfraz (Con) [V]: My Lords, I have spoken to several people in Myanmar who are now terrified of what lies ahead. Could my noble friend reassure the House that Her Majesty's Government will use all the tools at their disposal and keep all options on the table to ensure that the Rohingya and other minorities in Myanmar are adequately protected? These include the ongoing ICJ action but also the ICC action, the universal jurisdiction case and working constructively with those countries that have influence over Myanmar's military.

Lord Ahmad of Wimbledon (Con): My Lords, I can assure my noble friend that we are working as he has suggested. Among those that exert the greatest control over the military authorities in Myanmar is China, and it is important that China, as an important member of the international community, also recognises the election and that the civilian Government should be restored to their position of government as soon as possible. On the issue of the Rohingya, which the noble Baroness, Lady Northover, mentioned, we will of course keep that at the forefront of our considerations as penholders, and I am looking to engage with Bangladesh on this important issue hopefully later this week.

Baroness Cox (CB) [V]: My Lords, is the Minister aware that I visited Burma many times to provide aid and advocacy for ethnic minorities suffering offences by the Burmese army? Just today, I have spoken to colleagues inside Burma, who report continuing attacks by the Burmese army in Kachin, northern Shan and Kayin states, with thousands of displaced people. My colleagues' urgent requests are for the international community to engage directly with leaders of ethnic groups and for aid to be sent across borders to them and to NGOs working with them, as aid sent to the Government will not reach those in greatest need. Will the Minister give some reassurance regarding these urgent and serious requests?

Lord Ahmad of Wimbledon (Con): My Lords, the noble Baroness and I have often spoken about these important issues. In light of the coup, the Foreign Secretary has today announced a review of all support, including that sent to the Myanmar Government, with a view to suspend it unless, as the noble Baroness has suggested, there is direct exceptional humanitarian reasons not to do so. We will be working with people and NGOs on the ground to ensure that vital humanitarian access.

The Lord Bishop of St Albans [V]: My Lords, many of us have spoken out over recent months for the protection of Rohingya Muslims. There is a deep worry at the moment that the Government of Bangladesh

[The Lord Bishop of St Albans]
may continue their repatriation of the refugees. Are Her Majesty's Government talking with Bangladesh? Also, what are the prospects for freedom of religion or belief, not least for the Christian minorities in the country, who are under threat at the moment?

Lord Ahmad of Wimbledon (Con): My Lords, on the issue that the right reverend Prelate raises of freedom of religion or belief in Myanmar, the situation is, frankly and very candidly, dire—there is no other word that I can use for that. On the situation with Bangladesh, as I have already alluded to, we are looking to engage directly with the Bangladeshi authorities, but equally they have stated their support for the democratically elected civilian Government.

Lord Collins of Highbury (Lab): My Lords, the Government's decision to bring forward a UN Security Council meeting is very much welcome, and so is the announcement by President Biden that his Administration are considering sanctions. Obviously, I hope that we will be working closely with the US and other allies on this matter. It is vital that the international community imposes the toughest kind of sanctions, including on the enterprises owned by the generals and their families, because it is that network that will have the real big impact. I hope that the Minister will reassure the House that we will do that and get collective international action.

Lord Ahmad of Wimbledon (Con): My Lords, I can assure the noble Lord that we are working closely with our allies in this respect. We will look at a range of measures, with the aim of ensuring that the wishes of the Myanmar people are fully respected, including for the release of civil society leaders. We also want to consider measures that move us towards that end. It is a fluid situation, but we are establishing the exact facts on the ground. I assure the noble Lord that we are working very quickly, as demonstrated by our convening of the UN Security Council.

Lord Dholakia (LD): My Lords, the Minister has rightly mentioned our term in the rolling presidentship of the UN Security Council, where it is possible that the matter will be discussed today. While there is hardly any good word to say about Aung San Suu Kyi, given the way that she has behaved on the expulsion of Rohingya Muslims, there is hardly likely to be any co-operation from the countries of the Pacific zone; China and some neighbouring countries have already made comments that are not very helpful. Has the Minister had any discussion with the countries of the European Union about whether a targeted action can be taken at this time, as with the two generals?

Lord Ahmad of Wimbledon (Con): My Lords, on the noble Lord's last point, there is already concerted European action—specific sanctions on both the general and his deputy. On the wider point on Aung San Suu Kyi, he is quite right that we have had challenges and we have expressed deep regrets, through interactions by the current Foreign Secretary and his predecessors, about her lack of condemnation of the situation of the Rohingya. Nevertheless, she is the civilian elected leader, and she should be restored. My right honourable friend the Foreign Secretary was due to speak to her on that very issue later this week, but, of course, that is not taking place at the current time.

Lord Marlesford (Con) [V]: My Lords, I was working in Burma in 1962 when General Ne Win took over the Government. At that time, the Burmese military were completely naive; they asked a friend of mine in Rangoon University to draft them a manifesto, which he called *The Burmese Way to Socialism*, but we ended up with more than 40 years of what was, in fact, fascism. Does the Minister recognise that that is the danger now, and will he try to get the United Nations Security Council to recognise this in approving an appropriate resolution? Normally, Russia and China might be hesitant to support it.

Lord Ahmad of Wimbledon (Con): My Lords, my noble friend's personal insights are valuable. Indeed, I recall visiting Myanmar just after the first election and what he talks about—the lack of governance, the inexperience of state institutions and the inability to govern effectively—was very clear to me. I take note of what my noble friend says and, of course, today's meeting is focused specifically on Myanmar.

Lord Kilclooney (CB): My Lords, first, is not the failure of the Chinese Government to criticise and condemn the military takeover in Myanmar shameful, and a warning to neighbouring nations, such as the Philippines, Indonesia, Taiwan, Japan and South Korea, about China's attitude towards democratic nations? Secondly, in most elections there are external observers. Were there external observers for this election in Myanmar? The army is using the excuse that it was an unfair election. If there were external observers, was their report favourable or unfavourable?

Lord Ahmad of Wimbledon (Con): My Lords, I note what the noble Lord said about China. We appeal to China, as a member of the international community, to ensure that the democratically elected Government are restored to their position of governing the people. The 2020 elections were an important milestone on Myanmar's path and were monitored by international and local observer groups.

Baroness Whitaker (Lab) [V]: My Lords, following the questions of the right reverend Prelate the Bishop of St Albans and several others, can the Minister confirm that the Government of Bangladesh have definitely undertaken not to send Rohingya people back to Myanmar while they are at risk?

Lord Ahmad of Wimbledon (Con): My Lords, I can assure the noble Baroness and the whole House that in all my interactions as Minister for South Asia with the Bangladeshi Government I stress that the voluntary, safe and dignified return of the Rohingya community is paramount on any ask that they make. They have again been reassuring on that point. I have not spoken to them specifically over the last day or so, but I am seeking urgent engagement on this very point.

Lord Mackenzie of Framwellgate (Non-Afl) [V]: My Lords, I congratulate the Minister on his robust response to the Question of the noble Lord, Lord Alton. This outrage is rightly condemned and the world should unite in calling it out. Is there any point in raising this assault on democracy in the Security Council, as has been said, given the lukewarm response so far from China and Russia? Listening to the reports of the overthrow of this democratically elected Government in Burma, the reason given was that the election last November was rigged. I racked my brains to remember when I had last heard this reason and, of course, I recalled that in the United States, the symbolic seat of power was attacked. Does the Minister share the thought that, facing a clear defeat, the tactic of alleging a fraudulent election comes straight from the playbook of the former President of the United States in exactly the same month of 2020?

Lord Ahmad of Wimbledon (Con): My Lords, I shall not comment on all the questions raised by the noble Lord. I agree with him, but I also believe that it is important we have a UN Security Council debate on this.

Lord McConnell of Glenscorrodale (Lab): My Lords, on an additional, very serious point, I visited Myanmar just before the previous set of elections, and there was deep worry on the ground that, should there be uncertainty and instability after the election at that time, the people who would suffer most would be those who need, for example, international supplies of HIV medication and that sort of humanitarian support. So, will the Government, in their discussions at the UN Security Council, look not just at the democratic and constitutional issues at stake here but ensure that the UN agencies that provide humanitarian support inside Myanmar are able to continue to do so during this crisis?

Lord Ahmad of Wimbledon (Con): My Lords, first, in terms of direct financial aid to the Myanmar Government, as the noble Lord will know, we do not provide any such support. We do provide, as he is aware and rightly articulates, targeted support, working through international organisations and multilateral bodies. As I said earlier, in light of the coup the Foreign Secretary has today announced a review of all indirect support involving the Myanmar Government. However, we retain the importance, as I said earlier, of humanitarian aid getting through and will continue to work on that basis.

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, despite it being a near-run thing, noble Lords managed to ask all the questions in this allocated slot. We are not going to adjourn, but we will take a small breather to allow people to move in and out of the Chamber.

Arrangement of Business

Announcement

1.25 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. The time limit for the following debate is one and a half hours.

Public Health (Coronavirus) (Protection from Eviction) (England) Regulations 2021

Motion to Approve

1.26 pm

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

That the Regulations laid before the House on 8 January be approved.

Relevant document: 42nd Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, this draft instrument prevents enforcement agents—bailiffs—attending residential premises in England to execute a writ or warrant of possession except in the most serious circumstances. The instrument applies to enforcement action in England. It has been in force since 11 January and will expire at the end of 21 February. I refer to my interest as set out in the register.

The instrument renews the restrictions on enforcement agents carrying out evictions that were in place between 17 November 2020 and 11 January 2021. This will ensure that we continue to protect public health during this national lockdown, at a time when the risk of virus transmission is very high, and avoid placing an additional burden on the NHS and local authorities. The instrument continues to provide for exemptions from the ban in cases where we consider that the competing interests of preventing harm to third parties or taking action against egregious behaviour are sufficient to outweigh the public health risks.

The exemptions are as follows. The first is where the claim is against trespassers who are persons unknown. The second is where the order for possession was made wholly or partly on the grounds of: anti-social behaviour or nuisance; false statements; domestic abuse in social tenancies; substantial rent arrears, equivalent to six months' rent; or where the order for possession was made wholly or partly on the grounds of the death of the tenant and the enforcement agent attending the property is satisfied that the property is unoccupied. The instrument contains a requirement for the court to be satisfied that an exemption applies on a case-by-case basis. This will ensure that there is a clear, uniform and transparent process for establishing whether an exemption to the ban applies.

As noble Lords will appreciate, this legislation is an extension of the previous ban on the enforcement of evictions in all but two respects. The first difference is that we have redefined the exemption for "substantial rent arrears" to mean arrears of more than six months. The definition in the previous instrument was arrears of more than nine months, not including any arrears that had accrued since March 2020. We have made this change to balance the impact of the ongoing restrictions on landlords with the need to continue to protect tenants. Because of action that the Government have taken as a result of the pandemic to protect renters, we expect that most cases that will fall within this exemption will relate to possession claims that began before the six-month stay on possession proceedings commenced in March 2020. In those cases, landlords may have been waiting for more than a year without rent being paid.

[Lord Wolfson of Tredegar]

The second difference between this instrument and the one it replaces is that it permits writs and warrants of restitution to be enforced. These orders are issued in cases where a person who has been evicted from premises re-enters those premises illegally. It is therefore appropriate that they be excluded from the ban.

The regulations will be in place until the end of 21 February. We are considering whether and, if so, how to extend them, including how long any such further extension should be in place, and will provide more details as soon as possible.

It is important to ensure that our approach remains proportionate and strikes the right balance between continuing to protect tenants and ensuring that landlords can access justice. On 8 December last year, during the debate on the previous statutory instrument, concern was raised that the Government had not gone further to protect renters and support landlords, many of whom are individuals. The Government believe the best way to support landlords at this time is to provide support to tenants to enable them to continue to pay their rent, and have provided an unprecedented package of financial support which is available to tenants. This includes the fact that, in April 2020, we increased the local housing allowance rate to the 30th percentile of local market rents in each area to help prevent people getting into financial hardship. It also includes an increase of nearly £1 billion in additional support for private renters claiming universal credit or housing benefit in 2020-21, which will benefit over 1 million households, including those in work. Claimants will gain on average an additional £600 this year in increased housing support.

The Secretary of State for Work and Pensions recently announced that the increase to local housing allowance rates in April this year will be maintained in cash terms in 2021-22, even in the large number of cases where the 30th percentile of local rents has gone down. The continued investment in local housing allowance will support claimants in the private rented sector to manage housing costs. That is on top of the other provisions in place, which the House will know of, to help businesses pay salaries, with the furlough scheme extended to April and the welfare safety net boosted by billions of pounds. In this context, the Government have made £180 million available to local authorities and discretionary housing payments to help renters with their housing costs. All that is critical factual background when considering this statutory instrument.

We continue to require landlords to provide tenants with six months' notice before eviction in all but the most serious cases until the end of March. That means that most renters served notice now can stay in their homes until June 2021, with time to find alternative accommodation. The six-month stay on possession proceedings put in place at the start of the pandemic could only ever be temporary.

The new court rules also respond to the pandemic and will be reviewed. These include a requirement for cases from before 3 August last year to be reactivated by the landlord and subject to a new review hearing at least four weeks before the substantive hearing. There is a need for landlords to provide courts and judges with information on how tenants have been affected by the pandemic—if that information is not provided, an adjournment will be made. There is a new review stage at least 28 days before the substantive hearing so that tenants can access legal advice, and all enforcement agents must provide a minimum of 14 days' notice before enforcing an eviction. That is on top of new listing prioritisation arrangements which have been introduced by the judiciary.

Further, we are piloting from early this month a new mediation service to support landlords and tenants in seeking to resolve disputes before a formal hearing takes place. That will be free to use for both landlords and tenants, if it is considered at a review that the case would benefit from mediation and the parties so agree.

Our approach strikes the right balance between prioritising public health and supporting the most vulnerable renters, while at the same time ensuring that landlords can access and exercise their rights to justice. Landlords can action possession claims through the courts, but evictions will not be enforced except in the most serious cases. This SI strikes the right balance, and I therefore commend the regulations to the House.

1.34 pm

Amendment to the Motion

Moved by ***Lord Kennedy of Southwark***

As an amendment to the motion in the name of Lord Wolfson of Tredegar, at end to insert "but that this House regrets that the Regulations only provide protection from eviction for residential tenancies until the end of 21 February, and regrets that the Regulations permit evictions for arrears that have built up since the start of the pandemic, and that a case is deemed to involve substantial rent arrears if the amount of unpaid arrears outstanding is at least equivalent to six months' rent, which contravenes Her Majesty's Government's commitment that nobody would lose their home because of the COVID-19 pandemic."

Lord Kennedy of Southwark (Lab Co-op): My Lords, I have several declarations to make: I am a vice-president of the Local Government Association, chair of Heart of Medway Housing Association and a non-executive director of MHS Homes Ltd. Noble Lords will be further aware that my wife is my noble friend Lady Kennedy of Cradley, who is the director of Generation Rent.

In moving this regret amendment today, I make it clear that I do so as the official Opposition spokesperson for housing and local government, and not in a personal or any other capacity. I also welcome the noble Lord, Lord Wolfson; I have not had a chance to speak to him yet, but I have seen him in the Chamber and I am sure we will speak outside. I wish him well in his responsibilities.

From the start of the pandemic, the Government have made numerous announcements and promises. One such area is the private rented sector, where the Government's mishandling of the situation has failed

tenants and landlords. On 26 March last year, the right honourable Member for Newark in the other place, Mr Robert Jenrick, went on record saying

"no one should lose their home as a result of the coronavirus epidemic".

These regulations confirm that that promise is broken: tenants across the UK are struggling to make ends meet right now; certain sections of the economy have had no help whatever; redundancies will be at record levels across huge sections of the economy when the furlough scheme ends; we are in the worst recession for 300 years and the economy is expected to shrink by 11.3%. The Chancellor of the Exchequer is on record as saying that the fiscal damage will be "lasting", and the Office for Budget Responsibility predicted that unemployment will rise in 2021 to 7.6% of the entire workforce, or 2.6 million people.

These regulations satisfy no one. On the one hand, they extend the ban on enforcement of eviction orders which has been granted by the courts until 21 February, but they also expand the exemptions from the ban, meaning that tenants with more than six months' arrears could be evicted. Citizens advice bureaux estimate that close to 500,000 renters are in arrears and are now at risk of a Covid-19 eviction because of the ban being lifted. Already, more than 174,000 private tenants have been threatened with eviction by their landlord or letting agent. Even at the start of the pandemic, nearly two-thirds of private tenants had no savings, on top of the 45% of private renters who have lost income since March.

We are asking the Government to stick to their word: that no one will lose their home because of coronavirus. In the months that preceded this debate, the right measures could have been put in place to ensure that the Government's promise was honoured. They could have brought in the right support for struggling tenants that would have benefited both tenants and landlords, with changes to the universal credit system and an uplifted local housing allowance. They could also have announced a credible plan to deal with rent arrears. Instead, they leapt from crisis to crisis and wasted months, and tenants now face the same predicament they faced at the beginning of the pandemic.

Measures that could have been looked at include the setting up of a Covid-19 hardship fund to help support those in receipt of benefits who are struggling, or an increase in local housing allowance, but instead the Government proposed a freeze in cash terms from April 2021. All that achieves is that tenants in higher-rent areas get less support than those in lower-rent areas. The shared accommodation rate should have been suspended for at least 12 months, as called for by the Social Security Advisory Committee. The housing benefit cap should be scrapped and the £20 monthly uplift to universal credit kept. Those measures and similar ones would in most cases have the support of both landlords and tenants. Neither good landlords nor good tenants who find themselves in real difficulties should be penalised because of the pandemic.

Looking at the measures called for by landlord trade bodies and by tenant organisations, what is striking is the similarities between them. It is also worth noting that the BMA and others have warned of a potential rise in Covid infections if the Government force people into homelessness or overcrowded accommodation, the consequences of which would extend far beyond those directly involved. Look at the tragedy that lifting the lockdown measures over Christmas brought to families—this is a deadly virus, and measures that do not respect that fact and protect people accordingly will have deadly consequences.

I intend to test the opinion of the House on the regret amendment in my name. It is another plea to the Government to get a grip on the situation. People are really suffering, both landlords and tenants. They are really scared about their future. Landlords and tenants need help to get through this nightmare. We all need to get back on our feet and on the road to recovery. We all desperately want to see that.

There is a second regret amendment, in the name of the noble Baroness, Lady Grender. I have great respect for her. She has considerable knowledge and experience of these matters. The House would do well to listen to her. I make it clear that I would have no problem voting for her amendment and fully endorse its aims.

1.40 pm

Baroness Grender (LD) [V]: My Lords, I too welcome the noble Lord, Lord Wolfson, to his new role. We welcome the extension to 21 February but, for well-being, security and public health arguments, we believe that extensions of these measures should be linked to extensions of lockdowns. We regret that, unlike the first lockdown, eviction notices can still be served under these rules.

Given the UK and South African variants, the last thing we want is more families homeless, and the greatest cause of homelessness is the end of a private tenancy. I urge the Minister to agree to speak with and understand the plight of families who have had to find a new home to rent during the lockdown. I am sure that Citizens Advice would be willing to arrange this if he is amenable.

The Minister has been asked to deliver a highly significant change from the previous version of this statutory instrument—a change which suggests that there is a minimal understanding of what is happening to private renters. As the noble Lord, Lord Kennedy, has already said—this bears repetition—the Secretary of State promised on 18 March that

"no renter who has lost income due to coronavirus will be forced out of their home".

This change in the statutory instrument breaks that promise, by changing eviction guidance from a nine-month threshold to now ensuring that renters can be evicted with more than six months of arrears, including the period of this pandemic.

Last week in Oral Questions, I asked for the data behind this extraordinary decision. It was puzzling to me that the Minister kept resorting to the latest Citizens Advice report, *New Year, Same Arrears*, and using that as the rationale behind this change. Citizens Advice had revealed that tenants were £360 million behind in rent. But if they are behind in rent, surely they need support, not a change to include arrears during the period of the pandemic.

Sadly, this change is only too transparent. It suggests that, when it comes to tenants, the Government's assumption is that they are in some way irresponsible—but

[Baroness Grender]
most evidence suggests that before this pandemic, well over 90% of tenants were not in arrears. Should not the assumption be that these are responsible people, the vast majority of whom until this moment paid rent in full on time, who are now often in the worst-case scenarios? Indeed, according to the Resolution Foundation, twice as many private renters have reported job losses as homeowners. The Government's own *Household Resilience Survey: Wave 1* found that private renters were by far the hardest hit by the pandemic.

When the noble Lord, Lord Kennedy, pushes his amendment to the Motion to test the opinion of the House, we will fully support him. I thank the noble Lord for his words of support. We feel that one vote is enough on this, and I will not push my amendment to a vote today.

When the Minister responds, I ask him to tell us what risk assessment has been conducted regarding the likelihood of families losing their home as a result of this substantive change.

The amendment to the Motion I have tabled explains the context in which so many private renters entered this pandemic and the devastating impact it has had on them. The Minister has already referred to the levels of support given. But, as my own amendment to the Motion makes clear, this support is given without an understanding of the context for most private renters at the start of this pandemic.

Renters had an average of £500 in savings at the start, and 60% had no savings at all. The average shortfall in support each month under the local housing allowance scheme, because it is only the bottom 30% of rents, is about £100—you do the maths. The benefit cap has also reduced allowances. So any savings—if renters did have them—are already gone, and many started with no savings at all.

Citizens Advice found that most tenants have accrued arrears of less than £600, but the people they help will take, on average, seven years to pay that back. The cost to the public purse right now to help those tenants through a support package of targeted loans and grants—a one-off financial boost that would pull them out of debt, so that they in turn can pay their landlord and stay in their home—would be less than the projected £360 million debt.

The final part of my amendment to the Motion refers to the need for just such a package of support to keep people in their home, proposed by the National Residential Landlords Association, Generation Rent, Citizens Advice and others. It is really important to note that, when we are talking about this balance issue with landlords, the NRLA is very clear that the real need is to tackle the rent debt crisis.

Let us put that £360 million debt in context. It is far less than the highly questionable £1 billion spent on lateral flow tests, devised by US firm Innova but made in China, and a tiny fraction of the staggering £15 billion spent in four months on test and trace, much of it on lateral flow tests. Let us think just for a second about the hurdles private sector tenants have to go through right now for support, and then compare it with the fact that only 1% of this massive test and trace expenditure has gone through any competitive tender, according to the National Audit Office. How different it is for renters, choosing between food, heat and rent.

For public heath safety, for security of a family home, and for mental health reasons alone, we should keep renters in their home. These measures fall far short of those aims.

1.46 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, it is a great pleasure to follow the noble Baroness, Lady Grender, for whom I have the greatest respect and who knows a great deal, about this area. I welcome my noble friend to the Front Bench and thank him very much for setting out these regulations. I declare my interests as set out in the register, and I thank the National Residential Landlords Association and Generation Rent for their helpful briefings.

I am in support of these regulations, but I have some concerns. I see the need to protect public health and the risk of virus transmission—I am sure that we all do. We go through this bimonthly ritual of renewing these regulations, and I have to say to my noble friend, who seemed to indicate that there was as yet no certainty about renewing them, that we are only three weeks away from them running out. It seems to me that we should provide some certainty for both landlords and tenants.

I hope that we will renew the regulations, but that we will take a more strategic look at how we approach this situation. Here we are, many renewals in, with a very fundamental problem: the gradual accumulation of rent arrears, which is now substantial. That affects tenants and, of course, landlords, because we are not doing anything about the debt which is building up over time. There is a very real concern about credit ratings for tenants who find themselves, through no fault of their own, in this situation. Their credit rating is affected, and that will have a long-term effect on the tenancy market, which is a very important part of our housing area. We will need to take a much more strategic approach, rather than looking simply at the very important protection of tenants from eviction—that is, as it were, a given. I have great sympathy with looking at this on a wider scale rather than every two months, because I do not see this problem going away by 21 February. Surely we should take a longer look at this.

Could my noble friend give some thought, and perhaps some preliminary thoughts to the House, on how we might move forward, at least with hardship loans or funds to help tenants, and thus landlords and the sector? Otherwise, this will be a long-term problem that is building up over time. I sympathise with the situation that my noble friend finds himself in, and I can appreciate the great pressure that the Government are under on so many fronts. However, I think we need to take a step back and look at this not just in tactical terms of what we need to do for the immediate problem but at the situation that is building up.

I know my noble friend said something on this in opening, but I am not quite clear why we have moved from nine months' arrears to six months' arrears. What is the reason for that? The problem is more serious now, so I cannot quite square that with the fact

that we seem to be bearing down with six months of debt accrued rather than nine months. However, it may be that I missed something there.

As my noble friend said, we have provided unprecedented help, but on the other hand, we are in a unprecedented situation, and it looks to me as if it will last for some time. Even as we come out of the public health hazards, as I am sure we will this year, the long-term economic position will have an effect on tenancies. I look forward to my noble friend saying something on that but, in the meantime, I support the necessity of these regulations.

The Deputy Speaker (Lord Duncan of Springbank) (Con): We have had two speakers scratch, so I hope it does not come as a surprise that the next speaker is the noble Baroness, Lady Bennett of Manor Castle.

1.51 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, thank you, it does not. I declare my position as a vice-president of the Local Government Association. I follow the noble Lord, Lord Kennedy of Southwark, and the noble Baroness, Lady Grender. Robert Jenrick, the Secretary of State for Housing, said in March 2020 that

"no one should lose their home as a result of the coronavirus epidemic."

That sounds like a promise, which the Government are breaking by cutting the rent arrears minimum to six months—only half the period for which the SARS-CoV-2 virus has been raging. I will also quote Shelter chief executive Polly Neate on this statutory instrument, which she described as

"the minimum required to keep … people safe in their homes",

as the very useful briefing from Generation Rent on this SI notes. Eviction notices can still be served and possession notices are being granted, while the Government are asking people not to leave their homes—and all of this runs only until 21 February. To complete my trio of quotes, I will go to the Green Member of the London Assembly, Siân Berry: "Everyone has the right to a home."

The Government doing the minimum here is really not enough. In Scotland and Wales more is being done. Both nations have loan schemes. Wales has a five-year loan with an APR of 1%, while in Scotland the loans are interest free, and there is also an increase in direct support to tenants. That is better than in England, although of course the problem with loans is that they still have to be paid back. For many households who were living permanently on the edge, even pre-Covid, in a society with a minimum wage well below the real living wage, and the horrendous insecurity of zero-hours contracts, it is hardly any relief from the massive pressure of poverty and inequality under which so many live to say, "Here, have a loan". Clearly, what is needed are grants—support for the poorest, who have been utterly failed by our massively expensive, exploitative, privatised housing system, to lift them at least to ground level out of the massive financial hole they find themselves in through no fault of their own.

Progressively, over decades, under Governments of various political colours, we have destroyed a system that provided genuinely affordable, generally decent homes for all. Let us not forget that in 1979 nearly half the British population lived in secure council homes. Some of those were not as well built or maintained as they should have been, or were in areas with inadequate facilities and opportunities, but they were secure. As the noble Lord, Lord Bourne, has just said, we replaced that with a market, and that is not a successful model for housing.

As noble Lords might predict from those remarks, the Green group supports both of the regret amendments, particularly that in the name of the noble Baroness, Lady Grender, with its focus on the need to provide long-term security for tenants. However, looking at that longer term, we have to move away from regarding houses primarily as financial assets and instead focus on providing everyone with a secure, genuinely affordable home that meets their needs—although of course I acknowledge that that is beyond the immediate scope of this SI. I note research last month from Aldermore Bank showing that half of renters now regard their circumstances as unstable, with one in 10 struggling to pay the rent since March. Clearly, we have a broken housing system.

Coincidentally, I spent this morning chairing a Westminster Forum session about our broken food system. That is two basics of human existence—food and housing—on this planet, with a climate emergency and a nature crisis, where as a species we are smashing through multiple planetary limits while failing miserably to meet even basic human needs in a collectively wealthy country such as the United Kingdom. I have to say that we have a broken economic, social and political system. We have to rescue people in the immediate future, but we also have to think longer term about massive transformational change.

1.55 pm

Baroness Altmann (Con) [V]: My Lords, I declare my interests as in the register. I too welcome my noble friend to his role and thank him for setting out this SI so clearly. I also thank Generation Rent and the NRLA for their briefings and their constructive work on these issues. It is absolutely right that tenants need to be protected against unreasonable behaviour by their landlords, and public health concerns absolutely mean that homelessness is really problematic and must be avoided wherever possible. As the noble Baroness, Lady Grender, rightly says, the vast majority of tenants are responsible, but the vast majority of landlords are, too. The majority in fact own just one or two properties and look after their tenants with care. Some are pensioners, relying on rental income for their retirement security. Private landlords cannot be expected to continue to effectively pay to house people for free. That is a government role, and I agree with other noble Lords that there are important issues that we must address to support tenants who, through no fault of their own, and perhaps as a result of the pandemic, have found themselves in rent arrears.

This SI, which focuses mostly on tenants with large arrears who have engaged in egregious behaviour, anti-social behaviour, abusive behaviour or trespass, for example, does seek to balance the interests of landlords, who may indeed have suffered more than a year without any rental payments at all, and those of tenants who need a home. Of course, supporting

[Baroness Altmann]
tenants to help them continue to pay rent is a very effective way to help landlords, but there are cases where landlords will need to have their property back. That is what the Government are seeking and I agree that this is a very delicate and difficult issue that they are seeking to achieve.

The measures that the Minister outlined show that, even with the six months' arrears and notice of eviction, tenants will be secure until June at the very least and, indeed, with the review stages being extended, it is likely to be quite significantly beyond that. They have time to either find new accommodation themselves or for social housing to be assigned to them if possible. I recognise that this is difficult and that in some cases we will be dealing with tenants who will find it difficult to be housed. However, I support the Government in their efforts to balance the interests of innocent landlords with the needs of good tenants, who also must be protected.

1.59 pm

Lord Mann (Non-Afl): My Lords, I would like to ask the Minister how an individual who has been evicted will be traced—for example, there is tracing currently for the South African virus variants—or how they will be contacted for an appointment for their jab if they have been evicted.

I know that the Minister, his predecessor and his officials will have been involved in detailed discussions and research looking at this issue, which is obviously fundamental to getting out of the current health crisis. All my experience suggests that there is a direct correlation between the ability to interact with the NHS and the stability of housing. Therefore, the more that people are evicted and moved, the less their interaction with the health service will be, and the more vulnerable they and society will be—either by not being traced when there is an emergency requirement or by not being contacted when there is an opportunity for them to receive the vaccine.

What is the propensity for someone not to be registered with a GP who is trying to communicate with someone, having lost the address when that person has been evicted? It is a big issue for NHS business planning and is not new. What discussions have taken place over the past year between the Minister's department and the department of health to clarify that matter? It is an important consideration now and in the future.

A second issue is a microcosm of a problem that I have raised previously but not with any success, relating to the Traveller community. It is more vulnerable to eviction under the criteria that the Minister has set out, yet it is by definition more likely then to move to another area. Given the context in which these regulations are made—the health pandemic—what specific attention has been given to the requirements of the Traveller community and its danger of being evicted, either from a fixed location or from within the community? Some Travellers are evicted by others in that community from less-fixed accommodation. How does that issue fit into the strategy?

2.02 pm

Lord Naseby (Con) [V]: My Lords, I welcome my noble friend to the Front Bench. I have been involved in housing matters of a political nature for half a century. I was housing chairman for the London Borough of Islington, which at that time—the 1960s—was difficult for tenants and the economy under Harold Wilson. I have been deeply involved with the mutual movement and social housing. I am sure that my noble friend knows this but there are rogue, bad landlords around. We had Rachman and De Lusignan. Their equivalents are there today. There are also rogue tenants, who were a problem then and now.

The kernel of this SI is about normal tenancies and normal tenants who face particular difficulties due to the pandemic. I say to my noble friend, who is enormously welcome to the Front Bench: can we please plan ahead? Why did we not review this issue at least 10 days earlier? February 21 is two and a half weeks away, not even three. That is not long.

I have looked at the four categories and I am comfortable with three of them, but not with the category of substantial rent arrears. Questions arise. We—my Government—have done a good job on the homeless but, if we now find ourselves in another crunch period whereby people are made homeless, that will fall on the local authorities just when they have been working tremendously hard to make things operate as normally as possible. What are we going to do? I suggest two things. One should be to quickly announce that the scheme, whatever it may be—some revisions may be needed after this debate—will run until Easter. Secondly, I have looked at the schemes run in Wales and Scotland. I do not find much in favour of the one in Scotland but the tenant hardship loan in Wales has a lot going for it. It might need a bit of fine tuning to English conditions; nevertheless, it may be the way forward.

Frankly, I do not understand why there has to be a 1% charge. Are we not hoping that we are beginning to come to the end of the pandemic? There should be no interest charge but a hardship loan, with people implementing it who understand how it works and how tenants can ensure that they play their roles.

Finally, my dear and noble friend Lord Bourne asked a valid question about the change from nine months' to six months' arrears. I say to my noble friend on the Front Bench that housing was never an easy job but, at this point in time, the middle category of people who are genuinely good tenants in normal times are those who need this help.

2.06 pm

Baroness Uddin (Non-Afl) [V]: My Lords, I welcome these discussions and particularly welcome the noble Lord, Lord Wolfson, to this place and congratulate him. The last point made by the noble Lord, Lord Naseby, is important, although I do not agree with tenants having to be forced to take loans out. If the Government are considering that at all, there should be no interest charged whatever. We should not get into the circle of providing further opportunities to put vulnerable people into more debt.

The Housing Secretary made a statement that no one should lose their homes as a result of this health crisis. However, the legislation on eviction precisely allows that for arrears accrued since the start of this pandemic. The Minister will be aware that, between April and November 2020, a staggering number of

some 207,500 households sought help with homelessness from their local council. Surely it is evident that families are suffering extreme hardship, and extending the ban on eviction until the end of February or even June will not resolve any of the grave consequences for particularly vulnerable families. That requires long-term and sustainable policy and action.

As a number of noble Lords have eloquently pointed out, families are facing the most serious job and financial crisis, and six months' exemption is not good enough. I therefore support the regret amendments in the names of the noble Lord, Lord Kennedy of Southwark, and the noble Baroness, Lady Grender, and ask the Government to extend the ban on evictions and repossession until we are out of this health pandemic.

Housing reform, alongside all the associated safety nets, is required even more urgently now as more families become reliant on public housing. These regret amendments seek to prevent the enforcement of eviction and repossessions until such time as the pandemic eases. Unless we do so, such inhumane responses will make families prey to further stress and inevitably dire health consequences. Housing is a basic fundamental right. Therefore, the Government's response is intrinsically, in effect, in breach of those basic rights. These matters go beyond any party-political ideology. They are about safety and preventing further stress on the NHS.

I support these regret amendments and ask the Government to commit to protect all those who are facing eviction, and to ensure that all families who need homes are provided with safe, secure and good-quality accommodation for the most vulnerable of our society.

2.10 pm

Baroness McIntosh of Pickering (Con) [V]: I welcome my noble friend back to the Front Bench after his positive responses when the Domestic Abuse Bill was in Committee yesterday. I declare an interest, as I lease a property. As part of my training for the Scottish bar, I did an apprenticeship with Simpson & Marwick. One of the benefits of the Scottish training is that we work with solicitors first hand. One of my duties was as a debt collector. It impressed on me that people fall into debt not necessarily through any responsibility of their own but through misfortune. That has been compounded in the present environment and climate that we find ourselves in through Covid, with the dreadful consequences that other noble Lords have set out.

I welcome the regulations before us today, and I thank my noble friend for setting out the changes that they introduce from previous ones. I welcome them, as far as they go. In preparing for today, I am grateful to briefings from, among others, Generation Rent and the National Residential Landlords Association. The degree to which they agree on the way forward is stark. While I welcome the positive steps taken in the regulations before us, I share the misgivings of other noble Lords about the reduction in protection from nine to six months. It would be helpful to understand the reasoning behind that.

I also think it is important to recognise the generosity of support that the Government have given so far, but I hope that my noble friend urges the Government and department to look kindly on two proposals, in particular. The first is the tenant hardship loans, which we have seen work so effectively with similar schemes in Scotland and Wales. This measure has the support of, among others, the debt charity StepChange and Citizens Advice. The scheme has a proven track record in two other parts of the kingdom, and it bears further investigation. The second, as other noble Lords have suggested, is a Covid-19 hardship fund to be administered by local authorities. This could be boosted to support those in receipt of benefits.

Finally, I focus on the expiry of the regulations in three weeks. As the furlough scheme has been extended, it would help if the schemes before us could be extended at least to reflect the same deadline as the furlough scheme. It is important to realise that tenants have fallen on hard times, not necessarily through any fault of their own. Many shops, retail businesses and others have closed at very short notice, in very short order. For example, many would not have been able to benefit from the extension to the furlough scheme in October, because they did not realise what was intended. We do not know what is going to happen when the furlough scheme expires, if that is the case, at the end of April.

I hope that my noble friend shows his benevolent nature and seeks to extend these regulations at the first available opportunity, and looks at schemes such as the tenant hardship loans and Covid-19 hardship funds, as others have suggested. Also, the deadlines set out in these regulations should be revised to reflect those in other regulations, such as the extension to universal credit and the furlough scheme. With these few words, I support the regulations before us, but urge my noble friend to look favourably on my suggestions.

2.14 pm

Lord Bhatia (Non-Afl) [V]: The Government have extended protections against the enforcement of residential evictions until at least 21 February 2021, because of the third national lockdown in England. These measures have been criticised by Labour and others for not going far enough to prevent renters losing their homes during the pandemic. On 8 January 2021, the Government announced that, in view of the new national lockdown, they would extend the ban on bailiff-enforced evictions in England for at least six weeks. The regulations came into force on 11 January 2021. Both Houses of Parliament must approve them by 3 February 2021 for them to continue in force.

The regulations prevent enforcement of evictions through bailiffs attending residential premises in England to execute a writ or warrant of possession or to deliver a notice of eviction. However, evictions and repossessions can continue to take place where a court is satisfied of an exemption, such as a claim against a trespasser, or that the order of possession was made, wholly or partly, on the grounds of anti-social behaviour, nuisance, false statements, domestic abuse in social tenancies or substantial rent arrears for six months, or on the death of the tenant, or when the property is unoccupied when the person attends.

The Government have said that restricting the enforcement of evictions would help control the spread of infection and prevent additional burdens falling on the NHS. These regulations will expire on 21 February

[Lord Bhatia]
2021. They are necessary, but stopping evictions for a few weeks and reviewing the regulations again must cause considerable anxiety and mental health problems for those who are genuinely in arrears because they have lost their jobs. The processes described will benefit only lawyers and are an unnecessary waste of court time. Will the Minister confirm whether he will reconsider the regulations, as there is evidence that the pandemic will surge, again and again, until over 70% of the population has been vaccinated?

2.17 pm

Baroness Gardner of Parkes (Con) [V]: My Lords, I believe that, in these Covid times, these regulations are important for relieving anxiety and giving tenants the peace of mind that they will continue to have a roof over their heads, while ensuring a balance that allows landlords to repossess a property where the tenant is in significant breach of their lease—for example, due to their anti-social behaviour or a six-month backlog of unpaid rent.

I am a landlord myself, as disclosed in the register of interests. While I recognise that many landlords will think that some of these regulations are unfair and costly to them, there will be many tenants who think that they still favour the landlord too much. It is key to strike the right balance, and it is important that the Government consider a package of financial assistance to help tenants in arrears and landlords who currently have to bear those arrears.

In addition, I question the provision to allow repossession on the grounds that

"the dwelling house is unoccupied"

at the time of attendance. Given all the restrictions on international and local travel, and the possibility that the landlord may find it impossible to return to their property, should international tenants be given more protection from repossession, subject to paying their rent, when they are unable to return to the UK?

2.19 pm

Baroness Fox of Buckley (Non-Afl): My Lords, I have previously queried whole swathes of illiberal legislation that have been put on the statute books, such as that which makes it illegal to leave your own house without an explanation or to mingle with friends in your own back garden. When I pressed for a date about when lockdown will end and asked if we can know exactly when these things will happen, my queries were met with great irritation and government Ministers saying, "We are following the evidence, don't you know there's a pandemic on?" This is one statutory instrument where I would actually like to see that kind of approach. Instead, here we have very specific dates, which are always time-limited, on-the-dot and short-term. I do not understand, especially given that homes are so important in this pandemic, why the Government are being so mean-spirited on this question.

That dreaded lockdown phrase, "Stay home", resonates differently across society. For some, "Stay home" means saving money on the commute, or thinking about where to place the home-school workspace for the children or what bookcases are on display during business Zoom calls. But for many people, "Stay home" means how to rota the kids' laptops on the dining room table in the cramped, gardenless flat. With this SI, it is about the fear and dread of whether or not being able to stay in the same home will be feasible once lockdown ends. This is one of the greatest causes of anxiety, with parents lying in bed at night worrying about debt and eviction. Many private renters are worrying about how to stave off homelessness for themselves and their families.

I of course welcome this temporary ban on eviction—I welcome it again, as it was only a few weeks ago that we renewed it for a further few weeks—but it feels too short-term and shallow to deal with the challenges of the continual closure of society. Surely the Government realise that this is storing up huge problems for the future. Tenants' debts are mounting up, and, as other noble Lords have mentioned vividly, this is not their fault. Many of them would never have got into debt before. They are using their rent money to pay fuel bills because they are not allowed to leave the house with their families. As the months drag on, furlough, which was at first welcomed, now means a one-fifth cut in wages. This is unemployment delayed. In the past, those who managed to juggle their finances often had a number of part-time jobs to make do, but you can no longer have an evening bar job or a shift in Debenhams to make up the money because we have locked down.

As tenants' debts mount up, they do not stand a chance of paying them off. It is now clear that when lockdown measures end there will not be a land of milk and honey but a serious economic depression with mass unemployment. If furlough is just redundancy deferred, then the inadequacy of this SI means that it is, I am afraid, eviction deferred. There is just no need; I genuinely do not understand why the Government—for whom money seems to be no object during this pandemic—cannot see that targeted loans and grants will get them out of this and help tenants and landlords alike. Why do they not write off the debt and have a debt amnesty? Remember that so many landlords, who are also suffering, are not property tycoons—almost half of them own only one property. They have spent their life savings or redundancy money on prudently investing in a buy-to-let for their income and pensions, and they too are now desperate.

I finish by saying that the Government have proved, through the magnificent vaccine rollout, that they can be impressive and swift, think in the long-term and solve problems. But, unfortunately, they also have the problem of making a mess of less challenging issues, from the cladding scandal and the throwing of leaseholders under the bus, to the home-school meals saga. I welcome the noble Lord to the Chamber, but I appeal to him to not follow in the same suit of making a mess of this, because it is easy to solve. Just solve it, and do not keep coming back with SIs for another few months.

2.24 pm

Lord Wolfson of Tredegar (Con): My Lords, in this short debate I feel I have been assailed from all sides. I have been attacked for not giving enough protection to renters and challenged for not giving sufficient thought to landlords. The noble Lord, Lord Kennedy of Southwark, said that I would satisfy no one—that

may be the story of my life. I bear in mind the point made by my noble friend Lord Naseby that housing never was an easy job. It is certainly less easy when you are in the middle of a global pandemic and even more difficult when you are actually a Minister in the Ministry of Justice.

The experience of being castigated from all sides, however, has been ameliorated by the cogency, force and evident passion of many of the contributions to this debate. But the fact that I have been challenged from all sides is important. I am not making the simple, perhaps simplistic, point—attractive though it would be to do so—that the fact that both renters and landlords consider they have cause for complaint shows that we have got it about right. That would be superficially attractive, but it would not necessarily follow.

What does follow is the point that this is not a simple issue. It is not just a question of focusing on the position of renters or landlords, or even a question of focusing on renters and landlords. We also need to bear in mind the position of others, including neighbours, for example, who have a right to be protected from anti-social behaviour or nuisance. I agree with the noble Baroness, Lady Uddin, who said that this is not a matter of ideology. It is rather, as my noble friend Lady Gardner of Parkes said, a matter of balance. This statutory instrument, as I have explained, seeks to balance those interests against an ongoing pandemic and, as I said in my opening remarks, in the light of the various financial support mechanisms that the Government have provided both for renters specifically and for people more generally.

It is against that background that I turn to the regret amendment put down by the noble Lord, Lord Kennedy of Southwark. I sincerely thank him for his warm words and I am sure that we will work together, both in and out of the Chamber, on this and other matters.

However, there have been no broken promises. On the point made by the noble Lord, and repeated by the noble Baronesses, Lady Bennett of Manor Castle and Lady Uddin, because of measures taken in response to the pandemic, we calculated that it would be unlikely that a case would have yet reached the enforcement stage where a landlord had initiated possession proceedings as a result of rent arrears that had begun to accrue since the start of the pandemic.

First, the Coronavirus Act 2020 provides that landlords must give tenants longer notice periods before starting possession proceedings in the courts, apart from in the most egregious cases. Previously, two weeks' notice was required, and between 26 March and 28 August last year, three months' notice was required. Since then, landlords have been required to give six months' notice where arrears are less than six months, and four weeks' notice where the arrears are at least six months. We also take into account the amount of time it takes possession proceedings to progress through the courts, and the new arrangements that are in place to deal with the resumption of cases following the resumption of possession proceedings at the end of September.

Importantly, at each stage of the process the tenant is provided with time in which to seek advice or make alternative arrangements. If we were to consider a hypothetical case, where a tenant has rent arrears that only started to accrue since the pandemic began, that case will have been affected by the requirement for longer notice periods, the six-month stay on possession proceedings and then the need to follow due process in the courts. When we assess it, it is unlikely that such a case would yet have reached the enforcement stage.

There could, however, be cases where landlords have been waiting to recover possession orders where the rent arrears began to accrue before March 2020. In such cases, where there are very significant rent arrears, we consider that those landlords ought to be able to enforce those orders. But even in those extreme cases, where a court decides that an exemption to this instrument applies, and taking into account one of the points made by the noble Lord, Lord Mann, bailiffs will not carry out an eviction if they are made aware that anyone living in the property has Covid-19 symptoms, is self-isolating or has been identified as clinically extremely vulnerable.

I now turn to the regret amendment put down by the noble Baroness, Lady Grender, whose experience and knowledge in this area must be acknowledged by everyone in this debate; they are certainly acknowledged by me. Despite the fact that she is not pushing her amendment to a vote, I have to say that, with respect, the terms of the amendment do not meet the issue which faces the Government, and which the statutory instrument seeks to deal with.

The terms of the noble Baroness's amendment state that it is regrettable that the statutory instrument does not

"link protection from evictions automatically to the extension of restrictions in place to address the COVID-19 pandemic",

which is a point also made by the noble Baroness, Lady Uddin. It would be wrong to make such an "automatic" link—to use the word in the amendment—because policy in this area should not operate on an automatic basis. It would be wrong for a number of reasons. When assessing the issue of protection from evictions, it would mean that we would look only at the existence of restrictions resulting from the pandemic, which would be to look at only half the picture. It would mean that we would not consider that those restrictions have changed, and no doubt will change further over time. It would mean that we would overlook the help that has been made available and remains available to renters specifically and to people generally. It would also mean ignoring the protections that we have built into the system, and, as my noble friend Lady Altmann reminded us, taking no account of the interests of landlords, who also deserve consideration. Many landlords depend on the rent that they receive for their sole income; if no rent comes in, they can be placed in a precarious financial situation. Over and above all of that, linking protection from evictions automatically to the existence of Covid-19 restrictions assumes a correlation, and indeed a causation, where neither might exist. By contrast, the statutory instrument seeks to find and maintain a balanced approach, taking all matters into account.

I will write to noble Lords whose comments I have not been able to refer to specifically. In the time that I have left, I will pick up on a couple of the main points

[Lord Wolfson of Tredegar]
which were put to me during the debate, beginning with the limited-time nature of this statutory instrument and what my noble friend Lord Bourne of Aberystwyth called the "bi-monthly ritual" of this SI. I would always be grateful for any opportunities to come to your Lordships' House for an interesting debate, but I accept in principle that we may wish to raise our eyes and look for a longer period. That is difficult in the midst of a continually changing pandemic, but we will do our best. We are looking at the future and, if we can, we certainly will.

As to the loans scheme, which was put to me by a number of noble Lords, the problem is that any loan scheme must have affordability criteria, which may make it tricky for those most in need to access. With a loan, you must be able to get it and then you must be able to pay it back. We believe, therefore, that the best way to support people in need is through the existing welfare system that provides ongoing support, and that is what the extensive pack of economic support is doing. In that context, the increasing of the local housing allowance rate to the 30th percentile is extremely important.

My noble friend Lord Bourne of Aberystwyth and other noble Lords asked about the change from nine months to six months. The rent arrears exception has been redefined to cases with rent arrears that are greater than six months because that is proportionate, given where we are in the pandemic, given the other protections in place and given the support that has been put in place for renters specifically and for people more generally. It is a question of balance, and that is where we consider the balance is best struck. We anticipate that most of the cases in which an exemption applies will involve a significant level of rent arrears that predate the pandemic and where landlords may have been waiting over a year without rent being paid.

I hope that I have replied to the main points that were put to me in this debate. I am conscious of the limited time that I have had to reply. The noble Lord, Lord Mann, asked a very specific question about the Traveller community. I hope that he will forgive me for not dealing with it now, but it would perhaps be more appropriate for a housing Minister to respond on that point.

We consider that the balance that this statutory instrument has struck is the appropriate one. It provides tenants with protection from eviction and provides landlords in appropriate cases with the ability to recover sums due. Therefore, I commend this instrument to the House.

2.35 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank all noble Lords who have spoken in this debate, and the Minister for his considered response to the points raised. I agree very much with the noble Lord, Lord Bourne of Aberystwyth, that we need a much more strategic solution to the crisis, a point also made by the noble Lord, Lord Naseby.

As I and other noble Lords have said, and the noble Baroness, Lady McIntosh of Pickering, made clear, it is striking how much agreement there is between landlord and tenant organisations as to the solution to these problems. I thank both the National Residential Landlords Association and Generation Rent for their very helpful briefings, and mention has been made of the similarity in the solutions that each has put forward to the Government. I agree with the noble Baroness, Lady Altmann, that there are good landlords and good tenants, and both need our support. The tragedy is that much more could be done to help landlords and tenants, but the Government are just failing to get this right. I hope that passing this regret amendment will encourage the Government to look again at the welcome proposals being put forward; they very much need to do so.

I also think that it is worth reflecting on the very short extension of this order, a point that many noble Lords have made. Landlords and tenants must be treated a bit better in this regard by the Government. An extension of less than three weeks, frankly, is no way to behave. We can do much better than that.

The Minister made the point about hypothetical cases. We can all draw them up to support our own positions. The problems is that it will be of little comfort to a tenant who has lost their job or who has little work due to being a freelancer, and on top of all that, they have the fear of sitting in their home waiting to be evicted in the next few weeks. They have all the legal papers there and are very worried. It is of little comfort to them. There is also very little comfort to the landlord, as the rent arrears accrue at the same time and they can see no end to that. The Government should take away the proposals put forward by the landlords and the tenants, look at them carefully and come up with a proper strategic plan for this crisis. I wish to test the opinion of the House.

2.38 pm

Division conducted remotely on Lord Kennedy of Southwark's amendment.

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Lord Kennedy of Southwark's amendment agreed.

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2.50 pm

Amendment to the Motion

Tabled by ***Baroness Grender***

As an amendment to the motion in the name of Lord Wolfson of Tredegar, at end to insert "but that this House regrets that the Regulations do not link protection from evictions automatically to the extension of restrictions in place to address the COVID-19 pandemic and so do not provide long-term security to tenants; further regrets that the Regulations do not take into account factors such as (1) the shortfall between support from Her Majesty's Government and median rents, (2) the level of personal savings held by renters at the start of the pandemic, (3) the loss of income and jobs experienced by private renters during the pandemic compared to mortgage holders, and (4) the high proportion of income spent by renters on housing compared to other tenures, and that these factors have led to renters missing bill payments or reducing spending on food due to their level of debt; and calls on Her Majesty's Government to bring forward a support package that will ensure that private tenants are housed and landlords paid during the COVID-19 pandemic."

Baroness Grender (LD) [V]: I thank all noble Lords, and in particular the noble Lord, Lord Wolfson, in his new role as Minister. I congratulate him on the extensive use of the word "balance"; it was used more times than I have ever heard it used in a speech in my lifetime. "Balance" suggests that the opposite is somehow division, but I strongly stress that there is a lot of unity within the sector, in that landlords' and tenants' organisations alike say that some kind of support package is desperately needed.

The Minister made a very coherent argument against loans but most noble Lords were talking about the use of grants. When he writes to noble Lords, I look forward to him writing to me about that and about taking up the invitation set up by Citizens Advice to sit down with some of the affected family groups.

The House has already given a view on this and therefore I will not move my amendment.

Baroness Grender's amendment to the Motion not moved.

Motion, as amended, agreed.

2.52 pm

Sitting suspended.

Medicines and Medical Devices Bill

Commons Amendments

3 pm

Relevant documents: 19th and 33rd Reports from the Delegated Powers Committee, 10th Report from the Constitution Committee

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, hybrid proceedings will now resume. There are no counter-propositions, so the only speakers are those listed and the Minister's Motion may not be opposed. Short questions of elucidation from listed speakers after the Minister's response are permitted but discouraged. A Member wishing to ask such a question must email the clerk. We will now begin.

Motion A

Moved by ***Lord Bethell***

That this House do not insist on its Amendments 2, 3, 12, 13, 14, 23, 24, 25, 30, 40, 48, 49 and 50 and do agree with the Commons in their Amendments 50A, 50B and 50C in lieu.

50A: Clause 42 page 24, line 36, leave out subsections (3) to (9) and insert—

"(3) The procedure for making regulations under Part A1, 1, 2 or 3 is to be determined in accordance with this table and subsection (4)—

If the regulations contain provision made in reliance on	*the regulations are subject to*
section 5(1)(a)	the negative procedure
section 10(1)(a)	the negative procedure
section 14(1)(a)	the negative procedure
paragraph 9 of Schedule 1	the negative procedure
section 6	(a) the made affirmative procedure, where the regulations contain a declaration that the person making them considers that they need to be made urgently to protect the public from an imminent risk of serious harm to health (b) the draft affirmative procedure in any other case
section 15	(a) the made affirmative procedure, where the regulations contain a declaration that the person making them considers that they need to be made urgently to protect the public from an imminent risk of serious harm to health (b) the draft affirmative procedure in any other case
any other provision of Part A1, 1, 2 or 3	the draft affirmative procedure

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

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

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

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

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

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

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

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

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

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

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

(i) each House of Parliament, and

(ii) the Northern Ireland Assembly.

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

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

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

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

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

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

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

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

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

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

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

(a) Parliament is dissolved or prorogued, or

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

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

(a) dissolved,

(b) in recess for more than 4 days, or (c) adjourned for more than 6 days.

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

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

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

50B: After Clause 42, insert the following new Clause—

"PART 4A

REPORT ON OPERATION OF MEDICINES AND MEDICAL DEVICES LEGISLATION

Report on operation of medicines and medical devices legislation

(1) The Secretary of State must, before the end of the relevant period, publish a report on the operation of medicines and medical devices legislation.

(2) The report must, in particular, include an assessment of whether—

(a) some or all medicines and medical devices legislation should be consolidated or otherwise restructured,

(b) provisions of medicines and medical devices legislation should be included in regulations or Acts of Parliament, and

(c) powers to make regulations should be modified or repealed.

(3) In preparing the report, the Secretary of State must take into account any report relating to the operation of medicines and medical devices legislation made by a Parliamentary Committee.

(4) The Secretary of State must lay a copy of the report before Parliament.

(5) In this section—

"medicines and medical devices legislation" means—

(a) the law relating to human medicines within the meaning of section 7 (interpretation);

(b) the Veterinary Medicines Regulations 2013 (S.I. 2013/2033);

(c) the Medical Devices Regulations 2002 (S.I. 2002/618);

(d) Parts 1 to 4 of this Act; (e) regulations made under those Parts;

"Parliamentary Committee" means a committee of the House of Commons or of the House of Lords or a joint committee of both Houses;

"relevant period" means the period of 5 years beginning with the day on which this Act is passed."

50C: Clause 44, page 26, line 8, at end insert—

"(ha) Part 4A."

Motion B

Moved by ***Lord Bethell***

That this House do agree with the Commons in their Amendments 11A, 11B, 11C and 11D.

11A: After Clause 6, line 6, after "where" insert "—

(a) the disclosure is"

11B: Line 8, at end insert ", and

(b) the relevant authority considers that the disclosure is in the public interest."

11C: Line 9, leave out subsection (3)

11D: Line 20, leave out "subsection (7)" and insert "subsections (6) and (7)"

Motion C

Moved by ***Lord Bethell***

That this House do agree with the Commons in their Amendments 22A, 22B and 22C.

22A: After Clause 10, line 6, after "where" insert "—

(a) the disclosure is"

22B: Line 8, at end insert ", and

(b) the relevant authority considers that the disclosure is in the public interest."

22C: Line 9, leave out subsection (3)

Motion D

Moved by ***Lord Bethell***

That this House do agree with the Commons in their Amendments 32A, 32B and 32C.

32A: Clause 35, line 3, after "where" insert "—

(a) the disclosure is"

32B: Clause 35, line 5, at end insert ", and

(b) the relevant authority considers that the disclosure is in the public interest."

32C: Clause 35, line 8, leave out subsection (4C)

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, with the leave of the House, I beg to move that the House do agree with the Commons in their Amendments 11A to 11D, 22A to 22C, 32A to 32C, and 50A to 50C en bloc. I pay tribute to noble Lords on all sides of the House in reaching consensus on the issues dealt with in these amendments. They were put down in the other place after cross-party discussions and I believe they reflect the aims and agreement of the House.

Amendments 11A to 11D, 22A to 22C and 32A to 32C all make minor amendments to Lords Amendments 11, 22 and 32. These amendments, in the name of the noble Baroness, Lady Thornton, made further changes to the clauses allowing the MHRA and the VMD to share information with relevant persons, such as regulators, outside the UK. Lords Amendments 11, 22 and 32 create a new safeguard that information could be shared only when in the public interest or for pharmacovigilance. I thank the noble Baroness very much for her remarks on Report. She made it very clear that the reference to pharmacovigilance was illustrative. Pharmacovigilance is very important, but it is also very much in the public interest and so does not need to be included outside the reference to the public interest. It is already captured. The Commons amendments therefore remove the reference to pharmacovigilance and the purpose of the amendments remains.

The majority of the Commons amendments deal with the variety of ways that noble Lords sought to create means to bring the Bill, and the principles of the Bill, back before Parliament in the future. Three methods were put forward and, in fact, noble Lords eloquently pressed the point on all of them. Lords Amendments 2, 13 and 24, which were tabled by the noble Baroness, Lady Thornton, put forward a sunset on delegated powers. Lords Amendments 3, 14, 25, 30, 48 and 49, which were tabled by the noble Lord, Lord Sharkey, put in the super-affirmative procedure. Lords Amendments 12, 23 and 40, in the name of the noble Lord, Lord Patel, put forward the idea of bringing forward consolidated draft legislation within three years. I do not intend to repeat my arguments against all three; I have said throughout this Bill that we have been listening carefully to all noble Lords who have put forward very clearly their continued concerns.

Commons Amendments 50A, 50B and 50C are an alternative, which I believe we can agree avoids the issue of introducing a "cliff edge" for legislation—and potentially patient safety—but importantly provides the reassurances that noble Lords quite reasonably sought. They collectively create an obligation for the Secretary of State to prepare a report on the operation of the legislation within five years of Royal Assent, and the amendments specify the considerations that must be addressed in that report: first, whether the legislation should be consolidated or restructured; secondly, whether legislation ought to be in regulations or in Acts of Parliament; and, thirdly, whether any of the powers to make regulations should be modified or repealed.

This would mean actively considering all the questions raised by noble Lords. It would give the time needed for making changes to the current legislation governing medicines and medical devices using the Bill's powers, and allow for those changes to bed down and for those complex areas of law to reach a steady state, before considering these important issues.

The Secretary of State must also take into account any report of a parliamentary committee in preparing that report. This would mean that if any committee—whether your Lordships' Delegated Powers and Regulatory Reform Committee or the Health Select Committee in the other place—decided to take a view on the operation of the legislation in the intervening time, its conclusions and considerations would have to be taken into account. If any committee should choose to do so, perhaps on the basis of the post-legislative memorandum that must be prepared within three to five years of the Bill being enacted, Parliament will have expressed a view before being presented with the Secretary of State's report.

I think this is a satisfactory compromise. It meets the principle of parliamentary review without the practical impact on patient safety of powers lapsing. It ensures that Parliament has the ability to express a view and for that view to be heard, without asking for review before it is practicable. Amendment 50A makes the necessary changes to reinstitute the parliamentary procedure changes made at Lords Committee stage, in place of the super-affirmative.

I hope that noble Lords will be content to accept the amendments from the House of Commons. I beg to move.

Lord Patel (CB) [V]: My Lords, I am extremely grateful for the amendments that the Government have brought from the Commons. I am grateful to the Minister and his team for working so diligently with the rest of us, and to all noble Lords who supported my amendments. It is not unusual—but it is infrequent—for the votes that the Government did not get through in the Lords to be reconsidered in the Commons and brought back as government amendments. I am very content that the amendments that the Government have brought are very satisfactory and I congratulate them. I thank the noble Lord, Lord Bethell, the noble Baroness, Lady Penn, the noble Earl, Lord Howe, and the legal team for working with us throughout the Bill. That is all I am going to say.

Baroness Jolly (LD) [V]: My Lords, I too shall be brief and I too am grateful to the Minister and his team for giving Peers an opportunity to see the Commons amendments to the Bill before they were tabled, so that we might give some feedback. One of the things that has made this Bill a pleasure to work on is the open way in which political parties and Cross-Benchers have worked together, as well as the way that the Minister and his team have worked with us. We particularly welcome the clauses that have come to us from the Commons; they make the Bill a more explicit and effective piece of legislation than when it was debated either in Committee or on Report in this House.

Baroness Thornton (Lab): My Lords, I am very grateful to the Minister and his team for the manner in which they have engaged and worked with us throughout the passage of this Bill, particularly at this final stage. The amendment in lieu is a good compromise that reflects the need for scrutiny to be at the heart of the Bill. It provides a mechanism to examine the powers of the Act in five years' time and will open the door for the restructuring and consolidation of the post-Brexit medicines and medical devices regulatory regime. We believe that this will prove both desirable and necessary, and look forward to working with the Minister on such issues when the time comes.

We welcome the requirement that the Secretary of State must specifically consider whether this should be in the form of primary or secondary legislation and hope that this will lead to policy being put into a future Bill rather than scrolled away in regulations. The Secretary of State will also have to take account of all parliamentary committee reports. This would include post-legislative scrutiny undertaken by a Select Committee, as well as the DPRRC and Constitution Committee, whose oversight played a crucial role in reshaping a skeleton Bill into a framework Bill; I thank the noble Lord, Lord Lansley, for explaining that to us all. I hope the Minister can assure me that stakeholders will also be consulted. I am sure that that will be the case. It is very important, given that they are the end users of the legislation, and for the report to have value and credibility it must reflect the experience of regulators, industry, patients and medical professionals.

Finally, the tidying-up amendment that retains the requirement to share information in the public interest is an important provision because it will allow for substantive and ethical issues relating to the sharing of public data to be considered. This is of the utmost importance, given the role that the NHS and patient data may have in future trade deals.

Lord Bethell (Con): My Lords, I do not intend to repeat much of what I said at Third Reading. Many thanks to the noble Lords who have contributed to the changing shape of the Bill. From Committee to ping-pong, we have listened, heard proposals for change and brought workable, practicable compromises forward.

I wish to repeat the remarks made by the noble Baroness, Lady Thornton. She congratulated all of us on the effective communication that has made it possible to make considered progress on this Bill, despite all the challenges that Covid-19 has presented us with. This a very fair assessment; I agree with it completely. From the report of my noble friend Lady Cumberlege to the demonstrated expertise of our medicines regulator, the MHRA, we have seen the importance of patient

[Lord Bethell]
safety, clinical trials, our life sciences sector and effective regulation bear out in our hospitals, clinical trials and patient community.

I look forward to the debates ahead of us on the regulations that will be made under the Bill. They will be important, as we set forward on our course for the best possible regulatory regime for the UK, with the patient at its heart.

The Deputy Speaker (Lord Duncan of Springbank) (Con): Noble Lords will be pleased to know that no one has requested to speak after the Minister.

Motions agreed.

3.11 pm

Sitting suspended.

Arrangement of Business

Announcement

3.30 pm

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, I have put my glasses on as there is a lot to read. The following proceedings will follow guidance issued by the Procedure and Privileges Committee. When there are no counterpropositions, as for Motion G, the only speakers are those listed, who may be in the Chamber or remote. When there are counterpropositions, any Member in the Chamber may speak, subject to the usual seating arrangements and the capacity of the Chamber. Any Member intending to do so should email the clerk or indicate when asked. Members not intending to speak on a group should make room for Members who do. All speakers will be called by the Chair.

Short questions of elucidation after the Minister's response are permitted but discouraged. A Member wishing to ask such a question, including Members in the Chamber, must email the clerk. The groupings are binding. Leave should be given to withdraw.

When putting the question, I will collect voices in the Chamber only. Where there is no counterproposition, the Minister's Motion may not be opposed. A participant, whether present or remote, who might wish to press a proposition other than the lead counterproposition to a Division must give notice to the Chair either in the debate or by emailing the clerk. If a Member taking part remotely wants their voice accounted for if the question is put, they must make that clear when speaking on the group. Noble Lords following proceedings remotely but not speaking may submit their voice, content or not content, to the collection of the voices by emailing the clerk during the debate. Members cannot vote by email. The way to vote will be via the remote voting system.

Trade Bill

Commons Amendments

3.32 pm

Relevant document: 15th Report from the Constitution Committee

Motion A

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

That this House do not insist on its Amendments 1 and 5, to which the Commons have disagreed for their Reasons 1A and 5A.

1A: *Because Parliamentary scrutiny of trade agreements is ensured by existing measures and UK standards cannot be changed without further implementing legislation (itself subject to Parliamentary scrutiny).*

5A: *Because Parliamentary scrutiny of trade agreements is ensured by existing measures and UK standards cannot be changed without further implementing legislation (itself subject to Parliamentary scrutiny).*

The Minister of State, Department for Business, Energy and Industrial Strategy and Department for International Trade (Lord Grimstone of Boscobel) (Con) [V]: My Lords, with the leave of the House, I will also speak to Motion A1. For those noble Lords present in the Chamber, I apologise for my discourtesy in not being at the Dispatch Box. I was travelling overseas on ministerial business last week, but while I was away my exemption was withdrawn so I am presently in quarantine. I apologise for my absence from the Chamber today.

The Bill has been returned to our House from the other place, and we are moving ever closer to getting this crucial piece of legislation on to the statute book. As my ministerial colleague the Minister of State for Trade Policy so eloquently put it during the last debate on the Bill in the other place, the Bill is this Parliament's first opportunity to define the UK's approach towards international trade as an independent trading nation, no longer a member of the EU and out of the transition period. The passage of the Bill will be a boon to the UK economy, giving certainty to business with regard to our continuity trade agreements, which we have now signed with no fewer than 63 partner countries, confirming the UK's access to the £1.3 trillion global procurement markets, providing protection for businesses and consumers from unfair trading practices, and ensuring that we have the appropriate data to support traders at the borders.

The other place has resolved against non-government amendments to the Bill. It is my hope that this House concurs with the opinion of the other place and chooses not to further amend the Bill. I say with the greatest respect that we must be mindful of the role of this House within Parliament. We are not the democratically elected House and we do not express the will of the people in the same way as the other place does. Our primary role is to scrutinise and, where appropriate, ask the other place to reconsider an issue. The other place has done this, so we must think long and hard before disregarding its clear pronouncements.

I turn to the revised amendment, tabled by my noble friend Lord Lansley, on parliamentary scrutiny. It is of course only right and proper, now that we have left the EU, that Parliament should have the powers to effectively scrutinise the Government's ambitious free trade agreement programme. However, the amendment has significant deficiencies that we believe are inappropriate for our Westminster style of government and would limit the Government's ability to negotiate the best deals for the UK.

That is not to say that the Government have ignored the concerns of noble Lords and the other place. Quite the contrary: the Government have significantly enhanced their transparency and scrutiny arrangements because of the scrutiny that your Lordships' House has given to the Bill. I point noble Lords to my Written Ministerial Statement of 7 December last year and the progress that we have made, for example, in putting the Trade and Agriculture Commission on a statutory footing as evidence of that.

The enhanced arrangements that we have set out are as strong as and, in several areas, stronger than those of comparable Westminster-style advanced democracies such as Canada, Australia and New Zealand. Several of the areas covered in the amendment duplicate things that the Government are already doing or are established precedent of the UK as a dualist state. This includes the statutory requirement to produce an Explanatory Memorandum when a treaty is laid in Parliament; it is through that Explanatory Memorandum that we outline the legislation needed to implement the agreement, as illustrated through the Explanatory Memorandum for the Japan agreement. Consequently, the Government already undertake what my noble friend is seeking in his amendment. As I said on Report, and I am happy to repeat it again, I remain open to discussing with noble Lords how we could improve the presentation of this information.

In addition, if the domestic implementing legislation were not passed before the FTA entered into force, the UK would be in breach of its treaty obligations. For that reason, implementing legislation is normally put in place before ratification of a treaty. I believe that there is no sense in changing that process. The Government have continued to stand by their commitments to accommodate debates on their trade agenda, subject to available time, and I am happy to confirm that that will not change.

Last week I met my noble friend Lord Lansley and the noble Lords, Lord Stevenson and Lord Purvis, to discuss the scrutiny amendment. At that meeting I said I would provide some additional information on the ministerial forum for trade, which I know has been of interest to your Lordships. The forum has been warmly welcomed by the devolved Administrations and has now met four times, most recently in December. As part of the Government's commitment to improved transparency of intergovernmental relationships, I am pleased to say that there will be a new dedicated page on the GOV.UK website for the ministerial forum for trade. It will be used to publish communiques following future meetings, as well as other relevant documents such as the forum's terms of reference.

To enable discussions on FTAs between the UK and devolved Ministers, we have shared negotiating objectives with the devolved Administrations for all our rest-of-world FTAs. We have also shared text concerning devolved matters during negotiations and stable text once we reach agreement in principle. I confirm that we intend to continue that approach in future.

In summing up on this amendment, it is already the case that if Parliament is not satisfied with an FTA that we have negotiated, the powers in the Constitutional Reform and Governance Act 2010—CRaG—give Parliament the power to make its views clear by resolving against ratification. In the other place this process can of course be repeated indefinitely, effectively acting as a veto. Your Lordships will also know that we do not have the powers in this Bill to implement any FTA with the United States or any other country which we had no agreement with through our EU membership. The House will therefore have the opportunity to scrutinise any future legislation needed to implement these agreements.

I am sure that noble Lords will scrutinise these future agreements just as forensically as they did the continuity agreements which are the subject of the Bill. As I mentioned earlier, failure to pass any necessary implementing legislation for these future FTAs would prevent ratification of the agreement taking place.

Motion A1 (as an amendment to Motion A)

Moved by ***Lord Lansley***

At end insert "and do propose Amendment 1B in lieu—

1B: After Clause 2, insert the following new Clause—

"Parliamentary approval of international trade agreements and treaties

(1) If a decision has been made by the Secretary of State to commence negotiations towards a free trade agreement, a statement must be made to both Houses of Parliament.

(2) Negotiations for that trade agreement may not proceed until the Secretary of State has laid draft negotiating objectives in respect of that agreement before Parliament, and an amendable motion endorsing the draft negotiating objectives has been approved by a resolution of the House of Commons.

(3) Prior to the draft negotiating objectives being laid, the Secretary of State must consult each devolved authority on the content of the draft negotiating objectives, and seek their consent.

(4) The Constitutional Reform and Governance Act 2010 is amended as follows.

(5) In section 20 (treaties to be laid before Parliament before ratification), after subsection (1)(b) insert—

"(ba) where the treaty is an international trade agreement as defined in the Trade Act 2021, a Minister of the Crown has published an analysis of the requirement for the treaty to be implemented through changes to domestic legislation, and

(bb) where the treaty is an international trade agreement as defined in the Trade Act 2021, the House of Commons has resolved, within period A, that the treaty should be ratified, and"

(6) In section 21 (extension of 21 sitting day period), after subsection (2) insert—

"(2A) Where a relevant Committee of either House of Parliament has recommended that a treaty constituting an international trade agreement as defined by the Trade Act 2021 should be debated in that House, the Minister of the Crown must ensure that the period does not expire before that debate has taken place."""

Lord Lansley (Con): My Lords, it is Groundhog Day and we are debating the Trade Bill. We have nearly concluded it, I hope, but it is in fact more than

[Lord Lansley]
four years since we first debated the original trade Bill. I earnestly share my noble friend the Minister's hope that we will bring it on to the statute book soon.

Your Lordships sent two amendments to the other place concerning the parliamentary scrutiny of international trade agreements, and the other place disagreed to them both. I am therefore grateful to the noble Lords, Lord Purvis of Tweed and Lord Stevenson of Balmacara, who have enabled us to combine and somewhat simplify those two amendments, and to focus their provisions in one amendment in lieu. Noble Lords will find it as Amendment 1B on the Marshalled List. It shows clearly that we wish to find common ground with the Government on the issue. As my noble friend the Minister has said on a number of occasions, we are not far apart, as demonstrated in our positive discussions last week, for which I am grateful to him.

Amendment 1B would provide that prior to entering the negotiations on a trade agreement, Ministers would be required to lay the negotiating objectives and that those would need to be approved by a resolution in the House of Commons. In preparing those objectives, Ministers would have to consult the devolved Administrations and seek their consent. Also, when the Government have signed a trade agreement and it is to be scrutinised under the CRaG process, Ministers would have to publish an analysis of the changes required to domestic legislation; and if a committee in either House called a debate on the treaty, Ministers would not be able to ratify it until that debate had taken place.

The House will be aware that the Government are now moving ahead with negotiations on new trade deals, not just continuity agreements. That is very welcome but it means that now is the time, and this is the legislative opportunity, to strengthen Parliament's role. The amendment does not impinge on the prerogative power. The Executive can still determine whether to enter a trade negotiation and the Government can propose the objectives. They conduct the negotiations and sign the agreement; only then does the Commons—not this House—have the power under the existing CRaG statute to stop ratification, or, technically speaking, to delay it.

The amendment would ensure that the Government consult the devolved Administrations. Given the breadth of trade issues, who could seriously argue that they should not, and that they take the Commons with them on their objectives? Many trade experts argue that this explicit support from Parliament, and occasionally Parliament's explicit red lines, give force to the trade negotiators' position.

3.45 pm

The debate on our amendments in the other place was interesting. The Government's argument came down to two things: a debate before the negotiations would bind their hands, and they already provide the information in time for scrutiny. I am afraid that neither point is persuasive. For government to enter negotiations with objectives which the House of Commons could not support is asking for trouble. The suggestion made yesterday by the Government in relation to the amendment of the noble Lord, Lord Alton, on genocide, for example, is presumably recognition of the reality of this fact, whichever Government are in power.

On the 21-day period, the CRaG process has a clear loophole. If time is not found for debate within 21 days, the Government can go ahead and ratify, giving the other place no final say. That simply should never happen. The loophole must be closed, and the wording of the amendment has been chosen quite carefully. The onus is on Ministers not to ratify an international trade agreement unless and until a requested debate has taken place. There is no statutory obligation or restraint being placed on business managers. If they have to ratify it urgently without a debate or scrutiny, Section 22 of the CRaG statute allows them to do that, citing exceptional circumstances.

In the other place a fortnight ago today, 11 Conservative Members of Parliament voted for what was Amendment 1 to strengthen parliamentary scrutiny. More than that were sympathetic. One Member who spoke in that debate was Liam Fox, who said that when he was Secretary of State his preference

"was for us to have a meaningful debate on a motion that was amendable at the outset for the mandate of trade discussions. That would have enabled the House to set the ethical parameters within which we would operate, and then the Government would have gone ahead and carried out the negotiation".—[*Official Report*, Commons, 19/1/21; col. 811.]

That was the former Secretary of State speaking. This amendment in lieu provides for that; it is a reasonable accommodation between the royal prerogative and parliamentary scrutiny. We in this place have not had the responsibility for scrutiny of trade agreements for over 40 years. They are a new and substantial responsibility, and Parliament must have its say.

The existing CRaG process will continue to apply to treaties that are not international trade agreements, so the Foreign, Commonwealth and Development Office can be content. But the CRaG structure is insufficient to carry the weight of the trade deals in prospect and the expectations of public and Parliament, so it has to be strengthened. The business managers—I was formerly one of them—are not required to provide time for a debate but Ministers are not able to go ahead and ratify unless such a debate has taken place. As a former leader of the Commons, I think that they too have no grounds to object.

As noble Lords can see, this is not a party issue but a parliamentary issue. I urge my noble friend the Minister to acknowledge this and accept the principles at stake—and give Parliament its say. I beg to move.

The Deputy Speaker (Lord Duncan of Springbank) (Con): Two Members have requested to speak in the Chamber, the noble Baroness, Lady Jones of Moulsecoomb, and the noble Earl, Lord Caithness.

Baroness Jones of Moulsecoomb (GP): My Lords, I support Motion A1. I congratulate the noble Lord, Lord Lansley, on his introduction, because I thought it was very calm, considered and thorough—and, above all, it was reasonable, which is something I care very much about. The Government's attempt to throw out all our amendments epitomises the problem that we have. This is not a democracy. The Minister is very well respected and extremely honourable, but his speech made me laugh out loud. The Government have enhanced their transparency, he said. In what world have they

done that? He was good enough to remind us of the rule that we should not overrule the elected Chamber and so on, and the will of the other place. But let us face it, with an 80-plus majority the Government just decide what is going to happen and stamp on those Members of the other place who choose not to follow the party line. What the Government are trying to do is to limit scrutiny of this.

There was something else—oh yes, the Minister said that this Motion would limit the Government in getting the best deals. Judging by the way in which they have handled the deals that they have done so far, I would argue that they are not very good at getting the best deals anyway. Perhaps they would benefit from your Lordships' House getting involved in giving scrutiny to their so far abysmal deal-making.

I strongly support this Motion and hope that the Government can see sense about it. It is not a democracy when you have two Chambers but the second Chamber is left not to comment when, let us face it, the other place does not have the time to scrutinise in the same way as your Lordships' House does. We have the time and the expertise to scrutinise things, and that is what we should be allowed to get on with.

The Earl of Caithness (Con): My Lords, before I comment on the amendment, I join the growing list of people who are very concerned about the procedures of the House. In the last week, we received a letter from the Clerk of the Parliaments, telling us to stay at home, and we had another missive from the Lord Speaker telling us to stay at home, yet the Procedure Committee insists that we break all the rules that the Government want us to obey to come here to speak on an occasion like this. I hope that the Lord Speaker, when he returns tomorrow after his birthday—and I wish him many happy returns of the day—comes back reinvigorated, with the determination to persuade the chairman of the Procedure Committee to bring the rules up to date, although I know that he himself is not in charge of that committee. It is ludicrous that we are put in this position.

I am very happy to support my noble friend Lord Lansley. Modern trade deals are much more complicated than they used to be and cover huge areas of public policy—areas of concern to all of us. It is a different world from when we used to do trade deals, before we went into the EU. My noble friend the Minister, in typically emollient fashion, put forward a good case, but it was not good enough. He said that it was the first opportunity for the UK to decide its own trade deals for 45 years. Yes, that is true, but it is not the first opportunity for Parliament to have a guaranteed say in what is going on. Surely my noble friend the Minister has absolutely nothing to fear from Parliament. I take a different view from my friend the noble Baroness, Lady Jones. I think that the Government's trade deals are very good, and I am confident that they will get even better, so my noble friend has nothing to fear, if he continues to produce good trade deals.

It is perplexing to many of us that there is no guaranteed vote by the House of Commons on a trade deal, whereas there is for the Parliaments of America, Japan and the European Union. We are portrayed as undemocratic, which is a sadness. This is a great opportunity to enhance the role of Parliament and the House of Commons, and one that ought to be seized with both hands. As I said, my noble friend the Minister has nothing to fear.

My noble friend Lord Lansley has moved considerably to try to meet the Government's concerns on this issue. He has listened and adapted his amendment and I hope that your Lordships will support him, to give the other place a chance to look at a different amendment and a hugely important one for the way in which our constitution works.

The Deputy Speaker (Lord Duncan of Springbank) (Con): Does anyone else in the Chamber wish to speak? No—good. That is that "name that Peer" round over, so that is excellent. I call the next speaker, the noble Lord, Lord Purvis of Tweed.

Lord Purvis of Tweed (LD): My Lords, it is a pleasure to follow the noble Earl. On this issue we share a great deal of common ground, although on other issues perhaps not, and I agree with his remarks about the procedures on these stages.

It has been a pleasure to work with the noble Lord, Lord Lansley, who suggested that this was like "Groundhog Day". That fantastic film had an element of things changing in each of the days that the character relived. If that was the equivalent of the Trade Bill, we would see the incremental changes that make for a happy ending at the end of the movie. If the Government see sense and accept the noble Lord's wise words, we will see that incremental change with a happy ending, as in "Groundhog Day".

The noble Lord referenced previous stages, and I quote from a previous stage in *Hansard*, where it says:

"We talk about taking back control, but Parliament has got to stop giving its decision-making powers away. If we want to be respected in this Parliament, we have to be the ultimate arbiters of the decisions and direction of travel of our country. We can have those powers. I say to the Minister for Trade Policy that we have had these discussions. I hope that the Government will bring forward mechanisms that allow the House to have much greater scrutiny at the outset of a trade negotiation to set those ethical parameters".—[*Official Report*, Commons, 19/1/21; col. 812.]

That was not from me, although I have called for similar during previous stages in the Trade Bill. That was from Dr Liam Fox on 19 January, when the Government rejected Lords Amendments 1 and 5 and gave the same reasons for rejecting both. I hope that, as there is growing consensus on this issue, the Government can at least listen to Dr Fox, if not to myself or to the noble Lord, Lord Lansley.

Dr Fox also said:

"Those who had discussions with me when I was Trade Secretary will know that my preference … was for us to have a meaningful debate on a motion that was amendable at the outset for the mandate of trade discussions. That would have enabled the House to set the ethical parameters within which we would operate, and then the Government would have gone ahead and carried out the negotiation".—[*Official Report*, Commons, 19/1/21; col. 811.]

That is very interesting to have learned. There has clearly been a position within the Government whereby they look to see how open they are at the stage of setting the parameters or mandates for opening negotiations. So I hope that the noble Lord's amendment

[Lord Purvis of Tweed]
is not that far from a great deal of thinking within the Government, if that had been the position of the Trade Secretary then.

It is not just Dr Fox—yesterday, on the very good and open Zoom meeting that the noble Lord, Lord Alton, hosted on the amendments that we will discuss in the next group, Sir Iain Duncan Smith said that Parliament should give the go ahead on a trade deal. He made it clear that it would not affect the prerogative power. So I think that there is cross-party support in this area, on a greater setting of the mandate. Sir Iain Duncan Smith, Dr Liam Fox and many Members of this House during the passage of this Bill have expressed a belief that it is in the Government's and our country's interest, so that these negotiations are stronger.

On the next element of the consultation, I welcome what the Minister said about the new page on GOV.UK on the ministerial forum, which we have debated during previous stages of this Bill. What the Minister mentioned is to be welcomed, but I think that the Government could still, in looking at legislation for international trading agreements, move the same mechanism that they put in place in the internal market Bill for our domestic trading relationships. In that Bill, there was a time-limited period of consultation with the devolved Administrations for regulations for the implementation of trading arrangements. However, I hear what the Minister said, and I hope that aspect is something on which, at this late hour, the Government could still think again.

4 pm

I turn to the final stage, which the noble Lord, Lord Lansley, referred to very well, with regard to debating agreements that have been negotiated by the Government. The Government believe that the prerogative power to start, negotiate and conclude trade agreements is a restricted prerogative power. This is the Government's policy, not mine or anyone else's, because they support the Constitutional Reform and Governance Act 2010. They are not set to amend it. They believe that there is a restriction on the prerogative power. The Minister referred to that restriction in his speech today and in the letter regarding genocide that he sent to noble Lords this afternoon, which says that the Commons are capable of

"effectively acting as a veto"

under the power in the CRaG Act. That power is beyond that which exists in other Westminster-style democracies. Canada, Australia and New Zealand have been cited. They do not have this power, so the UK has decided to be different from other Westminster-style democracies. I think the Minister referred to it as a UK proposition. So this is our starting point, not a new position.

The issue then becomes operability—as the noble Lord, Lord Lansley, indicated, whether there are loopholes now that we are operating the CRaG Act for trade agreements, which we had never done. When Jack Straw, then Leader of the House of Commons—one of the noble Lord's predecessors—was introducing that Bill, he indicated that there were separate procedures for EU agreements, so it has never been tested for trade agreements. So how operable is this veto power, as the Government say? Incidentally, I never said that the House of Commons has a "veto power" over trade agreements; I simply asked for a resolution in the Commons for a vote. I have never used that term but this is the Government's language so I will accept it.

The Minister said that that power operates subject to available time, so how operable is a veto if it is subject to available time? It is not an operable veto if it is up to the business managers to make time available for it. That is clearly a loophole. I think that is an unintended consequence which the noble Lord's amendment is seeking to resolve. I believe that it would resolve it because his amendment states that if a committee has asked for there to be time it has to be provided and, in effect, the clock cannot be run out on any of the agreements. The mechanism is for the agreement to be debated on a Motion—not a take-note Motion or a neutral Motion, but a Motion on which there can be a Division so that MPs can decide.

It is interesting that from information from the International Agreements Committee and its predecessor committee I have found out how many times trade agreements have been drawn to the attention of the House and are still awaiting debate. It happened on the Japan agreement and we debated it. The Motion was neutral and we took note. On the agreement with the United States on spaceports, no debate has been granted yet. On Norway and the Faeroe Islands on fish, no debate has been granted yet. On Canada and the FTA, no debate has been granted yet. On Singapore, no debate has been granted yet. On Kenya, no debate has been granted yet. There is a bit of a backlog. Given that we debated the International Relations Committee report in Grand Committee yesterday, 18 months after the committee published it, we are justified in considering the mechanism proposed by the noble Lord, Lord Lansley, to make the CRaG veto operable.

There is one final aspect. As the noble Lord indicated, in extreme and exceptional circumstances Ministers would be able to ratify outwith this situation, which we would fully support because ultimately there may have to be exceptional circumstances.

I want to close on one element which the noble Lord, Lord Grimstone, mentioned. He said that there was a further parliamentary power, which was, in effect, not to bring forward implementing legislation for an agreement the Government had signed. If our amendment had given an indication that we would block legislation implementing an agreement that a British Government had signed in the international arena, it would be scandalous that we would seek to use that as a mechanism. None of us wish to be in that situation. I hope that the cross-party consensus is that there is a greater voice for Parliament at the outset, that during negotiations there is greater input, that once those agreements have been reached we guarantee time, and that ultimately the House of Commons, as the elected Chamber, is able to form a view. I hope that this House sends a signal that we ask the House of Commons to consider this very carefully.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, first, we are sorry that the noble Lord, Lord Grimstone, is not able to be present for the debate, but we know that he is following his Government's rules by self-isolating.

I thank the noble Lord, Lord Lansley, for introducing the amendment, which, as he very kindly said, is the result of discussions and debates among Members of the House from all sides, but most closely with the noble Lord, Lord Purvis, who has just spoken, and me, in order to try to reach out to the Government with a corporate approach which is not party political but tries to reflect what this House has a responsibility for, which is to ensure that we have good governance.

We have moved considerably if we consider our starting position, which was set out in the Bill that left your Lordships' House in March 2019, as has already been said. It had a detailed and lengthy description of the sorts of processes which could underpin the approval of international trade agreements. It was done largely in a vacuum because the Government decided not to play. They had published a Command Paper but they were not interested in detailed discussions at that stage. It was very much a product of a "What if?" mentality in the sense of putting to the other place a proposal which we confidently expected to come back and on which we hoped there would then be discussions, which have indeed transpired, albeit at a year's distance from that time.

I want to put on record that we recognise that the Government, particularly under the Minister, have moved, but I point out that it has been mainly on the practicalities of scrutiny, not on the principles, and this amendment before your Lordships' House today is about the principles that should underpin the approval of trade deals on behalf of the United Kingdom. The changes that have been made constitute primarily a huge increase in the information provided to the committee set up to look at trade deals, and the engagement there seems to be going well. We took the view that since that was a work in progress it probably needs more time to bed down. It certainly needs more time in discussion with Ministers and the Government about exactly what information is going to be provided and how it is going to be disseminated and discussed. It was probably not appropriate to seek primary legislation at this stage, but we do not rule out the idea that it is something that should be codified properly as we go forward.

Again for the record, it is important to say that we have agreed, perhaps reluctantly, to accept the Government's red lines in relation to any constitutional changes that might be envisaged in relation to trade deals. We are not challenging the Government's power to initiate and carry on their trade negotiations under the royal prerogative. Many would argue that that is outdated and should be changed and that Parliament should have a role in that, but we have not chosen to engage with that at this stage. We are not challenging the relationship between international trade agreements and the CRaG Act 2010. Again, the point has been made very well already that it does not seem fit for purpose, but in the meantime it is the mechanism we have. The changes proposed in our amendment are appropriate for where we want to go. Indeed, the noble Lord, Lord Purvis, just talked about that and I agree with what he said. As I have said already, we will leave the committees to work through the procedures and processes to cover all the elements of a trade deal because there are many different styles of trade deal, many of which have not yet surfaced in terms of scrutiny, and we need to learn lessons from that. Time will tell, but in the interests of making progress we have framed an amendment within the Government's red lines.

We are not the elected Chamber but, as I have said already, we have a responsibility to look at the constitutional proprieties. I am very confident that this proposal before your Lordships' House, while I recognise that it is a major shift from where we started in 2019 and earlier on in the progress of this Bill, is an appropriate way of carrying on the dialogue with the other place in the hope of persuading them that there are issues here.

The noble Lord, Lord Lansley, did an excellent job of summarising the amendment in lieu, but I want to put on record again that this is not just something that has been dreamed up by a few of us in the confines of your Lordships' House. Everybody in your Lordships' House knows that there is an outside group of people—many organisations, individuals and companies—who would like to see a change in the way in which the scrutiny of trade deals is carried out. They want open and transparent procedures and they want scrutiny to apply to all our trade policy—not just the rollover deals, but for the future as well. They include, as has already been mentioned, the former Secretary of State Liam Fox, and indeed—not that much reference has been made to it—there was a very powerful speech in Committee in your Lordships' House by the former Trade Minister the noble Baroness, Lady Fairhead. They both urged the Government to seek a way forward by engaging with the proposals before your Lordships' House today.

I would like to thank the noble Lord, Lord Purvis, the noble Baroness, Lady Jones, and the noble Earl, Lord Caithness, for their comments. They were very supportive, and I think they take exactly the tone that we want. This is a reasonable, measured and appropriate proposal which builds on the work that has been done in committees and gives Parliament its appropriate place. Parliament needs to have its say. What on earth are the Government afraid of? In closing, I just want to say that we do not regard this conversation as being closed. Should your Lordships' House agree with this proposal today, we will be very happy to engage in further discussions with the Government, because we are not far apart on this.

Lord Grimstone of Boscobel (Con) [V]: My Lords, I would like to thank all noble Lords who have taken part in this important debate. I have listened carefully to my noble friend Lord Lansley displaying his normal forensic skills and to the noble Lord, Lord Purvis of Tweed, and his references to Dr Liam Fox. I listened to the noble Lord, Lord Stevenson of Balmacara, who I think courteously acknowledged the progress we have made in scrutiny, and to the noble Baroness, Lady Jones of Moulsecoomb. At least I made the noble Baroness laugh out loud, even if she does not think much of our negotiating skills. I have to say I think that was rather unfair to the officials who have been conducting the negotiations. Last, but certainly not least, the noble Earl, Lord Caithness, displayed his normal wisdom.

[Lord Grimstone of Boscobel]

As I mentioned, the Government have significantly strengthened the scrutiny and transparency arrangements in place. I fully acknowledge the pressure from noble Lords which led us to do that. I am sure that, over time as we consider more free trade agreements, there will be a continued strengthening of scrutiny and transparency. I am very pleased that the Government have undertaken to publish objectives and scoping assessments at the outset of negotiations for new free trade agreements with Japan, the United States, Australia, New Zealand, and in due course—if the admissions process triggered by my right honourable friend the Trade Secretary is successful—the Trans-Pacific Partnership.

Additionally, the Government will continue to keep Parliament and the public informed of progress on these negotiations through the publication of "round reports" as we call them, alongside regular briefings for parliamentarians so that they are kept informed and can ask questions of Ministers. I confirm that the Government will continue to work with the International Trade Committee and the International Agreements Committee to ensure that they have treaty text and other related documents or reports, on a confidential basis, a reasonable time prior to them being laid or deposited in Parliament under the CRaG procedure.

4.15 pm

I would respectfully remind this House that your Lordships' Constitution Committee recommended in its 2019 report *Parliamentary Scrutiny of Treaties* that

"existing parliamentary mechanisms, supplemented by the work of the proposed treaty committee, should be sufficient to provide effective scrutiny"

and that mandates for treaties should not be subject to parliamentary approval. Now we are not talking about a report that I am dredging up from the long-distant past. This was a report as recently as 2019. On the first point, as I have just set out, we have comprehensive engagement with the relevant Select Committees and, on the second point, we do respect the recommendations of the Constitution Committee, and the Government have ensured that comprehensive information is published ahead of negotiations, including our negotiating objectives and the initial scoping assessment—and I say yet again that of course we will be continuing to do this.

When a signed text is laid in Parliament, it will be accompanied by an Explanatory Memorandum. The Government will publish an independently scrutinised impact assessment covering the economic and environmental impacts of the deal, which I know are so important to noble Lords. Parliament will then have 21 sitting days to scrutinise the deal. Should the International Trade Committee or the International Agreements Committee recommend a debate on the deal, the Government will seek to accommodate such a request, subject to parliamentary time. Personally, I would find it disappointing if parliamentary time was not found for these debates.

It is also important to restate that it is not "one size fits all" in relation to the scrutiny of FTAs. All countries must tailor their processes to their own constitutional systems. The UK has done that as well, and our scrutiny arrangements are as strong as—and I do believe in several areas stronger than—those of comparable western-style democracies. I will also come back to the fact that Parliament already has the ability to veto the implementation of any FTA that the Government sign.

The other place has considered scrutiny amendments during the course of this Bill and its predecessor, and it has been consistent in its view that such amendments are not appropriate for this legislation. So, in light of the views expressed by the other place, and of the steps the Government have already taken, I ask that this House does not insist on this amendment. I beg to move.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, I see that there have been no requests to ask a question of the Minister, so I call the noble Lord, Lord Lansley.

Lord Lansley (Con): My Lords, I am grateful to all noble Lords who have participated in this debate, which illustrated the issues well. I am grateful in particular to my noble friend Lord Caithness and the noble Baroness, Lady Jones of Moulsecoomb, for their support.

The noble Lords, Lord Stevenson and Lord Purvis, and I have worked together. We are not insisting on the previous amendment sent. I want to be clear that we are looking for a reasonable compromise, but one which gives Parliament its say.

I make no criticism of the way in which the Government have gone about the processes of scrutiny and partnership with both Houses in relation to the continuity agreements, but we are about to enter the process of negotiating wholly new deals. That brings one forcibly to the question: should the Government enter negotiations with the confidence that at least the House of Commons has approved the negotiating objectives? On that, the quoted remarks of the former Secretary of State, who launched the previous Trade Bill four years ago, are relevant—he did not vote for Amendment 1 in the other place because there were other parts of it he did not agree with—so I think we can find a compromise that recognises that there is a democratic deficit which is best met by giving the two Houses a debate but, certainly, by giving a role in approving negotiating objectives to the elected House. That would strengthen the negotiating hand of government rather than bind it.

My noble friend Lord Grimstone was clear about all the ways in which the Government will work with the House, but by at one point saying "personally" I think he recognised the loophole that exists; namely, that if Ministers want to ratify a treaty without scrutiny and debate in the House, they can do it by laying a Statement under Section 22 of CRaG. If, however, they do not want to do that explicitly, they can allow 21 days to pass without a debate and ratify anyway. There is nothing in CRaG to stop them doing so. The purpose of this amendment is simply to close that loophole. If the International Agreements Committee in this House, of which I am privileged to be a member, or the International Trade Committee in the other place were to seek a debate, this amendment would provide that Ministers could not ratify the treaty prior to such a debate. If Ministers agree that there is such a loophole, I am afraid to say that they

should agree with the amendment. Disagreeing with the amendment and leaving the loophole open simply affords the possibility for mischief at some point in the future—maybe not by this Government but by another Government at another time.

The need for the other place to have an opportunity to look at this issue on the basis of a new, more restricted amendment on which we can reach a reasonable compromise gives us a basis for asking the other place to think again. I therefore seek to test the opinion of the House on Motion A1.

4.22 pm

Division conducted remotely on Motion A1

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Motion A1 agreed.

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Greenhalgh, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hailsham, V.
Hamilton of Epsom, L.
Hammond of Runnymede, L.
Hannan of Kingsclere, L.
Harris of Peckham, L.
Haselhurst, L.
Hay of Ballyore, L.
Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hoey, B.
Hogan-Howe, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Houghton of Richmond, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Bethnal Green, B.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Jopling, L.
Kakkar, L.
Kalms, L.
Keen of Elie, L.
King of Bridgwater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lancaster of Kimbolton, L.
Lang of Monkton, L.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lothian, M.
Lucas, L.
Lupton, L.
Mackay of Clashfern, L.
Mancroft, L.
Mann, L.
Manzoor, B.
Marland, L.
Marlesford, L.
Maude of Horsham, L.
McColl of Dulwich, L.
McCrea of Magherafelt and Cookstown, L.
McGregor-Smith, B.
McInnes of Kilwinning, L.
McLoughlin, L.
Mendoza, L.
Meyer, B.
Mobarik, B.
Mone, B.
Montrose, D.
Morgan of Cotes, B.
Morris of Bolton, B.
Morrissey, B.
Morrow, L.
Moylan, L.
Naseby, L.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
O'Neill of Bengarve, B.
O'Shaughnessy, L.
Pannick, L.
Parkinson of Whitley Bay , L.
Patel, L.
Patten, L.
Penn, B.
Pickles, L.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Powell of Bayswater, L.
Rana, L.
Randall of Uxbridge, L.
Ranger, L.
Rawlings, B.
Reay, L.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ridley, V.
Risby, L.
Robathan, L.
Rock, B.
Rogan, L.
Rose of Monewden, L.
Rotherwick, L.
Saatchi, L.
Sanderson of Welton, B.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Shrewsbury, E.
Smith of Hindhead, L.
Spencer of Alresford, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stern of Brentford, L.
Stewart of Dirleton, L.
Stirrup, L.
Stroud, B.
Stuart of Edgbaston, B.
Sugg, B.
Suri, L.
Swinfen, L.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Tebbit, L.
Thurlow, L.
Trefgarne, L.
Trenchard, V.
Trimble, L.
True, L.
Tugendhat, L.
Ullswater, V.

Vaizey of Didcot, L.
Vere of Norbiton, B.
Verma, B.
Vinson, L.
Wakeham, L.
Walker of Aldringham, L.
Watkins of Tavistock, B.
Wharton of Yarm, L.
Wheatcroft, B.
Whitby, L.
Willetts, L.
Williams of Trafford, B.
Wilson of Tillyorn, L.
Wolfson of Tredegar, L.
Wyld, B.
Young of Cookham, L.
Young of Graffham, L.
Younger of Leckie, V.

4.34 pm

Motion B

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

That this House do not insist on its Amendment 2, to which the Commons have disagreed for their Reason 2A.

2A: *Because it is unnecessary in light of existing international obligations.*

Lord Grimstone of Boscobel (Con) [V]: My Lords, I beg to move Motion B. With the leave of the House, I will speak also to Motions C, C1, C2 and C3.

First, I turn to the amendment in the name of the noble Lord, Lord Alton. While this amendment does not focus solely on China, it is clear that a primary concern of noble Lords and our colleagues in the other place are the deplorable actions of the Chinese Government towards the Uighur population in Xinjiang province. With that mind, I recall the Foreign Secretary's Statement of a few weeks ago, which set out a number of measures the Government are taking in this area, including the introduction of financial penalties for organisations that fail to comply with the Modern Slavery Act 2015, a review of export controls as they apply to Xinjiang, and strengthened overseas business risk guidance for businesses. These actions show clearly how seriously the Government take human rights violations and abuses across the world, including in China. The UK has long been committed to the promotion of our values across the world. Trade does not have to come at the expense of human rights.

The amendment of the noble Lord, Lord Alton, seeks to impose a duty on the Government to bring a Motion for debate before both Houses of Parliament in the event that the High Court makes a preliminary determination that a trading partner, existing or potential, of the UK has committed genocide.

It has been the Government's long-standing policy that any determination of genocide should be made only by a competent court, rather than a Government or a non-judicial body. It has been argued that international courts such as the International Criminal Court and the International Court of Justice have not been effective and that it should be up to UK courts to make determinations on state genocide.

UK courts already have a role where a person is charged with the crime of genocide. Under the International Criminal Court Act 2001, domestic criminal courts in the UK are competent to find individuals guilty of genocide where the case is proved to the criminal standard of "beyond reasonable doubt". UK courts can determine whether a genocide has taken place when a person is charged with the crime of genocide, wherever the alleged genocide took place. Both UK nationals and UK residents can be prosecuted, including those who became resident in the UK after the alleged offence took place.

Genocide, the greatest of all international crimes, is notoriously hard to prove. It requires not only the commission of a constitutive act—normally killing, but also rape, forced sterilisation and a number of other heinous measures—but

"intent to destroy, in whole or in part, a national, ethnic, racial or religious group".

To prove that any Government have "genocidal intent" under the very specific terms of the genocide convention can be extremely difficult to achieve in practice due to the inherent difficulty of proving genocidal intent and the potential difficulty of obtaining reliable information from overseas regions.

Any case would also entail significant practical and procedural difficulties for the UK courts charged with making a preliminary determination. On the procedural side, the proceedings will be formal court procedures with all the associated disadvantages; for example, relevant evidence might not be admissible under the stringent applicable rules.

Moreover, although the proceedings contemplated under the amendment seem to be ex parte, other countries could make an application saying that the High Court should not hear the claim on the ground that this would contravene sovereign immunity principles. If the High Court were then still to hear the claim, they could say that the process was illegitimate, as the court had no jurisdiction to judge their behaviour.

Given the procedural and evidentiary difficulties, as well as the extremely restrictive nature of the international law regarding genocide, I must say that there is a substantial likelihood that any judge could find him or herself unable to make a preliminary determination on the facts before the court. Such a result would be a substantial propaganda boon for any foreign Government accused, who could portray the outcome as vindication for their policies and undermine broader diplomatic efforts to hold them to account. Dwell on that fact for a moment, my Lords.

In a more general sense, the amendment seeks to force the Government to stop and debate their trading arrangements in the event that UK courts make a finding of genocide relevant to a partner country where the UK either has a trade agreement or is negotiating one. But it would frankly be absurd for any Government to wait for the human rights situation in a country to reach the level of genocide—the most egregious international crime—before halting free trade agreement negotiations. Any responsible Government, and certainly this one, would have acted well before then.

In the event of a finding by a competent court that an existing trading partner had committed genocide, we would of course consider the available range of policy options across government. Such responses would, of course, not be restricted to trade. The Government do not just have a responsibility in these matters, they have a duty to take tough decisions and to chart a course of action when faced with egregious crimes that may be perpetrated in the international community.

[Lord Grimstone of Boscobel]

On the amendment in the name of the noble Lord, Lord Collins, the Foreign, Commonwealth and Development Office publishes annually its *Human Rights and Democracy* report, which touches on relevant issues, including on matters concerning human rights in the context of business and the private sector. In the light of this existing government activity, I respectfully suggest that a legislative requirement to produce a report is not required.

The Government are committed to working with Parliament on the most heinous crime of genocide and to exploring options with Parliament in this regard as it relates to trade. Our minds are certainly not, as they should not be, closed on that matter, but we must proceed without amending the delicate balance in the constitution and the role of the courts, and, on this most serious of issues, genocide, minimise the risk of undermining the very aims of those seeking justice.

For all the reasons I have set out, I strongly encourage noble Lords to set aside this unnecessary amendment—powerful although it is—and to continue to work with the Government on this most crucial issue.

Motion B1 (as an amendment to Motion B)

Moved by ***Lord Collins of Highbury***

At end insert "and do propose Amendment 2B in lieu—

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

"Free trade agreements: determination on state actions

(1) Before a trade agreement can be laid before Parliament under section 20(1) of the Constitutional Reform and Governance Act 2010, Ministers of the Crown must determine whether another signatory to the relevant agreement has committed crimes against humanity, or if the agreement is compliant with the United Kingdom's human rights and international obligations. Such a determination must be published and made available to the relevant Committees in both Houses of Parliament at the same time as they are requested to consider a signed trade agreement.

(2) The Government must present an annual report to the relevant Committees in both Houses of Parliament which examines any crimes against humanity committed or alleged to have been committed by another signatory to the relevant agreement since it was signed. If such crimes have taken place, Ministers of the Crown must make a determination on the continuation of a trade agreement.""

Lord Collins of Highbury (Lab): My Lords, first, I welcome and support all the amendments in this group. There is no difference between us on the issue of human rights and, in particular, on ensuring that those people who commit genocide are held to account. I pay tribute to the noble Lord, Lord Alton, for his work on human rights. We have a long record of working together on this, and I am sure we will continue that co-operative approach this afternoon.

4.45 pm

The amendment in my name is fundamentally about ministerial accountability and parliamentary scrutiny, which we heard much about in the debate on the previous group. The amendment in lieu is shorter and refers to crimes against humanity. We have done this because we want to complement the amendment of the noble Lord, Lord Alton, not duplicate what it is trying to achieve; otherwise, the Government could just provide a nil return in their determination to Parliament, absent of any legal ruling of genocide, so it adds an important element. We want to provide a safety net in case the courts decide there is insufficient evidence to permit a ruling of genocide. The main thrust of the amendment remains on state actions, but we are also concerned for the UK's commitments and actions, and this would complement the standards amendment that the House has just passed, which will also include human rights and international obligations.

We need, and have agreed, to have an open and transparent process. Like other noble Lords, I am grateful to the Minister for spending time to meet us to consider this question. However, when I met him, I reiterated the call for proper, joined-up government, where we end the position of one government department condemning the actions of a country that commits outrageous crimes against humanity while another department signs preferential trade agreements.

We are assured that such mechanisms as the annual FCDO report to Parliament, to which the Minister referred, will be drawn to the specific attention of other departments. I have read and debated that report every year it has come out, and know that the countries we are trading with have terrible human rights records, but I have not heard a Trade Minister refer to them. I want to make our judgment today on the record, not simply on the kind words and assurances that we have heard.

The reason why this amendment and that of the noble Lord, Lord Alton, on genocide, matter so much is that the decisions the Government make on trade outside the European Union, and the way those decisions are taken, are opening up an entirely new frontier in Britain's responsibility for what happens to human rights overseas. The question is whether we embrace that responsibility or ignore it.

The Minister said that trade will not be at the expense of human rights. The question of trade agreements is not like the decisions the Government take on arms sales, for example, where there is a legal framework in place, some guarantee of parliamentary scrutiny and, on some occasions, the right to challenge those decisions in court.

On the trade agreements that the Government are signing, we have none of those things when it comes to human rights. On arms sales, the Government are obliged to consider whether they are legally permitted to license those exports. On wider trade deals, we are simply left to hope that the Government will voluntarily ask themselves whether they are ethically willing to extend preferential terms of trade to countries that abuse human rights.

The evidence so far is deeply worrying, with the Government apparently showing no concern whatever for the human rights records of potential trade partners before signing agreements with them and, as we have heard, resisting all attempts in the past year to place legal or parliamentary constraints on their ability to negotiate those deals.

That was also reflected in a much more mundane but equally pernicious way in the trade deal that came into force on 1 January maintaining free trade beyond the Brexit transition period with President Biya's regime

in Cameroon. That was the very same day that the United States Senate unanimously approved a resolution condemning the Biya regime for its massacre of civilians, its burning of villages, its mass detention of political opponents, and its use of torture and extrajudicial killings in Cameroon's English-speaking regions. That trade agreement with Cameroon was signed by the Government with apparently no consideration of whether it was appropriate or right in the light of the actions of the Biya regime. A full month later, there has been no parliamentary scrutiny of that agreement, which has still not been made available for Parliament even to read.

Those are the precedents that are being set when it comes to human rights and the Government's new trade agreements, and we are just at the beginning of seeing where this will lead. That is why it is so crucial that this House sends a clear message to Parliament, to the other place and to the Government that we care if British-made arms are used to kill children in Yemen as they travel to school on buses, that we care if British trade agreements give legitimacy and financial support to regimes such as those in Cameroon and Egypt, even as they slaughter their civilians and execute their political opponents, that we care about what is happening to the Uighur population and about the terrible crimes committed by the Communist Party of China, and that we care that the Government are able to take decisions in all these areas not just without an ethical mindset or a legal framework but without even a bare minimum of proper parliamentary scrutiny.

I appreciate what the Minister has said. I appreciate his sympathetic words about the need for human rights and about human rights being taken into account, but, on the past record, those sympathetic words are simply not enough. For me, as I said on Report, the best outcome would have been if the Government had committed to come up with their own transparent process, thereby alleviating the need to divide this House and the need to send amendments back to the elected Chamber. But I think that the elected Chamber deserves the right to have a further look at this very important issue, and it is very important that we are able to send that message.

I welcome the fact that the Government have sought to engage on this matter, but what has been proposed in the meetings we have had has serious limitations, and what is proposed in terms of committees is already within the mandate of the relevant Select Committee. There is no indication that the Government's policy will change, particularly—I am sure that the noble Lord, Lord Alton, will refer to this—on the question of genocide.

It is unclear what the concessions that have been referred to are or how they will impact on policy. The fact is that the Government's proposals were not laid before our House in time for today's debate. If we are really to be able to consider a concession from this Government, it is vital that this House votes for my amendment and for the amendment proposed by the noble Lord, Lord Alton. I beg to move.

Lord Alton of Liverpool (CB): My Lords, I would like to add my voice to that of the noble Lord, Lord Collins, before I turn to my own all-party amendment on genocide. His proposition that great thought must be given to a more coherent and comprehensive approach to dealing with gross violations of human rights is the right approach. It is always a privilege to follow the noble Lord because many of the same issues motivate and animate the two of us, and it is always a privilege to speak about these issues in your Lordships' House.

As co-chair and co-founder of the All-Party Parliamentary Group on North Korea, I gave evidence to the United Nations commission of inquiry into human rights violations in North Korea. Six years ago, it found North Korea to be a state "without parallel". Its crimes were found to include

"extermination, murder, enslavement, torture, imprisonment, rape, forced abortions and other sexual violence, persecution on political, religious, racial and gender grounds, the forcible transfer of populations, the enforced disappearance of persons and the inhumane act of knowingly causing prolonged starvation."

It concluded that these crimes were

"ongoing … because the policies, institutions and patterns of impunity that lie at their heart remain in place."

It also concluded that crimes against humanity had been committed, and recommended that the Security Council request that the International Criminal Court initiate a prosecution. That has never happened because, as the United Kingdom repeatedly says, China would use its veto to prevent a referral to the ICC. That is on the issue of crimes against humanity and human rights violations, even before one comes to the crime above all crimes—genocide.

Of course, we should challenge the ability of any country to use a veto when human rights violations of this magnitude are found by a commission established by the United Nations, but there is no treaty obligation to prevent even crimes against humanity. However, there is one on genocide—hence the amendment in lieu that I have laid before your Lordships today and on which, later, I will seek the opinion of the House.

On Thursday last, I spoke during the proceedings on the telecommunications Bill. I was grateful to the noble Baroness, Lady Barran, for responding so positively to many of the points that I and other noble Lords had made to her and, as a consequence, it was possible not to have a Division. During that debate, I outlined some of the appalling atrocities which have been occurring in Xinjiang and which the noble Lord, Lord Collins, has just referred to—an issue which I first raised in your Lordships' House in 2008. I am vice-chairman of the All-Party Parliamentary Group on Uighurs and follow this matter on an almost day-by-day basis.

This amendment on genocide has its origins not in China or Xinjiang or in the Uighurs but in 2016, when, despite Parliament passing a Motion on genocidal crimes against Yazidis and other minorities, the Government refused to accept it because a court had not made the declaration. The all-party genocide amendment remedies a circular argument. It also supports the position of successive Governments that only a court has the authority and ability to make such a determination. For at least a generation, the policy of all Governments has been that genocide determination is a matter for courts, not politicians.

Boris Johnson, at Prime Minister's Questions on 20 January, said that

"the attribution of genocide is a judicial matter".—[*Official Report*, Commons, 20/1/21; col. 959.]

[Lord Alton of Liverpool]

Dominic Raab, the Foreign Secretary, said on "The Andrew Marr Show" on 17 January, "Whether or not it amounts to genocide is a matter for the courts." Boris Johnson, as Foreign Secretary, said on 21 November 2017 that

"genocide is a strict legal term, and we hesitate to deploy it without a proper judicial decision."—[*Official Report*, Commons, 21/11/17; col. 839.]

The United Kingdom reviewed this policy in 2016. The then Prime Minister, David Cameron, concluded:

"It is not for the Government to be prosecutor, judge and jury … Not only are the courts the best place to judge criminal matters but their impartiality also ensures the protection of the UK government from the politicisation and controversies that attach themselves to the question of 'Genocide'."

5 pm

This is in contrast, of course, with the United States and other jurisdictions that have made non-judicial or political determinations of genocide, the latest of which was the designation by the outgoing US Administration on 19 January regarding the treatment of Uighur and other Turkic Muslims in Xinjiang. The following day, it was reaffirmed by Secretary of State Antony Blinken in the incoming Administration, so it is a bipartisan view.

The Government accept that the present process in the UK is not fit for purpose. Yesterday, at a meeting of Peers that was addressed by three Ministers—many of those present in your Lordships' Chamber will have heard this—they said that they intend to offer a concession to turn the policy of 40 years on its head and allow Select Committees to consider whether a genocide, as defined under Article 2 of the 1948 Convention on the Crime of Genocide, is under way.

Respectfully—I say this as a member of your Lordships' International Relations and Defence Select Committee—Select Committees already have such authority to examine evidence of genocide if they wish to do so; they do not need legislation to give them that power. Members of the House of Commons Select Committee on Foreign Affairs have already expressed public opposition to and scepticism about this proposal.

If, however, such an approach were to include a legislative right—for instance, for a committee not only to examine the evidence but to be able to trigger a referral to the High Court—this would not only open a judicial route, it would also enable parliamentary scrutiny and provide a trigger mechanism. An otherwise toothless concession might then be given some teeth.

This lunchtime, a letter was sent to all Peers, rather belatedly, from two of the three Ministers who were present on that call yesterday. The noble Lord, Lord Grimstone, was one of them, although, interestingly, the signature of the noble Lord, Lord Ahmad, from the Foreign and Commonwealth Office, was not on this letter. My noble friend Lord Hannay, who knows a thing or two about foreign affairs, emailed me to express his support for the amendment before your Lordships' House. About this letter, he said:

"It seems to me that the letter makes one fundamental error when it says that your amendment"—

that is, the amendment before your Lordships—

"is designed to get a British court to rule on whether country X or Y had broken its obligations under the genocide convention. It's surely aimed at getting a British court to rule as to whether the British Government would or might break our obligations under the genocide convention if it were to conclude a trade agreement with country X or Y in the light of evidence about their genocidal actions."

My noble friend is right: the amendment does not seek to convict a country through the courts. Many of the windmills that the noble Lord, Lord Grimstone, invited us to tilt at earlier on are therefore imaginary ones. We do not need to be like Don Quixote in that respect. This amendment does not provide for a criminal prosecution. My noble friend Lord Hannay is right when he says that its purpose is to enable the United Kingdom to fulfil its obligations under the genocide convention.

On Report, this amendment received a majority of 126 in your Lordships' House. The Government, with their large majority of more than 80 in another place, had a majority of 11 when the amendment was considered there. It is greatly welcome that the Government are beginning to address the issue and offer some way forward. I am grateful to the Ministers and their teams. Of course, as the noble Lord, Lord Collins, just reminded us, the only way that such concessions can be agreed is by our voting today to send this amendment back to the Commons. Otherwise, it will die in the ditch.

When Ministers say that they do not want the courts involved and question the ability of the courts to deal with such issues, they should consider that among the supporters of the amendment before us today are two illustrious former Lord Chancellors from both sides of the House: the noble and learned Lords, Lord Mackay of Clashfern and Lord Falconer of Thoroton. Other supporters include two former Supreme Court judges, the former Lord Chief Justice and a range of QCs, including the noble Lords, Lord Carlile of Berriew and Lord Pannick, and the noble Baroness, Lady Kennedy of The Shaws, who is in her place. As ever, we all look forward to hearing her speak. The Government can hardly plausibly argue, therefore, that the amendment is legally defective or incapable of operation.

At yesterday's meeting, Ministers said that the amendment may frustrate foreign policy and create diplomatic difficulties. We are talking about genocide, not diplomacy. The amendment is designed to frustrate business as usual on the narrow and specific issue of genocide and honour our obligations as spelled out in international law in the genocide convention. Senior figures from the world of foreign affairs are appalled by the Government's extraordinary argument.

Encouragingly, the amendment is supported by two former Conservative Party Foreign Secretaries and the former leader of the Conservative Party, Sir Iain Duncan Smith, along with the Front Benches of the opposition parties; we heard from the noble Lord, Lord Collins, and will hear, I think, from the noble Lord, Lord Purvis, later on. The chair of the Foreign Affairs Select Committee in another place also supports the amendment, I might add. Outside the House, the amendment has received important support from the Board of Deputies of British Jews, the Chief Rabbi, the Muslim Council of Great Britain, Humanists UK, Anglican and Catholic bishops, the International Bar Association and a range of human rights organisations.

In response to issues raised during earlier stages of consideration, those who tabled the amendment listened carefully. They have responded to the argument about the separation of powers—a point made by the noble Lord, Lord Lansley, on Report. We listened to that argument and have tabled this revised amendment in lieu. In accordance with their wishes, it therefore reserves to the Executive and Parliament the final say about what action to take on trade arrangements once a preliminary finding has been made by the court that there is evidence of a state, whichever state it may be, being complicit in genocide.

This is not a theoretical argument. It is borne out in a Written Answer given only yesterday to my noble friend Lady Cox by the noble Lord, Lord Grimstone. He said:

"China is an important trading partner for the UK, and we are pursuing increased bilateral trade."

Ministers have said previously that this amendment would not help Uighurs, for instance because currently—I emphasise "currently"—they have no plans to negotiate a free trade agreement with China. However, the wording of the amendment is not limited to free trade agreements; it specifically refers to bilateral trade agreements. Are the Government really arguing that we have no bilateral trade agreements in force with China? That is not what the noble Lord, Lord Grimstone, said to my noble friend yesterday.

On Thursday last, I set out one example of where a court might determine that the high threshold of the 1948 convention might be met, citing the example of the Uighur Muslims in Xinjiang. The amendment makes no mention of China and originates from the attempts of the noble Lord, Lord Forsyth, the noble Baronesses, Lady Cox and Lady Kennedy, and myself to have the atrocities against the Yazidis declared a genocide—something that, as I said earlier, Her Majesty's Government said at the time could not be done because it is a matter for the court.

None of this should blind us to what is happening to a million incarcerated people in Xinjiang. The Prime Minister himself once said that our inability to say the same as the United States, in his words, "baffled him". We can help him out of his bafflement by passing this amendment. No one can seriously believe that the Chinese Communist Party is about to refer itself to the International Criminal Court for an examination of potential genocide, so the convenient but hollow argument that an international court will make such a declaration leaves us derelict in our obligations under the genocide convention.

When you hear evidence of a state being complicit in the destruction of a people's identity, in mass surveillance, in forced labour and enforced slavery, in the uprooting of people, in the destruction of communities and families, in the prevention of births, in the ruination of cemeteries where generations of loved ones had been buried—and when you hear of people being re-educated to believe that you, your people, your religion and your culture never existed and the certainty that, through ethno-religious cleansing, you will simply cease to exist—this needs the full authority of a judicial hearing. That would also put us at the fore in defending a rules-based order—global Britain at its best, if I may say so. This all-party amendment would enable us to lead by example and be more vociferous in encouraging like-minded nations to take their convention duties seriously.

It is important to be clear what the amendment does not do. It does not empower the court to carry out a criminal prosecution, but simply to establish whether it has found sufficient evidence to say that atrocity crimes meet the criteria set out in Article II of the genocide convention. It does not take decisions about what happens when it finds evidence of genocide; it leaves it entirely to the Executive and Parliament to determine what happens next. It does not overturn 40 years of government policy, which has always been that genocide determination should be left to the courts; it complements and fulfils it. It does not stop the UK continuing to try to put evidence before the International Criminal Court, futile as such attempts have proved hitherto; indeed, it would provide impetus and a sound legal basis for so doing. It does not reopen historic cases of genocide. It is not a futile gesture or virtue signalling.

It applies to all states with which we have bilateral trade deals—including, for instance, China—but could be invoked only when the court has established evidence of a genocide. As I have said, the wording of the amendment is "bilateral trade arrangements" not "free trade agreements". It is not the intention of the movers that the amendment be limited to free trade agreements. It would include other such trade agreements—yes, we have numerous such agreements with China. To reiterate, it will then be up to Parliament and the Executive to decide what they wish to do about such trade with states found to be complicit in genocide.

Those opposing this amendment ask the perfectly legitimate question, as the noble Lord, Lord Grimstone, has done today, whether our courts would be capable of doing or the right place to do this. It is deeply frustrating, as the noble Earl, Lord Caithness, said earlier, that we have been unable to hear the voices of many who, if they could have been physically present, could have dealt with this question far better than me. There is no better example than the wise and authoritative counsel of my noble and learned friend Lord Hope of Craighead, a former first Deputy President of the Supreme Court and previously the second senior Lord of Appeal in Ordinary. He has made it abundantly clear that the amendment is sound and capable of implementation.

On Report, he told the House that

"any idea that this is not a matter for the courts really is misplaced … the enforcement mechanisms … of the Crime of Genocide"

are

"simply not up to the job"

and that, as a consequence, the objective of the genocide convention

"remains largely unfulfilled and we have to face the fact that the international institutions are falling short too."—[*Official Report*, 7/12/20; col. 1070.]

On the competence of our courts to deal with this crime, he says:

"Courts are well used to hearing and drawing conclusions from evidence. So, in principle, the task of addressing whether there is or has been genocide should be well within their grasp."

He says that the amendment in lieu

"looks very good to me"

[Lord Alton of Liverpool]
and believes our decision to refer to the definition in the genocide convention removes the risk of dispute over what constitutes genocide for the purposes of the application. Also, the noble and learned Lord, Lord Woolf, said in an email to me that

"the courts will apply the facts before it to the question and say whether or not they constitute genocide."

Speaking yesterday to a meeting of your Lordships, Sir Geoffrey Nice QC, who was lead prosecutor at the trial of Slobodan Milošević in The Hague, said not only that our courts and lawyers are perfectly competent to examine the evidence and determine whether a genocide is under way, but that many senior figures in the judiciary feel passionately that the failure to declare genocides makes a mockery of the convention duties. Sir Geoffrey has received 80,000 pages of evidence. Xi Jinping said, as appeared in a leaked document, that his officials should "show no mercy" to anyone who disobeys the edicts in Xinjiang, and an official said on television:

"Break their lineage … break their connections and break their origins".

This amendment is therefore deliberately specific and narrow. In the hierarchy of crimes, genocide is in a league of its own. Anyone who has stood alongside mass graves or genocide sites in Rwanda and Iraq, as I have, or visited the charred remains of homes and villages in genocidal attacks in Burma and Darfur, as I have, knows that the calculated intention of this heinous crime is what marks it out, even beyond the other horrendous crimes against humanity and human rights violations that have been referred to. Perhaps one day there will be a treaty and convention duties for these other egregious crimes but, unlike genocide, there is not. That is the benchmark for this amendment; its precision is what has enabled many parliamentarians who would be reluctant to support a broader approach to support this one.

One person watching our debate today is a Uighur musician who speaks powerfully about persecution in Xinjiang. She spoke at the briefing held yesterday for your Lordships. The testimony of Rahima Mahmut, translated from the Uighur language, is courageous and harrowing. These personal stories are rare glimpses into the tightly controlled and secretive world of Xinjiang, which one British academic has described as "a creeping genocide". Yesterday she pleaded with us to name this crime for what it is, but it remains the crime that dares not speak its name.

Having shared her story with Ephraim Mirvis, the Chief Rabbi wrote this about his encounter with her:

"An unfathomable mass atrocity is being perpetrated in China. The responsibility for doing something lies with all of us … I can no longer remain silent about the plight of the Uighurs".

Nor should we, who have the privilege to speak and to act.

5.15 pm

Let me end, as I have probably wearied your Lordships for too long. Last week we commemorated the 75th anniversary of the liberation of Auschwitz. As a young boy, Judge Thomas Buergenthal was incarcerated in Auschwitz. He survived. Judge Buergenthal throws down this challenge to each of us:

"The human mind is simply not able to grasp this terrible truth: a nation transformed into a killing machine programmed to destroy millions of innocent human beings for no reason other than that they were different … If we humans can so easily wash the blood of our fellow humans off our hands, then what hope is there for sparing future generations from a repeat of the genocides and mass killings of the past? … one cannot hope to protect mankind from crimes such as those that were visited upon us unless one struggles to break the cycle of hatred and violence that invariably leads to ever more suffering by innocent human beings."

This all-party amendment is a modest attempt to break the cycle of hatred and violence which will otherwise lead to more suffering of innocent human beings. It is why the House should support it. I hope we will send it back to the House of Commons for further consideration. I will press it to a Division and commend it to the House.

Lord Forsyth of Drumlean (Con) [V]: My Lords, what a powerful speech from the noble Lord—I hesitate to call him the noble Lord; he is my noble friend. It was an extraordinary account of why the Government ought to accept this amendment. I think all of us in the House pay tribute to him for the fantastic work he has done over the years in supporting human rights and campaigning to have genocide named where it is happening.

I owe the House an explanation for my amendment, which, as Members will realise, is almost identical to that of the noble Lord, Lord Alton, except in one respect. The reason I tabled it—I entirely support the noble Lord's amendment—is the ridiculous rules being applied in this House on ping-pong. On the one hand, we are told by the Clerk of the Parliaments that we should not come to the House in the current Covid circumstances, and on the other we have rules saying that Members may not speak on these amendments at ping-pong unless they appear in person. I got around that by tabling my own identical amendment, which enables me to speak remotely; the Procedure Committee, or someone, needs to put this right, because it is denying the opportunity to many Members of this House—after all, the previous amendment was passed by a majority of 126—to participate in this debate and provide support to the noble Lord's amendment while obeying the injunctions of the House not to go in and put themselves and others at risk.

The original amendment, as the noble Lord said, was defeated in the Commons by a very small majority of 11. This amendment responds to the concerns expressed by the Government and some Members in the other place by removing the role of the court in determining whether a bilateral trade agreement should be terminated if a state is found to be involved in genocide. It simply provides for the court to consider whether genocide is occurring.

I must say to my noble friend the Minister, providing us with a letter on the very day we are considering the amendment, as he has done today, is—to put it politely—putting a bit of a strain on people's ability to read it, consider the arguments and treat them seriously. However, I notice that the terminology in the letter has changed; whereas the Government have always argued before that genocide is to be determined by the courts—the noble Lord, Lord Alton, gave a number of quotes from the Prime Minister and others in which they

made that clear—we now have this phrase whereby it should be determined by a "competent court". I am not sure whether the Government are actually arguing that the High Court is not a competent court; certainly, as the noble Lord, Lord Alton, pointed out, looking at the number of former senior judges, lawyers and Lord Chancellors who support this amendment, I would have thought we could rely on their judgment as to whether the High Court was competent to carry out the duties set out in this amendment.

Recently, after the defeat of the original amendment in the House of Lords, when I asked my noble friend Lord Ahmad why the Government were persisting in their opposition to this, he said he was concerned about the "separation of powers". This amendment deals with that argument. As the noble Lord, Lord Alton, has pointed out, in the United States both the incoming and outgoing Administrations have taken a view on whether genocide is happening in China. I think the Government are right that this should be determined not politically but by an independent judicial body, and the High Court is fully equipped to carry that out. Therefore, I would have thought this was something which the Government would welcome.

In his letter to us today, my noble friend Lord Grimstone said:

"It is not appropriate for the Courts to be drawn into a decision-making process relevant to the formation of international trade policy."

This amendment does not do that. He says:

"It is not appropriate for the courts of one state to sit in judgement on whether another state had met its international obligations under a multinational treaty"—

nor does this amendment do that. It does not apply to all trading arrangements; it applies only to bilateral trade agreements.

I know that Ministers, including my noble friend the Minister, have suggested that this amendment would not make any difference because we are not planning on having a free trade deal with China. But only yesterday, in a Written Answer, the Minister said:

"China is an important trading partner for the UK, and we are pursuing increased bilateral trade",

which is what this amendment seeks to deal with.

Even more surprising today was the news of a government late concession. I have to ask my noble friend: if the Government were making a serious attempt to offer a concession, given the huge support in both Houses of Parliament for my noble friend Lord Alton's amendment, why have they left it so late that they were unable to table an amendment today? I think both the noble Lord, Lord Collins, and my noble friend Lord Alton made the point that the only conclusion one can make is that if the Government are serious about bringing forward a serious concession, it is necessary for this to go back to the House of Commons. So, while the Whips may be asking us to vote against this, the Minister, with his late concession, appears to be asking us to vote for it, in order that the Government can bring forward that concession in the House of Commons.

I have to say, having seen the concession, my own view is that it is pretty hopeless. It sets up a Select Committee. We already have plenty of Select Committees, and in the other place, as the noble Lord, Lord Alton, has pointed out, the chairman of the Foreign Affairs Select Committee supports this amendment, along with a whole load of luminaries. The Government today have done something that I do not recall ever having seen; they have managed to unite all the lawyers and all the experienced people in the judiciary in agreement on one thing, which is that they support this amendment. The suggestion that by setting up a committee to look at this and debate it will somehow take us further forward is clearly off beam. Parliament can pass resolutions; indeed, as the noble Lord pointed out, it did pass a resolution following the massacre of thousands of Yazidi Christians by ISIL in Iraq. When we had the debate then, we were told that determining genocide was something which was a matter only for the courts.

Surely the key point is that we are party to an international treaty, and that puts us under an obligation. We have obligations to identify, punish and prevent genocide under the genocide convention. All that the amendment does is allow an application to the High Court for a preliminary determination on whether a current or prospective trading partner has committed or is committing genocide. If that is found to be the case, the Government have to present these findings to both Houses of Parliament and indicate what, if any, action they plan to take. That is entirely appropriate; there is no threat to the separation of powers in this matter.

Of course, the amendment is solely about the crime of genocide. It does not apply to other types of international crimes, such as war crimes and so on. I feel very pleased that the noble Lord, Lord Collins, is supporting this amendment, but I am nervous about supporting his, because I think it will be used to argue the case against this amendment, which is rightly and properly honed on genocide.

The amendment also applies only to bilateral trade agreements of the kind which my noble friend the Minister has indicated he is pursuing with enthusiasm with China. But nor is it about China in particular; it seems to me that what has been happening to the Rohingya Muslims is equally a matter of concern and that it is appropriate to consider whether genocide is indeed taking place. And nor does it apply retrospectively.

I have to say that, having listened to my noble friend the Minister, read his letters and absorbed the information from the Government, I find it difficult to understand their position. They cannot argue that we must rely on international mechanisms which have clearly failed. Every dog on every street corner knows that the international procedures will fail because they will be subject to a veto. It does not take away power from Parliament; it offers justice and the chance, which the Government have claimed essential for the last decade and more, for a judicial process which will determine whether or not genocide has taken place.

I support this amendment from my noble friend Lord Alton with enthusiasm. I certainly will not press my amendment, for the reasons that I have explained. I am sure it will be overwhelmingly supported should he divide this House. My advice to the Ministers is this: when you are in a hole, stop digging. The case now is so overwhelming and all the arguments have been dealt with. It would be wise to accept the advice

[Lord Forsyth of Drumlean]
of my noble friend Lord Alton, accept this amendment and enable the other place to debate it properly. I am sure everyone would welcome the Government changing their position and accepting that the arguments they have put have been soundly defeated.

Lord Cormack (Con) [V]: My Lords, it is a pleasure and an honour to be able to follow my noble friend Lord Forsyth of Drumlean and, of course, my noble friend—for he is a friend—Lord Alton.

I took part in the debate on the Floor of your Lordships' House in December on Report. I spoke then in strong support of the noble Lord, Lord Alton. I have tabled this amendment today in my name—which alters a couple of quite important timings—not because I oppose in any way, shape or form the amendment in the name of the noble Lord, Lord Alton, but because I discovered last week that I could not take part in this debate unless I tabled an amendment. I thought things had changed a little since Christmas.

I spoke in your Lordships' House quite often from September to December, and I came to realise that those of us present had a certain privilege when it came to ping-pong. Since Christmas, I have received almost countless messages, as your Lordships will have done, telling me, in effect, not to come. Some were because of my age—I am over 80—and others because I needed to be vaccinated, and I now have been. But being told not to come does not chime with the injunction that the occupant of the Woolsack recites every day: "Some Members will take part in the debate on the Floor of the House and others by remote means, but all will be treated equally." This afternoon, all are not being treated equally.

5.30 pm

The House would have benefited from a speech by the noble and learned Lord, Lord Hope of Craighead, but he is not able to take part. I hope not only that the Government heed the lessons of today but that the authorities that regulate business in your Lordships' House will do likewise. It is wrong not to treat Members equally if, at the same time, you are telling or urging certain Members not to come.

I turn to the substance of the amendment. I like and respect my noble friend the Minister, and he tried to make what my late father would have called "a good fist" of his argument today, but—I say to him gently but firmly—he failed, as he did with the letter from which my noble friend Lord Forsyth quoted a moment ago. The Government are on barren moral ground and I hope that they move to more stable ground, following the defeat that I trust will be inflicted upon them in an hour or so.

I grieve that a defeat has to be inflicted upon them, because I do not doubt the personal bona fides of my noble friend the Minister, the Prime Minister or the Foreign Secretary, but this is not the way to go about it. We live in the midst of many and great dangers, and perhaps the greatest of all was underlined only yesterday with the news from Burma. The greatest danger of all is the collapse of civilisation and civilised values. There is no more heinous crime than genocide, as the noble Lord, Lord Alton, said in his brilliant and moving speech. We have to put down a marker today. The other place is clearly moving in this direction. The majority for the last amendment, which we all acknowledge was defective in certain particulars, was only 11. It would be failing in our duty not to send the amendment of the noble Lord, Lord Alton, to the Commons today, so that they can truly reflect and think again.

What is going on in China is appalling. The Chinese Communist Party is as objectionable a regime as any as we have seen since the beginning of the last century—in which we fought two world wars to defend civilised freedoms. I commend to noble Lords, and in particular to the Minister, a report that I have had the privilege and honour to be asked to endorse, from the Conservative Party Human Rights Commission. It is entitled *The Darkness Deepens: The Crackdown on Human Rights in China 2016-20*. No one can read that report—meticulously researched and spelled out in detail—without feeling revulsion to the very pit of the stomach. It is endorsed by two former Conservative Foreign Secretaries in the noble Lord, Lord Hague, and Sir Malcolm Rifkind, by two former leaders of the Conservative Party in the noble Lord, Lord Hague, and Sir Iain Duncan Smith, and by many others. It is a party-political service, but it is not a party-political document. I doubt that any Member in your Lordships' House or those who are observing this debate remotely could fail to be both moved and convinced by it.

Fundamentally, this is all about human values. Today, we had the very sad news of the death of Captain Sir Tom Moore, a man who stood for the values that it is our duty, as parliamentarians, to uphold. He fought for his country to uphold those values, when Europe was in danger of being plunged into the deepest darkness of all—citing the title of the report I just mentioned. It is less than a week since we commemorated Holocaust Memorial Day. Surely we do not need to be reminded that, if we are vigorously pursuing bilateral trade deals with the Communist Party of China, we are turning our backs in a way that does not do us credit. It is a very evil regime that can do what it is doing to the Uighur Muslims and others—think of Tibet—yet it has world ambitions and will be the dominant power as we move through the 21st century.

That country also has one of the greatest and oldest-surviving civilisations in the world. We must appeal to the people of China, who are the guardians of that civilisation, to say that we want them to realise that the regime that presently governs them is not honouring that great civilisation.

I will vote for the Motion in the name of the noble Lord, Lord Alton. I will not press my amendment to a Division—although it would marginally improve that of the noble Lord, Lord Alton, by putting in a couple of dates and concentrating the mind in that way—no more than my noble friend Lord Forsyth will move his. But I will vote with determination. I hope that the other place heeds the advice that we seek to give and that together, as a Parliament, we can be proud of what we are doing in creating global Britain.

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, nine Members have asked to speak. I will list them, so that noble Lords know the order in which they will be speaking: the noble Lord,

Lord Blencathra, the noble Baroness, Lady Kennedy of The Shaws, the noble Viscount, Lord Waverley, the noble Baronesses, Lady Altmann and Lady Neville-Rolfe, the noble Lord, Lord Polak, the noble Baroness, Lady Jones of Moulsecoomb, and the noble Lords, Lord Adonis and Lord Shinkwin.

Lord Blencathra (Con): My Lords, perhaps I may begin by being the first person in this Chamber to pay tribute to the late Captain Sir Tom Moore, who died a few minutes ago, I understand. He was a great British hero and, even if I were to live to 200, I could never hope to emulate his courage, his thorough decency, his niceness and his sheer pizzazz. No doubt there will be proper tributes, in this Chamber and elsewhere, in due course, but I simply say this—we shall remember him.

I also commiserate with my noble friend the Minister, who I believe is self-isolating. I did it for four months and one week last year and, despite getting a letter almost every other week from the Secretary of State warning me that I must not go outside but I could open a window for fresh air, I am dashed if I am going to do that again—so here I am.

Of course I support my other noble friend Lord Alton's excellent Amendment 3B. He has a long and noble history of advancing the case against genocide, wherever in the world it may occur. I pay tribute to his highly persuasive speech today, and also to my noble friends Lord Forsyth and Lord Cormack. I only say to my noble friend Lord Forsyth that I wish I had known his ploy a couple of days ago, before I spent hours trying to figure out the difference between the amendments —goodness knows how many pages of paper I wasted printing them out to compare them. I agree with both noble Lords that we have to look at our House procedures to make sure that this problem is overcome.

I cannot hope to be as persuasive as my noble friends who have spoken, but I wish to direct my remarks to Conservative colleagues who may have a few concerns about supporting these amendments. First, the Government oppose the new clause sent to the other place on the grounds that

"it is not an effective means of dealing with cases of state genocide."

Okay, so what is an effective means? The Government have not advanced any credible alternative means. All UK Governments, as has been said repeatedly, have hidden behind the excuse that they cannot declare a genocide because only a court can do that. My right honourable friend the Prime Minister has said it on a couple of occasions, the Foreign Secretary has said it and David Cameron also said it when he was Prime Minister.

Of course, the court they have in mind is the International Criminal Court—but, as we have also heard, the ICC cannot take a case unless it is authorised by a resolution at the United Nations, where Russia and China can exercise their veto. Thus, it seems to me that UK government policy is to rely on a motion approved by Russia or China, which will never happen. We have therefore subcontracted the UK's morality to two regimes which the new head of MI5, Ken McCallum, says are a threat to the United Kingdom. The amendment of the noble Lord, Lord Alton, gives the Government a way out, because it asks a UK court to make a preliminary determination on whether genocide has occurred.

Is there anyone in your Lordships' House who thinks that our United Kingdom courts are less able to do that than the ICC? Indeed, was it not top UK lawyers who prosecuted and adjudicated at Nuremberg and set up the ICC? Are we seriously suggesting that noble and learned Lords, with whom that part of the House is normally awash, or their successors now in the High Court, are incapable, or not as good judges as those in the International Criminal Court? Of course they are—and of course there are technical difficulties in hearing evidence, but the courts are in a better position to do it than any Select Committee. So I believe that the revised amendment of the noble Lord, Lord Alton, has removed that principal objection the Government had, that only a court can do it.

The Minister—I pay tribute to him—is a highly intelligent and very able Minister and he has had countless meetings on this. He knows that the brief he has to defend today is utterly illogical. The typical FCDO letter that has been circulated today is incredibly feeble. We all know that the Foreign Office does not want to say "boo" to any evil regime, wherever it may be in the world, whether it is in China, Zimbabwe, Burma/ Myanmar, Venezuela or wherever. We have a government policy that only a court can decide on genocide. Then we have an amendment giving our High Court a power to decide on genocide, but the Government says that it is not effective. How illogical is that?

The suggestion that the Government favour a Select Committee making a pronouncement instead is utterly wrong. There is nothing to stop a Select Committee doing that at the moment, but the idea that a Select Committee, meeting for a couple of hours a week, could give the same consideration as the United Kingdom or the English High Court taking evidence day after day, week after week, is for the birds. Of course, no matter what the Select Committee decided, the Government could ignore it on the basis that "It is not a court".

There is another worry many Conservatives have—I shared it initially—and that is that we cannot have a court determining foreign policy which is rightly the preserve of the Executive. I agree, and I have believed for some time that judicial activism in this country, especially judicial review, has gone too far. That is an argument for another day, but this amendment is quite different from what we debated before, because it does not permit the court to determine government policy. If the court makes a preliminary determination that genocide has been committed, what does the court then do? Absolutely nothing—the court's work is now done.

5.45 pm

The amendment before us, from the noble Lord, Lord Alton, merely obliges the Government to put down a Motion for debate in both our Houses, setting out what they propose to do. The Government have a completely free hand on what they may propose to do, ranging from doing absolutely nothing at all, to possibly deploring the killings, to some sanctions on individuals or not going ahead with a trade deal—a wide range of options. The political policy decision is 100% with Her Majesty's Government and I ask my noble friends to agree that this amendment is no threat to the Government's executive authority and does not intrude the courts into it.

[Lord Blencathra]

I know there will be some colleagues on the Conservative Benches—indeed, on all sides—who may be concerned that this power would be used and abused by the supporters of Hamas and Hezbollah to try it on with bogus claims against Israel. No doubt they will try stunts like that, but the threshold for proving genocide is extremely high and, in my view, nothing Israel has done has come within a million miles of the definition. But these terrorist groups and their bedfellows will have a go, just as they invoke bogus allegations against Israel now. Also, some Conservative colleagues may be concerned that this is a move against free trade. Yes, it is—but first of all, as I said, it is a very high threshold to prove, and we are not going to have dozens of countries determined by our courts as genocide perpetrators.

Secondly, once the court has made a determination, it will be up to the Government to decide what trade we do with the country concerned, or whether we continue trading at all. Thirdly, genocide must trump unfettered capitalism. Trade is the greatest lever the world has to relieve poverty. The more trade we have, the more freedom from want. The more capitalism we have, the more wealth for all. However, just a United Kingdom Prime Minister said in 1973, there is

"the unpleasant and unacceptable face of capitalism".—[*Official Report*, Commons, 15/5/1973; col. 1423.]

We still have that today. That was Ted Heath referring to Tiny Rowland hiding some unimportant information from his board. What words would Ted Heath have used to describe a situation where a company or a country was profiting by murdering its own people? Thus I submit that the evil of genocide must take precedence over free trade.

My final point is that this is a moral issue. In July 1995, in the Srebrenica massacre that took place in Bosnia, 8,000 men, women and children were slaughtered. Nearly every country in the world calls it a genocide, but it is not genocide as far as the United Nations is concerned. Why? Because in 2015, I think it was, Russia vetoed a resolution calling it a genocide. Is that the limbo in which the UK Government want to be trapped, when in future we could see thousands or tens of thousands of civilians murdered and massacred and we could do nothing about it, not even call it genocide, because Russia, China, Venezuela or Vietnam —or anyone else on the Security Council—has vetoed it going to the International Criminal Court?

This amendment has nothing to do with Brexit—thank goodness—but taking back control of our laws must mean a bit more than merely rewriting EU rules on square widgets or the meat content of sausages. It must also mean taking a lead on moral issues such as genocide. We are the country that led the way on the abolition of slavery; we should now lead the way in making a very firm statement that we will not tolerate genocide, nor seek to profit from it. And this is not just for the Government. I hope that, over the coming months and years, the media and campaigning organisations will highlight whether we get any goods from countries indulging in genocide and persuade customers to boycott them. I believe in free trade, but there is no God-given right for British consumers to buy T-shirts at £2 a piece if people have been murdered or forcibly sterilised in their production. I believe that the FCDO is way behind the curve on this. Its attitude is trapped in a past decade. I think the British public is much more aware now and want action on this.

I also appeal to my right honourable friend the Prime Minister to take a close look at this. He has been way ahead of the curve on vaccination. He is way ahead on environmental matters, with which I am concerned, with the 25-year plan, rewilding—there is a whole host of environmental matters where he is ahead of much of the rest of departmental government policy. I am certain that if, in the course of his busy day, he could take a look at what we are suggesting in this House, he too would realise that the old Foreign Office policy on genocide is no longer sustainable. The British people do not want it, this House does not want it, and I am certain that the Commons will not want it when this amendment gets there.

Amendment 3B in the name of my noble friend Lord Alton deserves support from all Conservative colleagues who believe in the executive authority of the Government, believe in free trade, and believe in having a moral foreign trading policy.

Baroness Kennedy of The Shaws (Lab): My Lords, I join the noble Lord in paying tribute to the noble Lord, Lord Alton, who really is the moral conscience of this House and who reminds us so frequently of our role in making sure that we protect the most vulnerable in our world.

I declare immediately that I am a practising member of the English Bar and the director of the International Bar Association's Human Rights Institute. The International Bar Association has been engaged with the issue of genocide for many years and it supports this amendment, as I do in my personal capacity as a Member of this House. The IBA has worked with organisations on this; in recent years I have worked closely with the United Nations Human Rights Council on the issue of genocide and certainly on the position of the Yazidis, and more recently with the World Uyghur Congress, which collates evidence on what is happening to the Uighur community in China.

I have seen much of the evidence and spoken with exiled Uighurs about their direct knowledge of serious crimes against humanity taking place back in China. The list has been set before your Lordships eloquently by the noble Lord, Lord Alton: the horror of internment in concentration camps and the torture, systematic rape and forced labour. We have listened to grieving mothers describe how their children were taken from them and put into "secure boarding schools", as they are called, having their culture removed and their religious observance forbidden, and then all the other things your Lordships have heard about, including forced sterilisation. Modern technology has helped to supplement oral testimonies, so that we now have evidence coming from drones and satellites, and so on.

The list is long, and the evidence points towards a Chinese policy of genocide. However, the best form of analysis takes place in the best forum for the assessment of evidence: an independent court of law. The best forum to determine whether the high evidential bar for genocide is reached is a court of law, not a parliament.

As this reconstituted amendment of the noble Lord, Lord Alton, has made clear, once a preliminary determination has been made by our High Court, using its best skills and the things that it comes into being to do, which is to analyse evidence and to look at the evidential thresholds, it will be for Parliament to decide how to make use of that determination with regard to bilateral trading relations. Therefore, on the concerns that were being expressed—I echo the noble Lord, Lord Forsyth, in saying this—about the constitutional principle and the fragile and careful way in which we have to protect the independence of the judiciary as distinct from the matters that should be dealt with by Parliament, the very way in which this amendment is devised means that it does that perfectly.

Some in the other place who opposed the amendment said that they had not left the European Union and the European Court of Justice to be told what to do by judges. That is not what is happening or what is contained in the amendment of the noble Lord, Lord Alton. Iain Duncan Smith, who was certainly up there leading the way on Brexit, has said very clearly that he wanted our judiciary to deal with matters of law concerning the people of this nation. It does concern the people of this nation. Along with the long list of the great and the good—the former Lord Chancellors: the noble and learned Lord, Lord Mackay, and my noble and learned friend Lord Falconer of Thoroton; the noble and learned Lord, Lord Hope, and the many distinguished lawyers, including the noble Lord, Lord Pannick, and so on, all of whom support this amendment—there are the many ordinary people who feel that we should not be trading. These are people who are not lawyers and are not tarred with the brush of being one of my community but who still feel very deeply about what is happening in China.

The noble Lord, Lord Alton, mentioned the distinguished and great international lawyer, Sir Geoffrey Nice, and he made the point that this amendment will save lives. We should be very clear about that. He posed the question: but for the defeat in war, would the Nazis have pressed on with their intention to destroy the Jewish people? They were stopped only by external intervention. It is for that reason that we should remember that Raphael Lemkin, the great lawyer who, through his relentless scholarship and lobbying basically brought the genocide convention into being and who drew on his own experience, having lost 40 members of his intimate family to the Nazi examination policies, realised that no law existed to prevent another Holocaust. That was why in the post-war years he worked relentlessly to have this convention come into being. He made the point that it was for the prevention of genocide—not to wait until it was over and then to wring our hands but to act when such an atrocity was in progress to prevent it reaching its horrifying conclusion. But we are being stymied because the system allows the big authoritarian nations to block the route to justice. They hold the trump card—the veto.

The convention is a construction of a particular time. It was created without envisaging, for example, that non-state actors could be perpetrators of genocide, which was one of the issues that was so difficult when we were dealing with ISIS and creating accountability for its genocidal intent in relation to the Yazidis in northern Iraq. The convention's protocols also envisaged that the international courts would be the venue for establishing guilt of such an egregious crime as genocide. So it should be but, of course, as we have heard several times already, members of the UN Security Council block the cases and will continue to block cases going to the court by exercising the veto. China and Russia do not want nations to be held to account for genocide or indeed for serious crimes of inhumanity to man—and woman—as it comes too close to home and their own misconduct.

The genocide convention was created in 1948 at a different time, in a different era. Nothing concentrates the mind like world war and the horrors that were disclosed of Auschwitz and Treblinka. The urgency of that time can be forgotten if it is not kept alive, which is what last week's Holocaust Memorial Day and the fact that the Jewish community has been so strong in its support of this amendment make clear to us. We are being held hostage by authoritarian regimes and we have to break their stranglehold on our use of international law and of the genocide convention and our obligations under it.

The Government claim that it is not for this House to overturn a decision of the other place. Of course, normally that would be true, but this House is the protector of constitutional matters, and I think it must address grievous abuses of human rights. We should take exceptional steps when we are dealing with something of this magnitude.

6 pm

The Government claim that there is a court designated to deal with genocide, but this procedure would not usurp the function of that court. A declaration by the High Court here would not prevent the matter then going to the international court to determine criminality and to convict. The Government claim that there could be vexatious claims. Really? Our judges would be quick to give short shrift to such claims. The noble and learned Lord, Lord Hope, was clear about that in our discussions with him. The Government ask: would our courts be capable or competent to deal with such a thing? We have some of the greatest courts in the world and should have absolutely no doubt about the competence of our senior judiciary.

The Government are taking a default position in refusing any amendment to the Bill, not wanting their hands to be tied in trade negotiations. I am afraid that sometimes hands do have to be tied. We are also tying them to remind future generations of the seriousness of these matters. It is telling the world that we have values that will determine how we conduct ourselves in the world. There is a moral imperative in making this change to our law, but there is also a legal imperative.

The votes in this House and those that will eventually follow in the Commons are being watched by the world. I say that to noble Lords as someone who is involved in the largest global organisation of lawyers. Many nations that respect the rule of law will follow our visionary lead in creating a domestic legal mechanism for addressing our duties to prevent genocide. China is also watching us, and those votes may actually affect its conduct, too. Watching, too, are the generals in Myanmar and other tyrants.

[Baroness Kennedy of The Shaws]

Genocide is the crime above all crimes. I urge our Parliament to vote for this amendment to change the ecology of law by bringing into our own institutions of law and Parliament a way in which to make genocide have serious meaning in our contemporary world.

Viscount Waverley (CB): My Lords, these matters must not be allowed to die this evening and, I hope, will allow for variations that the Government will introduce in a concession amendment. It is my sincere wish that the noble Lord, Lord Grimstone, in his response factors that in as a possibility.

Before I turn to the genocide amendment, the noble Lord, Lord Forsyth, said that he does not support the amendment of the noble Lord, Lord Collins, because it complements the Alton amendment. Coming to the defence of the noble Lord, Lord Collins, my understanding is that his amendment is not a substitute but underlines the position that, when evidence on human rights does not pass the high bar of the definition of genocide, his amendment serves as a safety net.

I address my remarks on genocide globally—I am not being country specific—and support unequivocally the remarks of the noble Lord, Lord Collins. He and the noble Lord, Lord Alton, strike a chord of British values and stand for what the United Kingdom is recognised for around the world—decency. The genocide amendment strikes at the heart of our constitutional process, however, and magnifies the call for Parliament to make more meaningful contributions to foreign policy objectives. The motives of the noble Lord, Lord Alton, are undeniably valid but the harsh realities and complexities of our constitutional and legal systems mean that compromise must necessarily be found.

The detail can be endlessly discussed. However, the key principles and norms held by the High Court, the United Kingdom Parliament and the international judicial processes somehow need to be reconciled and merged, rather than remain in potential conflict in future deliberations. This is a quandary, with the devil being in the detail and definitions. I am taken by the suggestion that a Select Committee be chaired, or at least advised, by a former judge.

An endgame that ticks the boxes of being nimble and well-informed, but not disruptive of judicial domestic or international processes, is highly desirable—where the United Kingdom is deemed in lockstep so as not to trespass on constitutional territory or infringe on the royal prerogative. However, democratic oversight should be contained within this mix to instil our values; that is what I am looking for today. That will ensure democratic oversight in a manner that addresses the heart of the points made both by the noble Lord, Lord Alton, and by Mr Tugendhat from another place —whom I had the privilege to listen to while he made his remarks—and, ideally, the Government, mindful that the UK, or any other country, is not in a position to solve issues before us in isolation.

I understand that the Government are—or at least were—minded to bring forward a concession amendment, which would certainly be my preference, but for technical reasons, as we have heard already this evening, it is not before us at this time. That in itself is sufficient to send this process back to the other place, to allow that possibility to occur. I urge all noble Lords to support the noble Lords, Lord Alton and Lord Collins of Highbury, to hopefully then allow a concession to be included for consideration.

Baroness Altmann (Con): My Lords, I speak in support of Amendment C1, in the name of the noble Lord, Lord Alton, and the very similar Amendments C2 and C3, in the names of my noble friends Lord Forsyth and Lord Cormack. I echo the tributes paid to the noble Lord, Lord Alton, for his dedicated work on this issue and his powerful and moving speech.

As the child of two parents who fled the Holocaust, and most of whose family was wiped out by the Nazi regime, I feel duty-bound to do my best to ensure that the repeated promises of "never again" are more than mere words. Just a few days after Holocaust Memorial Day, there are lessons that we should have learned from the genocides of the 20th century, but too often we turn a blind eye, as this is so much easier.

I recognise my noble friend the Minister's words, that our courts can find individuals guilty of genocide, but this will not cover Governments which engage in such behaviour. It is all too easy to appease and to look for ways to avoid confrontation. Of course, there is a place for diplomacy, but if there are no consequences, in trade and other areas, for a country whose Government engage in such behaviour, then they can continue with impunity. Such impunity will lead to further crimes against humanity.

We are living in an increasingly authoritarian world, as powerful countries are crushing domestic dissent and those who oppose the ruling power. The lessons of World War II are being forgotten, but they must not be. I mention just one of the horrific concentration camps, Ravensbrück, which began as a labour camp that was, uniquely, exclusively for women opponents of Nazism in the 1930s. It ended up as a forced labour camp producing goods for powerful German companies and then also as a camp for the industrialised death of innocent victims.

There are clearly parallels today in Xinjiang, where what is happening to Uighur Muslims should provide a reason for our Government to support an opportunity to ask our courts to investigate this. As others have said, clearly China would just veto an ICC inquiry. This cannot just be left to the Executive. There is no excuse for inaction in the face of such evil in the 21st century. I echo the words of Chief Rabbi Mirvis that we must not be silent, and I believe that these amendments also uphold the Government's stated aim of putting victims first. The Government now have the chance to do so.

As it prioritises trade, this amendment has a specific focus. It aims to ensure that in the tiny number of cases—thankfully, today—where our trading partner or prospective partner is committing genocide and this determination is made by our courts, the Government will have the reason, and the power, not to continue to negotiate or co-operate on trade. No matter how important trade and economic prosperity are to us in the short term, it cannot be worth being complicit in genocide and, in the long run, it will damage us all. This country increasingly favours ethical trade and, as other nobles have said, this is a matter of morality and values. Trade cannot be prioritised over genocide.

A parliamentary Select Committee is not enough on its own; it would still need to have the power to refer this to a court. The noble and learned Lord, Lord Hope, has confirmed that there are no practical difficulties in courts evaluating evidence of genocide. This has been echoed by the powerful words of so many other noble Lords, including the noble Baroness, Lady Kennedy, the noble Lord, Lord Carlile, my noble and learned friend Lord Mackay, Supreme Court judges and former Attorney-Generals. They are all united in the view that this issue can and should be determined by the courts. My right honourable friend the Prime Minister himself has said that

"genocide is a strict legal term, and we hesitate to deploy it without a proper judicial decision."—[*Official Report*, Commons, 21/11/17; col. 839.]

Precisely, my Lords, which is why it is important for us to support Amendment C1.

The concession made by the Government this afternoon—I have huge sympathy for my noble friend the Minister in the position in which he finds himself today—does not provide for a court ruling on this issue and would therefore not trigger the UK's obligations under Article 2 of the 1948 genocide convention. I believe this country has never recognised genocide while it was taking place. This amendment would take the pressure away from politicians and place it with the courts, of which we are rightly so proud; they are world-leading authorities in legal matters.

These are complex problems, but I urge noble Lords to support this amendment and remember that, as Edmund Burke said, all it takes for evil to triumph is for good people to be silent.

Baroness Neville-Rolfe (Con): My Lords, it is always good to follow my noble friend Lady Altmann, who speaks on these issues with such eloquence. As noble Lords will know, I have supported this Bill, and its promotion by Department for International Trade Ministers since its first outing in 2017. It is vital to have a proper framework for trade in global Britain. I refer to my interests as in the register, and perhaps I could remind noble Lords that the purpose of the Bill is a sensible one: to ensure continuity for UK businesses and consumers. It allows us to join the GPA to implement 63 agreements and establish the Trade and Agriculture Commission on a statutory basis, as well as our own independent Trade Remedies Authority. There is a wide measure of agreement on all this, and this is the only time I will speak on the Bill today.

6.15 pm

As a general rule, I am opposed to attaching conditions to the trade negotiation process. Our negotiators need as much flexibility as possible to secure the best overall result in trade negotiations. I know this from my experience on the margins of EU trade negotiations both when I was in business, operating in Asia, and as a Minister when CETA was going through. As was briefly referred to, the UK and some of the poorest countries in the world benefit from free trade and, of course, they are harmed by protectionism.

On the specifics of the three genocide amendments, my concern is as follows. I was persuaded by the argument outlined yesterday by my noble friend Lord Wolfson of Tredegar at the Bill briefing that a UK court would find it difficult to reach firm conclusions on the basis of inevitably partial evidence of genocide. Indeed, it might find it impossible. Moreover, if a respected UK judge was unable to make a preliminary determination of genocide, this might give a state in the firing line a PR opportunity to say that they had been exonerated in a British court. That is the opposite of what we want. In any event, political life has, if anything, been dogged by too much judicial interference in matters that are properly decided by government or Parliament, and it could be perverse to encourage our distinguished legal colleagues to deploy their talents on yet more issues. To my mind, many of these matters are better decided by the wider population and through the democratic process.

Many important points have been made on all sides of the House, and they reflect the values that have been articulated rightly and the horror of genocide. However, a different solution must be found to the amendments before us today, as the noble Lord, Lord Waverley has said. I very much look forward to hearing what the Minister has to say.

Lord Polak (Con): First, First, I pay tribute to my noble friend Lord Forsyth, a great free-trader, who spoke with common sense and great dignity and clarity. Supporting the noble Lord, Lord Alton, is always a privilege, but on this occasion it is so much more than a privilege; it is a duty. I spoke in support of the amendment of the noble Lord, Lord Alton, in December and commend him for bringing back a form of words that have addressed the legitimate concerns that the Government had, most especially on the issue of the separation of power. As a result, I am again honoured to support the amendment.

This amendment is a crucial step towards fulfilling the UK's obligation under the Geneva conventions, and I firmly believe that it is not only a legal obligation to fulfil, but the moral and right thing to do. The noble Lord, Lord Alton, and my noble friend Lady Altmann, referred to an article published in the *Guardian* on 15 December 2020 by the Chief Rabbi, Ephraim Mirvis. He reminded us that it was on 9 December 1948 that the Convention on the Prevention and Punishment of the Crime of Genocide was adopted, a document that he said stands

"among humanity's most vital legal and moral proclamations",

but that is

"at risk of fading into the political periphery if we are not prepared to act"

on it. He continued by suggesting that the

"freedoms we enjoy, coupled with a perception that nothing we do will help, often create a culture of apathy",

and that history is littered with examples of apathy that allowed hatred to flourish. The amendment gives us the ability to take action rather than just to shake our collective heads.

In the last Shabbat Torah reading from Exodus, we read the famous storyline of ancient Egypt, the mightiest nation on earth, with its military might, untold wealth and cultural sophistication—but also known for its cruelty. A small primitive group was abused, persecuted and enslaved, but eventually they were freed and left

[LORD POLAK]

Egypt. Today we have video images and testimonies, and we all have an obligation not only to speak out but to act. On Report in December I said the following:

"We all witnessed the footage of Uighur"

Muslims

"being herded on to trains and transported to camps. It is footage that is all too familiar. Many of us who have heard first-hand accounts of the depredations of the Nazi camps know how major industrial companies ruthlessly used the slave labour in those camps to produce their goods and to make their fortunes. Will it be a case of business as usual as companies profit from the blood, sweat and tears of today's slave labour or are we prepared to do something about it?"—[*Official Report*, 7/12/20; col. 1083.]

Good intentions and nice words are good and nice, but good and nice are woefully inadequate. I have listened carefully today and read the ministerial responses but I have not been persuaded. I will once again vote for the amendment in the name of the noble Lord, Lord Alton.

Baroness Jones of Moulsecoomb (GP): My Lords, it is a pleasure to follow the noble Lord, Lord Polak; I did not realise we had so much in common. I congratulate the noble Lords, Lord Collins and Lord Alton, on their moving speeches. I support them and very much hope that there will be a vast majority in favour.

I have been an elected, and now appointed, politician for more than 20 years and in all those years, I have seen critiquing the Government, whichever side they were, as good sport; it is what small parties are for and what opposition is. In the last year, though, there have been two well-publicised, well-known events that have brought home to me just how morally bankrupt this Government are. The first was the decision to restart arms sales to Saudi Arabia, calling the possible war crimes against the Yemenis "isolated incidents", and the second was their inability to see that feeding hungry schoolchildren is actually a moral imperative. They had to be shamed into it by a footballer who had principles. Well done, Marcus Rashford; thank God for people like him. So, this Government actually need these amendments to do the right thing.

During consideration of the last set of amendments, the Minister took a dig that was slightly below the belt, saying that I was implying that officials were not competent and got us bad trade deals. My point is not that the officials were at fault; rather, they are operating in a political climate of inept and, worse, incompetent government. We have to do the right thing here today. We have to vote for these amendments because that is the only way of making sure that our Government do the right thing.

Lord Adonis (Lab): My Lords, we have heard many powerful speeches today. If I may say so, the speech by the noble Lord, Lord Alton, is one of the most powerful I have ever heard in the House. He made an utterly compelling case for sending this issue back to the House of Commons. Purely as a matter of parliamentary protocol, we should do so, and not only because, as the noble Lord, Lord Forsyth, rightly said, the opportunity for the Government to honour their own commitment to seek a compromise can arise only if this matter goes back to the Commons, but because the current amendment of the noble Lord, Lord Alton, has addressed the points made in the Commons speech last week by Greg Hands, the Minister for International Trade, about why we should not agree to the earlier Alton amendment.

Greg Hands said in the House of Commons last Tuesday:

"Nobody denies the importance and seriousness of the situation in Xinjiang … or that human rights cannot and should not be traded away in a trade agreement or anything like it."

He went on to say that the Government are clear

"that doing more trade does not have to come at the expense of human rights. In fact, as I am sure my hon. and right hon. Friends will agree, there is a strong positive correlation between countries that trade freely and human rights".

However, he said that the House of Commons should not agree to the then amendment in the name of the noble Lord, Lord Alton, because it

"would, in effect, take out of the hands of Government their prerogative powers to conduct international relations with regard to trade".—[*Official Report,* Commons, 19/1/21; cols. 796-97.]

The current Alton amendment meets that point entirely. It does not take prerogative powers out of the hands of the Government; rather, it enables Parliament and government to be better informed. They could not be better informed than by the advice and judgment of the High Court, and other courts in the land, on the specific issue of whether genocide is being committed. It does not even matter whether the Government intend to come back with further proposals. The noble Lord, Lord Alton, has already met the test which Greg Hands set last week.

On the wider question, where I have some sympathy with the Minister, there are wider issues involved here —of course there are. When I was a Minister, I visited China and had substantial dealings with them. Those who of us who have been engaged in these events for many years are aware that we have a growing China problem, which is not just about the Uighurs and potential genocide. It is also about Taiwan, Hong Kong and China's belt and road initiative. What we have in Xi Jinping is essentially a leader who is not so new now—his leadership is 10 or 11 years old—but who is increasingly Stalinist. It was reasonable to think in the decades after Deng—although, of course, Tiananmen Square was a wake-up call—that China might be on a more liberal path and that we should move accordingly. It turns out that that was a mistake. We all make mistakes, and there has been a significant change in circumstance. The Xi Jinping decision to essentially abolish what passes for the Chinese constitution at the end of his original 10-year term was clearly a massive wake-up call. Many of the worst atrocities being reported now, which the noble Lord, Lord Alton, referred to, have flowed from the radicalisation of his regime, and we have to respond accordingly.

We have been here before. I said that the regime was increasingly Stalinist. The noble Lord, Lord Blencathra, in a powerful speech, did not exhibit himself to be a great fan of the Foreign Office. He used certain epithets about it, which might indicate its weakness or pusillanimity, and so on. I have spent a large part of the last two years researching and writing about Ernest Bevin who, I can assure the noble Lord, was in no way weak as Foreign Secretary. He stood up to Stalin with determination, well before that was fashionable either in this country or, crucially, the United States, where

the early years of the Truman Administration sought to appease Stalin. Bevin stood up with a relentlessness for which we should all be grateful; maybe our freedom depends upon it. Great departures such as NATO certainly depended upon his actions.

However—and this goes straight to the point of the amendment of the noble Lord, Lord Alton—although two situations are never alike and there are differences between the situation with China today and with the Soviet Union in the 1940s and 1950s, one hugely important commonality is that there was then a distinct absence of knowledge about, and much controversy about, what was actually going on in Russia. Many people, predominantly but not exclusively on the left in politics, I am ashamed to say, thought that Soviet Russia was "a new civilisation"—to use the phrase in the famous book by the Webbs. They thought that it had found a new pathway to success and prosperity which we should honour. What goes straight to the point of this amendment is that they constantly poured cold water on reports coming out of Russia that there were massive abuses of human rights which verged on genocide, and which we now know were genocide.

6.30 pm

On the point from the immensely powerful speech of my noble friend Lady Kennedy, the same was true of Nazi Germany in the 1930s. Many people, including reputable people—mainly on the right, as it happens—such as Foreign Secretaries and distinguished leaders of society and business, constantly poured cold water on the atrocities which we now know were taking place in Germany and paved the way for genocide. It would have been better if we had had these provisions in place so we could have had open and transparent debate and some legal, formal process of testing evidence. It would have made it easier for Governments—who are, as the noble Baroness, Lady Neville-Rolfe, said, subject to public opinion—to shape that public opinion and respond to it. That is precisely what the amendment of the noble Lord, Lord Alton, does. It makes the business of establishing facts transparent and open so that we can have a wider debate. The courts are quite good at eliciting and elucidating facts.

I agree with the Minister that these issues are difficult. We have had his different opinions recycled in the last few days. At one and the same time, he thinks we should be cracking down hard on a regime that abuses human rights while continuing to trade with it more. I do not wish to make a party-political point; that dual mentality is precisely the dual mentality of the West at the moment. It is not just Britain; it is the European Union, which has just done another trade agreement with China, and it is also the United States. This is the situation we have got ourselves into over the last 30 years, and we must seek to resolve it.

I do not come to the House with great ideas of how we resolve this. I am not much in favour of slashing our trade with China—I hope that we can establish a basis for improvements in the Chinese regime so that that is not necessary. But the crucial point, on which I so strongly support the amendment of the noble Lord, Lord Alton, is that we must have an open, factual debate based on what is actually happening and not sweep anything under the carpet.

Ernie Bevin was making these arguments about Russia in the 1930s, because, as a trade unionist, he saw what Soviet Communists were up to in the trade union movement. That is what turned him strongly against dealing with Russia. The biggest problem he had was getting agreement on what was actually happening in, first, Nazi Germany, then Russia. When I was searching in his papers, I came across correspondence between him and Charlie Chaplin. Charlie Chaplin produced a great film, "The Great Dictator", which exposed and ridiculed Hitler and Nazi Germany and had a huge impact on opinion across Europe and the United States. However, the film was nearly not made, because the financial backers of Charlie Chaplin in Hollywood were worried it would be banned in Britain. We should support the amendment of the noble Lord, Lord Alton.

Lord Shinkwin (Con): My Lords, I rise to speak in support of this all-party amendment so powerfully advanced by my noble friend Lord Alton and supported so eloquently by other noble Lords. I know that my remarks cannot compare with the brilliant speeches we have already heard, so I shall keep them brief.

As I assume do all noble Lords, I believe passionately in freedom—freedom of trade and freedom of conscience. So I have one question for my noble friend the Minister. Just how bad does it need to get before global Britain stands up for that freedom?

I conclude with a question to all noble Lords and, crucially, Members of the other place. If we really believe in freedom, and if we want others to respect and honour it, how, in all conscience, can we not support this amendment?

Lord Purvis of Tweed (LD): My Lords, I refer to my entries in the register of interests. This has been a comprehensive and very thorough debate, as it should be. It has been ably led by the noble Lord, Lord Collins, introducing his amendment and who I think is now collectively our noble friend Lord Alton, for introducing so—

Lord Campbell of Pittenweem (LD): He used to be.

Lord Purvis of Tweed (LD): Yes. I will not be distracted by my noble friend Lord Campbell of Pittenweem with regard to where the noble Lord, Lord Alton, used to sit on these Benches. Nevertheless, he is our noble friend.

The noble Baroness, Lady Neville-Rolfe, referred to the three years of this Bill. There are two things in her contribution I would like to reflect on. First, one of the elements of the Bill that she highlighted as important was not in the Government's draft. In fact, putting the Trade and Agriculture Commission on a statutory footing was as a result of considerable cross-party pressure. The Government recognised that the case was very strong and amended their own legislation. We are seeking a similar kind of regard when it comes to human rights and how the UK trades. The Government have not only scope but precedent in changing this Bill—in listening to arguments and making changes. That is what we are seeking.

The second thing I reflected on was the three years. The reason I referred to the register of interests was that, during this time—although the noble Lord, Lord Lansley, might think I have no spare time other

[Lord Purvis of Tweed]
than that spent on this Bill—I travelled extensively to northern Iraq and to Sudan, two countries that have been badly afflicted by gross human rights abuses of the worst kind. I was in the north of Iraq, with victims of the gross atrocities of Daesh, and with people who were on their phone to their families who were in cellars of houses as prisoners of Daesh. I went to Sudan before, during and after the revolution. I was driving around Khartoum behind vehicles with armed paramilitaries and militia who the BBC had exposed the previous week as throwing people into the Nile and sending people away using the euphemisms—as the noble Baroness, Lady Kennedy, so accurately said—of oppressive regimes or military forces.

I have therefore been a supporter through all the stages of this Bill. Our trading relationships and where we give preferential trading relationships with states should not be isolated from our human rights and foreign policy. This is personal to me, as it has been over these last three years, and therefore I can completely understand the personal nature of many of the speeches in this debate today.

I commend the noble Lord, Lord Alton, and others who spoke so powerfully and those in the House of Commons. My right honourable friend Alistair Carmichael, who co-chairs the All-Party Parliamentary Group on Uyghurs, has led on this issue in partnership with many others and I commend his work. Therefore, from these Benches, we will be supporting Amendments B1 and C1 if they are pressed and we hope that they will be.

There are two key elements in my view. What would be a triggering mechanism that would bring about, as the Minister said in his opening remarks, tough decisions and courses of action? What would an appropriate framework be for making those decisions and what would the course of action be? Because we are operating under legislation, those processes would have to be compliant with domestic legislation and WTO requirements.

On the triggering mechanisms, because these are bilateral agreements, we have to have a triggering mechanism here in the UK, either through an international tribunal or commission—a judicial body—because of our international obligations, or through a domestic court. There has to be a domestic triggering mechanism, either by virtue of our international obligations or starting here domestically.

I have reflected on what the Minister said, and I wonder, with regard to the Minister's letters, what would have happened when a Spanish court indicted General Pinochet. If we had listened to what it says in the Minister's letter, I do not think that we would have put him under house arrest until there was the assuredness that he would be put on trial back in Chile. What would have happened last year if we had listened to the Minister's letter, which was not about a domestic court, when the ruler of Dubai was found guilty in a domestic court of crimes against his wife and children? I found it useful for the Government to say, in international diplomacy, that these are court decisions and that due process was being carried out. If we had to rely on the methods within the letter, I am not sure that that would have been as transparent.

I am so glad that the noble Baroness made reference to selling arms to Saudi Arabia. I wanted to direct this to the Minister, given the letter that was sent to us at lunchtime, which referred to a committee that would then seek a debate on any decisions made with regard to genocide and human rights. The noble Lord, Lord Alton, and I have been sitting on the International Relations and Defence Committee, although unfortunately I have just left it. In our report on the Middle East, the committee's finding was that the UK was on the wrong side of international human rights legislation with regard to arms sales, and called for a pause to sales before further judicial processes. The Government's response was simply to say that they disagreed. There was no debate, and the Government did not have any "tough decisions" or "courses of action", as the Minister said. I am with the noble Lord in being very sceptical about the contents of this letter, because we have seen a committee make a determination and the Government simply say that they disagree.

A domestic triggering mechanism is needed on genocide and, in our view, other gross violations of human rights or war crimes for existing agreements. These Benches also want to see a process in place that is the framework for what actions can be taken. We have had one through virtue of our membership of the European Union, since 1995 and 2008. There were mechanisms in place before trade agreements started to be negotiated, with an impact assessment on the human rights of that country which included the round, to inform the Commission and European Parliament on the decisions that it would take in negotiating with that country. The impact assessments would be carried out during negotiations, which would then inform a vote in the European Parliament on whether it approved of the negotiations having been conducted. Importantly, the agreements would have human rights chapters that included suspension clauses, which could be activated with regard to existing trade agreements.

The noble Lord, Lord Collins, referenced the opaqueness around whether the continuity agreement with Cameroon should have other elements, and I hope that we will debate that. I am also alarmed by the decision of the Government to open trade negotiations with Cambodia, to which we are currently offering preferential trading agreements that had been removed when we were in the European Union last year. So we are now restoring agreements to a country which we had been party to determining did not meet a human rights threshold for the "everything but arms" criteria. I can add that to the litany of complaints made by the noble Baroness with regard to this Government.

We have called for a comprehensive trade and human rights policy with draft legal texts of human rights clauses. This is not just us asking for this because it is something afresh—we are asking the Government to do what they said that they would do.

6.45 pm

It has not been mentioned in the debate so far, but in March 2019 the Joint Committee on Human Rights concluded a report on human rights protections in international agreements. Paragraph 30, which I thought

was very interesting, quoted a letter from the noble Lord, Lord Ahmad, Minister at the then Foreign and Commonwealth Office:

"'The UK's exit from the EU provides us with an opportunity to explore how we can most appropriately use free trade agreements to pursue broader international objectives while recognising the need for a balanced and proportionate approach. The Government is exploring all options in the design of future trade and investment agreements, including relevant human rights provisions within these.'"

We are now at the final stages of the three years-long process of this and the previous Trade Bill. All we are asking of the Government is for them to do what they said they would do to the Joint Committee on Human Rights.

In response to the previous amendment, the Minister quoted at length from the report of the Constitution Committee. With regard to scrutiny, let me quote from paragraph 52 of the report of the Joint Committee on Human Rights:

"The current system intended to ensure Parliament has information about the human rights implications of proposed agreements is not working. Parliament has not received adequate or timely information from Government about the potential human rights implications of international agreements being negotiated or those subject to CRaG scrutiny."

When the Government respond not only to these amendments but to those on scrutiny, I hope that they will move. As the noble Lord said, a concession is not to say that a parliamentary committee can carry out its work; it should be a full response.

I do not want to conclude by ignoring what the noble Lord, Lord Collins, rightly said in relation to his amendment, which I am glad to see—along with the Labour Front Bench, we on these Benches have been calling for a human rights report. The Minister referred to the annual Foreign Office human rights report. I had to smile listening to that because it had been referred to in Committee. At that stage, when I was indicating a potential way forward, I suggested that that report could be expanded to include specific elements of our trade agreements with human rights implications. The Minister said that it was unnecessary to do that, but he now refers us back to that very report. Like the noble Lord, I have read every human rights report since I have been in this House. I can say to the Minister that the report in its current format is not sufficient, so I am really glad that the noble Lord, Lord Collins, has indicated that.

We support these amendments. Should they pass, I hope the Government will take the opportunity afforded to them to consider full scrutiny and to listen to this House and to the Joint Committee on Human Rights. I agree with the noble Baroness, Lady Kennedy, that other people around the world should be listened to as well, because we lead in this United Kingdom; we can be a force for good on prevention around the world. I hope that this House will allow the House of Commons to reflect on this properly.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, despite the problems in relation to attendance and ability to speak that we have heard about, this has been a very good debate, full of passion and erudition. We do not have nearly enough Charlie Chaplin in our House, and so I was glad that my noble friend Lord Adonis was able to bring him in, even at this late stage.

Both opening speeches on the two amendments, from my noble friend Lord Collins and the noble Lord, Lord Alton, respectively, were moving, persuasive and, of their type, almost unanswerable. As the noble Lord, Lord Forsyth, pointed out, the Government are in a hole here. The blizzard of meetings, calls and letters across three departments, and the tone of the arguments deployed by Ministers, are all indicative of a panicked response, stemming perhaps from a failure to anticipate the problem and compounded by a worry, as my noble friend Lord Collins saw it, about no longer being able to have their cake—trade—and eat it, with no worries about the ethical elements. If a concession is to be brought forward which is "Let's set up a committee", one wonders what they thought the original question was—it will not wash.

It is clear that these amendments need to be considered as complementary, as my noble friend Lord Collins and the noble Lord, Lord Alton, agreed. Together, they pose the question of when and in what way we bring in an ethical dimension to our trade policy. The Minister said at the start of the discussion that trade does not have to come at the expense of human rights, but it does—unless, as the noble Baroness, Lady Altmann, warned us, good people follow Burke with action, not just nice words. As the noble Lord, Lord Polak, said, words are completely inadequate when you are facing a case of genocide.

We, the Official Opposition, will support both amendments when they are called. The amendment of the noble Lord, Lord Alton, respects parliamentary authority now and it has been changed in a way which makes it more effective and more appropriate for its purpose. It sets in place a process to remedy the current defects in the way the international order deals with the egregious crime of genocide. The amendment proposed by my noble friend Lord Collins rightly places a responsibility on Ministers to make a determination about crimes against humanity and to keep Parliament fully informed about breaches of compliance in relation to the UK's human rights and international obligations. This seems to be a logical, balanced and appropriate approach to the issues that are before us and we will support the amendments.

Lord Grimstone of Boscobel (Con) [V]: My Lords, this has, quite rightly, come to be the most passionately debated issue. We have heard a number of remarkable interventions from across the House. Anybody listening to the noble Lord, Lord Alton, could not have failed to be moved by what he said, and I pay particular tribute to him, as I have done on previous occasions.

The Government have listened carefully before today, and we will listen very carefully to the points that have been put forward in this debate. First, I make it crystal clear to noble Lords that the UK does not have a free trade agreement with China and is not currently negotiating one. If it were to do so, any concluded agreement would be laid before Parliament, as is usual under the terms of the Constitutional Reform and Governance Act, which empowers Parliament to undertake treaty scrutiny prior to ratification. This mechanism is available to Parliament now, as it has been since 2010, and it rightly does not turn on determinations being made in the courts.

[LORD GRIMSTONE OF BOSCOBEL]

I say without any minimisation that it is always open to parliamentarians to raise the issues of the day with the Government and to spotlight developments of serious concern, both domestically and internationally, on human rights, trade and myriad other issues. Parliamentary committees have existing powers to hold inquiries and publish reports and the Government welcome and encourage the searching and serious efforts of parliamentary colleagues from both Houses in this regard. However, there are critical, practical concerns with this amendment which I outlined earlier. I shall not repeat the arguments I gave in my opening, but they are real and serious. I must ask noble Lords to put aside the quite understandable emotional reaction that they have to this issue and to consider these arguments and the points that my noble friend Lord Wolfson and I put in our letter today. Of course, I apologise to noble Lords that the letter was not issued earlier.

There are serious wider issues affecting the issues in this amendment, as has been recognised by my noble friend Lady Neville-Rolfe, the noble Lord, Lord Adonis, and others. This Government are committed to working with Parliament on this most heinous crime of genocide and to explore, and to continue to explore, options with Parliament in this regard as it relates to trade, but we must proceed without amending the delicate balance in the constitution or the role of the courts, no matter how terrible these issues are, or we will run the risk of undermining the very aims of those seeking justice.

However, yet again, I want to make it completely clear that the Government understand the strength of feeling on this matter. It is completely common ground between the Government and the noble Lords who have spoken that there must be enhanced scrutiny for Parliament on both the issue of genocide and the Government's response to this most serious of crimes. I accept that point completely on behalf of the Government.

Accordingly, the Government are looking at how we can ensure that the relevant debate and scrutiny can take place in Parliament in response to credible concerns about genocide in defined circumstances. We want to work with Parliament to find a parliamentary solution and ensure that the Government's approach to credible claims of genocide is both robust and properly accountable to Parliament. This is not a subject that can be swept under the carpet. It must be dealt with transparently and openly.

The Government's proposal is that if a Select Committee takes such evidence it considers appropriate, publishes a report stating that there exist credible reports of genocide and subsequently seeks a debate on the report or is dissatisfied with the Government's response, HMG will of course facilitate a debate on the report in Parliament. Such a debate would bring extreme focus to the issue in question. It would greatly increase political pressure on the situation in question and provide further scrutiny of government policy. I am convinced that that is the best way forward.

Lord Collins of Highbury (Lab): My Lords, this has been an amazing debate. We have heard some powerful speeches; I will remember many of them for a very long time.

I was struck by the contribution from the noble Baroness, Lady Altmann. I tried to participate in Holocaust Memorial Day through listening to lots of online events. I was struck by someone who, like the noble Baroness, lost her family and parents. She talked about how she speaks to schoolchildren about these horrible events; obviously, children are too young to be really hit with that horror. She said that we understand where genocide ends but do not understand where it begins. That is what this debate is about: human rights and respect. She said that she was teaching children about how failure to respect is a slippery slope. I know that myself from being a gay man in the 1980s; I would recommend watching "It's A Sin" because you can see what happens when people lose respect.

We are in a new era where we have a responsibility to start negotiating trade agreements outside the EU. The noble Lord, Lord Purvis, is absolutely right: we must ensure that, with that responsibility, we take cognisance of all our human rights responsibilities.

I want to pick up on the point made by the noble Lord, Lord Forsyth. He and I have disagreed about policy on many occasions but we agree on so many matters of principle, and on principles relating to human rights and genocide there is not a single difference between us—we are both committed. I reassure him that the purpose of my amendment is to complement and underpin the very important amendment from the noble Lord, Lord Alton. He should have no fear in voting for my amendment, because the Minister has just told us that what the Government are doing is work in progress. Great—I want to make that work progress even more, but the only way we can do that is by ensuring that the elected House has the opportunity to consider both these amendments. I wish to test the opinion of the House.

7 pm

Division conducted remotely on Motion B1 (as an amendment to Motion B)

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Motion B1 (as an amendment to Motion B) agreed.

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7.13 pm

Motion C

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

That this House do not insist on its Amendment 3, to which the Commons have disagreed for their Reason 3A.

3A: *Because it is not an effective means of dealing with cases of state genocide.*

Motion C1 (as an amendment to Motion C)

Moved by ***Lord Alton of Liverpool***

At end insert "and do propose Amendment 3B in lieu—

3B: After Clause 2, insert the following new Clause—

"Agreements with states accused of committing genocide

(1) The High Court of England and Wales, or the Court of Session in Scotland, or the High Court of Justice in Northern Ireland, may make a preliminary determination that another signatory to a relevant agreement represents a state which has committed genocide, within the meaning of Article II and Article III of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, following an application to the Court from a person or group of persons belonging to a national, ethnic, racial or religious group, or an organisation representing such a group, which is alleged to have been the subject of that genocide.

(2) "A relevant agreement" in subsection (1) is a bilateral trade agreement towards which the United Kingdom is negotiating or to which it is a signatory.

(3) The Lord Chancellor must lay before both Houses of Parliament any such preliminary determination by the Court.

(4) After the laying before Parliament of a preliminary determination under subsection (3) a Minister of the Crown must, after a reasonable period, make arrangements for a motion to be debated in each House of Parliament requiring the Government to set out its course of action relating to the relevant agreement in subsection (1).

(5) This section applies to genocides which occur after this section comes into force, and to those considered by any Court in subsection (1) to have been ongoing at the time of its coming into force.

(6) A Minister of the Crown may by regulations made by statutory instrument make provision for or in connection with an application and preliminary determination made pursuant to subsection (1).

(7) Regulations under subsection (6) above may in particular—
(a) specify the form, content, and criteria for applications;

(b) make provision about the procedure to be followed in relation to applications;

(c) make provision about the procedure and rules of evidence necessary for consideration of an application by the Court, allowing for contradictory representations to be made.

(8) In making such regulations the Minister of the Crown must have regard to—

(a) the experience gained in the operation of this section;

(b) the object and intended purpose behind the operation of this section including—

(i) the upholding of all undertakings in and international obligations arising from the United Nations Convention on the Prevention and Punishment of the Crime of Genocide;

(ii) provision of meaningful access to the Court by persons making applications specified in subsection (1) without hindrance from unreasonable provision made pursuant to subsection (7).

(9) Regulations under subsection (6) may contain supplemental, incidental, consequential and transitional provision.

(10) A statutory instrument containing regulations under subsection (6) is subject to annulment in pursuance of a resolution of either House of Parliament.""

Lord Alton of Liverpool (CB): My Lords, the House would not forgive me if I were to detain it long. We have heard extraordinary—perhaps an overused word during this debate, but I think a proper one—and powerful speeches from all sides of your Lordships' House. I can only say that I am extraordinarily indebted to everyone who has supported Motion C1. I was particularly touched by some of the personal stories we heard during this debate.

If anyone outside this Chamber has any doubts about the purpose or point of your Lordships' House, surely, having listened to today's debate, they will have understood why we are here and that we are doing our duty in trying to demonstrate to the world outside that we would be prepared to go to the stake for the values we stand for in Parliament, in government and throughout the whole of our society.

7.15 pm

The noble Lord, Lord Blencathra, referred to Richard Cobden. He brought back to my mind that that arch-priest of free trade, who was a radical Liberal Member of Parliament from the north of England—who started a calico factory not very far from where I live in the north—and who went to Manchester and became this extraordinary figure in the great battles over the Corn Laws, opposed slavery and the opium trade, and he spoke eloquently in Parliament against them. He knew there were limitations, and we are trying to impose a limitation where genocide has been demonstrated to take place.

The noble Baroness, Lady Kennedy of The Shaws, reminded us that Raphael Lemkin saw over 40 members of his family murdered in the Holocaust but, prior to those events, had studied atrocity crimes. Like the noble Lord, Lord Purvis, and I, he studied events in northern Iraq in particular; like the noble Lord, last year I visited the Yazidis and also the Assyrians. I went to a place called Simele, where the Assyrians were murdered in 1933. Lemkin wrote about that; he understood the enormities and horrors and what happens when you fail to take a stand. He felt it personally. He coined the word "genocide", which is where the genocide convention came from.

Before we vote, let us remind ourselves what this high threshold in the convention says—no one has actually said it during this extraordinary debate. Article II defines genocide as

"any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group."

We have heard during noble Lords' speeches that precisely those things are happening in Xinjiang in China. However, they can be demonstrated to be a genocide only if a court is given the option to do so. That is why this amendment was laid before your Lordships' House.

The noble Lord, Lord Grimstone, made a perfectly reasonable point about trade—I will draw my remarks to a close in a moment. He said that we were against having a free trade agreement with China. Yesterday he said in a Written Answer:

"China is an important trading partner for the UK, and we are pursuing increased bilateral trade."

The only way we can deal with making agreements with genocidal states is to be able to demonstrate that there is a genocide. If there were to be a propaganda victory, surely such a victory would be able to demonstrate that the British Parliament did not care enough to put this in the Bill and make it into legislation.

I end by reminding the House of two heroes of mine—

Viscount Younger of Leckie (Con): I am sorry to interrupt the noble Lord. I know he made a very passionate and emotive speech earlier. The purpose now is to press his amendment, should he choose to do so.

Lord Alton of Liverpool (CB): I am also exercising my right of reply at the end of debate, and I am drawing my remarks to a conclusion.

Two heroes of mine from the Nazi period have been referred to in this debate. One was a man called Maximilian Kolbe, who was taken to Auschwitz and executed there. He said that

"beyond the … hecatombs of extermination camps, there are two irreconcilable enemies in the depth of every soul … what use are the victories on the battlefield"—

in other words, what use are all the privileges we enjoy—

"if we ourselves are defeated in our innermost personal selves?"

The other person was Dietrich Bonhoeffer, executed by the Nazis, who said:

"Not to speak is to speak. Not to act is to act."

I commend Motion C1 to your Lordships' House; this is our chance to speak and to act. I would like to test the opinion of the House.

7.19 pm

Division conducted remotely on Motion C1 (as an amendment to Motion C)

Contents 359; Not-Contents 188.

Motion C1 (as an amendment to Motion C) agreed.

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Motions C2 and C3 not moved.

Motion D

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

That this House do not insist on its Amendment 4, to which the Commons have disagreed for their Reason 4A.

4A: *Because Parliamentary scrutiny of trade agreements is ensured by existing measures, and regulations under Clause 2 are subject to the affirmative procedure in any event.*

Lord Grimstone of Boscobel (Con) [V]: My Lords, with the leave of the House I will speak also to Motions E, E1, F, F1, H, H1, J and J1. The amendments in this diverse group all have something in common: they all relate to standards and protections, whether protecting the UK's high agricultural standards, children and vulnerable people online, or the NHS and medical data.

Lords Amendment 6 builds upon the government amendment brought forward to the previous Trade Bill, after agreement across the House. Consequently, the Government have some sympathy with how this amendment relates to continuity agreements. I am happy to commit to working with noble Lords on the drafting, on the understanding that the Government will table an amendment, when the legislation returns to the other place, on the agreements in scope of Clause 2.

Although this legislation deals with continuity agreements, in which noble Lords will clearly see the Government's commitment to maintaining standards, we have also been clear that the UK's strength—our unique selling proposition, as it were—has always been our high standards. I am pleased to confirm from this virtual Dispatch Box that it is both ethically right and economically in our interest to maintain these high standards, and we have made this clear in our negotiations on FTAs with new partners.

In addition, when we sign future free trade agreements with countries such as Australia and the US, where changes are required to domestic law we will also bring forward the necessary legislation to implement those agreements. Parliamentarians will have the ability to amend that legislation or vote down the Bill if Parliament decides that the agreement is insufficient and does not protect standards. I have no doubt that the strong arguments made in relation to standards on our continuity agreements will be raised with equal passion on future deals.

Lords Amendment 4 seeks to introduce a range of restrictions on the regulations that can be made under Clause 2 relating to the delivery of free and universal health services, the protection of medical data and scrutiny of algorithms, and a prohibition on the use of investor-state dispute settlement, rachet clauses and negative listing provisions. This Government, like each and every Government since the establishment of the NHS, are completely committed to ensuring that it remains universal and free at the point of service. As I have said before on a number of occasions, the NHS, the services it provides and the price it pays for medicines will not be on the table when we are negotiating free trade agreements.

It is a truism that actions speak louder than words so, if you are not convinced by my words today, please feel free to take a look at the agreements we have already signed. Not one has undermined the principles or the delivery of a free and universal NHS; not one has affected our ability to protect the health service; and the powers in this legislation provide continuity with existing EU trade agreements. The NHS is not on the table. The price the NHS pays for drugs is not on the table. The services the NHS provides are not on the table as trade-offs in return for anything else. The NHS is not, and never will be, for sale. However, I reaffirm my commitment today to work with noble Lords to include the NHS—including data protection provisions—within the standards amendment that the Government will now bring forward.

Lords Amendment 7 seeks to prevent the Government signing international trade agreements that are not explicitly compliant with international and domestic obligations relating to the protection of children and vulnerable people online. The Government are committed not only to maintaining but to strengthening protections from online harm for the most vulnerable members of our society. We have a proud record in this area. The Department for Digital, Culture, Media and Sport—DCMS—has published an initial government response to the *Online Harms* White Paper that sets out new expectations for tech companies to keep their users safe online. The full government response will be released alongside interim voluntary codes on tackling criminal activity. I can confirm that this will be followed by the introduction of new primary legislation this year, substantially upgrading protections from harmful or inappropriate content for children and young people, and showing that the UK will continue to be a world leader in this cause.

Noble Lords have made it clear that their concerns are primarily regarding a potential US FTA. As we have made clear throughout, the Trade Bill cannot be used to implement an FTA with the US. New legislation will be required to implement any such deal. Parliament, of course, will be able to debate, scrutinise and amend that legislation in the usual way. If Parliament does not pass any necessary implementing legislation, the agreement will not be ratified. Additionally, if there are any provisions in these new free trade agreements that Parliament does not agree with, it maintains the ability to resolve against them through the CRaG process.

I have met with the noble Baroness, Lady Kidron, a number of times and she has shown passion and courtesy in those meetings. I support her cause and I am happy to work with her to include online protection for children and vulnerable people within the scope of the standards amendment that I have just discussed.

Finally, I turn to Amendments 9 and 10 concerning the Trade and Agriculture Commission, which the Government support. These amendments put the commission on a statutory footing to help inform the report required by Section 42 of the Agriculture Act. The other place supported the proposals by a majority of 100. The Trade and Agriculture Commission will advise the Secretary of State for International Trade on certain matters set out in Section 42 of the Agriculture Act concerning the consistency of certain free trade

agreement measures with UK statutory protections concerning animal and plant life and health, animal welfare and the environment.

The other place re-amended the provisions in the Trade Bill relating to the Trade and Agriculture Commission to remove human health from its remit. As my ministerial colleague, the Minister of State said during the debate in the other place, putting human health under the remit of the TAC would duplicate the work of other appropriate bodies, and that would undermine both the TAC and those relevant bodies.

I met with the noble Lord, Lord Grantchester, last week and promised to outline to him the role of the Food Standards Agency in this important area. The Government recognise the important role of the food standards agencies in providing independent and science-based evidence on key areas of human health, such as food safety standards. As independent agencies, the FSA and FSS are free to comment publicly on future FTAs with regard to the areas of their statutory remit, and Ministers will of course consider any such views. Furthermore, in the Government's preparation of the report under Section 42 of the Agriculture Act, we are considering how best to draw on relevant expertise of different departments and specific relevant bodies such as the food standards agencies.

The clear intention of the Government is to recognise the importance of our independent food standards agencies and the advice that they provide. This Government seek not to duplicate the advice of those agencies or undermine their expertise. That is why they have set out that human health should be out of scope for the TAC's advice but they in no way minimise the importance of advice on human health.

I hope that that reassures the noble Lord, Lord Grantchester, and that the House is clear on the Government's commitment to maintaining existing standards. I beg to move.

7.45 pm

Motion D1 (as an amendment to Motion D)
Moved by ***Baroness Thornton***

Leave out "not"

Baroness Thornton (Lab): I thank the Minister for his opening remarks and the reassurances that he seeks to give us about health, social care and data. We return to this issue because we raised it in Committee and on Report and there has been considerable support across your Lordships' House. A Division took place on 7 December at around midnight, which was won quite substantially. I am again inviting the Minister to accept this amendment so that the Government can proceed with their trade negotiations, confident that Parliament has expressed its clear intention.

The reason this is so important is that although the Government have repeatedly promised that the NHS will be "off the table"—those promises were repeated at some length by the Minister, for which I am very grateful—to ensure that this is the case, and that future Governments are able to reform the NHS and the interface with social care moves towards a more collaborative model, the Bill must ensure that the health and social care sectors are excluded from the scope of all future trade agreements, including services and investment chapters.

While the Government have repeatedly pledged that the NHS is not on the table in trade negotiations, we also know that there have been detailed conversations between the UK and US negotiators, revealing that health services have been discussed and that the US is probing the UK's health insurance system and has made clear its desire for the UK to change its drug pricing mechanism. I was reassured by many of the things the Minister said, but he repeated what the Government have always said about the NHS—they guarantee that it will be free at the point of use. That is great, but it does not say, "We are protecting the public ownership of our NHS." That really is the point; many things can be free at the point of use that are not publicly owned. It is important to recognise that that takes us only so far.

The Bill is being discussed in the context that Parliament does not yet have adequate powers to guide and scrutinise trade negotiations; I sat in on the end of the previous discussion, which was about work in progress. The current process provides no legal mechanism to directly influence or permanently block trade agreements—hence the amendments which we have discussed throughout the passage of the Bill. I thank the noble Lords, Lord Patel, Lord Freyberg and Lord Fox, who supported this amendment on Report.

This amendment is a merging of the important amendment about NHS data tabled by the noble Lord, Lord Freyberg, with the one about the NHS and public health. These are national assets which must not be put in jeopardy or squandered in whatever the future holds for UK trade with the world. To guarantee protection, the Bill must ensure that the health and social care sectors are excluded from the scope of all future trade agreements. It is important that the Minister says that this is the case, and he has done so this evening.

The Bill must rule out investor protection and dispute resolution mechanisms in UK trade deals to ensure that private foreign companies cannot sue the UK Government for legitimate public procurement and regulatory decisions that we decide to take with regard to our public services, including the NHS. If a future Government want to change the structure of the NHS, they must not be prevented from doing so by trade deals that this Government might agree. The Minister needs to guarantee that this will not happen. I beg to move.

Lord Grantchester (Lab): Motion E1 in my name is on the non-regression of standards in international trade agreements. Your Lordships' House will remember the outcome of the Agriculture Bill—now the Agriculture Act—on the subject of standards on imported food and the inclusion of Clause 42 in the legislation. Indeed, the Minister has referred to this already. The three key areas in relation to international trade negotiations and agreements are listed in subsection (2) as

"human, animal or plant life or health",

together with animal welfare and environmental protection. To this, the basic non-regression of standards underlined by the withdrawal agreement and the EU-UK

[Lord Grantchester]
Trade and Cooperation Agreement, clarity and certainty must be provided in relation to the UK's ability and competence to be able now to diverge in its standards.

As befits the non-regression of standards in an international trade context in the Bill, certain other fundamental standards across society and how the United Kingdom operates must be added to that list. The earlier amendment supported on Report by your Lordships' House included the importance of employment labour law as well as human rights, child and women's rights and international obligations, but this amendment now also includes two further key vital areas on which the House and the public have spoken loudly and clearly, which were also listed in subsection (2): online harms and the National Health Service.

Once again, the Government will assert that they have no intention to regress, but this must be clear in a fundamental area of UK law. The public are rightly fed up with the abuse on social media of their black footballers and heroes. Anonymity should no longer be somewhere for abusers to hide. The Government are treading slowly towards more detailed legislation to come on online harms, and I thank the noble Baroness, Lady Kidron, and others, who have so boldly paved the way for this to happen.

The National Health Service is another fundamental area, cherished throughout all four nations of the UK. I thank my noble friend Lady Thornton for her introduction of her Motion D1. She is correct that the NHS is a national asset, not to be jeopardised as the UK begins to make new trade agreements but to be guaranteed protection in her amendment and in my amendment as part of the non-regression of our nationally recognised standards.

This amendment has heard and recognised the debate in the Commons on your Lordships' amendments sent to them in previous weeks. This amendment signals that I wish to resolve with the Government by returning to the agreement secured on the last Trade Bill, so ably guided through your Lordships' House by the then Minister, the noble Baroness, Lady Fairhead. This reflects her drafting that implemented trade agreement provisions, including any primary or secondary legislation, must be consistent with maintaining the existing statutory protections as listed.

At the time, the focus was on leaving the EU and securing rollover deals to the existing EU agreements. The Government will say that they have abided by their commitments without legislation. Certainly, I congratulate them and the Minister on having secured 62 rollover agreements; the process is very nearly done. I now assert that this amendment is needed more than ever, as work is under way in the next phase of trade deals. I would be grateful if the Minister could confirm in his response, first, that he agrees that we need a clear, all-embracing statement of our commitment to the non-regression of standards on the face of the Bill; and, secondly, having said that, and understanding that the Government will not proceed with a new deal if they consider that Parliament may not be supportive, why do they undertake deals piecemeal, as they contend, deal by deal? Surely this sort of amendment can help us to do better. Is the Minister expecting Parliament to be tied up with detailed consideration of each individual deal from now on? However, I am heartened by his opening remarks.

I would also like to mention the amendments in the name of the noble Baroness, Lady Boycott—Motions H1 and J1—and thank her for returning to the important subject of food. The Commons has now had a chance to reflect on the wording of the Trade Bill, in conjunction with the wording of the Agriculture Act, and I thank the Minister for our continuing discussions. I also thank Heather Hancock, the chair of the Food Standards Agency, for discussions with her as well. However, certain issues may remain on which it would be helpful if the Minister could reply to provide clarity and certainty regarding how this non-ministerial government department will work with the Trade and Agriculture Commission to provide advice to the Minister, which will then become part of reports to Parliament on all future trade agreements in relation, importantly, to the new arrangements under earlier amendments taken already today.

The Minister is aware of the questions I have raised. After the debate and his responses, I will write to him—if I may—with any that require further deliberation, and ask that, as decisions are taken, they be announced as ministerial Statements.

I therefore conclude by stressing the importance of my amendment on standards, on which I will be seeking the opinion of the House. Standards define who we are as a society and as a nation. Standards define how we nourish ourselves as human beings. Standards define how we cherish the world in all our environments. Standards define how we respect our relationships with all other animals. Standards define how we treat each other in all our working relationships. Standards define how we treat each other online as in our interfaces with each other. These reflect our values; all this will be reflected in our laws. I conclude that this amendment is how we should insist we will continue in all our trading relationships.

Baroness Kidron (CB): I rise to speak to Motion F1 in my name and to speak in support of Amendment 6B. I refer the House to my interests, particularly as founder and chair of the 5Rights Foundation. I noted the Minister's words at the outset, and I will return to them. But for the purposes of the House and those who might be drafting such an amendment, I want to set out my reasons for the amendment that we have before us.

Since we last debated this amendment, a number of significant things have happened which have made it necessary to re-present it. First are events in Canada: against the will of many politicians of all stripes, the free trade agreement between the United States, Canada and Mexico saw the inclusion of Section 230-style protections for tech firms. At the time, the Canadian Government promised parliamentarians that nothing in the agreement would impinge on their ability to regulate companies under existing or future Canadian law.

Canada is the base for Pornhub, the largest pornography site in the world. But when Pornhub was found to be monetising child rape and child sexual

abuse material, the Canadian Government representative in the Senate, Senator Marc Gold, had to admit that

"there are provisions in the"

USMCA

"that make it difficult to deal with a company like Pornhub."

Canadian parliamentarians scored one small concession during the passage of that free trade agreement: to keep domestic criminal laws on prostitution, sex trafficking and sexual exploitation. It is agreed by the Government that these are now the only Canadian domestic laws in this policy area that take precedence over the terms of the agreement.

Motion F1 does not refer to a theoretical concern. This is a clear and present danger, and it is designed to prevent the powerlessness currently experienced by Canadian lawmakers as we speak. It would, if it were adopted as a whole, put UK online protections beyond doubt.

I have been very grateful for the time given to me and Members of the other place by the Minister and his colleague Greg Hands, the Minister for Trade, and I actually agree with them that we are entirely aligned in this policy area and that the Government have reason to be proud. None the less, I have to challenge their assurance that it simply could not happen on their watch—because it already has.

8 pm

In the recent Japan-UK trade deal, 98% of the text is a carbon copy of the EU-Japan FTA, but slipped into this continuity deal is wording that is almost identical to that of the USMCA. While it stops short of inserting Section 230 wording—since it is not a US deal—its provision on domestic regulation says:

"Each Party shall ensure that all its measures of general application affecting electronic commerce, including measures related to its collection of information, are administered in a reasonable, objective and impartial manner."

By contrast, the wording it replaces in the EU deal says:

"The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, public education, safety, the environment including climate change, public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity."

That is the wording that allowed the UK to introduce the children's code into the Data Protection Act, and the wording that allowed the Government to put forward the provisions they are suggesting for the online harms Bill, including a duty of care, and all the other provisions and progress that we might make in this area.

Public Citizen in the US—renowned experts on international trade—suggests that, if UK data protection and the provisions envisaged for the online harms Bill were contested under the language in the Japanese deal, in the way the Pornhub case was in Canada, it would fall foul of the law. But more important even than whether I am right or wrong is the fact that, whether or not this vague wording would result in blocking UK policy, it would take years of legal action with the companies with the deepest pockets in the world—and therefore a lack of protection for all that time—while we found out.

I acknowledge what the Minister has already said, and I want him, when he reappears on the screen, magically, to wind up, to assure me that what he is proposing is sufficient for the protections not only that children need but that the Government need in order to protect their own policy programme. I understand that the Government are not minded to accept my amendment and that the parliamentary maths allows them that privilege, but I want to make three brief points in favour of doing so.

Since we first divided on this matter, TikTok announced changes to its platform, across the globe that are a direct result of the regulatory requirements of the ICO's children's code. Similar changes have been and will be announced by Silicon Valley companies that have resisted such changes for years. It would be simply devasting to the UK's reputation to put this landmark piece of legislation at risk just as legislators and regulators from Australia to Africa are seeking to mirror its provisions. The global community looks to the UK for leadership on this issue. A clear provision in the Bill that these advances will be protected would confirm that leadership.

Secondly, there is a growing consensus, in and out of Parliament, that we must tackle the harms of the digital world in a more fundamental way. The vote in the Commons was on party lines, but the machinations of Parliament do not actually reflect the true feeling. If my inbox is anything to go by, it does not reflect, either, the feelings of the Government Benches in this House or the other place. When I went to see the Minister for Trade on two separate occasions, I was accompanied each time by a very senior member of his own party, and I thank them both. I believe it would commend the Government to Members of both Houses and all parties were they to find a way to insert an absolute protection for children—not a fig leaf—into the Bill.

Thirdly, as the Canadian example exemplifies, there is no promise made at the Dispatch Box that can offer the level of certainty that UK children deserve.

As well as what the Minister suggests will be in the non-regression amendment, I ask him to confirm that keeping Section 230 language, or language like it, out of all trade deals is a stated objective of UK negotiators. I would like him to defy expectations and parliamentary maths and give an unequivocal commitment that, by hook or by crook, the online protections for children in the Bill will be fit for purpose.

I turn to the amendment in the name of the noble Lord, Lord Grantchester. I thank the noble Lord for adding, in paragraph (e), online protections of children and vulnerable adults. For the reasons that I have set out, it would be insincere to say that it was equal in scope to what I originally suggested, but to my knowledge this is the first time that online protections for children have been included in the same breath as the long-standing issues of workers' rights, protecting the NHS and food and environmental standards. That is a huge step forward in acknowledging the importance of online protections for children.

I worry on behalf of children and indeed on behalf of the Government that it does not affect the protection for the Government's flagship online safety Bill unless a trade deal, by luck, happens to come about after that Bill completes its passage. I hope the Government intend to move very fast. I am confident that the House wants

[Baroness Kidron]
to see non-regression of existing standards, but again I appeal to the Minister that his commitment is clear and profound and that the government amendment in the Commons, in a further round of ping-pong if necessary, will reach the same objectives.

Lest anyone forget, in listening to the intricate detail of the language of trade deals, what we are talking about here is our ability to prevent the wholesale spread of harmful material such as those offered by self-harm and pro-suicide sites, the nudging of children to meet stranger adults in online settings and the egregious targeting of children with cosmetic surgery and other inappropriate advertising, and the ability to prevent sites such as Pornhub freely monetising rape. The harm is not theoretical—it is manifest in the lives of millions of children—and neither is the danger of undermining our world-leading legislation by means of a trade deal. I thank the Minister for his words and I hope he will join me in building the digital world that children deserve.

Baroness Boycott (CB) [V]: My Lords, it is a great pleasure to follow my friend, the noble Baroness, Lady Kidron, who is such a champion. I think her words will have moved people a great deal. I shall speak to Amendments H and J, which are to do with public health, an issue that I feel has been kicked from pillar to post over the last few months. I hope it has not slid entirely down the agenda and I was encouraged by the Minister's words, but I would like to make a few points and ask a few questions.

I remind people about where we are right now. We have just passed the grim milestone of 100,000 deaths from Covid. One of the main reasons why that death toll is so high is that we have extremely poor public health. The NHS has identified clinical vulnerability to Covid as obesity and being overweight, which affects 28% of our population. Another key morbidity is diabetes. At the start of 2020, just a year ago, 3.9 million people had that diagnosis—that is up 100,000 a year. The causes of it are primarily, indeed almost exclusively, poor diet. Our NHS is spending £6 billion a year treating diet-related disease.

Yet, at a press conference to launch the trade negotiations with Australia, the Prime Minister extolled the benefits of the deal, saying that we could get more, cheaper chocolate Tim Tams—those rather irresistible chocolate biscuits that are like our Penguins. Just last week, the UK's International Trade Secretary, Liz Truss, said she intended to cut what she called the "Tim Tam tax", referring to the tariffs on these same Australian biscuits. Although we have notified the WTO of plans to introduce limits on the promotion of unhealthy food in England, this policy could be seen by trading partners as a barrier to trade and thus be removed. We will have to wait and see.

How are we going to monitor public health? The Minister referred to the fact that this issue began to be discussed during consideration of the Agriculture Bill and I agree, there was a lot of discussion about it. The views of the public were well known at that point, and 2.6 million—that is a lot of people—signed petitions calling for our standards to be protected in law. The Government opted instead to introduce the Trade and Agriculture Commission. Section 42 of the Act committed to reports being put before Parliament explaining how free trade agreements impact on, at this point,

"human, animal or plant life or health, animal welfare, and the environment."

In previous debates we called for a public health representative to be included in the TAC. We sent an amendment to the Commons for consideration; it was rejected. Ministers say that public health is so important that reports on the impact of trade deals on public health will therefore be presented to Parliament alongside any other FTAs, and that this will not be the responsibility of the TAC as it would overburden the organisation. So, where is it going to go?

The plan is obviously for it to end up in the Food Standards Agency, which is an excellent organisation. It is an independent government department, working to protect public health and consumers' wider interests in relation to food in England, Wales, and Northern Ireland—note, not Scotland. Its mission is to have "food we can trust." If we have this independent department charged with looking after public health, why have Ministers not been more upfront about it? If you look at that little story of how public health has been taken from one place to another, I think many people would be forgiven for thinking that it was not really very high on the Government's agenda.

I would like to know tonight from the Minister exactly how this is going to work. How is the FSA going to be staffed? Its funding is down: from £114 million in 2011 to £98 million now. It currently employs 1,718 staff—again, down from the 2011 figure of 1,950. How exactly is this going to work? What will be its relationship to the TAC? How exactly is it going to put things in front of Parliament and, crucially, how does this work with Scotland?

I will reiterate a point I have made before, and which is really the big thing I am trying to say. It is no good focusing just on food safety. We need to consider what kills us slowly, as well as what kills us quickly. The Food Standards Agency has explained its role in regulating novel products and that it will consider safety, but also always the consumer interest. Will this cover public health issues such as the degradation of antibiotics through overuse in farming on imports, increases in pesticide residues, or possibly even the re-introduction of banned pesticides? What powers might it have to advise on the impact of trade policies that sweep away tariffs on the very high fat sugar and salt products—HFSS—that we are trying to limit the promotion of? Indeed, the Government, the Prime Minister and the obesity plan are all attempting to tackle this.

Once again, public health is slithering down. At this extraordinary time in our nation's history, when we have seen the devastating impacts of an unhealthy nation and how much misery and sadness that can lead to, this ought to be an extremely important issue. I look forward to the Minister's reply.

The Deputy Speaker (Baroness Henig) (Lab): The following Members in the Chamber have indicated that they wish to speak: the noble Baroness, Lady Kennedy of The Shaws, the noble Lord, Lord Hunt of Kings Heath,

the noble Baroness, Lady Jones of Moulsecoomb, and the noble Lord, Lord Freyberg. I call the noble Baroness, Lady Kennedy.

Baroness Kennedy of The Shaws (Lab): My Lords, I endorse what was said by my colleague on Labour's Front Bench: standards define us. They reflect our values, and we in turn put them into our contractual relations and our law. It is vital that, in any urgency to acquire trade deals, we do not in any way lower those standards.

8.15 pm

Concerns have been expressed in this House about maintaining standards in agriculture, food, the environment, employment protections for workers, the healthcare of our citizens, encroachment on our proud National Health Service, the misuse of the data of patients and those who use that service, and the protection of our children, who are at the mercy of big tech companies—more powerful now than most other companies in the world. I really listen to the words of the Minister, who seeks to reassure us that there will be no reduction in standards as we go forward into trading deals, having now left the European Union.

I added my name to this list to speak in support of the noble Baroness, Lady Kidron, who raised issues that should be a source of real alarm to this House. It was a source of regret to me when I saw that she was not receiving the support of my Benches for her amendment, because the protection of our children is absolutely paramount. She gave the recent example of the US-Mexico-Canada trade deal, and how Canada found that what looked like the innocuous phrasing of a contractual commitment was unable to protect it from the encroachment of pornography on an incredible scale. It is one of the things causing such disturbances and unfortunate consequences among our young, because accessing it is so easy. It was interesting that she made the parallel with the wording used in our own recent Japanese trade deal. Some noble Lords will not know this, but I am a criminal lawyer. I alert the House to the fact that Japan is one of the great producers of pornography, and that wording—lawyers are trained to do this—that may look innocuous but which is sufficiently vague can be used to block the many things that concern us about standards.

The legal firepower of big corporates is such that it is very difficult to meet it—I promise noble Lords—particularly when you are talking about the big tech companies, so I put a warning before this House. I listened to the reassurances and I trust the understanding of the noble Baroness, Lady Kidron, of the full measure of those commitments; I have not attended those meetings.

This will be quite a treacherous path in securing trade in the months and years to come, because it is where the lawyers step forward. As a lawyer, I can tell noble Lords that when it comes to the negotiations and the drafting of the trading agreements, it is very difficult to nail down standards in the way that we seek. I hope the words of reassurance do not come back to bite the Minister in time to come. I too wait to hear what the Minister has to say when he returns to the screen. Had Amendment 6B been put forward, I would certainly have supported the noble Baroness, Lady Kidron, but if she chooses not to put it to a vote, of course I accept her judgment.

On other matters, maintaining standards is one of the things the British public expect of government—and it is mighty difficult, when you are involved in negotiations, not to retreat even slightly from them.

Lord Hunt of Kings Heath (Lab): My Lords, it is a great pleasure to support my noble friend Lady Thornton and to agree with my noble friend Lady Kennedy. I obviously listened with great care to what the Minister said, and the reassurance that he gave, but I hope that in winding up he will actually respond to the points raised by noble Lords. Essentially, he is asking us to take this on trust, but the problem is that, in relation to the issues that the noble Baroness, Lady Kidron, talked about, the same argument could be just as well used in relation to health issues.

As the BMA has pointed out, unless the health and social care sectors are specifically carved out from the scope of deals, common elements within free trade deals, such as standstill and ratchet clauses, could lock in and deepen the fragmentation of services. That could block new models of care. Other unintended effects might be to prevent NHS hospitals bringing support services back in-house, as they now seek to do.

Investor protection and dispute resolution mechanisms in UK trade deals open the door to the Government being sued for making legitimate public procurement and regulatory decisions. We heard of the Canadian example, but another is that of an EU investment treaty which resulted in the Slovakian Government being ordered to pay over €22 million in damages to a foreign private health insurance firm after they decided to reverse the privatisation of their national sickness insurance market. Investor protection mechanisms have also been extensively used to challenge public health initiatives such as plain packaging for tobacco.

I really must endorse the words of the noble Baroness, Lady Boycott, because it is exactly as she said: there are necessary interventions in health in relation to, say, issues of pricing and other things on foods that we might regard as harmful, but this can be extended to other health interventions as well. The noble Baroness talked about clever corporate lawyers, but take, for instance, the tobacco companies; globally, they fight their corner very fiercely indeed. The idea that they would use some free trade agreements to argue against some of the protections that the Government might want to put in strikes fear into my heart.

As my noble friend Lady Thornton said, we know that UK and US negotiators have had conversations about the health service. The US has also made clear its desire for the UK to change its drug-pricing mechanism. I am certainly with those noble Lords who say that trade deals could risk compromising the safe storage and processing of health data. We will hear from the noble Lord, Lord Freyberg, in a moment and I will be very interested in his remarks.

In the end, this amendment cuts to the chase of the debate about whether the NHS is on the table in trade negotiations. I am convinced that it has to be taken off the table; that is the only way that we will protect it.

[LORD HUNT OF KINGS HEATH]
In this short debate, frankly, we have exposed the arguments of the Minister. I say this to him: we deserve an answer, because it is no good giving bland assurances about the Government's intent. A lot of this is about unintended consequences, with the examples there are now globally of how trade deals can impact on the sovereignty of individual national Parliaments. I will not put Brexit in at this stage, but how ironic indeed that the Government who talked about taking back control are busy agreeing trade deals where they are in fact at great risk of losing control.

Baroness Jones of Moulsecoomb (GP): My Lords, it is obviously a pleasure to follow the noble Lord, Lord Hunt. He told me off earlier for giving the Government a hard time. I thought about that and, in fact, until very recently, if I criticised the Government, I always offered another policy, a greener idea. I tried to be positive towards the Government, but I am afraid that my optimism is failing me. I shall come back to that.

I congratulate the noble Baroness, Lady Kidron, on her incredibly hard work, nudging the Government towards a more ethical stance on the protection of children. I hope that she can get them over the line. If she puts her amendment to a vote, I shall of course vote for it. The noble Baronesses, Lady Kennedy and Lady Boycott, gave such good ideas and sound arguments that it is difficult to imagine that the Government can overrule them.

There is a lot in this non-regression area. I assure noble Lords, as the only Green allowed to speak in this debate today, that Greens very much support the NHS, which has done the most incredible job during the pandemic and is now doing a fantastic job of vaccinating the population.

Children, animal welfare and human rights are all very close to my heart—but I shall speak about the environment. Environmental protections are always in danger, with any government, because it is so hard to understand how you can change from where we are now to where we really ought to be, given the climate emergency that we are all facing. I hope that the Dasgupta review that has been published will help all of us to understand the threat that we face.

I welcome the review—the good thing is that it actually uses the language that most politicians use, and it looks at the economic value of nature and natural resources. Greens tend to use the phrase "natural capital". The Dasgupta review stresses that the economy is a complete subset of the environment and not the other way around. It uses the language that growth-oriented 19th-century political perspectives can get a handle on. When it says things like, "we can't exist without a healthy world", that is not only about air, water and having enough pandas and elephants and things like that; natural capital includes the soil and geology—it includes everything that we are destroying very fast. That review could be a moment when all politicians make the seismic shift to understanding that it is not all about growth. Quite honestly, with the Trade Bill, you really have to have that understanding. Embedding environmental considerations into our current systems will not work; you actually have to change the systems. We have already overshot our planetary limits—we are already in huge danger, and we are still failing to meet the basic needs of billions of people all over the world.

These amendments are absolutely crucial, not only for individuals but for every part of our planet, our system and our society. I really hope that we have another massive defeat for the Government on this, so that they might have pause in their complete lack of understanding of green issues.

8.30 pm

Lord Freyberg (CB): My Lords, as I rise to speak to Motion D1 in the name of the noble Baroness, Lady Thornton, the House will recall I have spoken at length in recent weeks about my support for Amendment 4 and, in particular, the protections it would afford publicly funded data processing services and IT systems in connection with the provision of health and care.

The Minister has mentioned in his replies, and again tonight, the importance that the Government place upon data protection for individuals, although I note that he was more sparing in his responses to my other substantive questions on Report. By contrast, the Minister of State for Trade Policy in the other place, Greg Hands, failed to provide even vague reassurances about the Government's ongoing commitment to UK data protection provisions.

However, notably, the former chair of the Digital, Culture, Media and Sports Committee, Damian Collins, voiced reservations about the potential for digital and data rights to be "traded away." In fact, he asked the Minister to consider a formal role for the Information Commissioner to advise Parliament on future trade agreements and, in particular, to make sure that they comply with our data protection laws. I put it on record that I share his concerns and echo his call for the Government to provide additional assurances at this critical juncture. I also underline what to many of us is already self-evident—that the near future of our NHS will be data-driven and increasingly digital, both in inclination and composition.

Other noble Lords have rightly drawn attention to concerns about the potential for overseas companies to access contracts for the provision of traditional health and care services in the UK via international agreements. However, I emphasise the added protections contained in Amendment 4 which would, among other things: safeguard state control of, and involvement in, policy-making and the use of publicly funded health and care data; prevent the outsourcing of digital infrastructure that is already critical to the nation's health and wealth; and harness the value of data controlled by our NHS in future to ensure that the public can be satisfied that the value will be safeguarded and, where appropriate, ringfenced and reinvested in the UK's health and care system.

It is incumbent upon all of us to serve as enlightened and forward-thinking custodians of the precious resource our health and care data represents in the context of the ongoing public health emergency, as well as with an eye to the health and care needs of future generations. As such, I urge the Minister to reconsider his position. If he is not willing to support this amendment, how do

the Government propose to protect data as outlined in the amendment? I would be grateful if the Minister could set that out this evening.

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, we have had a wide-ranging debate and covered some important topics. I welcome the Government's amendment made in the other place, but it does not go far enough. I fully support the remarks made by the noble Baroness, Lady Thornton, on the important issue of the public ownership of the NHS contained in Motion D1, and agree with the comments from the noble Baroness and the noble Lord, Lord Hunt of Kings Heath, on taking back control and ensuring the safety of the NHS.

I wish to speak chiefly in support of Motion E1 on international trade agreements, moved by the noble Lord, Lord Grantchester. This is an important amendment which was heavily supported on all sides of the House during the passage of the Agriculture Act. Others have referred to this. The standards of protection of human, animal and plant life and health should be at the top of everyone's agenda. Following the Brexit agreement, there are significant numbers of statutory instruments being debated around animal and plant life and health. This is to ensure the welfare of animals, environmental protection and the prevention of importing into Great Britain animal and plant diseases.

However, all those safeguards are in secondary legislation and are therefore open to change and amendment by succeeding Governments or due to changes in government priorities. In order to be certain that standards affected by international trade agreements are safeguarded not only for our generation but for future generations, it is necessary for that to be stated on the face of the Bill and not tucked away in a plethora of statutory instruments which might contradict each other.

As everyone who took part in the Agriculture Bill and those taking part in the Trade Bill know by now, the UK has some of the highest animal welfare standards in the world. We are rightly proud of our plant welfare regulations that help to protect against the importation of foreign pests and diseases, which can decimate our native trees and plants. However, many diseases and pests are airborne. We are an island country but are geographically very close to our neighbours in Europe, so, despite rigorous import controls, we are vulnerable to airborne diseases.

The importation of high-quality food is at the top of the agenda; I am grateful to the Minister for his reassurance with regard to the Food Standards Agency, but that is not the whole picture. We have confidence in the FSA, but it is the monitoring of trade agreements that is of concern. Trade agreements need to be strict and monitored closely so that countries with endemic animal and plant diseases which are not currently prevalent here take steps to ensure that their outbreaks are kept under control. This will not be a failsafe mechanism for protecting GB from those diseases, but it will make a significant difference.

Polling shows that there is unequivocal public support for maintaining our current food standards relating to a few issues, including pesticides, antibiotics and other products. This approach must also be applied to other areas to safeguard against downward pressure on environmental standards in the UK—for example, those relating to chemicals and manufacturing.

The noble Lord, Lord Grantchester, spoke eloquently to his amendment. It covers some vital issues, including standards on employment and labour. If he moves his Motion to a vote, we will support him. New subsection (2)(e) proposed in his amendment provides for

"online protections for children and vulnerable users."

That echoes the theme of the amendment in the name of the noble Baroness, Lady Kidron. There are many reasons why protection of children from online harms should be on the face of the Bill. We heard from the noble Baroness about the distressing case in Canada whose Government are not able to take action against a company called Pornhub due to the trade agreement between Canada, the US and Mexico. This has slipped in unnoticed and, as a result, the Canadian Government are powerless to protect children and young people. We should do everything possible to ensure that that does not happen here.

The UK has a proud record of protecting children and young people, but the rapid advance in technology and digital communications means that we must be vigilant on all fronts, including in the Trade Bill. The noble Baroness, Lady Kennedy of The Shaws, gave stark warnings about trade deals that are not rigorously drafted. The noble Baroness, Lady Kidron, did not indicate that she would press her amendment to a Division. However, should she do so, we on our Benches will be happy to support her.

Lastly, the noble Baroness, Lady Boycott, spoke knowledgeably, as always, about public health and health inequalities being included in the remit of the Trade and Agriculture Commission and in the role of the FSA. Given the current state of public health caused by Covid and the health inequalities that this has shown up in very sharp relief, it would seem important for there to be someone sitting on the TAC who has expertise in, or some knowledge of, public health and health inequalities. As the noble Baroness, Lady Boycott, said, sections of our communities are currently suffering considerable health inequalities.

No doubt the Minister will say that health inequalities are covered elsewhere and that this is not the place for them. However, confidence in the Government's ability to ensure that health inequalities are covered elsewhere is currently somewhat thin. After severe cuts to public health budgets in previous years, we are now seeing just how dangerous those cuts were to the most vulnerable residents in the country and just who is paying the price for those inequalities. I urge the Government to seriously consider agreeing to the amendment of the noble Baroness, Lady Boycott. I look forward to the Minister's response to this debate and hope that he has some concessions to offer us.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, this has been a very good debate, which has demonstrated clearly why the celebration of our existing high standards, which might be affected by international trade agreements, is justified. We lead the world, and we should be proud of that. The speeches from the noble Baronesses, Lady Thornton, Lady Kidron and Lady Boycott, and

[Lord Stevenson of Balmacara]
other noble Lords were redolent of that. The noble Baroness, Lady Kidron, is right to say that we still have much to do on online harms. We on this side of the House fully support her on that.

We welcome the announcement by the Minister that he will table an amendment modelled on the one inserted into the 2019 Bill by your Lordships' House. We have discussed this with him at length in recent months, and I know he has worked extremely hard to convince his colleagues in government—who are, I gather, often sceptical of what is going on in your Lordships' House—to allow him to do so. However, why are we being offered the protections that are listed in Amendment 6B, which is a very full list, and includes in subsection (2)(a), (b) and (c) statutory protections that are already in place through the Agriculture Act, and also includes

"employment and labour … online protections for children and vulnerable users … health and care, and publicly funded data processing services and IT systems in connection with the provision of health and care"

but not also human rights? There are standards for human rights in this country. What have we done to deserve not having them in the list?

In addition, why is this limited to rollover agreements? We have heard that we now have signed 63, I think, rollover agreements, and we are about to engage in a whole raft of new trade agreements with the United States, Mexico and the Trans-Pacific Partnership. So what are we left with? Are we not in a bit of a dilemma here? Is the Minister saying that there will be stability protection for rollover agreements and that that has worked—although the information given in the debate by the noble Baroness, Lady Kidron, is extremely worrying—but that statutory non-regression will fall away as soon as the first new trade deal is done?

What will be there to protect us? Are we back to the same litany: "Trust us. We have high standards. We are the envy of the world and these standards are our prop and support in future negotiations, so don't worry"? Is that what we are being told? Does this mean that every time there is a new trade deal and it turns out that in order to complete it changes in primary legislation are required, the business managers of both Houses will be able to find time to ensure that the necessary legislative changes are brought forward? I am sure the Minister has enjoyed every minute of his time as Minister for Trade in your Lordships' House, but is he really looking forward to spending all his remaining time arguing about whether changes proposed in, say, our online harms legislation are sufficiently necessary and proportionate to require changes in primary legislation, with all that that implies in terms of trying to make sure that both Houses agree with him and pass that legislation?

I put it to him that the wording of the amendment proposed by my noble friend Lord Grantchester, which is before your Lordships' House today, provides a sensible, logical and coherent way forward, and I ask him for an early meeting to see whether we can find sufficient common ground in Amendment 6B to make it the basis of his promised amendment. If he is able to do that, he will have our full support.

However, we are where we are. I hope that we can build on this important concession by the Government, but I understand the Minister's concern that it would be much easier to do a deal if we were working on a single amendment. We have worked closely with my noble friend Lady Thornton and the noble Baroness, Lady Kidron, to get the essence of their amendments into my noble friend's Amendment 6B and I hope therefore that they will agree with us that it is important to ensure that it goes to the other place and receives consideration—with, we hope, an alternative in lieu being brought back which will mirror its wording and cover both rollover and new trade deals—and that it would not be helpful at this stage to have other amendments put in front of the Commons because it will not be clear where we in this House wish to go. I hope I have persuaded your Lordships' House that we want a composite amendment based on the wording before us and inclusive of all the issues that have been raised today. I look forward to the Minister's response.

8.45 pm

Lord Grimstone of Boscobel (Con) [V]: My Lords, we have listened to another very interesting debate, with many fine comments made by noble Lords. I have learned during the many hours of debates on this Trade Bill that no subject is ever closed or finished with, and that there is always more to say that is well intentioned on everything that is debated. For example, on ISDS, I am sure that the noble Lord, Lord Hunt, is deeply concerned about the matters that he brought forward, but even at my age I do have a clear memory of a debate that we had earlier on that matter. I remember it well, because I think it was the only amendment to the Trade Bill that the Government managed to win in our many hours of debate.

On the fears expressed by the noble Baronesses, Lady Bakewell and Lady Thornton, about the NHS, I must repeat categorically, yet again, that the NHS is not and never will be for sale and that no free trade agreement will affect that. I am happy to repeat that phrase as many times as your Lordships want, but I am trying to make it as straightforward as I can.

The UK has a long track record of high standards across all areas. I say categorically that this Government are not going to see the UK turn into a so-called Singapore-on-Thames. This is not something that we could ever countenance. That is for a very good reason. The people of this country do not want to see the UK's high standards diminished, and we hear them say that loud and clear. We have signed agreements with 63 countries worth more than £200 billion, and not one of them undermines in any way British standards in any area, whether it be agriculture, labour, climate, online harms, or health. In more than three and a half years spent on this legislation and its predecessor, taking in nearly 150 hours of debate, no noble Lord has been able to find one standard that has been undermined by our continuity programme.

To make our commitment in this area completely clear, the Government propose to bring forward an amendment in the other place modelled closely on the amendment introduced the last time the Trade Bill was debated. I shall go through the list of what it

provides for one by one, so that I am being crystal clear. There will be no regression of standards in regulations made under this Bill—I remind noble Lords that the regulations made under the Bill relate only to continuity agreements—which in any way affect the maintenance of UK publicly funded clinical healthcare services; the protection of human, animal or plant life or health; animal welfare; environmental protection; employment and labour; data protection, which of course includes health data; and the online protection of children and vulnerable people. That will be the basis of the amendment that we will bring forward in the other place. Of course, I would be delighted to discuss it with the noble Lord, Lord Stevenson, and other Peers as we move towards that point. I hope that the noble Lord, Lord Grantchester, will be satisfied with that all-embracing commitment. I repeat to him and to the noble Baroness, Lady Bakewell—yet again—that the intention of the Government is to recognise the importance of our independent food standards agencies and the advice they provide.

The only reason we thought it best that the statutory Trade and Agriculture Commission did not itself cover human health is that we have excellent agencies already doing that. We felt that it would be wrong—worse than wrong, nonsensical—to seek to duplicate the advice of these agencies or undermine their expertise. That is why we set out that human health should be out of scope for the TAC advice. On the point made by the noble Baroness, Lady Boycott, I have heard no suggestion that in any way it does not feel resourced to do this, but I will inquire about that and write to her if there is any such suggestion.

We will continue to protect the UK's high standards in agri-food, human and animal health, workers' rights, the environment and the climate, and we will continue to protect the NHS and the most vulnerable in our society, as we have done in every single negotiation that we have concluded. To reassure the noble Baroness, Lady Kidron, we will not allow anything to be put into future FTAs that would harm our children or vulnerable people. Why would we want to do that? Why would we be so foolish in negotiations as to allow something to be included that would harm our children or our vulnerable people?

Yet again, we have had an excellent debate. I hope that my words have at least reassured noble Lords, although I suspect that, until they see the colour and fine print of the amendment that we intend to bring forward showing non-regression in these areas, they will not fully believe what I have said—not until they see it in black and white. As I have said, the continuity agreements that this Bill implements do not undermine any domestic standard or our ability to provide an NHS free at the point of use. I reaffirm yet again the Government's commitment to bring forward an amendment in the other place to address these concerns. I sincerely hope that that will put your Lordships' minds at rest and enable it to be taken for granted that we will do what I have said we will do.

The Deputy Speaker (Baroness Henig) (Lab): I believe the noble Baroness, Lady Kidron, would like to ask a question for elucidation.

Baroness Kidron (CB): I asked to put a question because I created absolute confusion earlier by not saying whether I was going to divide the House; in this virtual world, I have been inundated with texts and emails. So I just want to say that I intended to ask the Minister to make his assurances and then step back from my amendment. I choose to fully believe him and, in doing so, I hope that we will see a result in writing. I am not sure whether that was a question, but I thank noble Lords.

The Deputy Speaker (Baroness Henig) (Lab): I now call the noble Baroness, Lady Thornton.

Baroness Thornton (Lab): My Lords, this Government have proved themselves capable of constructive engagement and compromise on the MMD Bill, which I have been working on for many months. In that spirit, and in the sincere hope that the Minister will do as he has said, I beg leave to withdraw my amendment.

Motion D1 withdrawn.

Motion D agreed.

Motion E

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

That this House do not insist on its Amendment 6, to which the Commons have disagreed for their Reason 6A.

6A: *Because Parliamentary scrutiny of trade agreements is ensured by existing measures.*

Viscount Younger of Leckie (Con): My Lords, on behalf of my noble friend, I beg to move.

Motion E1 (as an amendment to Motion E)

Moved by ***Lord Grantchester***

At end insert "and do propose Amendment 6B in lieu—

6B: After Clause 2, insert the following new Clause—

"Standards affected by international trade agreements

(1) If regulations under subsection (1) of section 2 of this Act, or any other provisions of primary or subordinate legislation to implement an international trade agreement as defined in section 2(2), include provision in any of the areas listed in subsection (2), the provision must be consistent with maintaining United Kingdom levels of statutory protection in that area.

(2) The areas referred to in subsection (1) are—

(a) the protection of human, animal or plant life or health;

(b) animal welfare;

(c) environmental protection;

(d) employment and labour;

(e) online protections for children and vulnerable users;

(f) health and care, and publicly funded data processing services and IT systems in connection with the provision of health and care; and (g) human rights and international obligations.

(3) "United Kingdom levels of statutory protection" means levels of protection provided for, by or under any—

(a) primary legislation,

(b) subordinate legislation, or

(c) retained direct EU legislation, which has effect in the United Kingdom, or the part of the United Kingdom in which the regulations or other provisions have effect, on the date on which a draft of the regulations is laid or (as the case may be) the provisions are first published."

Lord Grantchester (Lab): My Lords, I thank all those noble Lords who have spoken so eloquently tonight. It has been wonderful to hear such powerful speeches, all making such important points. I am also very grateful to the Minister for committing, in his opening remarks, to perfecting this agreement on the basis of including all the measures listed to which the whole House wishes to have attention drawn. He can also reflect more widely on other amendments proposed tonight.

However, working on any further perfecting of amendments must not be limited merely to rollover agreements. This amendment is tabled on that basis, and for those reasons. The Government have done as much in the past to meet us on these issues, and it is very important that we get an important, all-embracing statement on the face of the Bill. We must be firm in insisting on it now. The Minister started in a most emollient fashion, but, unfortunately, he has ended most frustratingly. I beg to move, and I beg leave to test the opinion of the House.

8.56 pm

Division conducted remotely on Motion E1

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Motion E1 agreed.

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9.08 pm

Motion F

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

That this House do not insist on its Amendment 7, to which the Commons have disagreed for their Reason 7A.

7A: *Because it is not an effective means of ensuring the protection of children online.*

Motion F1 (as an amendment to Motion F) not moved.

Motion F agreed.

Motion G

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

That this House do not insist on its Amendment 8, to which the Commons have disagreed for their Reason 8A.

8A: *Because unfettered access to the UK market is addressed by the United Kingdom Internal Market Act 2020.*

Lord Grimstone of Boscobel (Con) [V]: My Lords, Lords Amendment 8 aims to ensure that there is no discrimination within the UK internal market against Northern Ireland goods and services or against services provided to customers in Northern Ireland as a result of UK trade agreements.

When this amendment was previously considered in this Chamber, many noble Lords expressed concerns around the flow of goods into Northern Ireland. The Government are committed to addressing any challenges that may arise with the Ireland/Northern Ireland protocol. There have been no significant queues at Northern Ireland's ports, and supermarkets are now generally reporting healthy delivery of supplies into Northern Ireland. The Government have put in place three end-to-end systems—the GVMS, the CDS and the trader support service—to deliver the Northern Ireland protocol and successfully implement a functioning model that facilitates the flow of trade between Great Britain and Northern Ireland.

The Government are committed to ensuring unfettered access for Northern Ireland goods moving to the rest of the UK market. To be clear, when we say "unfettered access", we mean that there will be no declarations, tariffs, new regulatory checks or customs checks, or additional approvals for Northern Ireland businesses to place goods on the GB market. The Government's commitment to this goal is evidenced by the fact that we secured the removal of any requirement for export declarations as goods move from Northern Ireland to Great Britain in discussions at the withdrawal agreement joint committee.

The Northern Ireland protocol applies only to a small subset of EU rules on goods and electricity, related to the good functioning of the Northern Ireland-Republic of Ireland border. There will be the same freedom to regulate for the services industries of the future in Northern Ireland as in the rest of the United Kingdom, and regulations will be consistent across the UK internal market.

The Deputy Speaker (Lord Russell of Liverpool) (CB): The noble Lord, Lord Hain, has withdrawn and there are no unlisted speakers, so I call the noble Lord, Lord Purvis of Tweed.

Lord Purvis of Tweed (LD): My Lords, the Minister's reassurance on this is slightly jarring with the latest news, which is most unwelcome in Northern Ireland, about the security threat to many staff working to process at the ports of Northern Ireland. The Government are right to have indicated that any threats to them are unacceptable, but it draws stark attention to the fact that considerable tensions remain in Northern Ireland. I do not think that anybody could have seen the recent debacle on vaccines between the EU and UK without feeling a degree of foreboding about the potential consequences of some elements of the protocol.

The hour is late, the Trade Bill has debated these issues well and they are not going away, so I will just ask the Minister one question. I do not expect him to respond immediately, but I would be grateful if he could write to me. I am on a distribution list for HMRC, which provides information to businesses trading between GB and Northern Ireland. I will quote from the most recent email I received, and ask the Minister to clarify. This is for all businesses. The email says:

"You must have an Economic Operators Registration and Identification (EORI) number that starts with GB if you wish to move goods between Great Britain or the Isle of Man, and other countries. Without it you will not be able to complete your customs declarations and you may experience increased costs and delays.

You will also need a separate EORI number that starts with XI if you: move goods between Northern Ireland and non-EU countries (including Great Britain), make a declaration in Northern Ireland, get a customs decision in Northern Ireland. To get an EORI number that starts with XI, you must already have an EORI number that starts with GB."

I hitherto had not been aware that, to have a separate business registration for conducting fettered business between GB and Northern Ireland, and Northern Ireland and GB, you need a separate registration number. Within the United Kingdom, businesses trading between Northern Ireland and GB now have two separate processes to cover trade over the new border down the Irish Sea.

My question to the Minister—and I would be grateful if he would write to me—is: how many UK businesses that conduct trade between Northern Ireland and GB, and vice versa, currently have an XI EORI number, and what is the Government's estimate of what proportion of businesses have it?

9.15 pm

Lord Stevenson of Balmacara (Lab) [V]: My Lords, the noble Lord, Lord Purvis, is right to have raised in this brief debate the recent events which, as reported

in the press, certainly seem to cast a completely new light on how arrangements are to operate within Northern Ireland, and in relation to goods travelling between GB and Northern Ireland. He also referred to the recent issue—a diplomatic issue, perhaps—to do with the vaccine and the relationship that had with the Northern Ireland protocol. I think, having been said, these points are made, and if the Minister wishes to respond to them that would be interesting, but I think they do not really bear on the future debate.

I will use this opportunity to thank my noble friend Lord Hain and his all-party group, which supported amendments both here and in the United Kingdom Internal Market Bill—now Act—which were very useful in bringing to the attention of both Houses of Parliament, and to the wider world, the way in which some of the regulations and the statutory provisions being discussed and debated in your Lordships' House would bear on the real lives of people who live in Northern Ireland, and the impact it would have on how they operate, how they live, and the wider context of the legislative framework within which they operate, including the Good Friday agreement.

I think the amendments have served their purpose in making sure that we are aware of these issues and keeping them in front of Parliament, as I have said. I think there is no more need for them, which is why we are not contesting the decision of the Commons on this matter.

Lord Grimstone of Boscobel (Con) [V]: My Lords, first, I completely associate myself with the comments of the noble Lord, Lord Purvis, about the critical importance of maintaining the security of staff at the border in Northern Ireland, and his comments about vaccination. As the noble Lord, Lord Purvis, often does, he has managed to catch me out on a point of detail about his EORI numbers, but I will commit to look into the point he made and write to him about that as soon as possible.

In conclusion, the Government are fully committed to ensuring that there are no barriers or discrimination within the UK internal market, as this amendment seeks to prevent. We will continue to abide by the principle that the noble Lord, Lord Hain, has espoused across these many debates.

Motion G agreed.

Motion H

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

That this House do agree with the Commons in their Amendments 9A and 9B.

9A: Line 14, after "products," insert "and"

9B: Line 15, leave out from "policy," to end of line 16

Motion H1 not moved.

Motion H agreed.

Motion J

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

That this House do agree with the Commons in their Amendment 10A.

10A: Line 6, after "subsection (2)" insert "except insofar as they relate to human life or health"

Motion J1 not moved.

Motion J agreed.

House adjourned at 9.20 pm.