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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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

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

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

House of Lords

Wednesday 24 February 2021

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Newcastle.

Lord Speaker's Statement

Announcement

12.08 pm

The Lord Speaker (Lord Fowler): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, others are participating remotely, but all Members will be treated equally.

Her Majesty the Queen, in less than one year from now, will mark the 70th anniversary of her accession to the Throne. The Queen's Platinum Jubilee will be marked by national celebrations and, as with previous jubilees, it is hoped that Her Majesty will visit Parliament next year to mark the occasion.

Noble Lords were told in November about the plans to present a gift to Her Majesty to mark this historic occasion. In 1977, to mark Her Majesty's Silver Jubilee, the fountain in New Palace Yard was built. In 2002, to mark the Golden Jubilee, the sundial in Old Palace Yard was installed and, in 2012, to mark Her Majesty's Diamond Jubilee, the stained-glass window in Westminster Hall was commissioned.

Noble Lords will therefore be pleased to hear that a gift has now been commissioned for Her Majesty from Parliament to mark her Platinum Jubilee in 2022. It is now open to all Members of both Houses to contribute towards this gift and I invite noble Lords to do so. As was the case in 2012, when hundreds of parliamentarians contributed towards the Diamond Jubilee gift, this gift will also be funded by personal contributions from Members of both Houses entirely at their own discretion. No public funds will be spent on the commissioning of the gift. I have written to all noble Lords with details of the gift and how they may make contributions and I warmly encourage them to do so.

Oral Questions will now begin. Please can those asking supplementary questions keep them short—no longer than 30 seconds—and confined to two points? I ask that Ministers' answers are also brief.

Covid-19: Vaccination Programme

Question

12.10 pm

Asked by ***Baroness Walmsley***

To ask Her Majesty's Government what assessment they have made of the progress of the COVID-19 vaccination programme towards meeting its (1) delivery targets, and (2) objectives.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, the vaccine deployment programme is proceeding at pace, for which I give profound thanks on behalf of all noble Lords. We have offered a Covid vaccine to 15 million of the top four priority cohorts, hitting our 15 February delivery target. We remain on track to achieve our objective of offering a vaccine to all priority cohorts by 15 April and all adults by the end of July.

Baroness Walmsley (LD) [V]: My Lords, the vaccine programme certainly is going well, but there is evidence that some groups are being left behind. One such group is housebound people. Although they cannot leave their homes, carers and family come in, which opens them up to infection. Why does NHS England not record the number of housebound patients who have received the vaccination? What is being done to speed up their vaccination? The other group is people in poor areas and demographics. What is being done to correct this?

Lord Bethell (Con): My Lords, we were alert to the issue of housebound priority cohorts from the very beginning, which is why we have put in place mobile vaccine units. We work closely with community pharmacists and GPs in order to take the vaccine to housebound individuals. While we do not report on them publicly, I understand from the front line that the progress of that has gone extremely well.

The issue of areas of deprivation is really troubling. It is often those areas where the disease is most prevalent and where the vaccine rollout has been the slowest. We are working extremely hard with local community groups, faith groups, marketing experts and influencers to get the message through to the right people and to take the vaccine delivery into the right contexts.

Lord Reid of Cardowan (Lab) [V]: My Lords, the vaccination programme has been one bright spot in what has otherwise been a less than illustrious handling of the pandemic, but the number of daily doses administered on Monday fell significantly, week on week, for the fifth day running. Can the Minister explain why? Can he further explain the apparent discrepancy between the vaccination rate in London and other regions of the country? It appears that some regions have a rate 50% higher than London. What are the reasons for that and what is being done to narrow the gap?

Lord Bethell (Con): My Lords, I do not agree with the noble Lord's analysis. We are sometimes constrained by supply, but I am reassured that we will hit the targets that I articulated. London has a younger demographic, which is why the rollout percentages can seem lower than in other areas.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, will the Minister outline the Government's strategy to address those areas and people who are reluctant to take up the vaccine? Those of us who have had it know that it is the passport to our freedom.

Lord Bethell (Con): My Lords, we have an extremely sophisticated and energetic programme in this regard. Let me flag that the most important influencers in anyone's decision on whether to take the vaccine are the people whom they know and love. The best way to encourage vaccine uptake is to take the vaccine yourself.

Lord Hamilton of Epsom (Con): My right honourable friend the Prime Minister said in his Statement that decisions would be led by data, not dates. In the same Statement, he said that step 2 would be no earlier than 12 April, step 3 no earlier than 17 May and step 4 no earlier than 21 June. This morning, the *Daily Telegraph* reported that the 21 June date may be brought forward if the data continues to show that coronavirus is being well dealt with. What is leading the Government's decisions? Is it dates or data?

Lord Bethell (Con): My Lords, I recommend that my noble friend and the *Daily Telegraph* look at the large amount of conditional material that the Prime Minister articulated in his Statement. There were no firm dates. He made it clear that data would drive decisions and he made a lot of his indicative programme remarks reliant on passing the four key tests that he laid out very clearly in his programme.

Baroness Tyler of Enfield (LD) [V]: My Lords, at Monday's Downing Street press conference, Professor Chris Whitty expressed his view that front-line health and care workers had what he termed a "professional responsibility" to get vaccinated to reduce the risk that Covid poses to patients and care home residents. With studies indicating that in many care homes well in excess of 30% of care workers have not yet taken up the vaccine, what plans do the Government have to make getting vaccinated a condition of employment?

Lord Bethell (Con): My Lords, the Chief Medical Officer was entirely right. As the noble Baroness probably knows, there are already important requirements on health care workers who, for instance, do surgery or are in certain risky clinical situations to have the right vaccines, hepatitis being one in particular. Having up-to-date vaccines is a condition of engagement for some medical staff. The noble Baroness is right to raise the question of social care. We are looking at the right policy in that area. We want to tread carefully and to take social care workers with us. We are aware of the risks in social care, but we do not want to provide barriers for employment. Getting that decision right will be one of the most important things that we do.

Lord Cormack (Con) [V]: My Lords, I would like to follow on from that. My friend has a 99 year-old mother in a care home and she is naturally very glad at the prospect of more frequent and slightly less distanced visits. She has not held her mother's hand for over a year. She is deeply concerned that some of the care workers in the home, who have to attend to some of her mother's most intimate needs, have declined vaccination. Should not the rule in care homes be, in the words of a recent *Times* leader, "no jab, no job"?

Lord Bethell (Con): My noble friend puts it very bluntly. At this stage of the rollout, when the vaccine has not been made available to everyone, it is too early to make that kind of decision. However, he makes the case well and I hear it loud and clear.

Baroness Hollins (CB) [V]: My Lords, I welcome today's announcement that all people with a learning disability on their GP learning disability register will now be included in group 6. However, we know that these registers are incomplete. How will the Government and the NHS ensure that those in England not currently on the register can be added so that they can be offered a vaccine too? Will the Minister confirm that family carers and home carers will be offered vaccination at the same time?

Lord Bethell (Con): We have to work with what we have. The existing register, while not perfect, is the tool that we have for our task. GPs had been encouraged to update registers in advance of the vaccine, as we had several months of knowing that it was coming. I understand that considerable work has gone into that. With regard to carers, my understanding is that they are not currently included in the clarification that came out today, but I am happy to confirm that point with her.

Baroness Thornton (Lab): My Lords, we all want our children back at school on 8 March, and the Government need to do everything possible to keep children learning, with testing systems that work, ventilation and the use of Nightingale classrooms. The Government missed the opportunity to vaccinate teachers at half-term, so I ask the Minister to explain why, if our children are to be back at school on 8 March. When will teachers and support staff be a priority for vaccination?

Lord Bethell (Con): My Lords, teachers are a priority in as much as they are on the prioritisation list along with other key workers, but the honest assessment of the JCVI is that teachers are not at accelerated risk of increased sickness or hospitalisation over any other member of the public. We are enormously grateful to the teaching profession for the role it is playing in getting schools back and in testing but, in terms of sickness and mortality, teachers are in the right place in the JCVI prioritisation.

Baroness Jolly (LD) [V]: My Lords, NHS England has told GPs to use their clinical discretion on vaccines for adults with a learning disability—although I am pleased that the Minister says that this is no longer the case. What percentage of adults with a learning disability have been called for their first jab and, if it is not 100% at this stage, why not?

Lord Bethell (Con): I do not have the precise figure to hand. Those in group 4 will include those with Down's syndrome and other CEVs; those with severe or profound learning disabilities will be in group 6. As we know, group 4 has had an extremely high conversion rate and, although I do not think it is exactly 100%, it will be an astonishingly high amount and, if those figures are available, I should be glad to write to the noble Baroness with them.

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

Pandemics and Environmental Degradation

Question

12.21 pm

Asked by ***Baroness Miller of Chilthorne Domer***

To ask Her Majesty's Government what assessment they have made of the relationship between the emergence of pandemics and environmental degradation.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con) [V]: My Lords, my department has not made an independent assessment of the relationship between the emergence of pandemics and environmental degradation. However, Defra has been fully engaged in the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystems Services work, including the 2019 *Global Assessment Report on Biodiversity and Ecosystem Services*, which highlighted the links between exploitation of nature and emergence of infectious diseases, and the subsequent IPBES workshop report on biodiversity and pandemics, which was published last year.

Baroness Miller of Chilthorne Domer (LD) [V]: My Lords, I thank the Minister for his reply. This pandemic is a stark example of exactly what those pieces of research have found: what happens when nature is abused, whether through habitat destruction or the wildlife trade, can wreak stark things for humans. I know that the Minister, through his work with the Taskforce on Nature-related Financial Disclosures, is aware that evaluation and disclosure by corporates and the investment sector is very important, but does he agree that subsequent action is even more important? What lessons would he draw from all the work on carbon issues, so that we move from high carbon emissions to much lower carbon emissions and an ambition for net—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): That question is far too long. Can we hear from the Minister, please?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, there is no doubt that increased risk of pandemics is just one of the many reasons why continued destruction of the natural world is so short-sighted and damaging to our long-term interests. Ecosystem degradation and habitat disruption can dislodge pathogens; it can also bring wildlife into closer contact with humans and livestock; and climate change can lead to shifts in wildlife vector ranges and is likely to increase the risk of future pandemics by driving the mass movement of people and wildlife. This is a priority issue for the UK Government.

Lord Robathan (Con): My Lords, this degradation is driven by pressure on resources, which is of course caused by demand and increasing consumption, with poorer countries understandably wanting to raise living standards to those of more prosperous countries. The elephant in this particular room is, of course, population growth. When I was born, the world's population was approximately 2.5 billion; it is now three times that; and, by 2050, by which time I fear I may be dead, it will be four times that. What is Her Majesty's Government's policy to raise that issue internationally, to raise awareness and get action on overpopulation of the planet?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, whatever action is taken, it is likely that the global population will be in the region of 10 billion within a generation, so it is incumbent on us to find ways to work and live within nature's limits. Through the upcoming Convention on Biological Diversity and the climate COP, which we are hosting, we are pressing for really ambitious targets on biodiversity and nature, mechanisms to hold Governments to account, finance for nature, and commitments to tackle the drivers of environmental destruction. We are also using our presidency of the G7 to help drive more activity in pandemic preparedness. The UK is at the forefront of this debate and is a world leader in tackling nature and climate change.

Lord Bird (CB): I congratulate the noble Baroness, Lady Miller, on this Question: it is one of the most interesting I have heard recently. When will we break out of the idea that the environment is a cul-de-sac, something that we can take or leave? When will we lead in this country and spread the idea of the importance of the environment across every section of society—to the woman on the third floor of a block of council flats in Hackney, all that? I feel that we are always dealing with the very small amount of people who are very interested in it, and the vast majority do not give a toss.

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, the noble Lord makes an extremely important point. I agree with him; the environment is not a niche concern. Everything we have, everything we are, everything we do comes from the natural world. As we destroy the natural world, ultimately we destroy ourselves. That seems an obvious thing to say but, unfortunately, it still needs to be said. A recognition of that fact runs through all departments of the UK Government. This is, as I said, a top international and domestic priority for us.

Lord Clark of Windermere (Lab) [V]: My Lords, we are increasingly reminded of the link between animal diseases and human health. Currently, I think of bird flu in Russia and a question over the origin of the Covid-19 pandemic itself. Do the Government intend to raise this very real problem at the COP 26 meeting under their presidency this November?

Lord Goldsmith of Richmond Park (Con) [V]: I can absolutely provide that reassurance—not just through the COP 26, which we are hosting, but via the biodiversity convention and the G7. The noble Lord makes an important point: 60% of infectious diseases are caused by bacteria, viruses, fungi or parasites that are transmitted between humans and animals. Numerous reports confirm the link between environmental degradation and the

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emergence of zoonotic pathogens—Hendra virus in Australia, Nipah virus, Ebola, Zika, yellow fever, Dengue, SARS, MERS, Covid-19 and many others besides—so this is a crucial issue.

Baroness Sheehan (LD) [V]: My Lords, the Dasgupta review cautions that the Covid-19 pandemic may be just the tip of the iceberg if we continue to encroach on natural habitats. The Minister obviously agrees. Does he also agree with Professor Dasgupta that citizens must be empowered to make informed choices and demand change? One way to do that is to establish a natural world in education policy.

Lord Goldsmith of Richmond Park (Con) [V]: The natural world and climate change should certainly be a thread that runs through the educational curriculum, and I think increasingly it is. That is my experience from talking in numerous schools around the country, where climate change and the environment are the first issues that young people want to raise. The noble Baroness is right: Covid-19 has highlighted that link between biodiversity loss and human health. It is a stark reminder, but the terrible consequences of this pandemic are nothing compared to the consequences we can expect if we continue to degrade the natural world and destabilise the world's climate.

Baroness Jones of Whitchurch (Lab) [V]: My Lords, much of the spillover of viruses from animals to humans globally has been linked to intensive meat production, driven of course by human population growth and urbanisation. Can the Minister assure the House that we will apply these lessons to UK agricultural reforms by not incentivising the expansion of intensive livestock management in the UK?

Lord Goldsmith of Richmond Park (Con) [V]: There is no doubt that there is a very clear link between industrialised agriculture—factory farming, if you like—and the emergent risk of pathogens. This is very high on the agenda. Linked to that is the risk of misuse of antibiotics in agriculture to keep animals alive in conditions that are so squalid that they would not otherwise be able to survive. Our new land use subsidy system that replaces CAP will incentivise ecologically sensitive farming and farming that is in the interests of, and aligns with, human health concerns.

Viscount Ridley (Con) [V]: My noble friend will be aware that China has been reforesting rather than deforesting in the last decade and that the animals in the Wuhan wildlife market tested negative. At the moment, the only known connection between wild viruses that are closely related to SARS-CoV-2 and Wuhan is the collection of nine bat viruses taken by scientists from a mineshaft in Mojiang county to Wuhan—a distance greater than that from London to Budapest. Does my noble friend share the US National Security Advisor's deep concern that the World Health Organization was premature in ruling out a laboratory leak and endorsing an unsupported claim by the Chinese Government that the virus came to Wuhan on frozen fish or meat?

Lord Goldsmith of Richmond Park (Con) [V]: There is no doubt in my mind that every stone needs to be overturned and every avenue explored before we reach firm conclusions—and that has not yet happened. I share many of the concerns raised by the noble Lord. However, in relation to his first point, wildlife markets have, nevertheless, been implicated in numerous outbreaks of zoonotic viral and bacterial infections, including SARS, MERS, avian influenza and swine flu. So that link is established and, irrespective of the broader concerns, it must be explored.

Lord Truscott (Non-Afl) [V]: My Lords, as the Minister said, it is now accepted that many new diseases have emerged due to environmental degradation and animal populations under severe pressure—not only coronavirus, including SARS, but Zika, AIDS and Ebola. What are Her Majesty's Government doing to meet the goals of the 2021 to 2030 UN Decade on Ecosystem Restoration and how is destroying 108 ancient woodlands to build HS2 compatible with that?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, the United Kingdom has played a leading role internationally in raising the profile and the importance of tackling nature loss. We co-drafted the unprecedented Leaders' Pledge for Nature, which has now been signed by 80 countries. We run the Global Ocean Alliance and are co-leading the High Ambition Coalition for Nature and People, calling for 30% of the world's land and ocean to be protected by the end of this decade. Through our presidency of the COP we have put nature at the heart of the global response to climate change. I do not think that any country in the world is doing more heavy lifting or more generally to push the need to reverse nature degradation to the very forefront of the global agenda.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed. We now come to the third Oral Question and I call the noble Lord, Lord Bradshaw.

Rail Freight: Channel Tunnel

Question

12.33 pm

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government what assessment they have made of the barriers to using the Channel Tunnel for the conveyance of rail freight; and what plans they have, if any, to overcome such barriers.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the Government engage regularly with the international freight sector to discuss a range of issues and are keen to see the expansion of rail freight services running through the tunnel. It is ultimately a commercial decision for rail freight operators whether to facilitate new services, but the Government are open to engaging with industry-led proposals and potential new operators where there is a commercial proposition.

Lord Bradshaw (LD) [V]: I thank the Minister for that reply, but what needs to change to make it feasible to see more rail freight using the Channel Tunnel and the HS1 route to London?

Baroness Vere of Norbiton (Con): As I have just explained to the noble Lord, this is a commercial decision by the freight operating companies. The Government certainly stand by to support where we can. For example, we are developing and, indeed, have developed, bespoke customs regimes for rail freight traffic through the tunnel. We have already approved regimes at Barking, Dagenham, Daventry, Scunthorpe and Widnes. We are also looking at, for example, gauge clearance for alternative access routes to the Channel Tunnel. At the heart of all this, the industry has to demonstrate to government that if we put these interventions in place it will come forward with commercial proposals.

Baroness Jones of Moulsecoomb (GP): I take the Minister's point that it is a commercial decision, but the Government could help hauliers and exporters of all kinds. What about setting up an innovations fund that they could bid for money from when they have a viable plan? This would stimulate the move from road to rail.

Baroness Vere of Norbiton (Con): I think the noble Baroness is referring to our Mode Shift Revenue Support scheme, which is indeed already in place. It supports rail services where they may be slightly less commercial, to try to get freight off the road and on to rail. During the Covid pandemic we made sure that part loads would also be supported. The noble Baroness will also be pleased to hear that we have increased funding to this scheme by 28% in 2021 and it now amounts to £20 million.

Baroness McIntosh of Pickering (Con) [V]: My Lords, does my noble friend share my concern that rail freight was down 37% in January this year over last year and that passenger traffic through the tunnel was down 71% in January over last year? What support might they be eligible for, for problems that are not of their making but are largely a result of the bureaucratic and administrative change of rules because of Brexit and the situation with Covid? Will she join with me in paying tribute to the noble Lord, Lord Berkeley, without whose good offices we may not have had a tunnel at all?

Baroness Vere of Norbiton (Con): I will certainly join my noble friend for the latter comment. The tunnel is a great thing. The noble Baroness asked what support is available. We are working very closely with Eurotunnel to help it access the Government's support schemes. Some of the Eurotunnel revenues remain in place, because of course haulage continues to go through on the shuttle system. The noble Baroness mentioned that freight was down 37% year-on-year in January. That was because, I think, people were expecting some changes and some impact of Covid. She will be relieved to hear that in February there was a 34% increase over January, and therefore I feel that things are heading in the right direction.

Lord Snape (Lab) [V]: My Lords, does the Minister accept that only around 1 million tonnes of through-freight is taken across the Channel on long-distance freight trains from this country, whereas more than 20 million tonnes is taken on 1.6 million lorries? If you add to it the 2.5 million lorries a year thundering down the M20 to use the sea crossing at Dover, leaving these things to—as she puts it—commercial matters when they are environmentally disastrous is not what those of us who supported the Channel Tunnel from its inception really believed.

Baroness Vere of Norbiton (Con): The noble Lord will know that whether a consignment uses conventional rail freight or an HGV will very much depend on the nature of the goods being transported. Conventional rail freight is more often used for more dense goods, such as those from the steel and automotive sectors and other bulk goods. But, as I have already said, there is capacity to increase conventional rail freight through the Channel Tunnel and we look forward to those who wish to do so.

Baroness Randerson (LD) [V]: My Lords, Eurostar also goes through the tunnel and is in serious financial difficulty, yet the Secretary of State says that it is not his company to save. Well, neither are the domestic train operators that have received billions in government support. Does the Minister accept that, although the Government may not have a legal obligation to Eurostar, they have a moral duty to the planet to ensure the survival of this environmentally friendly alternative to flying to Europe?

Baroness Vere of Norbiton (Con): The Government continue to discuss Eurostar's financial situation with the French Government. At the moment there are no proposals on the table.

Lord McColl of Dulwich (Con) [V]: My Lords, how many of these delays are due to widespread strikes in France over pensions and how many are due to the EU being, as usual, as difficult as ever? I have found no record, of course, of the EU ever having been accused of fairness and honesty.

Baroness Vere of Norbiton (Con): I am not sure about the delays to which my noble friend has referred, but it is the case that at the end of the year, freight flows decreased somewhat owing to both testing for hauliers, which had to be put in place quickly in December, and preparations for the end of the transition period in January. However, I reassure my noble friend that all freight is now flowing as it should.

Lord Rosser (Lab) [V]: The Minister said that there has been a 34% increase in freight truck traffic through the Channel Tunnel in February compared with January. Can she say whether that is a 34% increase in volume or in value, and does it apply equally across all sectors of industry and services?

Baroness Vere of Norbiton (Con): I would love to have the answers to those questions, but I am afraid that I do not, and I do not have a calculator with me at this moment. However, I will write to the noble Lord

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with the details he has set out. It is the case that, in January, we were looking at daily HGV traffic flows in the region of around 2,800 vehicles on average and that we are now up into the area of mid-3,000 vehicles. I will write to the noble Lord with the analysis that he would like to see.

Lord Young of Cookham (Con): My Lords, is not one of the barriers referred to in the Question the fact that gauges in the UK restrict the destination of much of the freight traffic coming through the tunnel? What progress is being made with the gauge enhancement programme to make it easier to send more freight through the Channel Tunnel by rail?

Baroness Vere of Norbiton (Con): This is a fascinating area and I thank my noble friend for raising it. We are developing a number of loading gauge enhancement projects to extend the strategic freight network of routes to offer the greatest flexibility for carrying intermodal shipping containers on standard wagons. We are working on the Great Western main line between Didcot and Bristol, on the Midland main line between Syston and Trent and, as I have mentioned, we are looking at alternative routes to the Channel Tunnel. Clearances for W10 and W12 will probably offer fairly poor value for money, so further development is more likely to consider W9A, which would allow containers on specialist wagons with lower decks.

Lord German (LD) [V]: Given that there are only nine months of grace, what progress have the UK Government made in securing a bilateral agreement to operate trains through to Calais-Fréthun, and what would be the impact on trade through the tunnel if the UK had to secure EU licensing in order to operate those trains?

Baroness Vere of Norbiton (Con): We continue to work with the French Government on seeking arrangements for the longer term. This will include recognition of operator licences, safety certificates and train driver licences. We expect the impact of the longer-term arrangements on operators, when they are agreed, to be minimal.

Lord Berkeley (Lab) [V]: My Lords, I thank the noble Baronesses, Lady McIntosh and Lady Vere, for their kind words. However, is one solution to increasing the volume of rail freight traffic through the tunnel not in the Minister's hands, because of the reduction in passenger traffic and therefore the greater capacity that is available on many parts of the network? She has talked about gauge enhancement, but we need more terminals and capacity. That would attract the just-in-time deliveries that I am sure she would be very keen to see.

Baroness Vere of Norbiton (Con): The noble Lord is right to say that there are things that we can do; indeed, we are doing them. Network Rail is working with the freight operating companies on timetabling to ensure that we can prioritise freight, in particular in these times of lower passenger numbers. Of course, passengers will come back to the trains one day and we need to make sure that whatever solution we put in place now is for the longer term. However, I reassure the noble Lord that we will leave no stone unturned and that we greatly welcome his input in these matters.

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

Covid-19: Vaccination Passport

Question

12.44 pm

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

To ask Her Majesty's Government what discussions they plan to have with the devolved Administrations about the introduction of a COVID-19 vaccination passport to enable those who have been vaccinated to travel.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, the Government remain committed to restarting the travel industry, as the Prime Minister has set out in his road map. Vaccinations could offer the route to that once we know more about the impact of vaccines on transmission and their efficacy. The UK is working with other countries to adopt a clear international framework on standards and we are committed absolutely to working with the devolved Administrations throughout at both official and ministerial levels.

Lord Foulkes of Cumnock (Lab Co-op) [V]: Does the Minister agree that it is important to differentiate between a certificate that might allow access to venues in the United Kingdom and one that would allow travel overseas, such as the one I have for yellow fever and malaria? Can he tell us which countries he and the Government are now in discussions with to enable to us to get back to travelling as soon as possible so that the travel industry can return to a financially sound situation?

Lord True (Con): My Lords, I agree with the noble Lord, but these are two entirely separate issues. I assure him that the UK is working with a wide range of other countries and that the Government will make this a reality through ongoing work not only with other countries, but with the World Health Organization and other multilateral organisations, and through the UK's presidency of the G7. The point the noble Lord has made is an important one.

Lord Campbell-Savours (Lab) [V]: Is it not true that if the Government had not blocked ID cards in 2011—a perfect form of vaccination passport—then we could have avoided problems about vaccination recording by entering annual vaccination data that would have been readable on the card chip, covered the entire population with a track-and-trace system, and, in effect, brought this nightmare of an epidemic to an earlier end? The Government missed a trick that could have saved billions of pounds and perhaps even thousands of lives.

Lord True (Con): My Lords, I note the noble Lord's enthusiasm for ID cards, but it was not shared universally either in Parliament or outside. I am certainly not going there on this issue.

Lord Bruce of Bennachie (LD) [V]: My Lords, I understand the frustration of the travel, hospitality and leisure industries that want to get their businesses up and running as quickly as possible. However, does the Minister accept that there are some concerns? The first is that with the rollout of the vaccine continuing over the summer, many young people, including students who want to study overseas, may be excluded from the chance to travel. Is there not a risk that the demand for passports, if they were introduced, could create a bureaucratic logjam that could interfere with the vaccine rollout and may unhelpfully aggravate the arguments over which vaccines are the most effective?

Lord True (Con): My Lords, I hope very much that that is not the case. The Government's objective is to see a safe and sustainable return to international travel for business and pleasure. To achieve this, my colleagues in the Department for Transport will be leading a successor to the Global Travel Taskforce. It is important that we work towards that objective.

Lord Balfe (Con): My Lords, much of this debate is around holidaymakers, but there is an important section of the population—businesspeople—who travel in order to increase the prosperity of the companies and countries that they represent. Can the Government give some attention to easing short-term business travel restrictions which mean that, every time you go for a 36-hour trip to the European mainland, you need to spend £200 to get a certificate? This is ridiculous and does no good for business at all. There does not appear to be a business party in this Parliament any longer.

Lord True (Con): My Lords, I understand where my noble friend is coming from, but repeat what I said in reply to the previous question: the Government's objective is to see a safe and sustainable return to international travel for business and pleasure. I put business first advisedly. We have to do this in a safe and sustainable way, and the Prime Minister has set out a road map towards it.

Lord Patel (CB) [V]: Does the Minister agree with the well-researched report by the Royal Society relating to SARS-CoV-2 vaccine certificates? It identifies 12 key areas that need better understanding before the introduction of Covid passports for international travel, including: the effectiveness of various vaccines; the nature and duration of the immune response; the ability of variants to escape vaccine-induced immunity; and the transmission or otherwise of the virus by those vaccinated, as mentioned by the Minister. Will the Government consider the scientific advice before any plans to introduce Covid passports?

Lord True (Con): My Lords, I am not the lead Minister on that narrow area, but I note what the noble Lord says and will pass on his comments to colleagues.

Baroness Hayter of Kentish Town (Lab) [V]: My Lords, if the certificates or passports were to happen, it would be essential to have just one system across the UK. It must not be just one Government doing it and imposing them on the other countries; they must be jointly developed. The Minister talked about the road map, but that was shared with the Welsh Government only after it had been briefed to the press, on Monday morning. Can the Minister assure us that, if there is work on this, it will be done jointly by all four Governments, so that there is only one system for the whole UK?

Lord True (Con): The noble Baroness, as always, make a profound point, which is that the best thing that we must wish and work for is that all Administrations work together on this. We do not want internal divides. My right honourable friend the Chancellor of the Duchy of Lancaster is speaking further to First Ministers today, which is another opportunity to reflect on the details of the published road maps. I take what she said: we will continue to work with the devolved Administrations to reflect on the implications of the road maps, and to co-ordinate and co-operate on our response to this and other areas.

Lord Thomas of Gresford (LD) [V]: My Lords, I live five miles from the English border, and I am relieved that the noble Lord, Lord Foulkes, is not pressing for a passport, with 15,000 vehicles going one way and 32,000 coming the other way to work, every day. Referring to the discussions that the Minister mentioned, what is the Government's attitude to people coming to this country who have been vaccinated by a non-approved vaccine, and are they discussing this with other countries?

Lord True (Con): My Lords, I confess that I cannot find the answer to that at the moment. I will write to the noble Lord on that point. I apologise for not being able to answer it now.

Lord Dodds of Duncairn (DUP) [V]: My Lords, I agree with the noble Lord, Lord Foulkes, on international travel issues, but surely the way forward within the United Kingdom is to have as rapid a vaccination rollout, of as many people, as possible. Can the Minister assure us that the devolved Administrations are intimately involved in that rollout programme and that they will all move ahead at the same time?

Lord True (Con): My Lords, we wish for the fastest possible progress across our United Kingdom. I can give that assurance. In reply to the previous question, at this stage, the Government are not looking to make it a requirement to have a Covid-19 vaccination to travel into the country.

Lord Dobbs (Con) [V]: My Lords, I am not sure what our colleague, the noble Lord, Lord Foulkes, is worried about. The way the SNP is going, he will not be allowed back into Scotland, with or without a passport. But he is correct to focus on this issue; it is difficult. The other day, the Prime Minister seemed to suggest that we must not discriminate against those who have refused a vaccine for whatever reason—a medical condition, for example—but we know that there are anti-vaxxers who are refusing the vaccine

[Lord Dobbs]
because they do not like it, cannot be bothered or are simply professional disrupters. Does my noble friend accept that it would be outrageous to hold back the reopening of society, in any way, and to compromise the rights and liberties of everyone else, because of those who refuse to take any step to protect either themselves or others? Should it not be the anti-vaxxers who suffer inconvenience, rather than the rest of us?

Lord True (Con): My Lords, as I have said, the Government's objective is a safe and sustainable return to international travel. By a miracle of science and endeavour, this and other countries have good—outstanding—vaccines. We have a fine rollout programme right across the four nations. Everybody should support and get behind that programme, the vaccines and the people who are working on them.

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

12.55 pm

Sitting suspended.

Arrangement of Business

Committee

1.30 pm

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, the Hybrid Sitting of the House will now resume. I ask all Members to respect social distancing.

For the Committe on the Non-Domestic Rating (Public Lavatories) Bill. I will call Members to speak in the order listed. During the debate on each group, I invite Members, including Members in the Chamber, to email the clerk if they wish to speak after the Minister. I will call Members to speak in order of request. The groupings are binding. A participant who might wish to press an amendment other than the lead amendment in a group to a Division must give notice in debate or by emailing the clerk. Leave should be given to withdraw amendments; when putting the question, I will collect voices in the Chamber only. If a Member taking part remotely wants their voice accounted for if the question is put, they must make that clear when speaking on the group.

Non-Domestic Rating (Public Lavatories) Bill

Committee

1.31 pm

Clause 1: Relief from non-domestic rates for public lavatories

Amendment 1

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

1: Clause 1, page 1, line 6, after "day," insert "the hereditament is a publicly-owned library or community centre or a local authority property that is free of charge to enter and contains a public lavatory that is free of charge for anyone to use, or"

Member's explanatory statement

This amendment would extend the rate relief to publicly-owned libraries and community centres, and local authority properties, which are free to enter and which contain public lavatories that are free to use.

Lord Kennedy of Southwark (Lab): My Lords, as this is my first contribution today, I draw the attention of the House to my relevant registered interest as a vice-president of the Local Government Association. Amendment 1 in my name and that of the noble Baroness, Lady Pinnock, seeks to amend Clause 1(3) of the Bill. The purpose of the amendment is to bring into the scope of the Bill those toilet facilities that are in community centres, libraries and other local authority buildings and are free of charge for use by members of the public.

There are clear and undeniable public health benefits to having toilets that are available for the public to use. This amendment seeks to increase that provision. I recognise that in some cases, libraries and other public buildings already make their toilet facilities available to the public. This amendment supports them for doing that, but goes further, as it provides a welcome encouragement for those facilities that do not have the same access provision to be made available to the public. There has been a noticeable decline in public facilities over recent years, and this amendment seeks to reverse that trend by providing rate relief as an encouragement either to continue with the access presently provided or to extend access to the public to take advantage of this rate relief.

The noble Lord, Lord Greaves, has tabled Amendment 9, which I am very happy to support, and the noble Lord will explain the effect of his amendment when he speaks shortly. I beg to move.

Lord Greaves (LD): My Lords, I thank the noble Lord, Lord Kennedy, for his support for my Amendment 9 in this group. I will speak to both my amendment and Amendment 1, which the noble Lord has just moved. I declare my interest as a member of Pendle Borough Council, which no longer has public lavatories but is the rating authority for those that exist. I thank the Government for scheduling this Committee fairly quickly after Second Reading so that we can progress this Bill; it gives us real hope that the Bill will manage to pass in this Session.

The amendment in the name of the noble Lord, Lord Kennedy, would follow up amendments moved in the Commons and comments made quite widely by people at Second Reading in your Lordships' House. They pointed out that very many lavatories that people consider to be public lavatories and that operate as public lavatories are ancillary to other facilities provided by local authorities and other voluntary bodies, and so on. The problem is that, from a rating point of view, they are part of the same hereditament as the facility to which they are basically ancillary and therefore would not come under the provisions of this Bill as it stands. The Minister has kindly written to interested Members of the House putting forward the view that the Government put forward in the Commons that, to exempt these genuine public lavatories from business rates would be onerous—particularly on the Valuation Office Agency, which is responsible for doing all this—and that it would therefore not be practical to go ahead with it.

My Amendment 9 tackles some of the affected lavatories, which would probably not be a very large number. I believe that this could be done without any

onerous burden being placed upon the VOA or anybody else. It reads that, for the purposes of subsection 4(I), which is what this is all about,

"a self-contained public lavatories facility which forms part of a larger hereditament and which may be accessed independently from outside that hereditament forms a separate hereditament."

It is possible that it would have to be done technically in some other way: it might be that it could be done via secondary legislation. The noble Lord, Lord Lucas, has amendments later on, to which I am not going to speak, but at this stage I will just say that I strongly support them; they provide an opportunity for the Government to tackle the technical details, and there are huge technical details in all this, because it is about rating. They would allow the Government to pick up a lot of the points that we are making in these probing amendments at this stage.

It seems to me that, when a lavatory is part of a council-owned building in the middle of a small town or village—it might be a library, market hall or any other council-owned building—and has an outside door so that, even if there is also an inside door that could be locked when the main building is not open, people would be able to access that from outside, sorting out the separate valuation for a limited number of instances like this would not be a great burden, and it could, and should, be done. In practice, the VOA will have done it anyway when it assesses the rates on the whole building, because here is a separate use from the main building and it will have a look at it and say, "What is the amount that that contributes?" Somewhere in the depths of its records, it probably has the information anyway. Even if it does not have it, however, it is not an onerous task for it to do. The number is relatively small compared with the great majority of lavatories in libraries and so on. I hope the Government will accept the principle of this—I do not expect them to accept my amendment as it is today—and go away and have a look at it. I invite the Minister to say that he will do that.

Lord Lucas (Con) [V]: My Lords, as I said at Second Reading, I welcome the Bill. That the Government have chosen to encourage the provision of public lavatories is a great public good, because adequate lavatory provision is a liberation for many millions of people, for whom the thought of not finding one when they go out is a significant restriction on their participation in society as a whole. There are said to be some 14 million people in this country with bowel or bladder problems. That is a very large proportion of the population who are worried about being able to access a public lavatory when they go out.

I really encourage the Government, perhaps not immediately but during the progress of the legislation, to look at opportunities to extend its reach. An obvious example is lavatories in stations, which everyone regards as public lavatories. Victoria station is very well used. It is only in a very peripheral way a part of any other hereditament. The same applies to lavatories in other public buildings, and to push in the direction which is being opened by Amendment 1 is thoroughly worth while.

There is no obvious need for a public lavatory to be a separate building. It seems, given the attractiveness of public lavatories, that having them in a building encourages other uses of that building too, and that their integration into public buildings should be encouraged. If we can find a way round it over the next few years, we should not be privileging just those public lavatories which are free standing.

As has been said, I really hope that the Government look on this as an opportunity, over time, to encourage facilities that are needed for the general public enjoyment of public facilities by extending the rather narrow rating release in the Bill to the many other deserving facilities that are provided at public expense and otherwise, and without which we will find ourselves rather too often caught short.

Lord Hope of Craighead (CB) [V]: My Lords, I have a great deal of sympathy for what the noble Lords, Lord Kennedy of Southwark, Lord Greaves and Lord Lucas, have said in support of these amendments. For some people, venturing into parts of our urban communities where they cannot be sure of access to a public lavatory is a risk that they dare not take. The physical conditions that create this problem can affect all ages. One thinks especially of the elderly, but there are also visitors to the area and others who depend on the uncertainties of public transport to get home. Whoever they are, they need to be provided for.

My interest in this subject, as I have mentioned before, is a professional one. I am interested in whether the amendments to test alternative solutions to those which the Government are suggesting are capable of being put into effect. The valuation of buildings for rating was one of my specialist subjects when I was in practice at the Scottish Bar. The valuation process itself was not for me; that was the job of chartered surveyors. The noble Earl, Lord Lytton, is a distinguished member of that profession, with years of experience in the practice of that art, and I am very sorry that for other reasons he is unable to take part in this debate.

However, valuation for rating is not just about facts and figures. There are some legal rules too, and that is where I come in. The non-domestic rating system is the product of a listing process. Every non-domestic hereditament that is capable of separate occupation must be entered in the valuation list and given a value. A single building may contain within it a number of properties that are in separate occupation. If so, one would expect each of them to be the subject of a separate entry and a separate value, but where one finds a building in a single occupation, the consequence is that the entire building is treated as a separate hereditament and valued accordingly.

1.45 pm

Therefore, where one finds a stand-alone public lavatory—which is what the Government are providing for in the Bill—one would expect it to be entered in the roll with its own entry and its own value. The reform which the Bill introduces is that the value of these subjects is to be taken to be nil. As the noble Lord, Lord Lucas, made very clear, the problem is that there are not enough of them. That is what the amendments in this group seek to address.

As I see it, the amendments in this group respect the rules that I have described. Amendment 1 assumes that the publicly owned buildings listed here have a public lavatory within them that is free of charge for

[LORD HOPE OF CRAIGHEAD]
anyone to use. It assumes, rightly, that the public lavatory is not the subject of a separate entry, so it asks the Government to accept that the building as a whole should be given the relief. One can draw an analogy with the relief of 80% that is currently given to hereditaments that are occupied by charities, but the part of the building containing the public lavatory is likely to be quite small in comparison with the whole, and the loss of income to the rating authority may be disproportionate to the public benefit.

There is some value in exploring an alternative, as the noble Lord, Lord Greaves, is doing with his Amendment 9. This would introduce a statutory rule that these public lavatories should be treated, in effect, as separate hereditaments, so long as they can be accessed from outside and therefore given a separate value. I do not know how many there are—perhaps not many, as the noble Lord, Lord Greaves, has suggested—and if so it may not take us very far, but some distance is worth travelling in the interests of addressing the problem through the Bill. As a lawyer, I cannot see any objection to this proposal. It is an adaptation of the ordinary rules, but if the law provides for it, it is a perfectly orthodox adaptation. I commend this as a very neat way of responding to a very real problem that needs to be addressed, and I am happy to give Amendment 9 my support.

Baroness Randerson (LD) [V]: My Lords, I declare an interest as a member of an informal campaign group which seeks to improve the standards of public toilets generally. I am pleased to speak in support of the amendments in this group, and I am grateful to the Minister for his response by letter to issues that I, among others, raised at Second Reading. However, I am sure that he will forgive me when I say that I found his arguments unconvincing.

I accept that to include facilities open to the public, but not as separate or distinct buildings, would mean a valuation exercise. In each local authority area this would involve numbers maybe in the dozens, not the hundreds. That really cannot be seen as a costly hurdle. The Minister believes that it would divert resources from the 2023 revaluation. It should simply be part of the revaluation. I also reject the idea that identifying the facilities concerned would be difficult. These are public facilities and public bodies would self-identify. I also recommend to the Minister the Great British Public Toilet Map, available online, and a number of apps which guide you to local public toilets.

As it stands, the Bill is of course sensible, but it is a paltry little measure and will certainly not bring the transformation needed. I am not sure how deeply the Government consulted local government representatives. The local authorities that I am familiar with ceased building stand-alone public conveniences decades ago because problems of anti-social behaviour are so much greater in isolated blocks. Nowadays, new sets of conveniences are mainly incorporated in other public buildings, where issues of safety for users, maintenance and cleanliness are more easily dealt with. Stand-alone blocks obviously still exist but are often old and are too often already closed and shuttered.

I also wish to test the definition of "publicly owned". The definition is very blurred these days. Facilities can be publicly owned but privately run—for example, in many areas that is the case with leisure centres. My area has publicly available toilets in libraries and shopping centres. The shopping centres are commercial developments and commercially run, but the toilets are discrete units. They are not just toilets in shops; there are separate doors to them, but it is a commercial operation.

We also have public toilets in the Wales Millennium Centre in Cardiff—a large building at the centre of Cardiff tourism in the bay. It houses major musical events and a lot of youth and artistic activities. It runs free concerts and there are shops and cafes. There is free public access to the toilets. The Wales Millennium Centre is run by a trust, but that trust has been funded by major amounts of public money. I know that the noble Lord will say that that is in Wales and that there is a separate set of rules, but I use it as an example. Clearly, it would not qualify for this scheme, but why should it not? It provides the same facilities, with cleaning and maintenance, and the public are allowed to enter for a large number of hours each day of the week.

It is really not difficult to ascertain whether toilets are genuinely publicly available or available for a reasonable amount of time each day. The Minister told us that the Government are adopting the community toilet scheme, and similar types of rules can apply for rate relief.

My concern is not just that the Government's scheme is not generous enough; it is also that it is not even-handed. Public toilets in buildings still have to be maintained and cleaned, so why should an accident of situation define whether this relief is granted? It could even discourage major new developments from incorporating what would be genuinely public toilets.

Baroness Pinnock (LD) [V]: My Lords, I draw the Committee's attention to my interests as listed in the register: as a member of Kirklees Council and as a vice-president of the Local Government Association.

The amendments in the names of my noble friend Lord Greaves and the noble Lord, Lord Kennedy, to which I have added my name, challenge the scope of the Bill in its restriction to public toilets that are stand-alone and not part of a larger public building, such as a library or community centre. I thank the Minister for the opportunity to discuss these amendments and for the letter that he sent explaining the reasons for confining the scope of the Bill to stand-alone public toilets. However, we have to remember that one consequence of the long period of cuts to local government funding has been that many public toilets have been closed permanently. In my local authority, which serves nearly half a million people, there are now no stand-alone public toilets. The Bill is welcome but it is very much like closing the stable door after the horse has bolted.

These amendments are intended to encourage the Government to appreciate the wider need to increase the availability of public toilets. There is already pressure for some public toilets in public buildings to be closed because of the costs associated with keeping them open, as they are not part of the focused purpose of

the building. For example, a public library is having to use scarce funds to keep the public toilets in its building open when there is barely sufficient funding to staff the building. That is the dilemma facing local authorities, certainly in the northern urban areas that I know well.

My noble friend Lord Greaves's points are well made. Local people regard public toilets within a public building as being the same as stand-alone public toilets. The challenge is explained in the letter that I referred to earlier—the volume of work it would impose on the valuation office—but my noble friend Lord Greaves's amendment seeks to find a way round this for public toilets that have separate access. I hope that the Minister is able to respond positively to that amendment.

The noble and learned Lord, Lord Hope, is an expert on these matters. He has said that valuation for rating is not just about facts and figures. One example that he provided was the relief given to charities. The Government would do well to take heed of the arguments that the noble and learned Lord made, and that view has been well supported by my noble friend Lady Randerson. As well as making those arguments and supporting my noble friend Lord Greaves's view, she argued that improved public toilets are more secure and can be more easily kept clean if they are within a public building, rather than being stand-alone.

The Government have a responsibility to ensure adequate availability of publicly funded public toilets. It is a responsibility that has been accepted since the days of the great Victorian public heath reformers. The Bill demonstrates that the Government continue to accept that they have that responsibility. It is not sufficient, in fulfilling this obligation, to make those public toilets that have survived the cull zero rated. The Government must provide the means for local government to increase availability to meet local need. That is what these amendments seek to do and I wholeheartedly support them.

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): My Lords, I am grateful to the noble Lord, Lord Kennedy, for raising the points highlighted by his amendment and for his valuable and knowledgeable contribution to the Second Reading debate, supported by the noble Lord, Lord Lucas, and, with great knowledge, by the noble Baroness, Lady Randerson. I point out that the horse has not bolted entirely. There are nearly 4,000 separately assessed public toilets in England and Wales—3,990 as of 31 March 2020—and therefore this is a very important relief for those properties.

The effect of the first amendment would be to extend the scope of the relief to include publicly owned properties, such as libraries, community centres and other local authority properties, where they contain free-to-use public lavatories. In effect, this would mean that the local authority-owned buildings that contained a non-fee-paying public lavatory would be exempted from paying rates.

It is the Government's firm view that public bodies, like other ratepayers, should pay rates on the properties they own and occupy, and it is therefore right that the legislation should broadly reflect this principle. The Government's policy aim, and the purpose of Clause 1, is clear in that it provides a targeted relief to support the provision of public lavatories in specific circumstances. In particular, we want to support facilities that exist where there are unlikely to be any other publicly available toilets, such as those along our coastline or in towns, where removing the additional costs of business rates could make a significant difference to the ability of councils or others to keep the facilities open.

2 pm

For England, the cost of this targeted measure is estimated to be around £6 million. The amendment would significantly increase this; for example, extending support to public libraries alone would see a tenfold increase in cost—to around £60 million. Although I recognise where the noble Lord, Lord Kennedy, is coming from, this is not the aim of the Bill. I do not agree with the premise of this amendment.

I turn to the second amendment, tabled by the noble Lord, Lord Greaves. I recognise that the noble Lord intends that the current practice of determining what is—and what is not—a separate hereditament should be amended, so that any toilet which can be accessed independently of any other hereditament should be considered separately. He is supported by the noble and learned Lord, Lord Hope of Craighead, with his breadth of legal knowledge. While I expect that most public bodies which can be independently accessed already qualify for this relief, I appreciate that there might be some which do not. I recognise the concerns of the noble Lord, Lord Greaves.

I must return the Committee's attention to the importance of keeping the administrative costs and the burden of this relief on local authorities to a minimum. If we were to amend the Bill in the way in which the noble Lord proposes, the Government would be asking the Valuation Office Agency to carry out an assessment of the location and rateable value of public toilets. The agency does not hold this information already. It would then prescribe that local government should make its own—in some cases, contrary—assessment in order to implement the relief. Requiring councils to do this would bring administrative costs disproportionate to any potential benefits to ratepayers.

The Valuation Office Agency is responsible for the valuation of all properties in England. The Government do not intervene in this independent process. I am sure the Committee will agree that it is important that this element of the business rate system retains its independence. Not only would the cost of implementing relief in line with this amendment be disproportionate to any benefit to ratepayers, it would mean prescribing an approach to assessing hereditaments that differs from the VOA's own. As such, I do not consider it right to place such an approach in law.

It is right that the measure should remain a targeted relief, focused on providing support for public facilities in specific circumstances. On this basis, I hope that the noble Lord, Lord Kennedy, will agree to withdraw his amendment.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank all noble Lords who have spoken in this short debate. Both amendments in this group—from the

[Lord Kennedy of Southwark]
noble Baroness, Lady Pinnock and me, and from the noble Lord, Lord Greaves—attempt to probe how the Bill could increase the number of public lavatories and prevent further closures.

I agree with the noble Lord, Lord Lucas, about toilet facilities at stations. I regard these as public lavatories. It would be good to extend the provisions of the Bill to cover them. In recent years, charges have been removed at virtually all mainline stations in London—with the possible exception of Marylebone. This is good news.

Amendment 9 from the noble Lord, Lord Greaves, provides for those public toilets with a separate entrance to be brought into the scope of the Bill. The noble Lord is right; there are probably not that many facilities which would come into this category, but it would be a welcome move.

I agree with the noble Baroness, Lady Randerson, that it would not be onerous to identify the different facilities which would come into the scope of the Bill. I do not accept the Minister's comments about onerous costs on local authorities. In effect, the facilities would self-identify. I do not believe there is a huge amount of work involved. I do not accept the argument that the cost would outweigh the benefit to the local authority going forward. I am also grateful for the support of the noble and learned Lord, Lord Hope of Craighead.

We all support the aims of the Bill. It is good as far as it goes. If we want to stop the decline in the number of public lavatories—and the public health benefits that go with them—we will have to go a bit further than this welcome Bill. This is the point of our amendments. I am sure we shall bring them back on Report. I hope that the Minister will reflect on whether, if we all want the same outcome, we should go further. I do not accept that the costs outweigh the benefits. I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

The Deputy Chairman of Committees (Lord Lexden) (Con): We now come to the group beginning with Amendment 2. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Amendment 2

Moved by ***Lord Greaves***

2: Clause 1, page 1, line 6, leave out "or mainly"

Member's explanatory statement

This is a probing amendment to explore the meaning of "mainly".

Lord Greaves (LD): My Lords, I thank the Minister for his detailed response to my previous amendment. I thought that commenting here would be more convenient than making a separate intervention after the Minister in the previous group. That amendment—and others in this and other groups—will give rise to the need for further discussions with the Minister about some of the technical details, if he is agreeable. With the exception, perhaps, of the noble and learned Lord, Lord Hope, none of us is an expert lawyer. We are trying to understand how it works.

That is the purpose of Amendment 2. I am not trying to persuade the Government to remove "mainly"; that would make the Bill even worse. This is a typical House of Lords Committee probing amendment. I am sure that during the noble Lord's long career as a local government Minister in this House, he will have a lot of fun with a lot of similar amendments to much bigger and longer Bills. This is what we do. It is a way of asking questions. What does "or mainly" mean? It is not clear, and it is not defined.

The National Association of Local Councils' briefing says that the cost to councils of paying rates on public lavatories is £8 million. The Minister said that the cost of the Bill as it stands is £6 million. Either in his reply to this, or at some other time during today's discussion, could he explain the difference between those numbers and where it comes from? Perhaps he can give us figures for the extra costs which he thinks would be incurred by some of the proposals being put forward.

I have one other amendment in this group—Amendment 7. I had another, similar probing amendment, but there was a technical problem with it. It was my fault for submitting it on the last day. The Public Bill Office kindly offered to have the Marshalled List reprinted, but I said I could cope with what we have here.

Amendment 7 suggests that "mainly"

"is to be construed according to an assessment by the rating authority of the balance of use by the public of the public lavatories compared with the remainder of the hereditament, disregarding the proportion of the area occupied by the public lavatories."

I have been trying to get my mind round the relationship between a public lavatory—which might be free standing—and the land on which it stands. This might be a garden area or amenity area in a town or village: a mini-park—or a pocket park, as they are called nowadays; we all know the kind of thing—or it might be a full park. If it is within a park, and basically for the people using that park, it will not be paying rates anyway, because parks are zero-rated. I think it is regarded as part of the hereditament that consists of the park.

If the public lavatory is free-standing in a park or elsewhere and the land around it is a separate hereditament, it will benefit from the Bill. However, somewhere, there must be a dividing line between a lavatory in a park and one that is mainly in an amenity area that forms part of the same hereditament as the lavatory, which is therefore all rated. That is the purpose of this amendment. Alternatively, there may well be a public lavatory that is part of a wider hereditament, the rest of which has fallen into disuse, but it is all part and parcel of the same rate.

If the public use of a public lavatory is greater than that of the rest of the hereditament of which it is a part, and is thus mainly what happens there—this might be a building that contains other council facilities: a storage shed or office, for example—I do not know how this would be worked out under the Government's own proposal that everything should rely on "mainly", where this word applies to use by the public.

The other amendment I was going to put down was about the financial valuation. It may be that a hereditament contains a public lavatory and, to all intents and purposes, is a public lavatory but contains another use: it is a mixed hereditament. I am not

talking about a public library—where the lavatory is just a small part of it, as the noble and learned Lord, Lord Hope, said—or a community centre, where the public lavatory probably would not be there if it did not exist. How do you decide if a council-owned building that consists partly of a public lavatory and partly of something else is "mainly" a public lavatory? Even if the assumed assessment or valuation of the rest of the building for rating purposes is greater than that of the public lavatory, the latter should nevertheless trump—that may not be quite the right word—or prevail over the rest.

I hope the Minister understands what I am saying. First, how does he define "mainly"? Secondly, even if the public lavatory is a smaller part of the area, can it prevail as the main use? Thirdly, if it is not as valuable as the thing it is attached to, whatever that is—a tiny parish council office or something like that—can it nevertheless be the prevailing use? I ask those questions to find out how the provision will actually work in practice: what is the workability of this, as regards public lavatories? Having said that, I beg to move Amendment 2.

Baroness Pinnock (LD) [V]: My noble friend Lord Greaves has rightly questioned the meaning of "mainly" and its purpose: is it, as he asks, about the extent of public use? He is an experienced user of such probing amendments in seeking to get to the detailed consequences of Bills, and this one is no exception. I am sure the Minister will be able to give a detailed explanation in reply, and I look forward to hearing it.

The other query that my noble friend Lord Greaves rightly raised concerns his information that the cost of paying rates on public toilets is £8 million a year, which is rather different from the £6 million cited by the Minister. It would be good to know the reason for the difference in those figures, and why. Having said that, I am looking forward to the Minister's response to my noble friend's probing question.

2.15 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I have nothing really to add: the noble Lord, Lord Greaves, has set out very clearly and carefully what he seeks to get from his amendment. As we have heard, it is a very good probing amendment that gives the noble Lord, Lord Greenhalgh, the opportunity to set out carefully for the Committee what is meant by "or mainly". As the noble Lord, Lord Greaves, said, this is a good House of Lords way of getting into the detail of the Bill, and I look forward to the Minister's response. Amendment 7 seeks, of course, to provide a welcome definition of what "mainly" could be construed or interpreted as, giving weight to public use of public lavatories. I will leave it there, and I look forward to the Minister's explanation.

Lord Greenhalgh (Con): My Lords, I am beginning to learn how the House works, and I appreciate the education; I am sure I will get used to this way of drawing out important information. These amendments probe the current definition of a public lavatory that would qualify for this relief, and seek to amend this definition to capture some of the facilities that the Bill does not currently cover.

The Government have carefully drafted the scope of the Bill, and I am pleased to have the opportunity to set out for the House the rationale behind this decision. Subject to Royal Assent, the relief within this Bill will apply to all hereditaments that

"consist wholly or mainly of public lavatories".

Amendment 2, tabled by the noble Lord, Lord Greaves, probes the meaning of "mainly" in this provision. The phrase "wholly or mainly" can be found across government legislation and, in particular, exists within that legislation which provides for an 80% business rate discount to properties used

"wholly or mainly for charitable purposes",

as the noble Lord mentioned. Local authorities are responsible for deciding which properties are eligible for business rate relief, and the use of "mainly" provides for some discretion on their part.

However, I will directly respond to the noble Lord, Lord Greaves, on how this would work in practice. Councils should reflect on all relevant matters, including any relevant case law and guidance, when making these decisions. The use of "mainly" means that an authority may, for example, look at the floor area of a building and see that less than 50% is being used directly as a public lavatory, but it may still feel that it meets the criteria for this relief because the remaining area is used as storage or for other matters of little consequence. That is very similar to the example that the noble Lord gave. The Government consider it right that the Bill provides local authorities with this level of discretion because these are decisions best taken on the ground and on the basis of local knowledge.

The second amendment tabled by the noble Lord, Lord Greaves, follows on from the first and would act to define "mainly" within the Bill in reference to the extent to which a property is used as a public lavatory, rather than for other purposes. I appreciate that the intention of this amendment is to provide for the relief to be available to buildings that do not constitute separately assessed public toilets but that serve that purpose to a large extent. As I set out earlier, an expansion of the relief beyond those toilets that are separately assessed and have already been identified and separately rated would bring with it significant administrative burdens and costs.

In the case of this amendment, local authorities would be required to not just identify qualifying facilities but assess the extent to which the public are using them for different functions. The public use test would be particularly cumbersome because it would go beyond an assessment of a property's physical elements and would require an analysis of the extent to which these elements are used by the public. The results of such a test could change relatively frequently, and local authorities may need to make the required assessment on a regular basis.

As currently designed, the measure in the Bill does not carry implementation costs disproportionate to the benefits to ratepayers, nor any significant implementation difficulties for local government. As such, we are not in favour of any amendment to this relief which would increase the complexity of its implementation, create unnecessary burdens for local authorities, or indeed create

[Lord Greenhalgh]
administrative costs disproportionate to the total benefit to ratepayers. However, I would be keen to engage with noble Lords on some of the technical reasons for not expanding the scope of the Bill.

I again thank the noble Lord, Lord Greaves, for his amendments, which probe the design of the relief before the Committee. However, for the reasons that I have set out, I do not consider that the potential benefits of the amendments would outweigh their substantial costs and I hope that the noble Lord will not press them.

Lord Greaves (LD): My Lords, I am grateful to my noble friend Lady Pinnock and the noble Lord, Lord Kennedy, for their support in this little group, and I thank the Minister for agreeing that we will have some discussions about it. He said that this would be to explain to us what we did not understand, and that we would then understand it. That is fine; I am totally in favour of understanding things.

I hope that the Government understand that some of us, at least, are trying to help them with this, to produce a slightly better Bill. We are not trying to wreck it and certainly not trying to place lots of extra administrative burdens on local authorities. We are looking for ways in which common-sense solutions can be found to problems which are going to occur. Inevitably, a town council will say, "Why are we paying rates on this and not that?" They are not experts, and it will cause all sorts of grumpiness. Also, it will not do, in some instances, what the Government are trying to do, which is relieve the burden on councils, particularly town and parish councils which are increasingly taking on public conveniences. So I hope the discussion we have will be two-way

The Minister said two things. First, he said that, in deciding what "mainly" means, councils should reflect on all the "relevant case law". He then said that he did not want to put administrative and other burdens on councils. It sounds to me as if the Government are already admitting that there are going to be problems. If you have got to go to all the relevant case law and goodness knows what, it inevitably results in the creation of new case law, because it will get to the courts.

The second thing the Minister said was that the rationale was similar to that for charitable 80% relief, and that that is for "wholly or mainly" charitable use. The word "use" is crucial there, because the Bill does not say "use", but

"consists wholly or mainly of public lavatories."

One of my amendments talks about use. Can we look at that, and give the rating authorities a steer that it is the use which is important, rather than the other things, as the legislation does for charitable relief? That might just be a way forward.

I hope that the Government will not be stubborn and say that they are not going to change this under any circumstances, if there are ways through some of these problems. On that basis, I beg leave to withdraw at this stage and look forward to discussions with the Minister.

Amendment 2 withdrawn.

The Deputy Chairman of Committees (Lord Lexden) (Con): We now come to the group beginning with Amendment 3. Anyone wishing to press this, or anything else in this group, to a Division must make that clear in debate.

Amendment 3

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

3: Clause 1, page 1, line 7, after "lavatories" insert "which are free of charge for anyone to use"

Member's explanatory statement

This amendment would confine the rate relief to public lavatories that are free of charge to use.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendment 3 in my name seeks to add the words

"which are free of charge for anyone to use"

to Clause 1(3). The Bill provides a financial benefit and the effect of my amendment would be to restrict that benefit to public lavatories that are free to use—a very reasonable aspiration and objective. I do not see why those public lavatories that you must pay to use should be a beneficiary of this relief. The purpose of the Bill is to provide encouragement in this area, and I think that this amendment strengthens the Bill in this regard and provides a clear focus on the free use of public lavatories.

Amendment 10 from the noble Lord, Lord Greaves, is very sensible and I fully support it. Why should we provide financial benefit when the lavatory is not open for extended parts of the day? But I will let the noble Lord explain his amendment to the Committee.

On a more general point, in resisting amendments in previous groups, the noble Lord, Lord Greenhalgh, has relied on the argument that the Government do not want to place additional burdens on local authorities and that any savings would be outweighed by the cost of identifying these lavatories. When he replies to the debate, it would be useful if the Minister could evidence that. I have heard nothing from any local authority—the National Association of Local Councils, the District Councils' Network, London Councils or the Local Government Association—to suggest that the argument that the Minister is relying on has any basis in fact. So it would be useful if he could explain that to the Committee. Or is it just the assertion of the department? I look forward to his response to the debate.

Lord Greaves (LD): My Lords, I will speak to Amendment 10 in my name and Amendment 3, proposed by the noble Lord, Lord Kennedy, which is fairly basic. I am old enough to remember one of the great hue and cry campaigns by women; it would be called a gender campaign nowadays. Not only did they have to spend an old penny—one of those great big things which people under 40 or 50 have never seen—but they had to go through a turnstile, which caused problems for pregnant women. That was a huge hue and cry at the time and was, I think, sorted out—but there are still plenty of supposedly public lavatories where you have to pay. The most disgraceful ones in my view were at mainline railway stations, which started charging considerably more than a penny, but that seems to be being changed now.

Amendment 10 would prevent bodies benefiting from free rates when the lavatories are not open for a reasonable amount of time and at reasonable times. I am always told by lawyers and Governments that the word "reasonable" should never be put in legislation because all legislation has to be reasonable before you start. Nevertheless, this seems to me to be a reasonable thing to discuss in this Committee.

There may well be some public lavatories in tourist areas which are not needed, or not in such quantity, at some times of the year. There may be ones which are needed at some times of the week and not others. It may be perfectly reasonable to lock public lavatories overnight to prevent them being used for undesirable purposes. That was certainly done in my part of the world. There may, indeed, be public lavatories which are open only on special occasions because of where they are and what takes place there. We used to have one which was opened at various times of the year, particularly on Remembrance Day, because it was next to the cenotaph. What is reasonable ought to be up to local decision-making by the owners of the lavatories, but they ought to be stopped from keeping them shut when they ought to be open. That decision ought to be made by the rating authority.

I think it was the noble Lord, Lord Kennedy, who referred earlier to some confusion in the Bill about what a public lavatory is, in terms of ownership. Does this Bill apply only to facilities owned by councils or by other public bodies, or to other voluntary bodies and charities as well? Does it apply to commercial enterprises that might provide a public lavatory at the entrance of their commercial facility—there might be a park, or whatever—which is open all the time for public use? Could the Minister clarify that? Is it use as a public lavatory, under the Minister's terms, that matters, or, is it who owns it that matters? That would be a helpful clarification.

My amendment is about how the Government are going to stop people freeloading and getting rate relief when they are not providing the facility they ought to be.

2.30 pm

Baroness Pinnock (LD) [V]: My Lords, there are important and relevant issues to explore in Amendments 3 and 10, proposed by the noble Lord, Lord Kennedy, and my noble friend Lord Greaves, respectively. When a financial benefit is to be gained, as there is in this Bill, it inevitably becomes an issue of dispute at some time in the future when some realise that they are not getting rate relief on their provision of public toilets while others are. That is why it is important to explore what the Government are proposing here.

As we have heard from the noble Lords, Lord Greaves and Lord Kennedy, there is a considerable range of public toilet facilities. Some are open only during the day and some not at the weekend; some require payment, and some do not. We need to understand the implications of this variety of provision for the purposes of the Bill. Is it acceptable to make a small charge for a public toilet facility and get the rate relief proposed in this Bill? What will happen if that small charge becomes ever larger? Is it still right, then, that that facility is zero-rated? These two amendments indicate that what may appear to be simple, straightforward changes can have inconsistent consequences once the detail of the implementation is exposed, as it has been so expertly this afternoon. I look forward to hearing the reply from the Minister.

Lord Greenhalgh (Con): My Lords, the noble Lord, Lord Kennedy, wanted to know the evidence that this would cause a burden disproportionate to the level of relief provided. The reality is that, under these proposals, we are not asking local authorities or the Valuation Office Agency to do anything in addition to what they already do. But where we are widening the scope, we are asking local authorities to do something they do not currently do, so by definition that will increase burdens on them and, in some cases, on the Valuation Office Agency.

The effect of the amendments from the noble Lords, Lord Kennedy and Lord Greaves, would be to apply a set of conditions that would need to be satisfied before the relief could be granted. I will expand on the reasons why I do not believe these are helpful in the operation of the relief. As a principle, I do not agree we should be moving away from the clear and simple aims of the policy by limiting this much-needed support.

The effect of Amendment 3 would be to exclude those who own and run facilities where a small fee is charged from receiving this relief. The Government's policy aim and purpose in Clause 1 is to target the relief to best support the provision of public lavatories. In particular, we want to support facilities that exist where there are unlikely to be any other publicly available toilets, where removing the additional costs of business rates could make a real difference to the ability of councils or others to keep the facilities open. I understand the concerns of the noble Lord, Lord Kennedy, about free-to-use public toilets. Nevertheless, the purpose of this Bill is to provide targeted support to separately assessed public lavatories, recognising the particular circumstances they face, not to draw a distinction between those that charge and those that do not. Such a distinction would add complexity, uncertainty and an unnecessary administrative burden for local authorities and would increase the pressure on those facilities that are not able to access this support. I do not agree that those ratepayers that operate a public lavatory and charge a minimal fee for the first service should be excluded from this vital support.

I understand the practice of charging a fee is reducing, but those that charge do so on the basis of a commercial decision. In some cases, that fee may be charged to meet the ongoing costs of maintenance and cleaning, which is entirely reasonable. Nevertheless, I recognise the importance of knowing which facilities charge and what services they provide, so I welcome the work of the British Toilet Association, which provides an online service called the Great British Public Toilet Map, which has been referred to by the noble Baroness, Lady Randerson. This provides visitors with critical information about toilets in a specific area, including whether they are free to use, whether they are accessible and whether they have baby-changing facilities. Users can then make a decision in good knowledge and plan appropriately. I also commend the community toilet scheme, which was first devised by the London borough of Richmond upon Thames and is now used by local

[Lord Greenhalgh]
authorities across the country. This enables local businesses to work with councils to widen lavatory access so the public can use their facilities without making a purchase.

Amendment 10, proposed by the noble Lord, Lord Greaves, would limit the relief on the condition that the facilities should be open at set times and days as reasonably necessary. As I have outlined, our aim is to increase the support for the provision of public toilets, not to reduce the level of assistance for facilities that are most in need of support. I would not support the creation of a further burden on authorities to assess and police the opening and closing times of a toilet before awarding relief. The establishment of such a regime would be disproportionate to the value of the relief and would not represent good value for money to the taxpayer. As I have set out, the relief applies only to occupied facilities and is awarded only in these circumstances. While I understand the intention of the amendments from the noble Lords, Lord Kennedy and Lord Greaves, in practice, they may, at best, be unhelpful and, at worst, unnecessarily increase pressure on toilets to close.

I hope that I have helped clarify the Government's intention about how the measure would apply. With these assurances, I hope the noble Lord, Lord Kennedy, can agree to withdraw this amendment.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank all noble Lords who have spoken in this short debate. We are identifying issues the Government should reflect on before this Bill comes back on Report.

The noble Lord, Lord Greenhalgh, has not sought to challenge my general point from my earlier remarks, that the position of the Government, in resisting any amendment here today, is that we are creating burdens on local authorities that far outweigh the benefits. Yet, as I have said, I have looked and cannot find any organisation from local government—the LGA, the Welsh LGA, the District Councils' Network, London Councils, the National Association of Local Councils—or, in fact, any local council or local authority in England or Wales that would support the Government's position. If they actually asked them, I suspect there would be a lot of support from local authorities for increasing the benefits of support for their network of public toilets. I will leave that point there, and at this stage, I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, we now come to the group beginning with Amendment 4. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Amendment 4

Moved by ***Lord Lucas***

4: Clause 1, page 1, line 7, after "lavatories" insert "of a prescribed description"

Member's explanatory statement

This amendment ensures the Government has power to require that the lavatories are provided and operated in accordance with national standards, making proper provision for the various needs of their potential clientele including the disabled, parents with children, women and trans people.

Lord Lucas (Con) [V]: My Lords, I urge the Government to take the opportunity to give the Bill some wording that expands its ambit, and to take advantage of the leverage that it gives them—as the noble Lord has noted, it is a generous disbursement of funds—to achieve other policy objectives. The policy objective that I, personally, would like the Bill to support is whatever the outcome is of the Government's current review of toilet provision in general.

It has been a joke all my life, let alone my noble friend's life, how there is always a queue at the ladies and none at the gents. We have not had equal provision in relation to demand. We now need to recognise that there are people—particularly those who are committed transgender—who are not easily able to take advantage of toilets that are just for men or just for women. Having toilets that are universally unisex, such as those in the Old Vic and the Department for Education visitor accommodation, is extremely difficult for many women and some men, including me, to put up with.

There are, therefore, matters of policy relating to the provision of toilets that we can reasonably anticipate will come to the fore over the next couple of years. It would be good to give the Government, in this Bill, the ability to lever the rates relief that they are giving in order to achieve their policies. As the noble Lord, Lord Greaves, pointed out, we may find that over time there will be opportunities to expand the Bill's ambit to other worthwhile premises in ways which, as my noble friend insisted, go along with the modus operandi of the valuation office. That is fine, but we are missing a chance if we leave the Bill as it is and do not give the Government additional power along the lines that I have suggested. I beg to move.

Baroness Pinnock (LD) [V]: My Lords, it is not clear to me why the noble Lord, Lord Lucas, believes that it is necessary to—I quote—prescribe a definition of public lavatories. It is not clear what policy objective would be achieved by his amendments. Without wishing to cause offence, that clarity has not been expanded during the noble Lord's introduction of the amendment.

As we have already heard, there is currently a huge variety of provision: some are in old-style toilet blocks, some include Changing Places and some include baby changing facilities. Some modern provision consists of a single facility into which only one person at a time can enter. Some public toilets are unisex, as the noble Lord, Lord Lucas, explained. That is increasingly the case in modern office blocks. I have never heard anyone being particularly concerned about that provision. Public toilets are simply a facility for members of the public. I do not on earth see what is gained by prescribing a definition.

The best thing we can do, having heard the noble Lord, Lord Lucas, explain his amendments, is agree to disagree with him. I, for one, cannot support this amendment.

2.45 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendments 4 and 12 in the name of the noble Lord, Lord Lucas, enable us to debate important issues. He seeks to ensure that lavatories that operate in accordance with national standards benefit from this relief.

The trade union Unison has campaigned on the issue of disability and the barriers that disabled people face when using a standard toilet. Many disabilities are hidden. The sign that we often see indicating disabled facilities is a person in a wheelchair, but fewer than 10% of people who meet the Equality Act definition of disability use a wheelchair. Signs that say "Some disabilities are invisible" have become more prevalent given the requirements of the pandemic restrictions. Crohn's disease and colitis are two examples of conditions that may mean that a person has to use a disabled toilet facility while having no outward signs of disability.

As we move forward we need a greater understanding and respect for difference, and we must ensure that people are protected. These are not easy issues; if they were we would not be debating them today. What we also need is many more Changing Places toilets, which are a very important to cater for. We will get on to this later.

The comments from the noble Baroness, Lady Pinnock, reminded me that all the toilets by the reception at Southwark Council are gender-neutral, individual toilets. They are there for public use. So things are certainly changing, but we must at all times have respect for difference and for people. As we move forward on these issues we must ensure we keep those thoughts to the forefront and provide the facilities that people need.

Lord Greenhalgh (Con): My Lords, I thank my noble friend Lord Lucas for his amendments, which would provide the Government with the power to limit this relief to only those toilets that meet prescribed criteria of their choosing. The underpinning nature of the amendments is the desire to see toilets for all, and I am very supportive of the need to have toilets for those who need disabled access, gender-neutral toilets and gender-specific toilets. As I set out to the House earlier, the Government do not intend to limit the measure within the Bill to only those toilets that meet certain criteria. Subject to Royal Assent, the Bill will support the provision of separately assessed toilets across the country. I therefore do not agree that it would be right to make any amendments which could limit the benefits of this measure.

Furthermore, limiting the relief to only those public lavatories that fit a prescribed description would place a significant burden on local authorities, which will be responsible for administering the relief. Well-intentioned though the amendment is, it would weaken the effectiveness of the legislation were we to require its provisions to be subject to a new, locally administered system of controls.

While I appreciate the arguments that my noble friend Lord Lucas made in support of the Government having the power to make this relief more specific, any benefits must be weighed against the consequential impact on local authorities of using such a power. Although I do not think that the Bill would be improved by these amendments, I appreciate the points that my noble friend makes about the standards of our public toilets.

The Government are interested not just in the total number of public toilets in this country but in ensuring that everyone in our communities feels confident and comfortable using them. This means maintaining hygiene standards and ensuring fair provision of accessible and gender-neutral toilets.

Noble Lords may therefore wish to note that the technical review of toilets launched by the Government will consider the ratio of female toilets needed versus the number for men and take into account the needs of all members of the community, to ensure fair provision of accessible and gender-neutral toilets. The call for evidence, which closes on Friday, has received over 15,000 responses; a government response will be published in due course. As part of this review, the merits of any best practice guidance on the provision of gender-neutral toilets will be considered, alongside any guidance on the necessary provision of access to disabled toilets. These considerations also include provisions for older people and parents with very young children who need changing facilities.

I hope this reassures my noble friend that the Government are supportive of not just the total number of public toilets but the vital importance of ensuring that appropriate facilities are available to all. On this basis—and the basis that the potential administrative burden resulting from these amendments would outweigh the benefits—I hope that he will agree to withdraw his amendment.

Lord Lucas (Con) [V]: My Lords, I am very grateful to my noble friend for his obiter dicta on the Government's general intentions in this area, which I applaud. I can see that he has clearly understood the intent of my amendment and disagrees with it. I therefore beg leave to withdraw it.

Amendment 4 withdrawn.

The Deputy Chairman of Committees (Lord Lexden) (Con): We now come to the group beginning with Amendment 5. Anyone wishing to press this or the other amendment in this group to a Division must make that clear in debate.

Amendment 5

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

5: Clause 1, page 1, line 8, after "zero", insert "; and where, on a chargeable day, the hereditament consists partly of public lavatories, the chargeable amount for the chargeable day of the public lavatories shall be separately calculated and the chargeable amount for the chargeable day of the hereditament shall be reduced by the amount calculated in respect of those public lavatories."

Member's explanatory statement

This amendment would give rate relief to premises that consist partly of public lavatories according to the proportion of the premises occupied by those lavatories.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendment 5 in my name provides for a relief where there is a public toilet in part of a premises by enabling it to be calculated and charged separately and benefit from the zero rating. It would provide welcome support for public lavatories, and I hope that the noble Lord, Lord Greenhalgh, will embrace it.

Amendment 6, also in my name, seeks to provide rate relief to a premises with a Changing Places facility. We need to do much more to support Changing Places facilities; providing this relief would be a very positive way to do so. Changing Places facilities provide the

[Lord Kennedy of Southwark]
necessary space and equipment for people with disabilities—more than a standard accessible toilet can cater for. I mentioned at Second Reading that the Tower of London, a Historic Royal Palace, has a Changing Places facility installed. Noble Lords will know that that building's construction dates from 1066, after the Norman conquest. The facility is in the New Armouries building, which was built in 1663. It has installed a Changing Places facility; we should follow its example and do the same elsewhere.

When lockdown ends, we want people to be able to get out, meet family and friends and do all the things we have all longed to do for so long. However, for disabled people wanting to enjoy those things that we often take for granted, we need to ensure more adequate, better and more suitable provision. It is not a lot to ask for. It is about dignity and letting people have the freedom to enjoy themselves. Supporting Changing Places facilities is a very welcome thing that we should all do. My Amendment 6 is a small step to encourage the provision of more Changing Places facilities. I hope that the noble Lord, Lord Greenhalgh, can provide a positive response. I beg to move.

Lord Hope of Craighead (CB) [V]: My Lords, the formula proposed by this group of amendments raises an interesting practical question. I support what the noble Lord, Lord Kennedy, said on Amendment 6 about the desire to provide for Changing Places facilities where required, but my interest is in a more practical question: whether what is proposed here works with the normal principles of rating and valuation law.

I understand that it is proposed to extend the relief to the more usual situation where there is a public lavatory, or perhaps more than one, within a larger building which is not accessible from outside—the situation contemplated by the noble Lord, Lord Greaves, in Amendment 9, which we considered earlier. This being so, these amendments correctly assume that a value has been given to the building as a whole; they seek to extract from that value the amount attributable to the public lavatory or lavatories by asking for it or them to be valued separately and the value given to the building as a whole reduced accordingly. As I said earlier, I am not and never was a valuer, but I fear that the exercise that the amendment contemplates is not nearly as simple as it might seem. The noble Lord, Lord Greenhalgh, touched on this earlier.

The problem is one that a valuer would readily identify. First, it is not normal for individual elements in a building, such as public lavatories, to be given values in the course of making up the value for the hereditament as a whole, so a valuation exercise would have to be undertaken which is not normally—indeed, probably never has been—undertaken in the course of the valuations we have today. There is also a consequence for the other part of the building that does not consist of these lavatories—the effect of extracting the value and whether the value attributable to the remainder can be properly sustained without some kind of examination. I suspect that this approach runs into quite difficult valuation problems which a valuer would need to explore with the Minister to see whether they could be resolved.

There may be an alternative solution. I mentioned earlier the example of charitable relief; this time I will take another. Rather than engaging in the rather difficult exercise I have hinted at, it might be worth considering applying a derating formula across the board to all hereditaments comprising public lavatories. There is precedent for that approach in a statute introduced in the 1920s to provide relief for industrial hereditaments. These were hereditaments that were shown to be occupied and used as a mine, factory or workshop. The details are to be found in the Rating and Valuation (Apportionment) Act 1928. Hereditaments which met the tests for being treated as subjects of that kind were entitled to a reduction of half their annual value. The aim was to deal with the acute problems of unemployment and to stimulate the economy by encouraging the development of subjects for industrial use. Of course, an enormous problem was being addressed there that was shared across the economy as a whole, and one can well understand the measure and the extent of the relief that derating provided. I should mention that that statute was repealed some years ago so does not apply today.

A 50% reduction would be out of all proportion to what we are talking about when considering the public lavatories element in the overall hereditament, but that does not affect the principle on which the relief was given in these cases: that it is possible, without getting embroiled in detailed valuation exercises, simply to introduce a form of derating for a desirable purpose to encourage whatever one seeks to encourage. If the Minister is not willing to accept these amendments, the noble Lord, Lord Kennedy, might find it worth considering a 1% or 2% deduction from the overall figure, perhaps adjustable by statutory instrument in the light of experience, as an alternative to the rather complicated valuation exercises that this group of amendments contemplates.

Lord Lucas (Con) [V]: My Lords, I am attracted to the idea that the noble and learned Lord, Lord Hope of Craighead, has just advanced. After Second Reading, I had a very long and entertaining conversation with the noble Earl, Lord Lytton, on the technical subject of valuation. Some of it may have stuck in my brain, but the overall impression that this was not a simple matter certainly stuck there—in particular, the idea that the uplift in rateable value that comes from having a toilet can be quite substantial. It makes, for instance, the upper floors of a department store much more attractive than one might think. So there are considerable complications underlying the process, and if a toilet was subtracted from the whole, the question of how that whole would be valued fairly—when a toilet is available but it is not being rated—becomes quite complicated. At least, that is the strong impression that I was left with after my conversation.

3 pm

Having embarked on this course, the Government ought to be encouraged to continue down it. We ought to find a way to encourage those institutions that could comfortably provide public toilet facilities, and have their own reasons for doing so, in particular to encourage people to come into them or as part of their contribution to the society that they are embedded in.

If a business is doing that, it seems reasonable that it should receive some recognition of it from the Government. It is providing a public service and we ought to find a way of supporting that.

The noble and learned Lord, Lord Hope of Craighead, illustrated one way of doing it. I think even that would have its complications, in that one would have to ask, "Is the business doing enough to deserve the 1% or 2% that would be deducted from its business rates?" However, I really encourage the Government to look down that road and prepare to take steps down it, even if they cannot do so today.

Baroness Pinnock (LD) [V]: My Lords, these amendments proposed by the noble Lord, Lord Kennedy, explore the opportunities for public toilets within a public building that are not separately rated, so that they may benefit from the purposes of the Bill. In particular, Amendment 6 seeks to achieve the benefits of the Bill for those facilities providing changing places. These are inevitably included within public buildings, where there is the large amount of space available to provide changing places.

The noble and learned Lord, Lord Hope, has shared his expertise on these matters. He provides alternative thinking about derating hereditaments that provide public toilet facilities. The principle is sound; we all seek today to find ways of supporting public toilets through the financial benefit provided by the Bill, and not just those which are stand-alone. I hope that the Minister will, with his department, think carefully about the solution that the noble and learned Lord is pointing to. I certainly hope that we will be able to explore it on Report.

I for one support any means for exempting non-domestic rates where there is a public benefit. This debate has revealed the total incoherence of non-domestic rating. For example, in my own town of Cleckheaton the public toilets we have as part of our small market hall are separately rated and cost the council £15,000 a year in rates. These are no grand-affair public toilets; they are just two toilets, one for men and one for women. The cost of the rates is by far the largest element of expenditure on the upkeep of these toilets, yet they provide a free public benefit. The rate charged on this humble public toilet block is far in excess, in ratio terms, of that charged on an out-of-town warehouse providing storage for online shopping. This is all out of kilter.

Fundamental reform is essential and the Government have for too long avoided taking these difficult decisions. I hope that the Minister will consider all the helpful suggestions made this afternoon and be willing to think again about the contents of the Bill. I look forward to his reply today, and to further discussions and further debate on Report.

Lord Greenhalgh (Con): My Lords, I appreciate the backing that the Committee has given to the measures in the Bill and recognise the arguments made in support of extending the relief further still. The first amendment tabled by the noble Lord, Lord Kennedy, would provide for relief to be given to properties which contain public toilets that are not separately assessed, and for that relief to be determined according to the proportion of that property occupied by the public toilet. The second would have the same effect, but separately for properties which contain Changing Places facilities.

In designing the scope of the Bill, the Government have given due consideration to the benefits to our communities of extending the relief to those toilets that are not currently separately assessed. However, these benefits must be weighed against the significant practical and financial implications of implementing such a relief. I hope that my colleagues present today have received a copy of the letter of 2 February setting out these implications in detail—actually, I think most noble Lords today have referred to it. For the benefit of the Committee, I will set them out again now.

The Government have taken the deliberate approach of targeting the measure within the Bill at supporting those toilets that appear separately on business rates lists. This means that this support will be available to those facilities for which the cost of business rates has the largest bearing on their ability to remain open. The amendment tabled by the noble Lord, Lord Kennedy, would require the separate assessment of the rateable value of public toilets that sit within larger properties, and for the awarding of a business rates discount relative to the proportion of the property that the toilet occupies.

A valuation exercise to provide an apportioned relief would be extensive and require the Valuation Office Agency to first identify where the facilities are, and then to assess the specific rateable value of each toilet relative to the property of which it forms a part. This exercise would carry significant financial and temporal costs, as pointed out by the noble and learned Lord, Lord Hope of Craighead. It would require business rates valuers to carry out assessments and, where needed, to make site visits up and down the country. As such, it would divert critical VOA resources from the priority of delivering the 2023 revaluation and could potentially delay the implementation of the core measure of the Bill before the Committee today.

The noble and learned Lord, Lord Hope of Craighead, mentioned a formula-based approach to derating. This would also result in considerable burdens, for example by requiring the VOA to identify the location of the public toilets. Obviously, the scale of the intervention is different from that for mines in the 1928 Act, but I am happy to discuss that technical approach with my officials between now and Report.

I am proud to be here today championing a measure that will be of great value to our communities. While I recognise the importance of all publicly accessible toilets, the cost of extending this relief according to the amendment would be significant—far greater than the financial benefit to operators of such facilities. I hope that the Committee will agree that a relief with implementation costs disproportionate to its financial benefits would not represent good value for money for taxpayers.

Although extending relief to toilets that form part of larger properties would undoubtedly bring about significant and disproportionate costs and practical difficulties, I appreciate that the second amendment tabled by the noble Lord, Lord Kennedy, concerns Changing Places toilets in particular. I therefore hope

[Lord Greenhalgh]
that the Committee will allow me to set out the steps that the Government have already taken to support these vital facilities.

I am proud to belong to a Government who are delivering on their commitment to provide more Changing Places toilets. At the last Budget, the Chancellor announced a £30 million fund to further extend the provision of these vital facilities and my department will shortly set out the allocation of this funding. I would be happy to provide my colleagues in the House with further details on this funding once they are available.

The funding comes on top of the £2 million announced by the Department for Transport to provide Changing Places toilets at motorway services and the £2 million made available by the Department of Health and Social Care to install these facilities in NHS hospitals across England. I hope that that reassures the Committee that where a Changing Places toilet is separately assessed, the measures in the Bill, subject to Royal Assent, act to reduce the business rates liability of these facilities to nil. While there are significant practical reasons why the Bill does not cover toilets—Changing Places or otherwise—within larger buildings, the Government are delivering on their commitment to supporting Changing Places toilets directly through grant funding.

I hope that with those assurances, the noble Lord, Lord Kennedy, will withdraw the amendment.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank all noble Lords who have spoken in this short debate. I was particularly grateful to the noble and learned Lord, Lord Hope of Craighead, for his explanation of what would appear to be a far simpler method of achieving what I am seeking to do. I might have a look at that before Report as it seems to be a simpler method.

I thank the Minister for his response. Obviously, I am pleased to learn of the additional government expenditure on Changing Places facilities. It is good to hear but we need to do more and go further. However, at this stage, I beg leave to withdraw the amendment.

Amendment 5 withdrawn.

Amendments 6 and 7 not moved.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, we now come to the group consisting of Amendment 8. Anyone wishing to press this to a Division must make that clear in the debate.

Amendment 8

Moved by ***Lord Greaves***

8: Clause 1, page 1, line 13, at end insert—

"(8E) Subsection (4I) does not provide any relief from non-domestic rates under the Rating (Empty Properties) Act 2007."

Member's explanatory statement

This amendment ensures that rates continue to be charged on public lavatories that are permanently locked up and out of use.

Lord Greaves (LD): My Lords, the Deputy Chairman really ought not to continue tempting me to call a Division but, never mind, I am not going to.

I tried to do some research. In May this year, it will be 50 years since I was first elected to a local authority and I thought that I knew about things such as business rates and so on. I have discovered in the past week or two that I do not know much at all. They are complicated and technical. I thought that I would ring up the noble Earl, Lord Lytton, and have a conversation with him but I have been advised by the noble Lord, Lord Lucas, not to do that because I might get too far into this subject.

As part and parcel of this matter, I have been looking at the Government's rating manual, the Local Government Finance Act 1988 and the regulations that are referred to in Clause 2, and discovered why no amendments have been tabled to that clause because I doubt any noble Lords who might want to table amendments to it would understand a word of it. However, I thought it necessary to table an amendment on empty properties.

The amendment is technically totally hopeless—I am certain about that—but it contains the words "empty properties". All I want to do is use it to ask the Government: can they give a guarantee that the Bill will not allow people to pay no rates on public lavatories that they have closed? I am aware that local authorities all over the country nowadays charge rates on all kinds of empty properties, which used not to be possible. I do not want people to be able to close public lavatories and still have rate relief on them as a result of the Bill; in other words, I am asking that the Bill should not trump other legislation that allows local authorities to continue to rate empty property, and that people will not be able get away with that. I look forward to the Minister's response. I beg to move.

Baroness Pinnock (LD) [V]: My Lords, my noble friend Lord Greaves' Amendment 8 rightly explores the possibility of closed public toilets being eligible for the relief under the Bill. As those toilets provide no relief for the public, it is quite proper that no relief is provided for the authority paying the rates. It is clearly an issue that we need to explore, and be certain that the legislation ensures that authorities do not benefit from closing public toilets. I look forward to the Minister's response.

Lord Kennedy of Southwark (Lab Co-op): My Lords, the amendment moved by the noble Lord, Lord Greaves, raises an important point and I hope that the Minister will able to provide some clarity on it. The amendment, on the face of it, highlights what would be an incentive to keep a public lavatory open. I look forward to the Minister's response because, from what the noble Lord, Lord Greaves, said, it would be perverse if, by closing a public lavatory, one would be eligible for rate relief. I am sure that that is not the Bill's intention but it is important to get clarity from the Government on the issue that the noble Lord rightly raised.

3.15 pm

Lord Greenhalgh (Con): My Lords, I am happy to give that clarification. I understand the intention of the noble Lord, Lord Greaves, in his amendment and

support what he is trying to achieve. However, let me set out why it is unnecessary. His aim is to ensure that the relief cannot be applied in circumstances where a public toilet is permanently closed and out of use. I can assure the noble Lord that this is the Government's intention. The Bill is therefore structured to reflect that aim. The Bill will amend only Section 43 of the Local Government Finance Act 1988, which relates only to occupied hereditaments. The Bill would therefore ensure that the relief would apply only to eligible occupied hereditaments, not to unoccupied public lavatories. As usual, local authorities will be responsible for determining the award of relief, having regard to the legislation, as they do with other relief schemes.

I hope that that clarification on how the measure would apply will help the noble Lord, Lord Greaves, to withdraw the amendment.

Lord Greaves (LD): My Lords, I will read carefully the Minister's reply—and go one more step towards being able to pass my GCSE in business rating. I accept his assurance that what he said will be the case. As on all these occasions, if it happens not to be the case, we will come back and harass him in the House. However, his reply was acceptable; I will read it carefully and attempt to understand it.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall): Do I take it that the noble Lord wishes to withdraw his amendment?

Lord Greaves (LD): I am sorry. I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Amendments 9 and 10 not moved.

Clause 1 agreed.

Clause 2 agreed.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall): My Lords, we now come to the group beginning with Amendment 11. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Amendment 11

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

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

"Assessment of the impact of Act on provision of public lavatories

The Secretary of State must within one year of the passing of this Act conduct and publish an assessment of the impact of this Act on the provision of public lavatories."

Member's explanatory statement

This new Clause would require the Government to publish a report on the impact of the Act on provision of public lavatories.

Lord Kennedy of Southwark (Lab Co-op): My Lords, the amendment in my name and that of the noble Baroness, Lady Greengross, seeks to insert a new clause that would require the Secretary of State to publish a report on the impact of the Act. The Bill, though small, provides for significant rate relief for public toilets as they become zero-rated. In those circumstances, the Government would surely want to see what the effect of the policy has been. The proposed new clause would bring that into effect.

I am happy to support Amendment 13 in the name of the noble Baroness, Lady Greengross, which goes well with my amendment, by giving us information, year on year, about the effect that the policy is having, given that it will be costing the public purse revenue of which it would otherwise be in receipt. If we found that public toilets were still closing, that would be useful information to help us consider how we keep them open and whether something else needs to be done.

Amendment 14 in the names of the noble Baronesses, Lady Pinnock and Lady Thomas of Winchester, is on a similar theme to Amendments 11 and 13, but has an important emphasis on the review to look at the effectiveness of the Act in increasing accessible toilets and, in particular, Changing Places facilities, which we have talked about in earlier groups. I can see how beneficial it would be for the Government to have this information to hand. It would enable them to see that the Act was working effectively or highlight that more work needed to be done.

Amendment 15 in the names of the noble Baronesses, Lady Randerson and Lady Pinnock, is in a similar place. It picks up on the point and gives power to make a recommendation whether other measures in this area need to be introduced.

I like all the amendments in this group. Perhaps all those who tabled them should get together before Report to table one amendment that takes all these points on board.

Lord Lucas (Con) [V]: My Lords, the noble Baroness, Lady Greengross, asked me to speak to Amendment 13 in her name. We very much share the sentiments just expressed by the noble Lord, Lord Kennedy. We all support this Bill and want to see it succeed. We want it as a foundation on which a renaissance in publicly available toilet facilities can proceed down the next decade or so. To know that we are succeeding or to know where any problems or challenges lie, we need good data. We therefore hope that the Government will accept an obligation to publish that information so that we can cheer them for their successes and encourage them to do better where that appears to be needed. It took around 50 years to persuade Victorian authorities to install public lavatories, let alone to agree funding and rates for them. With luck, because of this legislation, we will see increased provision at a much quicker rate. This amendment would let us keep track of progress and would be an essential expression of Parliament's support for this measure.

Baroness Thomas of Winchester (LD) [V]: My Lords, I so agree with what the noble Lord, Lord Lucas, just said. I support Amendment 11, but am speaking to Amendment 14, which follows Amendment 11 in this group, calling on the Government to undertake a review of the impact of the Act on the provision of accessible lavatories within a year of its passing.

There are three reasons why we need to know whether the change in rating for stand-alone public loos is resulting in more accessible facilities. First, the population is getting older, so there will be more disabled and elderly

[Baroness Thomas of Winchester]
people about in the future than there are now, which means that the need for accessible toilets will grow. Secondly, sadly, there will not be so many food outlets on the high street which have accessible toilets for use by the general public, because of multiple closures in the wake of the pandemic. Thirdly, thousands of disabled people, like me, have spent the last year shielding, which means that they will not have been out and about. Many will now be more fearful than ever about going out without knowing where they can spend a penny in an accessible toilet. The Minister may say that any review should be done by local authorities, but we will not have a national picture unless the Government take ownership of it. Perhaps the British Toilet Association could help with up-to-date information.

I asked the Minister, at a meeting to which he kindly agreed, whether he could tell us how the £30 million rollout of Changing Places was going. These wonderful facilities are absolutely vital to about 250,000 disabled people. They are needed in town centres, arts venues, hospitals and wherever there are large gatherings of people. We have heard a bit about them this afternoon. Perhaps the Minister will undertake to give us more specific information at the next stage of the Bill.

Baroness Andrews (Lab) [V]: My Lords, it is a great pleasure to follow the noble Baroness, Lady Thomas of Winchester, and to support what she said. I am speaking in support of Amendment 11 and particularly to Amendment 13. I am conscious that the noble Baroness, Lady Greengross, is not able to be in her place today, because we all know what a superb advocate she is for all these matters. I am happy to support these amendments, because they are significant.

Amendment 13 makes clear what everybody who supports the Bill already knows: that we want to ensure that it works; that it is seen to be working; and that the evidence is collected and available for us to see. There is a matter of principle here: that public policy changes should be seen to be effective, especially when public money is involved; that when local funds are dedicated to a particular purpose, they are used for that purpose; and that there is transparency and agency in local and national government.

There is also a practical issue here. As the noble Lord, Lord Greaves, said, we have waited a long time for practical and universal initiatives to be taken to stop the closure of public lavatories and to place them in their proper context, which is within a robust and vigilant policy for local health and safety, rather than in some afterthought where no one is really interested in what happens to them.

As I said on Second Reading, the Bill is very welcome, but it would be a major disappointment if the funding that is going to be generated is not used for that purpose. We have to know the impact of the Bill, that it works and that it has achieved its purpose, and we need the evidence to be published. As other noble Lords have said, it is all the more crucial that we know this, because the measures will be introduced at a time when local authorities have never been more strapped, and it has never been more difficult to decide on priorities. We need to know that this small change will take its place in the range of priorities.

Local government needs financial and political investment to repair the damage and help to rebuild communities. I think that the Bill is part of that and part of the fabric of our whole public health and preventive health system, for the personal reasons that many noble Lords have raised today, and as part of a series of principles. I support these amendments and look forward to the Minister's response. I cannot see any possible reason for rejecting them and I hope I am right in that respect.

Baroness Randerson (LD) [V]: My Lords, all the amendments in this group are designed to ensure that the Bill is not the end of the matter, and that the Government are forced to confront the appalling and declining state of public conveniences in Britain. The Bill will not start to tackle the many problems. The Explanatory Memorandum tells us that it will involve redistributing £6 million back to local authorities in England. There are 343 local authorities in England—of course, I realise that there is some double counting because of two-tier areas—but this number does not include parish councils. There are 9,000 of those, many of which go on to take responsibility for public toilets. The Committee can immediately see from those figures that £6 million will not go far; it will be swallowed up in the general budget of local authorities, which are chronically short of cash.

3.30 pm

My own Amendment 15 is designed to ensure that, in good time, the Government are obliged to undertake a comprehensive review of public toilet provision. Are there enough of them and are they clean, well designed, well maintained and so on? As a result of this review, the Government should bring forward further measures. I realise that they are already undertaking a technical review of the accessibility and provision of public toilets for men and women. My intention with Amendment 15 is to ensure that the review is expanded and that a year after the Bill becomes an Act it is looked at to assess its effectiveness, if any.

In my amendment, I use "communities" to apply an all-encompassing term, because when one comes to the groups that have greater and specific needs, it is a long list. The issues for people with disabilities and, where relevant, their carers have already been covered very effectively by my noble friend Lady Thomas of Winchester. When I was a Mencap ambassador for Changing Places toilets, I was always struck by the poor design of many toilets intended for people with disabilities. The money had been spent and the provision was there, but the design was poor, so the Changing Places toilets are a huge bonus.

Parents with children—men and women—need special facilities. It is not just a case of needing unisex baby-changing facilities: as children get older, there is a need for cubicles large enough for both parents and children. Why do the cubicle doors always open inwards, when they could provide so much more room if they opened outwards? Some 14 million people in the UK have bowel and bladder problems, and they need catering for. Adequate numbers of cubicles for women are needed. They have physiological reasons for taking roughly twice as long as men to use the toilet; add to

that pregnancy and menstruation, and you have additional needs. I have spent a noticeable amount of my life queueing for toilets, as I am sure any female listeners would agree.

Facilities need to take account of societal and community circumstances. There is a trend towards the conversion of cubicles to gender-neutral provision. Gender-neutral facilities are important for a number of reasons, including, for example, when fathers wish to take young daughters to the toilet and when mothers wish to take young boys to one. But, for religious and cultural reasons, many women are simply unable to use unisex toilets. Additional gender-neutral facilities should not be provided at the expense of current facilities for men and women. They are needed, but not at the cost of what we already have.

Throughout this debate, the Minister has repeatedly referred to costs. I fear that he is missing the point entirely. He will not get a major improvement without some expenditure. I urge him and his officials to investigate what is really going on and what is needed, and to consult, for example, the British Toilet Association, which advises on the design and operation of public toilets. Its advice ensures that money is well spent. The Explanatory Memorandum refers to compatibility with human rights; I would argue that public toilet provision in the UK is so poor that it is a human rights issue, and of itself the Bill will not affect that situation.

While I am here, I also urge the Government to look again at the Public Lavatories (Turnstiles) Act 1963. It required local authorities to remove turnstiles from public toilets. Only railways, for no good reason, are exempt from this legislation. Any noble Lords who have tried using toilets in railway stations will recognise the huge problems that causes for passengers with luggage, children or a buggy.

I urge the Government to be bold. Governments have failed to stem the decline in the numbers and quality of public toilets since the 1980s. They have failed to address the traditionally inadequate provision for women and the lack of facilities for people with disabilities. The last year has made us even more aware of the importance of cleanliness. At Second Reading I referred to the impact of sudden unlocking early last summer, when people travelled to the coast but shops and cafés with toilets were still shut. A hygiene crisis spoiled the day out for thousands of people.

I urge the Government to recognise that the Bill on its own solves nothing. They need to take this situation forward to a better place. In 2021, the availability of clean public toilets is a reasonable expectation for us all. As we recover as a country from Covid, we need to encourage our tourism industry. The state of our public conveniences is a source of national shame. For this reason, if for nothing else, the Government need to do more than just this Bill.

Lord Greaves (LD): My Lords, I support these important amendments, and I ask the Government particularly to pay attention to the three powerful speeches we have just heard from my noble friends Lady Thomas of Winchester and Lady Randerson and the noble Baroness, Lady Andrews. Those three speeches sum up what the future really ought to be for public provision in this area. When the Government say they are carrying out a technical review, I am afraid that I am a bit cynical about the word "technical" in this respect. I am sure that their intentions are good, but it is more than just technical. It is about basic humanity and a basic provision of human-based services for all people. As I say, I hope that the Government will take this seriously.

To pick up on two or three particular points, parish and town councils are absolutely crucial in the future provision of public lavatories. Although they do not cover anything like a majority of electors in this country, they do cover a huge number of small and medium-sized communities. These are places that people go to, or through, and where people go for holidays and recreation. It is crucial that they are provided with the necessary resources to do what we all want to do, which is, in many places, to turn old inadequate Victorian and Edwardian public conveniences into modern provisions of the kind that people have been talking about which are suitable for everybody.

To do that, they need resources. I keep being told, and the National Association of Local Councils have been told, by the Government that they have no powers to provide funding for parish councils. That was almost the exact wording that I was given in a Written Answer from the Minister, not too long ago. I do not believe that; I think it is complete baloney. The Government can provide funding for projects on almost anything they want. They could certainly provide capital funding through some scheme or other for parish and town councils to renovate and modernise their existing public conveniences and provide new lavatories. I hope that the Government look seriously at that in their technical review because, if they are going to be provided, in many places the town and parish councils will have to do it.

Secondly, I asked a question earlier and the Minister did not reply, on whether the Bill applies to all kinds of ownership—public bodies including councils, voluntary groups including charities and commercial organisations, some of which may be charities. He said separately, in reply on another amendment, that the Bill applies specifically to lavatories that appear on business rate lists. Is that the definition? Does it therefore apply to any public lavatories that appear on business rate lists, whoever owns them, even if it does not apply to lots that are publicly provided?

My final point is on burdens to councils. As the Minister well knows, councils love to talk about, involve themselves in and do something about very local facilities. I understand the difficulties of providing extra burdens on the VOA, particularly at this stage, but I believe that, in a relatively small number of cases, public lavatories could be provided with the relief in this Bill by giving some discretion to local authorities, in some way. I do not believe that local authorities would regard that as a great burden, but as part of their ordinary job. We are not talking about a lot. I have a list of eight public lavatories that are on the business rates list in my own area of Pendle in Lancashire—only eight. The numbers that might benefit from the Bill, if it was extended a little, are not more than that. We are talking about single figures in most local authorities, certainly most ordinary districts. They could cope

[Lord Greaves]
with that perfectly well and would not complain about the extra burden; they would welcome the ability to influence things a little for the better.

Having said that, I very much support these amendments and look forward to the Minister's reply. I hope that we see a few improvements to the Bill from the Government, when we get to Report, to make it even better than it is now.

Baroness Pinnock (LD) [V]: My Lords, this is an important series of amendments. My noble friend Lady Thomas knows, at first hand, the challenges facing people with disabilities as they seek to do what the rest of us take for granted. Before people with disabilities venture out, questions have to be answered. Is there an accessible public toilet? Is its accessibility such that it meets the needs of, say, those using larger mobility aids? Is it open at the appropriate times? How easy is it to access? Negative answers to these questions may well mean that someone with a disability is unable to go on a trip or holiday, or simply shopping.

My noble friend's Amendment 14 is hugely important and I am proud that it is also in my name. I urge the Minister to take these concerns seriously, as I feel sure he will, and to press his ministerial colleagues to make them a priority. During this lockdown, we have all had the experience of not being able just to go out, when we want to. For people with disabilities, this can happen all the time. Ensuring there are accessible and available public toilets goes some way to remove one of their barriers to freedom.

3.45 pm

My noble friend Lady Randerson spoke to Amendment 15, which is also in my name. My noble friend has had a long connection with those who rightly want to make the accessibility, cleanliness and availability of public toilets a national priority. As always, she made a powerful case. The least that the Government can do is to accede to the requests couched in these amendments and make the provision of public toilets that meet high standards one of their priorities. This is a public health issue, and we have all learned that we ignore the consequences of public health requirements at our peril.

Amendments 11 and 13, in the names of the noble Lord, Lord Kennedy, and the noble Baroness, Lady Greengross, also make the case for assessing the impact of the Bill when it is enacted. In my view, assessment of the impact of new legislation should occur as a matter of course—it is surprising that it does not already—but it is important that an assessment of the Bill's impact is made and that we learn from what has occurred as a consequence.

I agree with the noble Lord, Lord Kennedy, that all the amendments in this group are important and deserve to form part of a single amendment on Report, if the Minister is unable to concede to these requests at this stage. I look forward to hearing his response and hope that he is able to have discussions prior to Report, because it is in all our interests to make best use of the Bill, to make sure that the financial benefit it offers is available to others who offer public toilets and that we raise the standards of public toilets throughout the country.

Lord Greenhalgh (Con): My Lords, these amendments would require the Government to carry out an assessment of the impact of the relief on the provision of public toilets. The first, put forward by the noble Lord, Lord Kennedy, would require an assessment to be made within a year of the Bill receiving Royal Assent, while the amendment tabled by the noble Baroness, Lady Greengross, would require an assessment of the impact to be published on a recurring, annual basis. The amendment tabled by the noble Baronesses, Lady Thomas and Lady Pinnock, would require an assessment to be made with particular reference to accessible toilets and Changing Places facilities. The fourth amendment, which has been tabled by the noble Baronesses, Lady Randerson and Lady Pinnock, would require such an assessment to review the impact of the relief on the cleanliness and maintenance of public toilets and the provision of baby changing facilities, in addition to the impact on the overall provision of public lavatories.

I appreciate the interest that noble Lords have in the efficacy of the measure within the Bill and assure the House that the Government keep all business rate reliefs under review. I also want to meet with interested noble Lords and the British Toilet Association before Report to see how we can review implementation of this relief. That is an important step and, I hope, will be an opportunity to discuss some of the issues that have been raised.

Before I turn to the detail of the amendments, I will respond to the question raised by the noble Lord, Lord Greaves, that I failed to answer earlier. I can confirm that the relief for all separately assessed toilets applies irrespective of ownership. I want to be clear on that point.

On the provision of public lavatories, the Committee may be interested in the data that is already published annually, to which I have already referred. There are some 3,990 separately assessed public toilets in England and Wales, and this figure is constantly updated and monitored. We do not want to see reductions, and it is clear that by significantly reducing the operating costs of these facilities, the measures in the Bill will help to keep public toilets open up and down the country.

While these measures constitute a significant element of support for these facilities, a number of other factors determine whether a toilet is able to remain open. Ultimately, the decisions on whether to maintain or close a facility must be made by the operator of the facility, often the local council. These decisions will usually be based on wider funding pressures, as well as the number of toilets elsewhere in the local area.

The Government strongly support the continued operation of our public toilets. As I set out earlier, we are providing £30 million of grant funding to directly support the provision of Changing Places toilets in particular. I also set out at Second Reading some of the good work that councils have undertaken through community toilet schemes to maintain and increase provision in their local areas. However, it is clear that there are a number of factors that determine whether a toilet is able to stay open, and it would not be possible to attribute any future changes in the overall provision of public lavatories, or facilities of any specific

type, solely to the measures in this Bill. Equally, I do not envisage any direct link between business rates relief and the maintenance and cleanliness of existing public toilets. For this reason, and because the number of separately assessed public toilets is already published on an annual basis, I hope that noble Lords will agree that any assessment of the kind proposed would be unnecessary and an ineffective use of government resources.

However, I welcome the fact that the Bill has shone a light on the interest from across the Committee in our public toilets, and I recognise the passion with which my colleagues have spoken of the need for adequate provision of accessible toilets in particular. I hope that the Committee will therefore allow me to conclude by reiterating the support of the Government for these vital facilities.

A number of noble Lords spoke about the importance of accessible toilets. The noble Baroness, Lady Thomas of Winchester, again raised the issue of Changing Places toilets and the disbursement of the £30 million of funds. I am happy to give further details on the progress of that, I hope before Report. It is important to many people in the country that we ensure that the absence of accessible toilets is reduced, because lack of accessible toilets reduces the ability of people with a disability to make use of our public spaces with confidence.

The noble Baroness, Lady Randerson, raised the important question of design and doors opening inwards, thereby reducing space. That is a good point, and everyone here nodded in agreement with that sentiment. So I am pleased to let the Committee know that a technical review is looking at the ergonomics and features of toilets and will I hope take some of these points on board. We hope to see an improvement in design in the future.

While the Bill is important, the provision of public toilets is rooted in a number of factors, and in the particular case of accessible toilets, the Government are providing direct grant funding. On this basis, and as the number of separately assessed public toilets is already published on an annual basis, I hope that the noble Lord, Lord Kennedy, will agree to withdraw his amendment.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank all noble Lords who have spoken in the debate. I agree with the comments made by the noble Lords, Lord Lucas and Lord Greaves, and the noble Baronesses, Lady Thomas of Winchester and Lady Randerson, and my noble friend Lady Andrews. The decline in the provision of public lavatories is a matter of great concern. The adequate provision of toilets is a public health matter, as my noble friend Lady Andrews said in this debate.

I agree with the noble Baroness, Lady Randerson, that many accessible toilets are poorly designed, despite considerable sums of money having been spent on them. I also agree with her that the need to provide more toilets for women and for men, and more gender-neutral toilets, as well as accessible and Changing Places toilets, is of paramount importance. As I have said, it is about understanding needs, the lack of provision of toilets for women, and ensuring respect for difference, along with the provision of facilities that are clean, safe and secure, and which people feel are safe to use.

The Bill does not address these issues because of its narrow scope, but I am sure we all agree that those are important matters. They are relevant issues that need to be addressed. I was very pleased by the offer of the noble Lord, Lord Greenhalgh, to meet interested Peers between now and Report, along with representatives of the British Toilet Association, and I look forward to taking part. However, at this stage I am happy to withdraw the amendment.

Amendment 11 withdrawn.

Amendments 12 to 15 not moved.

Clauses 3 and 4 agreed.

House resumed.

Bill reported without amendment.

3.56 pm

Sitting suspended.

Arrangement of Business

Announcement

4.30 pm

The Deputy Speaker (Lord Russell of Liverpool) (CB): 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 will be one hour.

Non-Domestic Rating (Designated Area) Regulations 2021

Motion to Approve

4.31 pm

Moved by ***Lord Greenhalgh***

That the draft Regulations laid before the House on 12 January be approved.

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): My Lords, you will recall that under the business rates retention scheme introduced in 2013-14, local authorities typically keep up to 50% of the business rates collected from local ratepayers. The actual amount retained by the authority depends on its local share, the amount that it pays or receives as part of the redistribution arrangements—its so-called tariff, or top-up—and ultimately whether it pays a levy on its growth, or receives a safety net payment because its business rates income has declined.

While the complexity of the rates retention scheme can sometimes be quite daunting, the underlying principle is really very simple. It allows local authorities, for the first time since 1990, to keep a share of the growth in their local tax base, over and above the resources they get from central government. However, there is another way in which local government can benefit from the rates retention scheme: through the designated area arrangements.

[Lord Greenhalgh]

The Government can designate a discrete geographical area in which the rates income, or some part of it, is ignored for the purpose of tariffs, top-ups, levy and safety net. Instead, the rates income is retained in its entirety by the local authority. Since 2013, the Government have created over 200 designated areas, most as part of enterprise zones. In such areas, authorities have been permitted to keep all the growth in their business rates for a period of 25 years, the additional business rates income being used by authorities and their local enterprise partnerships to help the regeneration of those areas. Other designated areas have been set up specifically to allow authorities to keep all the growth in business rates, to create an income stream against which authorities have been able to borrow for specific infrastructure improvements. In total, between 2013-14 and 2019-20, authorities have kept an additional £237 million from designated areas, which has been used to provide improved infrastructure and to support regeneration more generally.

The regulations create a new designated area in Teesside, that of the South Tees Development Corporation. Once the regulations are in force, Redcar and Cleveland Borough Council and the Tees Valley Combined Authority will keep all the growth in business rates for a period of 25 years. This development corporation site is the first mayoral development corporation outside London and was inspired by the independent report of the noble Lord, Lord Heseltine, in June 2016. In covering the industrial area that had been blighted by the liquidation of the SSI steelworks, he foresaw the development opportunities that would be afforded by this 4,000-acre site on the south bank of the River Tees, a site with good road and rail access, and sitting alongside one of the deepest ports on the east coast of the United Kingdom. He recommended the establishment of the South Tees Development Corporation and advised the Government and local partners to put the relevant resources in place to realise this goal.

The designation of this special economic area is part of that financing plan—part of a masterplan that will see new investment on the site and the creation of an additional 20,000 new good-quality jobs on one of the largest development sites in Europe. It builds on central and local government investment to initially deal with the legacy of steel-making and ensure that the site was kept safe and secure, before working with local, national and international investors on what market opportunities are most relevant to the site. The development corporation secured ownership of the developable land through agreement and a compulsory purchase order, bringing order to a piecemeal and incoherent situation, and allowing developments at scale.

There is a healthy pipeline of investment interest in place, and the provisions of this statutory instrument will ensure that, as the land is developed and new industries emerge, part of the business rates income will be reinvested in site development. It is a virtuous circle, where success in investment will bring resource to accelerate the development of the site. The regulations provide that the designated area will come into force only after the Government are satisfied that Redcar and Cleveland Borough Council and the Tees Valley Combined Authority have put in place arrangements that ensure that the money they keep as a result of these regulations will be used solely for the benefit of the South Tees Development Corporation.

To that end, the Government have negotiated a memorandum of understanding with Redcar and Cleveland Borough Council and the Tees Valley Combined Authority which will ensure that there are clear revenue-sharing arrangements in place, protecting the finances of the local authority and enabling funding to be released for the development of the site. This will be signed as soon as Parliament agrees to the regulations, and will enable the designated area to come into existence on 1 April 2021. From that point, all growth in business rates will be shared 50:50 between the council and the combined authority.

Growth will be measured exactly as in other designated areas. Schedule 2 provides details of that measurement. When in any year the business rates income in the designated area is greater than a baseline amount, set out in Schedule 1, the council and combined authority will keep 100% of the difference. The baseline amount—a little over £7 million—has been set by Redcar and Cleveland Borough Council. It represents the annual amount of business rates that it would expect to collect in the designated area at this point in time. As the regeneration of the development corporation increases, the council and combined authority will keep every pound of the collectible business rates above that £7 million baseline. This will be reinvested in the area, generating still further growth.

These are important regulations. They will provide additional funds over an extended period, allowing the council and the combined authority to invest in the regeneration of South Tees. I commend them to the House.

4.37 pm

Lord Hain (Lab) [V]: My Lords, I thank the Minister for his clear and cogent explanation. I realise that these are very technical regulations to designate, for the purposes of non-domestic rates, an area in England, including for the admirable objectives that he described, such as in Cleveland. However, I want to press him about the wider plight of our town centres, as I did last month. Their decline has been drastically accelerated by the Covid-19 crisis and the acceleration of online shopping.

It is no good leaving this to market forces. If that is the Conservative Government's stance, we might as well say goodbye to town centres, which have for generations, if not centuries, been the centres of community and business life. Commercial and online pressures and changing lifestyles have been accelerated by the pandemic. Business rates and rents have a critical role to play here. Of course there are different exemptions, suspensions, and reliefs for business rates, but that is sticking plaster. We need a much more radical and comprehensive solution to this problem, or our town centres will simply die.

To keep town centres viable and vibrant, they must be supported with UK government non-domestic rates subsidies designated for local government and transferred through the Barnett formula to devolved Administrations

as well. That support must be long term, if not permanent, to incentivise retail and hospitality outlets to locate in town centres. Currently, town centre businesses are being killed by unfair competition, high costs, high rents, and high business rates. This is not the fault of local authorities across the country. After savage Conservative government cuts during the past 10 years, of about 30% in many respects, local councils do not have the funding or the legal basis to subsidise town centre enterprises in the necessary way.

Crown post offices have closed, some backed into local branches of WHSmith, but how long will those WHSmith branches survive in our town centres? Local bank branches have also been rapidly disappearing. The Government need a completely new agenda. Business rates should be completely scrapped for microbusinesses in town centres, along with rents. Instead of Government Ministers passing the buck to local authorities, the Treasury should step in and take responsibility. Rejuvenating town centres would also reduce our carbon footprint and end the throwaway culture. The Government should promote a regeneration of repair skills and facilities in town centres through skills support packages.

That means ending our society's obsession with low personal tax. If we want a decent quality of life in town centres, which everyone says they do, we have to be prepared to pay for it. It is not going to happen on its own: market forces and commercial pressures will not resolve this problem. Treasury funding, provided through local councils, is necessary to regenerate and revive our town centres, and I hope that the Minister will seriously take up this option and encourage the Government to act before our town centres die. In that context, I support this order, but I think that a wider, more fundamental strategy is needed.

4.41 pm

Lord German (LD) [V]: My Lords, I also welcome these regulations and the narrow spectrum that they contain, but I want to address the wider issues that business rates inflict on business in this country, particularly with regard to the needs of revival following the pandemic. While these regulations provide a system for incentivising growth and encourage local government to take steps to promote business growth, they will not serve every cash-strapped council in the short term. The effects of the pandemic and lockdown have shown how challenging our present business rate system is and how fragile a tax it is.

One of the first incentives that the Government provided to business during the pandemic was a business rate holiday, and rightly so. Given the extent of the lockdown, this is acting as a real drag-anchor on our town centres, which are now facing a much smaller retail offering moving forward. Fixed business rate taxes act as a discouragement to newcomer shops and enterprises. Our town centres will need a rethink if they are to survive as hubs for our communities.

Equally, the universality of business rates and their inherent weaknesses will undoubtedly lead to slower town centre recovery in the poorer parts of the country. Boarded-up shops will be more of a feature if large steps are not taken now to revitalise our town centres. The retail and community offer in our centres must be given the right incentives if they are to re-establish these as places to which people want to go. Our business rates system is simply not fit for purpose for this to happen.

The crisis facing our high streets and the burden business rates place on companies compound the problems that we have with this tax. Business rates, by taxing the value of a business's machinery and premises, are a tax on investment itself. The result is a higher bill for the ambitious entrepreneur who decides to expand factory space or add solar panels to the roof and a lower bill for the speculative landowner who chooses to leave their commercial plot derelict or unused. The replacement of business rates with a new tax based solely on land value and paid by landowners, would remove the existing disincentive to invest. It would also spare millions of small businesses which rent their premises the unhelpful administrative burden of business rates.

Business rates have become an unacceptable drag on our economy. This system is a tax on productive investment at a time of chronically weak productivity growth and a burden on a high street struggling to adapt to the rise of online retail and the impact of the pandemic. Because of the highly unequal way in which land values currently exist, a land tax of this sort would significantly reduce business taxes in the poorest parts of the country, helping bring about the regional rebalancing that is so badly needed. By taxing only land, and not the productive capital above it, it would remove a major disincentive to investment, boosting productivity and accelerating the UK's recovery.

The business rates retention policy in these regulations, of sharing between central and local government—and solely within local government in this case—and providing local councils with extra cash to promote growth, could work equally well under a land value taxation scheme. Any growth in revenue could still accrue to the local authority alone. Therefore, although I agree that these regulations can serve us well as a policy in a period when growth is possible and likely, I encourage the Government to consider a new system altogether which would stimulate growth and encourage endeavour rather than just taxing it.

4.45 pm

Lord Kirkhope of Harrogate (Con) [V]: My Lords, in most areas of government, when the political decisions for actions to be taken are made, the process boils down to one of money coming in and then that money being committed or spent centrally or locally. In some areas, the process becomes very complicated and can lead to high levels of dissatisfaction and disagreement. These regulations, which appear in principle—as my noble friend the Minister has said—to be very simple, in fact form part of the whole debate on the financing of local government, the very relationship between central and local government, and the way in which businesses large and small contribute to the cost of local and national services.

Business rates are controversial, and substantial reform is overdue. In the meantime, as a result of the current Covid crisis and the inability of many businesses to trade profitably if they can even continue at all, the extra burden of non-domestic rates has rightly been recognised in short-term relief for businesses in the

[Lord Kirkhope of Harrogate]
hospitality, leisure and retail sectors with rateable values of less than £51,000. I hope that the Chancellor will have more to say and to offer on this subject in his Budget Statement.

We saw a number of changes in the way business rates were levied and spent in the Local Government Finance Act 2012, when normally 50% of monies could be retained by the local authority as opposed to being remitted to the Treasury. However, the Government are committed to a much wider reform of business rates. In its 2019 election manifesto, the Conservative Party promised to reduce business rates and to fundamentally review the whole basis of these charges. Since then, the Covid crisis has hit business hard, so a change in the basis of charging rates is urgently required. We have been promised a revaluation of rates from 2023, which luckily will be based on property values of April 2021, so it will reflect the impact of the present crisis. This is welcome, but in the meantime we are now extending a localisation of control of the rate income by this measure before us today.

This benefits Tees Valley Combined Authority and Redcar and Cleveland Borough Council. As my noble friend the Minister has indicated, it allows the retained monies to be used in the designated area where the need is greatest and where local economic growth is most required. That is a good thing. The establishment in certain parts of the country of mayoral combined authorities with specific spending powers and, in particular, the emphasis on local economic growth has clearly required new funding arrangements. Although these regulations are dealing only with any income arising from the growth of rate returns, in this one designated area, those sums will be totally at the disposal of local government. As this money will be shared 50/50 between the local authority and the mayoral combined authority in the area, I hope that the required memorandum of understanding between the two, which has been referred to, will be a really co-operative and positive statement and an encouragement for greater economic activity, and will allow the designated area to be confirmed in April, as suggested.

Memoranda of understanding are being ever more utilised as precursors for more solid agreements, as has been demonstrated in our recent UK trade initiatives. While always well intentioned, they do not always result in long-term satisfaction. Moving more of the monies received into the hands of local democracy is very important and it is, of course, not a substitute for thorough reform. We await that reform with great interest.

I am assuming that regulations similar to these will be put before us for other areas where a mayoral combined authority and local authorities are working together, and that this will include West Yorkshire, which moves to a new status soon. Can my noble friend the Minister confirm that this will indeed be the formula for all such combinations in the future as devolution proceeds? When the proposed revaluation is completed, will further changes be made to support business even more with the hope of economic enhancement, job creation and a lessening of the burdens on business as we emerge from the present crisis?

4.49 pm

Baroness Wheatcroft (CB) [V]: My Lords, I thank the Minister for introducing this statutory instrument in his normal straightforward way. I take the opportunity to pay tribute to my noble friend Lord Heseltine for his tireless efforts on behalf of this country. His farsightedness brought new life to Liverpool, and it is great to see that it will now do the same for the Teesside area, where it is certainly much needed.

As the Minister said in introducing the statutory instrument, the complexity of this scheme can sometimes seem daunting. I certainly felt that way on reading this legislation and the related documents. Therefore, would it be possible to simplify the legislation? One would imagine so. If so, can the Minister undertake to ensure that his department will do so?

I have two more general observations to make on the business rating system. The noble Lord, Lord Hain, spoke very eloquently about the problems that our town centres now face. They were bad before Covid; they are infinitely worse now. What will revive those town centres? Back in 2011, Mary Portas, an authority on retailing, was commissioned to write a report. She came up with a very detailed document that made specific proposals running into the teens, but, as far as I can make out, very few of them have been followed up in any detail at all.

Will the Minister revisit the Portas report and some of the very interesting ideas put forward in it? For instance, she suggested that there should be super-business improvement districts, with new powers to change an area and the planning that goes on within it. She suggested that it should be made much easier for individuals to set themselves up as market traders. Currently, there are so many regulations governing how our markets work that people face almost daunting obstacles in what should be a very simple business and which has, in the past, been a way of producing very successful retail businesses that have brought new rates into an area. Is there a central register of what works in a local authority area to enable it to generate more business rate income?

It is clearly beneficial to an area to have thriving businesses that will generate the income that they will then be able to use, as the Minister said, to improve infrastructure and the area generally. Would it be possible, if it is not done already, for central government to investigate what initiatives work? Does a town centre management scheme, for instance, bring new life into an area? Can educational initiatives be introduced locally that will, before very long, bring new business rates into an area? I would like to see government be proactive on this and would be grateful if the Minister would say whether he thinks that that sort of initiative is possible.

Finally, I echo the words of others in this debate. It is absolutely imperative that the business rates holiday, which was very speedily granted in the wake of Covid and the devastating effect that it had on our high streets, is extended in the Budget. Can the Minister give us any assurance on that?

4.53 pm

Lord McCrea of Magherafelt and Cookstown (DUP) [V]: My Lords, I thank the Minister for his introductory remarks in presenting the statutory instrument.

These regulations form part of a scheme to allow local government to retain a share of non-domestic rates, to be shared between central and local government, with 50% each. As a former local councillor for 37 years, I know how important rates are in providing local services. The Government previously identified a number of geographical areas designed to help job creation and encourage growth. I appreciate that this system applies only to England and Wales, but the 50:50 split of rates income between central and local government is generally mirrored in Northern Ireland.

I acknowledge that these regulations do not extend to the Province, but I share their overriding aim to provide flexibility and support for local councils, enabling them to promote economic development via the rates system. Belonging to a pro-business party, my colleagues have previously outlined our support for devolving to local councillors the powers and ability to lower business rates in their council areas by up to 3%. We also want to enhance the small business rate relief scheme and maintain industrial derating.

Ultimately, these regulations promote and encourage a rates-based growth strategy in designated areas of local government. This is certainly something on which I want to see a greater emphasis in Northern Ireland, and my colleagues in the Executive are seeking to take this forward. New developments and new businesses can boost the income of local councils and generate growth. Therefore, the business rates base should be a key driver.

The recovery from Covid-19 must have at its core an emphasis on skills and productivity, backed by infrastructure investment. A business rates system which is fit for purpose and allows the economy to grow and evolve is therefore essential. Higher rates bills are not only a barrier to business creation and growth, but a harmful impediment to existing firms. Rates reforms can remove these obstacles to growth and place the future of businesses that are under threat from the chaos of the pandemic on a more stable footing.

I am also mindful that the charitable relief from non-domestic rating has been a vital lifeline for faith-based organisations and for the community and voluntary sector. Any strategy for spearheading the recovery from the ravages of Covid-19 must not neglect these groups, as their operation has already been severely disrupted.

In conclusion, I agree with those who have emphasised the necessity of a specific plan to revive our town centres and high streets. I trust that the Government will give us a positive lead on that.

4.57 pm

Baroness Gardner of Parkes (Con) [V]: My Lords, I know that the scheme is welcomed by many local authorities as a way of getting money back into their areas by means of development and reinvesting locally. It is very much to be commended for that.

I inquired of staff in the House of Lords Library how many designated areas had been granted and for how long, and I thank them greatly for their excellent assistance in this. It was fascinating to see the range of places covered, the sums involved and the length of time granted. However, it gave me pause to ask about two aspects.

First, how does the Minister determine how long an area is designated for? I see that Birmingham city centre, which was designated in April 2013, was given 33 years, whereas Mersey Waters in Liverpool was designated for only 25 years, and the London zones of Croydon and Brent Cross for only 16 years and 12 years respectively. Can the Minister explain why some are granted such short periods and others so much longer, or does that reflect the period applied for by the local authorities?

My second question relates to how many applications are refused. As with any such applications, a great deal of work will go into preparing these and, over the years, I have known of too many cases in which the Government of the time encourage applications and then refuse to approve any, or many. I hope that this is not the case here. When a previous inquiry of this type was sought in 2011, the then Minister in another place would not disclose the number of unsuccessful applicants. I hope that the number of applicants is high and the percentage of refusals low. In either case, it must be clear in advance what is required and why an application is to be refused. Like other Members of this House, I too recall the effectiveness of the work of the noble Lord, Lord Heseltine, in Liverpool. We have something to build on in so many places in this country, and we should be doing it.

5 pm

Lord Bhatia (Non-Afl) [V]: My Lords, this SI has been prepared by the Ministry of Housing, Communities and Local Government. These regulations form part of the scheme for local retention of non-domestic rates. Their purpose is to designate an area in relation to which a proportion of the non-domestic rating income raised is to be retained in its entirety by the local authority in whose area the designated area falls and shared by that authority with its combined authority.

The department has reached this view because it considers that the primary purpose of the instrument relates to local government finance, which is within the devolved legislative competence of each of the three devolved legislatures. The territorial extent of this instrument is England and Wales. These regulations form part of the scheme to allow local retention of the non-domestic rate scheme which was introduced on 1 April 2013 to give local government a direct share of the local non-domestic rating income and thereby an incentive to promote local growth. This replaced the previous scheme whereby non-domestic rates were collected by local authorities, paid to central government and redistributed back to local government via the local government finance report.

As part of their policy to deliver growth, the Government have previously identified a number of geographical areas designed to help create jobs and businesses in areas of economic opportunity. They will do this by giving businesses the right conditions for growth, creating public and private partnerships and encouraging competition to attract foreign inward investment. In these areas, the Government have allowed

[Lord Bhatia]
local authorities to retain 100% of the growth in non-domestic rates. This provides a powerful incentive for growth.

Can the Minister say whether there is a monitoring process in place to ensure that local authorities use these funds for business growth and not for other purposes?

5.03 pm

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

This debate on the specific share of rateable income newly generated by Redcar and Cleveland Borough Council and the Teesside mayoral authority has raised some important considerations. The first is that currently around half of the income of local authorities is raised via business rates. This is either through retained business rates, which is the subject of these regulations, or by the redistribution of business rates collected locally and redistributed nationally.

In recent years the Government have made very considerable reductions in central government grants and have expected local authorities to base their expenditure on income derived in the main from council tax collection and business rate income. With the huge pressure on the most highly rated premises in our town centres, it is hardly surprising that retail outlets are closing in such large numbers. In the competition between online and physical retail, the biggest financial advantage lies with online premises, where rateable values are so much lower.

I have an example. I live in a small Victorian town, where a small shop is paying at the rate of £250 per square metre of its premises. The equivalent for an out-of-town warehouse, also in Yorkshire, which is the distribution centre of a major online shopping business, is a mere £45 per square metre. That vast disparity is at the heart of the crisis in our local high streets. This is the background to the regulations we are debating.

In a nutshell, the system is broken, as several noble Lords have detailed. The Government need to address this problem with considerable urgency and energy. It is also unfair. Designated areas are of benefit in those areas only. However, retaining those rates locally results in the national income of business rates not growing by that proportion. This in turn means that there is less to distribute across the rest of the country. Designated areas discriminate against those local authorities that, for a variety of reasons, are unable to encourage high business rate growth—including, for instance, serving an area within a national park.

What is also apparent in the need for the regulations is the narrowness of the Government's definition of devolution. Devolution as experienced in other nations in Europe would see no need for the regulations. The Government need to let go and free up local authorities to develop their enterprising faculties. That is what this small example of a designated area is able to do. The challenge, however, with the current high levels of unemployment, is for all growth and job creation to be encouraged. How can local and mayoral authorities achieve this while they remain harnessed to the constraints of central government?

Throughout this debate, we have heard sharp criticism of the existing system and a general desire to encourage enterprise, job creation and the prosperity that follows. This scheme of designation of business rates retention in the Tees Valley mayoral authority and the Redcar and Cleveland Borough Council area is welcome for this part of the country. However, major reform is vital. My noble friend Lord German has proposed a site value rating approach, whereby land is taxed, not the enterprise on it.

I hope the Minister will be able to tell us that the Government, in considering reform of the system of business rates, are mindful of the advantages of site value rating. With those comments, I of course support the regulations and the retention of rates in that part of the north-east of the country.

5.09 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I draw the attention of the House to my relevant registered interest as a vice-president of the Local Government Association. This has been an interesting debate, much wider than the regulations before us. As for the regulations, this is a government scheme that allows local authorities to retain some of the income from non-domestic rates that they collect. The regulations before the House today designate the Tees Valley Combined Authority and Redcar and Cleveland Borough Council to be recipients of the rates raised in their areas.

I have a few questions for the noble Lord, Lord Greenhalgh, and some comments to make on the contributions made by a number of noble Lords. When he responds, will the Minister explain the process for selecting this particular area to come forward at this time? What is the process for adding further areas? I think he said that over 200 areas have now been allowed to retain a large element of their rates. I remember the Government confirming—I think it was as far back as November last year—that other authorities, in Manchester, Liverpool, London and elsewhere, would retain an increased proportion of their business rates. If he can, will the Minister update the House on the progress of this? Does the Government have some sort of priority list?

My noble friend Lord Hain raised the decline of our town centres, an important issue that was contained in many speeches this afternoon. As my noble friend said, the decline has been accelerated at a pace by the Covid-19 pandemic. I agree that we need urgent action by the Government to deal with the unfair competition that many high streets now have from out-of-town shopping and online operations that are accelerating their destruction. Over the last year we have all seen reports of many well-known and loved chains disappearing. They have closed down and will not reopen, leaving boarded-up shops in their place. If we want to have anything like the high street we know and love, we have to do something to save it. I hope that the Minister can update the House on the work his department is doing on that issue. If he cannot do so today, will he write to the House and send a copy of his letter to Members who have taken part in this debate?

The noble Lord, Lord German, made a fair point when he highlighted that business rates are a disincentive to setting up new operations. I agree that our business

rates and council tax systems are not fit for purpose. We need urgently to address how we are going to fund local activities; we need to get this right. The noble Lord, Lord Kirkhope of Harrogate, made reference to the commitment in the Conservative Party manifesto to reform the business rates. I look forward to some proposals from the Government, as early as possible in this Parliament, on how they are going to do that. I think we should all agree on getting more money into the hands of local authorities to equip them better to spend money locally.

Like the noble Baroness, Lady Wheatcroft, I pay tribute to the noble Lord, Lord Heseltine, for his work in the area of regeneration over more than 40 years. He is rightly recognised for the excellent work that he has done. The noble Baroness also raised the Portas review. I remember that; it took place soon after the coalition Government came to office. It is now well over 10 years since it reported and it would be good, at some point, to hear what has actually happened on the back of that review. I think the noble Baroness is right that very little came from it. There were a number of interesting proposals which the Government should perhaps look at again. The problem now, of course, is that we are 10 years further on and the problems are more difficult to deal with—but we do need to look at that. I also join the noble Baroness in supporting the call for the extension of the business rates holiday. I hope that the Chancellor will address that when he delivers his Budget.

The noble Lord, Lord McCrea of Magherafelt and Cookstown, rightly highlighted the importance of giving local authorities the flexibility to support local businesses. Local authorities do know their businesses and communities, and having the flexibility to make a difference locally is really important. I am sure that the Minister supports that. Equally, I support the noble Lord's call for support for faith-based organisations and recognition of the important part they play in our local communities.

The noble Baroness, Lady Gardner of Parkes, asked about the length of retention periods for money raised by local authorities. She gave examples of how they are quite different in Croydon, Brent Cross, Birmingham town centre and Liverpool. There may be very good reasons for this, but I am not aware of what they are. If the noble Lord cannot respond now, could he highlight what those reasons are in a letter to the House?

The noble Lord, Lord Bhatia, raised the important point of supporting public and private partnerships and businesses through such schemes, as illustrated by these regulations—I fully agree with that.

Today's debate has been much wider than the very narrow issue about the business rates retention scheme in the Tees Valley, and I suppose it was always going to be. We have raised really important issues about our high streets, which we all love—we want them back, prospering and working well. However, to do that, we have to support them and shop local to ensure that they are there. If we do not make sure that we support them, they will not be there in the future, which would be a detriment to us all. This has been an excellent debate, and I am sure the noble Lord will respond to what he can today and that, if not, he will come back to us in a letter.

5.15 pm

Lord Greenhalgh (Con): My Lords, we have indeed had an interesting and extremely wide-ranging debate on the regulations before us. I thank noble Lords on all sides for their thoughtful contributions.

The noble Lord, Lord German, talked about looking at a land value taxation scheme. The noble Baroness, Lady Wheatcroft, the noble Lords, Lord Hain and Lord Kennedy, and a number of other noble Lords raised the issue of the future of business rates. We need to wait for the outcome of the fundamental review of business rates; it was recently declared that that will be published in the autumn. It is very important that we are cognisant of these seismic shifts that we have seen between physical retail on our high streets and town centres and the move to online, which of course has been accelerated by the Covid-19 pandemic.

The noble Lord, Lord Hain, gave an eloquent speech about how government can and should support our town centres, which are really hurting as a result of this pandemic in particular. I point to this Government's sizeable towns fund, which is £3.6 billion and will be allocated in £25 million chunks, with town deals that look to unleash the economic success and vibrancy of our town centres and high streets—£1 billion of that is specifically for our high streets, which are such an important part of life in our towns and cities. In terms of support, that is something we are bringing forward.

On rates relief and the future of business rates relief, an incredible £10 billion has been saved by providing a business rates holiday. The decisions on the future of that for 2021-22 will, of course, be something that is considered by the Chancellor in the upcoming Budget.

A number of noble Lords, including the noble Baroness, Lady Wheatcroft, talked about the important issue of the simplification and reform of local government finance. It is fair to say that, before the pandemic, we had long and detailed discussions with local government about reforms to the local government finance system. These included possible reforms to the allocation of funding, by means of a review of relative needs and resources, and to the business rates retention system. Earlier in the financial year, we announced that the Government will not proceed with reform in 2021-22. The Government's decision was to postpone reform and was taken in the interest of creating stability for local authorities, and it has allowed both the Government and councils to focus on meeting the immediate public health challenge posed by the Covid-19 pandemic.

However, once the pandemic is over—we have announced our road map to recovery—we will work with local government to understand the lasting impact it has had on both service demands and revenue raising. We will then revisit priorities for the reform of the local government finance system, taking into account wider work on the future of business rates and adult social care, so the final decisions about reform will be taken in the context of next year's spending review.

Both the noble Lord, Lord Kennedy, and my noble friend Lord Kirkhope raised the issue of new designated areas and the process, which is essentially by application. We have already created 226 designated areas across 94 different local authorities in England, mostly in enterprise

[Lord Greenhalgh]
zones; this includes 22 in Yorkshire and another 30 in Humberside. While we currently have no plans to roll out more enterprise zones, we are considering creating designated areas as part of free ports, as set out in the prospectus we published in November 2020. We are currently considering the applications that we received in response to that prospectus and hope to make a further announcement shortly. More generally, we are always looking at how best to help local government and partners meet their regeneration needs and challenges.

My noble friend Lady Gardner and the noble Lord, Lord Kennedy, raised a number of points about the differences between the lengths of time for which areas are designated. The majority of designated areas run for 25 years. This is because we recognise that the effective regeneration of an area requires a sustained long-term commitment, which needs to be underpinned by long-term funding arrangements. A few designated areas, such as those mentioned by my noble friend, in Brent Cross and Croydon, were put in place solely to provide a funding stream to enable authorities to borrow for specific infrastructure developments. The period for which those designated areas run was worked out with the authorities concerned to ensure that, based on their projections of the likely additional business rates yield, they would have sufficient additional funding to repay their loans.

On the question of how many applications are refused, over the years designated areas have been selected in a number of ways. The first enterprise zones were created before the business rates retention scheme had come into force. Subsequent designated areas were created following discussions with local enterprise partnerships and local authorities. In 2016, we ran an open competition which led to the creation of 24 new enterprise zones—many comprising multiple designated areas—from some 60 applications. As with Brent Cross and Croydon, we have also created a handful of designated areas, having been approached by individual authorities to assist with the financing of specific infrastructure projects. In all, we have designated 226 separate areas across 94 different authorities. Since 2013, these have contributed nearly £240 million of additional investment in the regeneration of areas throughout England.

Along with the noble Lord, Lord Kennedy, and as someone who was formerly a local authority leader, I pay tribute to the contribution of the noble Lord, Lord Heseltine. He is the regeneration impresario. In principle, it is about how we can take locally generated investment and reinvest it in the local area—effectively pump-priming money put in by the state by leveraging in money from the private sector. This is behind the approach we are taking in South Tees. The noble Lord, Lord Heseltine, took those principles and reapplied them again and again, because they work. He made a huge contribution in this field. With regeneration comes opportunities for good-quality jobs. It helps lift whole areas. It is important that we find measures within local finance to enable and encourage local authorities to grow so that they can reinvest in their local areas, so that we have that virtuous cycle.

The regulations will ensure that, from 1 April, any growth in business rates will be retained in its entirety by Redcar and Cleveland council and the Tees Valley Combined Authority. Instead of having to be shared with central government, this can be used for the benefit of the local area. They will provide those authorities with an income stream over 25 years that will be used to invest in the South Tees Development Corporation. This investment will secure the creation of new industries and 20,000 new jobs in an area blighted by the closure of the former steelworks.

In conclusion, these regulations make an important contribution to the redevelopment of one of the largest development sites in Europe. They underline the Government's long-term commitment to the regeneration of South Tees, and I commend them to the House.

Motion agreed.

Covert Human Intelligence Sources (Criminal Conduct) Bill

Returned from the Commons

The Bill was returned from the Commons with the amendments agreed to.

House adjourned at 5.23 pm.

Grand Committee

Wednesday 24 February 2021

The Grand Committee met in a hybrid proceeding.

Financial Services Bill

Committee (2nd Day)

2.30 pm

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): My Lords, the hybrid Grand Committee will now begin. Some Members are here in person, respecting social distancing, while others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering except when seated at their desk, to speak sitting down and to wipe down their desk, chair and any other touch points before and after use. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

I will call Members to speak in the order listed. During the debate on each group, I invite Members, including Members in the Grand Committee Room, to email the clerk if they wish to speak after the Minister, using the Grand Committee address. I will call Members to speak in order of request. The groupings are binding.

Leave should be given to withdraw amendments. When putting the Question, I will collect voices in the Grand Committee Room only. I remind Members that Divisions cannot take place in Grand Committee. It takes unanimity to amend the Bill, so if a single voice says "Not Content" an amendment is negatived, and if a single voice says "Content" a clause stands part. If a Member taking part remotely wants their voice accounted for if the Question is put, they must make that clear when speaking on the group. We will now begin.

Clause 2: Prudential regulation of certain investment firms by FCA rules

Amendment 10

Moved by ***Baroness Noakes***

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

"(2) Schedule 2 does not come into effect until each House of Parliament has approved accountability arrangements for the powers conferred on the FCA in that Schedule.

(3) Accountability arrangements under subsection (2) include arrangements for—

(a) draft rules to be laid before each House of Parliament;

(b) final rules to be laid before each House of Parliament;

(c) opportunities for each House of Parliament to take evidence on the draft or final rules and to express an opinion on them;

(d) the consequences of an expression of opinion by either House of Parliament."

Member's explanatory statement

This amendment would mean that the rule making powers given to the FCA in Schedule 2 can be exercised only when Parliament has agreed how accountability for those powers will be exercised by Parliament.

Baroness Noakes (Con): My Lords, this is my first day in Committee and I place on record my interests as declared in the register, particularly my shareholdings in financial services companies.

I am very grateful to the Committee for going so slowly on Monday and not reaching Amendment 10. As I think noble Lords are aware, I was in the Chamber and could not have moved it myself. I am grateful to the noble Baroness, Lady Bowles of Berkhamsted, and my noble friend Lord Holmes of Richmond; not only have they added their names to my amendments in this group but they were standing by to deal with them without me on Monday. Normal service is resumed and I can move my amendment myself. I shall also speak to Amendment 26 in this group.

This is a fairly large group of amendments but its underlying theme is a search for the right balance between letting the specialist regulators get on with the job of regulatory rule-making and the role of Parliament in overseeing those regulators. My Amendment 10 to Clause 2 says that Schedule 2 to the Bill, which amends FiSMA to create rule-making powers for the FCA to undertake prudential regulation of investment firms, will not come into effect until each House of Parliament has approved accountability arrangements for those powers.

Amendment 26 is drafted in identical terms but relates to the rule-making powers conferred on the PRA by Schedule 3, which deals with the capital requirements regulation rules.

I make no attempt in these amendments to say what form of parliamentary accountability arrangements should be put in place, although the second part of my amendment says that accountability arrangements should include a number of things: arrangements for drafting the final rules being laid before Parliament; taking evidence on a draft of final rules and, importantly, Parliament expressing an opinion on them; and the consequences of any expression of opinion. On reflection, the drafting of my amendment is perhaps not clear enough as I was not intending to suggest that Parliament had to, for example, have the laying of draft rules as part of the accountability arrangements. I merely intended to indicate that it could have that as part of the arrangements.

My amendments are predicated on a belief that we should not grant significant new rule-making powers to the regulators without sufficient checks and balances in the system. Had the Government retained the rule-making powers repatriated from the EU, it would have been pretty clear that Parliament would have had an involvement. I am clear that passing these powers to the regulators should not allow the Government to write Parliament out of the picture. I am not, however, of a settled view as to what Parliament should do, which is why my amendment says that these new rule-making powers can go to the FCA and the PRA only when Parliament's involvement is settled by Parliament itself. I am very conscious that it is not correct—or at least not normal—for legislation to cover the precise arrangements for parliamentary scrutiny. Those arrangements are for Parliament itself to determine, and I have tried to respect that.

[Baroness Noakes]

Other amendments in this group seek to fill the void of what Parliament should do in practice, and I shall comment briefly on some of them. The noble Lords, Lord Tunnicliffe and Lord Eatwell, in their Amendments 20, 21, 40 and 41, have set out involvement, with time limits, for each House of Parliament reporting on draft rules, with the ability to report on them but no power of veto. I can certainly see the merits of these amendments, as they strike a balance, giving Parliament an opportunity to give its views on new regulations but without allowing it to overrule our independent regulators. They should allow Parliament to take evidence on the impact of proposed new regulations, for example, on different parts of the financial services sector. This could deal well with concerns about, for example, the impact of regulations on both small and large players in parts of the financial services sector, and whether regulations create new barriers to entry. I am not sure, however, that the amendments sit easily with a need to make new regulations rapidly, which I believe is necessary from time to time.

On the other hand, many in the financial services sector are fearful of regulators gold-plating regulations and imposing unnecessary costs on whole sectors. At the end of the day, costs get passed on to consumers, even though there is often no direct correlation between a rule or regulation and any particular increase in consumer costs. That would not necessarily be well dealt with by the amendments in the names of the noble Lords, Lord Tunnicliffe and Lord Eatwell.

Some elements of Amendment 27 in the names of the noble Baronesses, Lady Bowles of Berkhamsted and Lady Kramer, would allow more thematic or cumulative reviews. I particularly like the elevation of the statutory panels of the FCA and the PRA, though I do not believe that those panels should include Members of either House of Parliament. I know that these panels could be more effective voices for industry concerns. I have in mind, in particular, the PRA's practitioner panel, which the PRA certainly did not want when it was set up by the Financial Services Act 2012, and has had no discernible impact since then. On the other hand, other elements of Amendment 27, for example Parliament's involvement in the regulators' meetings with the Basel Committee or IOSCO, seem to me to go beyond what it would be reasonable for Parliament to do.

My noble friend Lord Blackwell has an amendment with yet another variant with scrutiny of rules by parliamentary committees, but with any results being passed to the Secretary of State for action. My concern with that is that the only action that could in practice be taken, once the power to make rules has been passed to the FCA and the PRA, would be more primary legislation. That seems a sledgehammer to crack a nut and would, in practice, not really act as a restraint, a check or a balance on the undesirable use by the regulators of their powers.

The issue of the nature of parliamentary involvement is discussed in the Treasury's future regulatory framework review. The consultation on part 2 of that process, started last October, has just closed—my noble friend the Minister may want to say something about where we are with that process. I thought the section on accountability in that consultation was not strong and that reliance on the existing committee structures of both Houses was the wrong direction of travel. Whatever our views on that, a longer-term overhaul of accountability structures will not help us; we will have to find a solution that works for this Bill and until any changes emerge from the framework review. That is the challenge before us. I beg to move.

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, my name is on eight amendments in this enlarged group. They cover different aspects of parliamentary accountability, although a common thread is Parliament's right to information. Whether Parliament chooses a regime that scrutinises everything in detail or one which picks points of contention, and however it may develop over time, timely access to background and information is relevant.

My Amendment 18 and its counterpart, Amendment 38, relate to keeping Parliament informed about the discussions between the Treasury and the regulator concerning equivalence. In Schedules 2 and 3 this Bill establishes that, when making rules, the FCA or PRA may consult the Treasury about the likely effect of the rules on relevant equivalence decisions.

Parliament should be sighted of these considerations because they may affect the content and strength of rules and, as explained in the Government's consultation, equivalence decisions may result in requirements being embedded in statutory instruments. Just as we used to have EU requirements in regulations, we may end up having equivalence requirements. There is nothing complicated about my amendment; it just says, "keep Parliament informed". Unless Parliament establishes that right now, it will not exist.

To illustrate this, I quote from the recent FCA consultation on investment firms which, like this Bill, front-runs the Treasury consultation. Paragraph 9.68 states:

"we have discussed with HM Treasury the rules' likely effect on relevant equivalence decisions. We are not expected under our new public accountability requirements to provide further detail on this."

I think we need to know something, and I hope the Minister will appreciate that too.

I turn to my Amendments 19 and 39, which specify the level of detail that regulators' explanations concerning compliance with statutory requirements should contain. I was provoked into tabling these amendments on reading the FCA's explanations in its consultation. Although they gave a reasonable but qualitative explanation of its general approach to the Financial Services Bill, the statutory accountability statements were poor, containing nothing quantitative or illustrative. They consisted of "trust and believe me" statements littered with phrases such as "proportionality", "business specific", "bespoke" and "flexible"; no attempt was made to identify or quantify how that was done. Information would have to be extracted from the rest of the consultation and rules, if it were there at all; or—and this is the nub—we have to swallow that, as paragraph 9.71 states, it is left up to the

"investment firms and supervisors to focus on the core business model indicators of financial resilience relevant to each firm".

There are no examples given.

The statutory explanations are an important part of accountability. They should be elaborated on as a stand-alone justification, perhaps to spoon-feed the non-skilled reader, but not just through assertions. We need more than assertions that supervisors cosying up with firms can decide how to get it right. That is not accountability. These statements should be written more like justifying a case in court and less like how to pander to industry. They should inform on the toughness of the regime and capital calculations.

My amendment proposes that the explanations

"must include specific, detailed and quantitative elaboration, with worked examples",

and that Parliament may reject rules that are accompanied by inadequate explanation. By way of comparison, when I checked the PRA's front-running consultation which came out on 12 February, it seems to have done a rather better job and included examples.

2.45 pm

I turn now to the amendments on the broader parliamentary oversight regime. The amendment in the name of the noble Baroness, Lady Noakes, which I signed, lays out the starting principles. My Amendment 27 is about the middle game and draws attention to the regularity of, and entitlement to, information necessary to keep abreast of what regulators are doing and to acquire knowledge for effective scrutiny of the regulators' rule-making, rather than having to accept a regulator's say-so.

The amendment of the noble Lord, Lord Tunnicliffe, deals with the endgame approval. The noble Baroness, Lady Noakes, has explained her amendments, which are a treasure of drafting, each point carrying a strong message. The first is, do not take Parliament for granted and legislate a new regulatory architecture that is only at the consultation stage without Parliament having its share in the new process. It is therefore reasonable that the schedules do not come into effect until Parliament has determined its share.

The second message is that Parliament wishes to hold regulators to account and to be included properly and explicitly in consultation. I am really pleased to see recognition that Parliament must be consulted on draft rules as well as final rules. Put simply, it is not possible to get to grips with what is going on just at the very end.

The third message is that there must be opportunity for each House to take evidence and express an opinion. I understand the expression "opportunity" to cover both significant and adequate time and significant and adequate access to information; otherwise, it is a fake opportunity.

The fourth message is that there must be consequences when Parliament raises concerns. That might mean modifying rules; it might mean more explanation and that checking data is required; it might mean delay in implementation. That is for Parliament to choose, but I would certainly put delay in the toolbox.

At the end of the day, however, the regulator must take responsibility for the rules and a parliamentary sign-off does not remove that responsibility. We need discussion of how much Parliament desires to check. The rules that Parliament will look at over time are extensive, ultimately encompassing and replacing all the policy and hard benchmarking that previously existed in statutory instruments from onshored EU legislation. It is not the Government's intention to replace that layer in any substantive way. A few instances of "have regard" are the examples in the Bill, just like the suggestion in the HMT consultation, and some equivalence matters may creep into SIs. That format may technically be under consultation, but the Bill front-runs it, the regulators' consultations front-run it and we know that it is going to happen. What we negotiate in the Bill will fix the path, so it is not the time to be faint-hearted or live on a promise. Parliament's rights must be established.

Coming to my Amendment 27, I have drawn attention to a range of things which do not all have to be done all the time if Parliament wishes to target, rather than be comprehensive, but the rights should be there. Proposed new subsection (1) concerns the quarterly provision of regulators' reports and, as the noble Baroness, Lady Noakes, observed, before and after meetings of international standard-setting bodies. I put that in because that is how a lot of policy will be made—in the international standard-setting bodies—and then we will incorporate it under that cover. We will not have learned anything on the way about the thinking behind the policy.

Proposed new subsection (1)(d) gives an entitlement to seek other reports, including the data necessary both to pursue incidents and to understand how rules have been calibrated. At present, neither industry nor Parliament has access to that calibration data. We may not want it all the time but on contentious points it should be possible to obtain it.

Proposed new subsection (2) provides for appearance before committees when requested in connection with those reports, and that, where necessary, there can be confidential sessions. There are times, when a lot is happening, when meetings may need to be more frequent than at other times. This was the case in the EU when the whole tsunami of legislation and technical standards following the financial crisis was going on. I am a little concerned that there may be such a tsunami in the UK as the regulators absorb the onshored EU legislation currently in statutory instruments and convert it into rulebook form. That will need scrutiny, because it is the point at which most of the hard benchmarks for holding regulators to account that currently exist in legislation will disappear and be replaced by regulators' own policy, and their own variable ideas.

Proposed new subsection (3) provides for regulators seeking the views of Parliament before launching a consultation, when making rules, and regarding their business plan, new market activity and the regulatory perimeter.

Proposed new subsection (4) covers the statutory panels of the regulators, and suggests some changes that might be helpful to make them more independent and less influenced by the regulators, who currently choose the members, set their remits and keep control of the information. Changes are necessary in the interests of transparency, and there should also be a dialogue between those panels and Parliament, and maybe with others.

Finally, proposed new subsection (5) covers obtaining data, assistance from the NAO or other public office, including on impact assessments, assessments of regulatory

[Baroness Bowles of Berkhamsted]
burdens, and an ability for the committees to require a pause in implementation of rules for up to three months to allow further scrutiny. Parliament needs to have a grasp of what the regulators of our largest and most systemic industry are doing. It is a matter reported in international literature that financial services regulators tend to be the most captured of any regulators—which, along with their importance to the UK, is why greater attention is merited.

The amendments tabled by the noble Lord, Lord Tunnicliffe, contain provisions about Parliament giving opinions. These opinions must have weight, but they cannot be given without sufficient prior knowledge and information. I do not think that 20 days is sufficient for scrutiny of a large set of rules, or if many sets come along at once. People in industry, who do this all the time, normally get three months, and Parliament should not be squeezed to less. What might have happened in earlier stages of consultation is relevant, but I would still argue for the possibility of extension or delay, otherwise the timing will always be organised so that there is not time, and urgency can be claimed. I am aware of limitations on parliamentary capacity to do everything all the time so, to finish, I reiterate the point that information rights need to exist, even if they are used selectively.

My name is also on the amendment tabled by the noble Lord, Lord Sikka, which I support, but in the interests of time, I will leave it at that.

Lord Davies of Brixton (Lab) [V]: My Lords, before getting to the substance of the debate, I must express some puzzlement; obviously, I have much to learn about this House's mysterious ways. The specific issue that concerns me is the grouping of amendments. We are sternly told that groupings are not to be changed, but here we have a significant change: what was two groups on Monday is now a single group. The issues are not that disparate, but it makes a big difference to the time we have available.

The main point I wish to make relates particularly to Amendments 10 and 71. The latter was tabled by my noble friend Lord Sikka. If I had been a bit more alert, I would have added my name.

The issue here is to whom the FCA should be accountable, given the well-established phenomenon of regulatory capture, as the previous speaker mentioned. It is worth emphasising the point that regulatory capture is where an industry regulator such as the FCA comes to be dominated by the industry it is charged with regulating. The result is that the agency that is meant to be acting in the public interest instead works in ways that benefit the industry. The important point to understand is that this does not happen because inadequate or ineffective people are running the regulator. It is certainly not about corruption. It is an institutional, not individual, problem.

It is important to understand why it happens. The reasons are manifold but I will emphasise three. First, the regulated industry has a keen and immediate interest in influencing the regulator, whereas the customers are less motivated; they have their lives to live and are engaged only for relatively brief periods anyway. Secondly, we know that industries are prepared to devote substantial resources to influencing the regulator. Thirdly, there is the inevitable commonality of work and social life for the individuals on both sides of the process.

Given that the phenomenon of regulatory capture is acknowledged and widely understood, what do we do about it? The first step is acknowledging the issue and recognising and addressing the challenge. The next step is making the regulator as accountable as possible. There are many ways of doing this, but we can leave those for another day. What we have here are Amendments 10 and 71. Under Amendment 10, the involvement of both Houses in considering draft and final rules would be valuable in itself, given the expertise available. However, it is also valuable because of the additional exposure that it brings to the workings of the regulator, which will have to make its case. In the same way, Amendment 71 would bring greater exposure to the work of the FCA, forcing it to expound on its performance and its objectives in public and in an expert forum.

There is much more to do on making the FCA fully accountable, but these amendments are a start and have my support.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it is a pleasure to follow the noble Lord, Lord Davies of Brixton. He addressed in useful detail the risks of industry capture of regulators, to which the financial sector is particularly prone and which is addressed by Amendment 71 in the name of the noble Lord, Lord Sikka. Like the noble Baroness, Lady Bowles of Berkhamsted, and the right reverend Prelate the Bishop of St Albans, I have attached my name to that amendment. I associate myself particularly with the remarks of the noble Baroness, who stressed that these amendments are about the rights of Parliament and access to data and detailed information—necessary for the kind of expert work at which your Lordships' House excels.

As the noble Lord, Lord Davies, covered the need for Amendment 71 in some depth and its author—the noble Lord, Lord Sikka—is yet to speak, I will confine myself to general remarks about how all the amendments in this large group reflect the great degree of concern on all sides of the House about, given how the Bill is currently constituted, the lack of parliamentary oversight of the actions of both the regulators and the Treasury. The noble Baroness, Lady Noakes, explained this point in her highly informative introduction to the group.

This morning, thanks to their kind indulgence, I was able to join Cross-Benchers in a briefing on the Bill, where we heard how the formalisation of the relationship between regulators, Parliament and the Treasury is "on the way". The future regulatory framework consultation closed on Friday. We heard that the Bill is not the final word on that, and that the responses to the consultation will not be ready in time for the Bill. So, yet again, we hear that democratic controls and the details of government plans will be included in future legislation and regulation. Your Lordships' House has heard this so often on so many subjects; perhaps we could enlist the Lords spiritual in assisting us in putting it in some kind of musical form. It simply is not good enough.

We know that, despite the long run-in time, the Government were not ready for Brexit at the end of the transition period and that civil servants, through

no fault of their own, are trapped in a huge scramble to catch up with the massive backlog of government inaction and indecision—the tsunami to which the noble Baroness, Lady Bowles, referred. But what we have here are sensible proposals from experienced, expert Members of your Lordships' House. I hope that the Government will acknowledge the urgency and importance of ensuring democratic oversight and that they will take at least some of these amendments on board at the next stage of the Bill, particularly, given the arguments already made, Amendment 71. There is no need to wait. Democratic oversight should be a given, not an extra, later addition.

3 pm

Lord Holmes of Richmond (Con) [V]: My Lords, it is a pleasure to take part in day two in Committee on the Financial Services Bill. In doing so, I declare my interests as set out in the register.

I speak on this group to support my noble friend Lady Noakes's Amendments 10 and 26. I shall not detain the Grand Committee too long. I have written an extensive article on this subject—if anyone is interested, it is at lordchrisholmes.com. All the amendments in this group seek to answer a straightforward question: who watches the financial watchdogs? If I had had a more expensive education, I could do the Latin for that, but fortunately I simply had an expansive education.

It seems to me that the start point is not whether we need more or less scrutiny and accountability but what the right level of accountability is. What are we seeking to achieve? In the EU/UK process, the debate has been characterised as being between principles and prescription. That seems a somewhat false characterisation. For me, the start point of purpose would make a lot more sense. What are we trying to achieve via our regulatory approach—to the FCA and the PRA—to enable it to be to that extent and no more? We also hear of proportionality. I support the two amendments in the name of my noble friend Lady Noakes because they are elegant and leave space for detailed thinking to be done rather than for it needing to be rushed through in the Bill.

Some of that thinking needs to rest around the three Cs of capacity, consistency and co-ordination. Does any potential scrutiny have the right people, the right skills, the right experience and the right amount of time to undertake the task? On consistency, are the scrutinisers and the regulators there all the time, day in, day out, not merely when there is a significant regulatory failure or something that seems of particular political significance? Co-ordination speaks for itself, each regulator being a constituent part of a greater sector in terms of financial services and beyond that across the whole family of regulators, inspectors and ombudsmen.

In any solution that may come out of this, the greatest amount of energy seems to be around the Treasury Select Committee and a potential sub-committee. This has a great deal to recommend it, but even if we consider the first C of capacity, there would seem to be at least a challenge on this.

A similar argument, but with the addition of the right level of expertise, in my view, has been put forward in an excellent report from the All-Party Parliamentary Group on Financial Markets and Services, which was published on 18 February. It argues that a sub-committee of the Treasury Select Committee, supported by an expert panel, could be effective in this space. As has been said, it is not for the Government to prescribe what approach Parliament takes but, in this Financial Services Bill, the opportunity should be taken to provide that space and those options for such a scrutinising body to be constructed.

We have the opportunity to move a million miles away from part of the parliamentary scrutiny that we currently have—the annual report to Parliament via the Minister. We can move towards doing effective scrutiny in the 21st century in real time, rather than via the rear-view mirror: Parliament partnering with academia, the private sector and all the relevant expertise, deploying all the necessary elements of technology to enable effective and efficient scrutiny of our financial regulators for the benefit of us all.

Lord Sharkey (LD) [V]: My Lords, many of the amendments in this group share the aim of increasing or providing for the first time proper parliamentary scrutiny of some financial services regulatory regimes and of those who enforce them. Some amendments deal with the problem of absent or insufficient scrutiny on a grand scale and I strongly support their intent. This Government often seem to think that parliamentary scrutiny is best avoided or diluted. Our DPRRC, SLSC and Constitution Committee have regularly warned the Government against using skeleton Bills, against behaving as though consultation is a substitute for real parliamentary scrutiny and against using rule-making as camouflage legislation.

This Bill contains a particularly alarming example of the evasion of scrutiny in allowing the Treasury to revoke rules by SI by giving the regulator the power to make legally binding rules without any parliamentary involvement. That is completely unacceptable, as the Government must know. I strongly support Amendments 10 and 26, tabled by the noble Baroness, Lady Noakes, as a means of restoring some proper scrutiny. As the noble Baroness clearly explained, these amendments are not prescriptive as to the form of parliamentary scrutiny needed; they simply set out the principles that must guide construction of the scrutiny mechanisms. This is the equivalent of making an invitation to the Government that they should not refuse. It is an invitation to serious and substantive discussion about the way forward and it rightly, given the serious and far-reaching consequences, gives an appropriate incentive to resolve the issue quickly and collectively. I urge the Government to begin immediate cross-party talks on the issue.

By contrast with some of the amendments in this group, our Amendment 22 has modest and narrowly defined ambitions. As the Bill stands, Clause 3 lists the provisions of the CRR that the Treasury may revoke by regulation. There are 42 of these categories of provisions, all of them significant. Clause 3(4) makes these revocations conditional on their being or having been adequately replaced by general rules made, or to be made, by the PRA, or to be replaced by nothing at all if the Treasury thinks that that is okay. The Treasury appears to be the sole judge of what may or may not

[LORD SHARKEY]
be an adequate replacement. In any event, Parliament is completely bypassed in this system. But all this means is that the Treasury can revoke provisions by SI before it has published the replacement rules or even decided what they will be. This sounds like a perfect recipe for disorderliness and uncertainty and it means that Parliament will have no opportunity to consider these new rules in a legislative setting. We get to see what has been dropped, but not necessarily what the replacement rules may be. This is another example of making law by making rules that Parliament has not been able to scrutinise.

Our amendment proposes a simple way round this. It would require any revoking SI to carry not only full details of what was being revoked but the full text of the replacing rules, except, of course, where no replacement was envisaged. These new rules can and will reshape important parts of our financial services regulatory regimes, and it is quite wrong that Parliament should be unable to scrutinise them.

I hope the Minister will be able to accept our amendment or to give us an assurance that revoking SIs will contain the full text of any replacement rules.

Lord Blackwell (Con) [V]: My Lords, in addressing this group of amendments, I want to speak also to Amendment 85 in my name. As I set out at Second Reading, I should draw attention to the fact that I was chairman of a regulated bank until the beginning of the year, although my interests now are solely as a shareholder.

I agree with other speakers that parliamentary accountability for the regulators is important now that the UK has its own regulatory agenda outside the European Union, and it is missing from this Bill. However, the regulators have been established by Parliament to enable independent expert bodies to exercise delegated powers, and we need to be careful that in providing for the necessary parliamentary oversight we do not create structures that impinge on the political independence of the regulators and their ability to take a considered, apolitical view, undermine their expertise or turn Parliament effectively into the day-to-day regulatory body if it is required to approve every rule in advance. That would make the regulators simply a working body for Parliament rather than independent regulators in their own right.

A number of speakers have talked about regulatory capture. From my experience over many years, it has not felt like the regulators have been captured by the industry, but neither have they always been right, so scrutiny is important. My amendment seeks to strike the right balance of delegation and oversight by suggesting parliamentary scrutiny of rules after the event—ex post—rather than it trying to second-guess the regulator ex ante by approving rules in advance. I therefore take a different view from my noble friend Lady Noakes on Amendment 10 and some of the other amendments. If Parliament sought to approve every rule in advance, the regulators would lose their independence, and we would lose the benefits of speed and expertise. We need to recognise that, often, rules need to be made to fix a problem, and if that problem needs fixing, the regulators need to act rapidly. They obviously need to consult as far as is possible, but to set in process a whole session of approvals by Parliament would handicap them in taking action when they needed to, and it would jeopardise their political independence.

Under my amendment, if a parliamentary committee felt that the rules were inappropriate or not working properly, it could make its views known to the regulator, and I suspect that in many cases the regulator would sensibly take note of that. Ultimately, it would be up to the Secretary of State to propose changes to regulations if the regulator was not acting in accordance with the framework that Parliament set out and intended. The point was made that that might need primary legislation; my understanding is that, under this Bill, Her Majesty's Treasury can enact a lot of changes in regulations through secondary legislation, which can be done much more rapidly.

As my noble friend Lady Noakes said, what the amendment cannot signify is exactly what the form of parliamentary scrutiny will be and therefore that cannot be written into the Bill, but, since we are having this debate, I would advocate that the scrutiny function when Parliament comes to that is best carried out by a Joint Committee of both Houses, with appropriate technical support.

Experience suggests that a Joint Committee is the best way to avoid politicising the debate. It can draw on the experience in this House while enabling the elected Members in the other place to have their legitimate role in parliamentary oversight. As and when it is appropriate to decide on the form of parliamentary scrutiny, I hope that this can be taken into account.

I know that these matters are still under consultation. I look forward to my noble friend the Minister's response, but I support the weight of the speakers so far that this is a matter that needs to be dealt with, if at all possible, during the course of this Bill.

3.15 pm

Viscount Trenchard (Con): My Lords, I declare my interests as stated in the register. I support both Amendments 10 and 26 in the name of my noble friend Lady Noakes. They do not mean that Parliament would be seeking to usurp the role of the regulators, or to attempt to rewrite MiFID II which, according to *Forbes Magazine*, has required 30,000 pages to explain its regulations.

It is right that the Bill enables our regulators to act quickly and flexibly to respond to changes in the markets or the introduction of new financial products. However, without the scrutiny formerly carried out by the European Parliament of each and every detail of regulations and directives, it is necessary that Parliament should have oversight of the regulators' work. My noble friend is right that we need to agree the optimum balance and how this will be done before the powers conferred upon the PRA and FCA are made available for them to use.

Amendments 18 and 19 in the name of the noble Baroness, Lady Bowles of Berkhamsted, are motivated by a desire to continue to align to EU regulation, even though there are no expectations that the EU will make any further significant equivalence declarations in the short term. Amendment 19 places a large,

poorly defined burden on the FCA to show where and how its draft rules have been influenced. It is clear that the FCA will consider many external factors in drafting its rules. As your Lordships know, it is intended to agree a basis on which both regulators will be made accountable to your Lordships' House and another place for the way in which they carry out their work. Accordingly, I think it would be too restrictive on the FCA if this amendment were supported. It would also create uncertainty over the Bank of England's ability to act quickly as necessary in exercising its macroprudential responsibilities.

Similarly, Amendment 20 seeks to allow committees of your Lordships' House and another place to publish a report on proposed Part 9C rules. It is not clear which committees these will be in the future. It would slow down changes that the FCA will want to make quickly, which could be damaging to the standing and competitiveness of the City. Perhaps my noble friend can tell the House how the Government intend to amend the Bill in order to provide for the necessary scrutiny of acts of the regulators. I am not sure that that would be the effect of Amendment 22, in the name of the noble Lord, Lord Sharkey. The Government's intention, which I support, is that we should move away from the cumbersome, codified nature of rules. I would expect the PRA to try to make rules that are shorter and clearer than the regulations they replace. It would not always be appropriate for them to include the full text of the general rules to be replaced.

Amendment 27, in the name of the noble Baroness, Lady Bowles, seems to place a very heavy demand on Parliament to become closely involved in what our regulators do at international conferences, in a way that might be too restrictive on their freedom to participate fully at those conferences. This would be likely to weaken British influence on the outcomes of discussions and decisions made at such conferences.

In Amendment 38, the noble Baroness, Lady Bowles, seeks to duplicate other arrangements which will be made to institute the necessary parliamentary accountability and again appears motivated by a desire to continue to align to EU rules. If the Government can bring forward an amendment to increase the attention that the PRA is required to give to the competitiveness of the markets, as strongly proposed by several noble Lords on Monday, I would suggest that Amendment 38 might be unnecessary.

While considering this matter, can the Minister confirm that it remains the Treasury's intention to advise the Bank of England not to adopt a similar measure to the EBA to permit banks to capitalise software investments for the purpose of stress testing? This is one example of where, instead of equivalence, we will have higher standards than the EU, although regulatory standards are often not two-dimensional, high or low.

The effect of Amendment 39 is surely to transfer back to Parliament the detailed rule-making powers. Quite apart from the fact that neither your Lordships' House nor another place is equipped to carry out such detailed, line-by-line scrutiny, the amendment would seriously slow down rule-changing, removing agility and flexibility from the regulators.

Amendment 40 in the name of the noble Lord, Lord Tunnicliffe, does not remove the ultimate power to change rules from the regulator but introduces a cumbersome process involving the issuance of reports by committees of both Houses. Does the noble Lord intend these committees to be new standing committees, and how will they be resourced? I also note that in the case of a draft being laid, say, a week before Parliament rises in July, it might be three months before 20 sitting days of either House have elapsed.

I do not understand the intention of the noble Lord, Lord Sikka, in introducing Amendment 71—a requirement separately for the Treasury Committee in another place to assess the FCA's conduct prior to the appointment of a new chief executive.

My noble friend Lord Blackwell's Amendment 85 makes an interesting proposal as to how the regulators should be made accountable to Parliament. Does my noble friend Lord Howe think that, as far as your Lordships' House is concerned, scrutiny would come from an existing or soon to be established Select Committee, such as the strangely named Industry and Regulators Committee, or whether a new standing committee should be set up to exercise these functions?

The noble Lord, Lord Bruce of Bennachie, in his Amendment 137 seeks to place a statutory duty to consult the devolved Administrations over a reserved matter. We await with bated breath the publication of the Dunlop review, which should inform us of how the Government intend to manage relations with the devolved Administrations in the future, including on reserved matters. However, I cannot support the noble Lord's amendment, which is unnecessary and provocative to certain elements within the devolved authorities.

I look forward to other noble Lords' contributions and the Minister's reply.

Lord Sikka (Lab) [V]: My Lords, I will speak to Amendment 71, which is in my name and supported by the noble Baronesses, Lady Bennett of Manor Castle and Lady Bowles of Berkhamsted, and the right reverend Prelate the Bishop of St Albans.

The amendment seeks to strengthen the effectiveness of financial regulation and calls for scrutiny of the FCA's conduct by the Treasury Committee prior to the appointment or reappointment of its chief executive. It effectively calls on the committee to act as a guide dog to the watchdog. We all know that effective regulation is a necessary condition for protecting people from malpractices, holding miscreants to account and promoting confidence in the finance industry.

The FCA has failed to deliver robust and effective enforcement and it needs to be helped. Its failures are documented everywhere. The recent report by Dame Elizabeth Gloster on the collapse of London Capital & Finance noted that the FCA did not discharge its functions in respect of LCF in a manner that enabled it to effectively fulfil its statutory objectives and that there were significant gaps and weaknesses in its practices. From my perspective, even more damning was the revelation that FCA staff were not even trained to read financial information to recognise unusual or suspicious transactions.

[Lord Sikka]

Another report on the scandal-ridden Connaught Income Fund concluded that the FCA's regulation of the entities and individuals was not appropriate or effective. We are still awaiting the report on the Woodford Equity Income Fund, when thousands of investors are trapped. Regrettably that is not an independent investigation, but we await the outcome with considerable interest.

The FCA failed to act in the case of Carillion, a company that collapsed in January 2018. Carillion inflated its balance sheet and profits through aggressive accounting practices. These included the use of mark-to-market accounting, enabling the company to leave at least £1.1 billion-worth of worthless contracts on its balance sheet. It failed to amortise £1.57 billion of good will, which was effectively worthless. The company was disseminating that misleading information to the markets but the FCA took no action whatever. Curiously, on 18 September 2020, nearly 21 months after Carillion's collapse, the FCA issued a warning notice saying that the company and some of its directors had recklessly misled markets and investors over the deteriorating state of its finances before the company collapsed. Where was the FCA for all the earlier years while Carillion was publishing that misleading information? It was nowhere to be seen.

There is now considerable public evidence that the banks have been forging customers' signatures to alter key documents and repossess customers' businesses and homes, and that evidence has been published in the mainstream media. I understand that there are over 500 documented cases and the FCA has not even started any investigation. A senior Metropolitan Police fraud officer wrote to the Treasury Select Committee in 2017, stating that the executive boards of some of the most prominent banks were "serious organised crime syndicates", yet that has not resulted in any action by the FCA.

The bank RBS has systematically defrauded its customers but the FCA has been dragging its feet, often pushed by parliamentary committees and others to do its job. In November 2013 a 20-page report prepared by Lawrence Tomlinson summarised this abuse of bank customers and small businesses at RBS's global restructuring group, or GRG. The Tomlinson report stated that rather than nurturing small businesses, the bank actually pulled the financial rug and sent them to premature bankruptcy. GRG operated from 2005 to 2013, and at its peak handled 16,000 companies with total assets of around £65 billion. A proportion of those companies were not viable but a great number were and had never defaulted on loans. The FCA's approach was to bury its own Section 166 report on the RBS frauds. In February 2018, the Treasury Committee ignored the FCA's reluctance and published the report. The committee said:

"The treatment of vast numbers of SME customers placed in RBS's Global Restructuring Group was nothing short of scandalous."

In June 2019 the FCA published what it described as its final report on the investigation into RBS's treatment of small and medium-sized businesses. The co-chair of the All-Party Parliamentary Group on Fair Business Banking and Finance said:

"This report is another complete whitewash and another demonstrable failure of the regulator to perform its role."

The timidity of the FCA is also evident from the long-running HBOS frauds, which show no sign of resolution. In 2013, a report codenamed "Project Lord Turnbull" was published by Sally Masterton, Lloyds senior manager in credit risk oversight in the regulation and governance section of its risk division. It was prepared in response to inquiries made during Thames Valley Police's investigation into the frauds at the Reading branch of HBOS, and also covered the period before the 2007-08 banking crash and bailouts and the subsequent takeover of HBOS by Lloyds Banking Group. The report noted that HBOS executives had "concealed" asset-stripping frauds at its Reading branch ahead of the bank's takeover by Lloyds in 2008. The FCA did nothing to bring fraudsters to book.

3.30 pm

In 2017, a group of six financiers, including two ex-HBOS bankers, were jailed for 47 years for frauds that took place over a decade earlier, prior to the takeover by Lloyds in 2008. The credit for these convictions goes to the Thames Valley police and crime commissioner, Anthony Stansfeld, who spent £7 million of the police budget to collect evidence. He said:

"The fraud was denied by Lloyds Bank for 10 years, in spite of it being apparent that senior members of the bank were aware of it at least as far back as 2008."

On 8 February 2019, Anthony Stansfeld told the *London Evening Standard*:

"I am convinced the cover-up goes right up to Cabinet level. And to the top of the City."

Such a public statement by a senior law enforcement officer should have formed the basis of a parliamentary investigation, but it did not.

Despite the high-profile convictions and leaks, neither the FCA nor Lloyds published the Turnbull report. Eventually, on 21 June 2018, the All-Party Parliamentary Group on Fair Business Banking published a leaked copy of the report. In the words of Kevin Hollinrake MP, the report

"alleges that senior managers within the bank were aware of the fraud prior to the takeover and the £14 billion Lloyds and HBOS rights issues, yet they took clear, deliberate and documented action to conceal it. Let us be clear: if this is true, it could potentially make the rights issues and the takeover fraudulent".—[*Official Report*, Commons, 10/5/18; col. 968.]

That is a very serious failure by the FCA. After dragging its feet and doing nothing for more than a decade, in June 2019 the FCA fined the Bank of Scotland £45.5 million for its failure

"to alert the regulator and the police about suspicions of fraud at its Reading branch."

Not a penny of this fine went to the Thames Valley commissioner, which is a clear disincentive for any regulator or police force to take any action. The saga of the HBOS frauds is still unresolved. Many of the victims are in their 70s and may not even live long enough to receive compensation. That is a huge failure.

The finance industry continues to engage in abusive practices. Numerous financial products, including pensions, endowment mortgages, precipice bonds, split capital investment trusts, interest-rate swaps, mini-bonds and payment protection insurance have been mis-sold to create misery for many and profits for a few. Financial frauds have been rife in this industry for years, as shown

by RBS, HBOS, Lloyd's of London, BCCI, Barings, Barlow Clowes, Dunsdale and Levitt, to mention just a few. Financial enterprises have rigged interest and exchange rates and engaged in bribery, corruption, tax avoidance, money laundering and sanctions-busting on a huge scale. Lax regulation gave us the 2007-08 financial crash. Financial scandals have destroyed businesses, jobs, savings and investments, and many have been bankrupted on forged documentation, as I referred to earlier.

Research by Professor Andrew Baker of the University of Sheffield estimated that the UK finance industry made a negative contribution of £4,500 billion to the UK economy during the period 1997-2015. That is a staggering negative contribution, yet the regulators are not moved. The occasional puny sanctions from friendly regulators have not secured qualitative change. The typical response of the Government to scandals is to rearrange the regulatory deckchairs by replacing the Bank of England with the Financial Services Authority, which is then replaced by the FCA and the PRA. However, the same regulatory failures continue. We now need a sea change.

The FCA needs to be helped by an independent assessment of its shortcomings and failures. An investigation by the Treasury Committee provides this help by taking stock of the failures and providing guidance to the new or returning FCA CEO as to the challenges ahead. I have not even mentioned the challenge of shadow banking, which is excluded from this Bill but deserves to be debated. Importantly, the mechanism I have outlined—of scrutiny by the Treasury Committee—gives the victims a chance to speak. It is vital that the people's cry for justice be heard by Parliament. There is hardly any other mechanism which enables that cry to be heard. I commend Amendment 71 to the Committee.

Lord Bruce of Bennachie (LD) [V]: My Lords, that was a powerful speech by the noble Lord, Lord Sikka, and clearly, a lot must be addressed. I served on the EU Financial Affairs Sub-Committee and the Treasury Select Committee, and currently serve on the EU Services Sub-Committee. Therefore, I am well aware of the contribution the sector makes across the UK.

The UK helped to shape the regulations and rules for the EU, but we have now left. The sector has consistently argued that a reputation for high standards and effective regulation is important to the confidence the world expresses in the UK's financial institutions—notwithstanding the failures that have occurred. The combination of the European Parliament and the UK Parliament ensured that regulators have been accountable. I do not claim to be a technical expert on what is a complicated sector, but I recognise the dangers of regulation becoming an unaccountable closed book.

I support the case for a properly resourced specialist joint committee to ensure that regulators are held accountable, not so much on technical detail but in terms of a prudential framework and overall direction. That would be in the interests of the regulators and government Ministers as well as those who depend on a well-regulated and reliable sector. I share the concern that what the Government are trying to do will ultimately bite back if there has been no proper parliamentary oversight in a future scandal. The Government and the regulators will have nowhere to hide, but that will be very little comfort to people who may suffer from regulation failures.

Financial services are distributed throughout the economy. People often refer to the City of London, but we know that jobs and activities are distributed throughout the UK and have been growing in all the devolved Administrations. Edinburgh is the UK's most important financial centre and one of the most important in Europe. According to TheCityUK, financial services contribute £13 billion, or 9.4% of GVA, to the Scottish economy. More than 160,000 people are employed in financial and related professional services, which is nearly 6% of Scotland's national employment. The sector includes banking, fund management, insurance, life assurance and pensions, asset servicing and professional services.

Interestingly, Scotland accounts for 24% of all UK employment in life assurance and 13% of all banking employment. Given that Scotland has 8.5% of the population of the UK, this is clearly disproportionately important. According to Scottish Development International, there are more than 2,000 financial services businesses, supported by 3,650 professional services firms. Scotland's financial and professional services exports account for 40% of all Scottish services exports.

Having said that about Scotland, tens of thousands are employed in the sector in Wales and thousands in Northern Ireland, and the number is growing in all the devolved areas. My Amendment 137 takes this into account and seeks to ensure that the devolved Administrations are consulted about any proposed changes in financial services regulations. It is clearly in the interest of the sector to have clear and common regulations across the United Kingdom, which is why this amendment looks for consultation only. It merely seeks to ensure that any factors of particular importance to a devolved Administration are, as far as possible, accommodated. I can see no conceivable advantage to financial services companies to diverge from UK regulation. After all, as the figures I cited show, a significant part of the financial services sector in Scotland is serving the whole UK market. The last thing it needs is a distracting push separating it from its customers, either by erecting barriers at the border or by promoting an alternative Scottish currency, which would undermine the raison d'être of serving the UK from Scotland, or a "sterlingisation" agenda that would put huge pressure on the public finances in Scotland.

My amendment seeks to avoid any unintended negative consequences. It is not intended to cause delay or to encourage special pleading. Given the particular importance of Scotland's role in delivering life assurance and banking, it is surely right that any changes being considered to regulations affecting these sectors are not proceeded with until appropriate consultation has taken place.

That said, it is also important to recognise the role of professional support services, given Scotland's distinctive legal system and, for example, accounting qualifications. The expertise that exists in Scotland should in any case surely be drawn on to inform regulations if and when changes are being considered. I share concerns

[Lord Bruce of Bennachie]
that the Government are proceeding to build an architecture that lacks an adequate parliamentary dimension. It is perfectly reasonable to ask the legislatures of the devolved Administrations to be involved in contributing to the shaping of regulations, at least in their broad prudential thrust.

I look forward to hearing what the Minister has to say. I hope he will recognise the force of the arguments put by noble Lords about the need for a significant and effective parliamentary dimension and a recognition that the devolved Administrations, especially Scotland, should be able to contribute constructively and positively to that outcome.

Lord McNicol of West Kilbride (Lab) [V]: My Lords, one of the joys of being at the end of such a large group of amendments and a long speakers' list is that very much of what needs to be said has already been said, so I will be brief.

The contributions from across your Lordships' Committee, from the noble Baronesses, Lady Noakes and Lady Bowles, and my noble friend Lord Davies, outlined the importance of parliamentary and democratic oversight and the different levels and ways of delivering it. The contribution of the noble Lord, Lord Holmes, on the right levels of oversight also helped move the debate on.

The balance between regulatory authorities' powers and those of Parliament is critical. My noble friend Lord Sikka clearly outlined in detail many of the failures of the regulators and of the FCA, so getting the levels right is critical. I add my support for those amendments that I am pushing forward. I look forward to the Minister's response and to how we move this forward to Report and Third Reading.

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): The right reverend Prelate the Bishop of St Albans has withdrawn, so I call the next speaker, the noble Baroness, Lady Kramer.

3.45 pm

Baroness Kramer (LD): My Lords, we have, sadly, become used to skeleton primary legislation, with policy embedded in statutory instruments that cannot be amended and cannot be voted down without threats of a constitutional crisis. But at least statutory instruments can be brought before Parliament, and Ministers must then make the case.

This Bill is a new low—skeleton primary legislation, elimination of secondary legislation and policy set in regulators' rules with no meaningful accountability to Parliament. The accountability set out in the Bill, which largely mirrors proposals in the future regulatory framework review, provides, in essence, just for a bit more explanation by the regulator, the existing right of a parliamentarian to submit evidence to any consultation, and the existing right for committees such as the Treasury Select Committee and the Economic Affairs Committee to question the regulator from time to time. This will be the policy framework shaping a sector of the economy that will fundamentally impact our national prosperity, jobs and public spending.

The Minister was kind enough to meet us, so I can perhaps anticipate some of the arguments that the Government are likely to make. They will argue that the Bill is just a stopgap while consultation takes place, but the consultation under way has multiple stages and will stretch the whole process out for 18 months or two years. By then the horse will have long bolted and procedures will largely have been set in stone. Perhaps the Minister would spell out the timetable—because the Bill looks to me like a template, not a stopgap.

Secondly, the Minister will say that only part of financial regulation is covered by the Bill. But, since it includes all of Basel III, the Bill actually covers almost everything that matters in prudential regulation. I have also heard from parts of industry that a second financial services Bill is on its way. I do not know that; I have not heard it from the Government—but if so, it will have come and gone before the new framework legislation is finalised. Perhaps the Minister would comment on that. It is absolutely clear that what happens with this Bill genuinely matters.

I value consultation—real consultation—but I am saddened because consultation has become a cynical tool to sideline Parliament. "Just give us a free hand now, because we're doing a consultation." Colleagues who cover other areas of policy tell me that this is a pattern, and are now concluding that it is cynically being used with a wide range of legislation, to make sure that Parliament is sidestepped.

I suspect that the Minister will argue that the powers being given to the regulators in this Bill, with minimal accountability, are necessary so that the UK can respond to changing events. After all, we have left the European Union and times are going to change. I regard that as nonsense. We are in changing times, but we have proved in the last year that fast-track procedures exist when they are genuinely needed.

I very much welcome the amendments tabled by the noble Baroness, Lady Noakes, also signed by my noble friend Lady Bowles, and the noble Baroness, Lady Bennett. They are tough: they would prevent Schedules 2 and 3 coming into effect before the accountability deficit is sorted. That, I suggest, is what the circumstance warrants.

This group of amendments was revised from Monday, so it now includes proposals detailing how accountability can be structured. We have heard a whole series of brilliant speeches in this debate, so I want to make only some limited comments.

The noble Lords, Lord Tunnicliffe and Lord Eatwell, have tabled a number of amendments laying out process and timetable. I find that extremely constructive. By contrast, the noble Lord, Lord Blackwell, has tabled an amendment that covers similar territory, but with such a light touch that—I hope he does not take this wrongly—I think it will be read as cosmetic. The industry needs to recognise the importance of proper scrutiny and understand that scrutiny in name only will, in the end, do the industry itself no long-term good.

In addition to the procedural amendments, my noble friend Lady Bowles has tackled an equally crucial but often overlooked element of oversight—one that goes to the heart of the matter. It is the need for the regulator to provide the detailed information to Parliament to fully understand and evaluate the evidence, reasoning

and consequences of changes to rules. For years this has been done for us within the oversight process of the European Parliament, which has expert resources in depth. My noble friend, in her role in that Parliament, was able to use the information to improve proposals for rules and make them more effective. We have now lost that capacity, and nothing in the Bill or the framework consultation replaces it.

My noble friend Lady Bowles has also proposed amendments that would put this oversight on a regular basis, not just an ad hoc one, and would bring in an independent expert panel to do some of the heavy lifting. As the noble Lord, Lord Holmes, referred to, recently the All-Party Parliamentary Group on Financial Markets and Services addressed similar concerns. I quote from its February report, *The Role of Parliament in the Future Regulatory Framework for Financial Services*:

"Regardless of the format, the level of technical support available to Parliamentarians in this policy area will be key."

The APPG goes on to propose secondments from the Treasury to the relevant parliamentary committees to bolster institutional capacity. I personally regard that as the wrong approach—that would be letting foxes into the henhouse—but it makes the point that proper parliamentary oversight requires new expert capability to replace that lost with Brexit. We have expertise within the regulator but we must have it for oversight of the regulator.

Before I finish, I want to refer to Amendment 137, tabled by my noble friend Lord Bruce, which would require the Government to consult on rule changes with the devolved Administrations. It is quite shocking to me that the devolved Administrations are overlooked in the Bill. Scotland is a major player in financial services and that needs to be recognised.

I will listen to the Minister's response. I hope he will not repeat the airy dismissal that the Economic Secretary in the Commons deigned to give as his response. Voices on all Benches in this House are capable of coalescing around a set of viable amendments on Report that would at least remedy the worst in the Bill. The Government ought to be coming forward with the best.

Lord Eatwell (Lab): My Lords, in due course I will speak to the amendments in the name of my noble friend Lord Tunnicliffe and myself, which, as many noble Lords have commented, would introduce operational proposals that would address the problem of adequate parliamentary scrutiny.

Before I turn to those practicalities, though, I wish to speak to the amendments tabled by the noble Baroness, Lady Noakes, supported by the noble Baroness, Lady Bowles, and the noble Lord, Lord Holmes, which deal with the principles at stake. As we might expect from the noble Baroness, Lady Noakes, her amendments are precise and direct and go to the heart of the matter: the inadequacy of parliamentary scrutiny.

I regret that I was unable to attend the Second Reading debate on the Bill. On reading the report of that debate, it is evident that an overwhelming sentiment in your Lordships' House was that the procedures suggested by Her Majesty's Government for the future development of the regulatory powers display a serious lack of appropriate parliamentary scrutiny. The fears expressed at Second Reading can only have been further reinforced by the note entitled "Meeting between the Economic Secretary, Peers, the Financial Conduct Authority and the Prudential Regulatory Authority: Background Briefing for Peers", and by the document *Financial Services Future Regulatory Framework Review Phase II Consultation*, published by Her Majesty's Treasury in October last year. Both documents advocate a degree of parliamentary scrutiny that may at very best be described as minimalist. Seldom can two documents have made the case so eloquently for the adoption of a policy entirely at odds with that which they propose.

The central thrust of government thinking is spelt out in the phase 2 consultation document to which I have just referred. It may help if I quote the relevant passage:

"The Financial Services and Markets Act 2000 (FSMA), and the model of regulation introduced by that Act, continue to sit at the centre of the UK's regulatory framework. The government believes that this model, which delegates the setting of regulatory standards to expert, independent regulators that work within an overall policy framework set by government and Parliament, continues to be the most effective way of delivering a stable, fair and prosperous financial services sector. The model maximises the use of expertise in the policy-making process by allowing regulators with day-to-day experience of supervising financial services firms to bring that real-world experience into the design of regulatory standards. It also allows regulators to flex and update those standards efficiently in order to respond quickly to changing market conditions and emerging risks. The FSMA model was readily adapted to address the regulatory failings of the 2007-08 financial crisis."

Commenting further on the manner in which this model was readily adapted to address the regulatory failings of the 2007-08 financial crisis, the authors of this document declare:

"The financial crisis of 2007-08 revealed serious flaws in the UK's system of regulation, particularly in the allocation and co-ordination of responsibilities across the 'tripartite' institutions – HM Treasury, the Bank of England and the FSA … The post-crisis framework reforms were therefore focused primarily on institutional design and allocation of responsibilities."

So the problem that led to massive regulatory failure and to a regulatory system that failed to protect UK citizens and firms from a near-existential breakdown in the financial system, that heralded a sharp downturn in real income and higher unemployment, and that led inexorably to the disastrous austerity policy was a problem of

"institutional design and allocation of responsibilities".

There is no mention of the failed analysis, no mention of the pernicious groupthink that infected the analysis of the FCA and the Bank of England, no mention of the fact that warnings from distinguished commentators in academia and in the financial services industry were airily dismissed, and no acknowledgement that our regulators participated in the creation of a procyclical regulatory model that actually made the crisis worse than it otherwise might have been.

If anyone has any doubt that allowing regulators to bring that real-world experience into design of regulatory standards was the foundation of that massive failure, they should consider the words of Alan Greenspan, then head of the US Federal Reserve system—essentially, the western world's senior regulator—speaking to the banking committee of the US House of Representatives in October 2008. He said:

"This modern risk-management paradigm held sway for decades. The whole intellectual edifice, however, collapsed in the summer of last year."

[Lord Eatwell]

Where in this document is the recognition that the intellectual edifice collapsed? Where is the acknowledgement that those with real-world expertise did not understand the systemic risks in the industry that they were supposed to be regulating?

All this was clearly set out in the Turner review, published by the FSA in 2009 and seemingly unread by the authors of this document. The review advocated a shift from microprudential regulation that focuses attention on the risks facing individual firms to macroprudential regulation focusing on the risks inherent in the operation of the system as a whole. It is entirely true that implementing that change has proved more difficult than the noble Lord, Lord Turner, could have anticipated. Basel III, the regulatory system lauded in this Bill, was supposed to do the job, but as Professor Hyun Shin, chief economist of the Bank for International Settlements, the home of Basel III, has commented:

"Under its current … form, Basel III is almost exclusively micro-prudential in its focus, concerned with the solvency of individual banks, rather than being macro-prudential, concerned with the resilience of the financial system as a whole. The language of Basel III is revealing in this regard, with repeated references to greater 'loss absorbency' of bank capital."

When we turn to the impact assessment published by Her Majesty's Treasury to accompany the Bill, we again find many references to the virtues of bank capital, its loss absorbency and the resilience of individual firms. There is, however, absolutely nothing about the attempt to deal with systemic risk using liquidity rules, resolution regimes and comprehensive supervisions. The authors of this document have been rewriting history. They have also failed to learn from history.

4 pm

What, then, do Her Majesty's Government propose for the parliamentary scrutiny of the work of the independent regulators? HMG's proposals are neatly set out in the document that was the background briefing for Peers. The Bill, it is argued, establishes an accountability framework to provide appropriate strategic policy input and democratic oversight from government and Parliament. That sounds good, but what does it amount to? It consists of the regulators having a legal obligation to explain the rules and, specifically, how they have considered the matters contained in the Financial Services Bill. The regulators have a legal obligation to consult stakeholders and to do so in a manner that will best bring them to the attention of the public. They must also take into account and publish an account of representations made during consultation and their response to these. That is it—that is the accountability framework.

What of Parliament? There is a role for Parliament: in line with current practice, a relevant Select Committee can call witnesses, gather evidence and make recommendations at any time and on any relevant subject, including draft rules under consultation by the regulators. Her Majesty's Treasury therefore takes confidence that proper mechanisms exist to allow Select Committees to scrutinise and comment as they see fit, right and proper.

On that, I have two observations. First, in several documents accompanying this Bill, the Treasury refers to the Treasury Select Committee of another place as playing the key parliamentary role by means of

"Select committee inquiries … Regular hearings to scrutinise the work of the financial services regulators… Appointment hearings for key senior leadership positions in the financial services regulators".

I have considerable admiration for the work of the Treasury Select Committee, but the repeated emphasis in these documents on the central role of a committee already overloaded with work scrutinising the many other areas of Treasury responsibility does not give me confidence that the authors are filled with enthusiasm for parliamentary scrutiny. Secondly, while the regulators must take account of parliamentary comments, including those of the Treasury Select Committee, there is not a hint that they should have regard to them.

This leads me inexorably to recognise the worth of the principles behind the amendments proposed by the noble Baroness, Lady Noakes, and supported by the noble Baroness, Lady Bowles, and the noble Lord, Lord Holmes. I am not suggesting that there necessarily exists in either House the level of detailed expertise and/or experience that would lead Parliament to second-guess the regulatory experts—though, in fact, I suspect that such expertise is present in your Lordships' House. But this is not the role that I would expect parliamentary scrutiny to play. Instead, I would rely on the fact that parliamentarians have a tendency to challenge, to ask what are often the devastating, idiot boy questions: "I don't understand, guv'nor, would you explain?", "How can you be sure?" or "How do you expect that the measure will actually work once the markets turn their collective minds to devising ways to circumvent it?"

Parliamentarians have it in their DNA to take nothing at face value. This does not mean that they will be always right or even approximately right, but it does mean that the regulators will always need to be on the alert for the vigorous, even decisive, challenge. That is why a different eye is necessary in the form of a structure of parliamentary scrutiny significantly more systematic than that suggested by the Treasury's proposals.

I wonder whether Her Majesty's Government have taken on board the recent proposals referred to by noble Lords and advanced by the All-Party Parliamentary Group on Financial Markets and Services. Of course, it is not for a government Bill to instruct Parliament in what to do—what committees should be established and which procedures followed—but it would assist the Grand Committee if, in replying, the Minister at least mused a little about what he would consider a desirable parliamentary response.

I turn to the amendments in my name and that of my noble friend Lord Tunnicliffe—at last, the Committee may feel. They seek to establish an operational framework for parliamentary scrutiny that is incisive and practical and does not expose the regulator to inordinate delay in implementing measures that might otherwise be held up by parliamentary procedures. The essential thrust of the amendments is that there should be scrutiny by a parliamentary committee, or committees, and that the regulators should have regard to the consequent findings. The committees' findings would also be an important source of information and insight for Parliament when dealing with affirmative resolutions.

However, the period in which parliamentary scrutiny should take place is limited to 20 sitting days of this House or the other place, whichever falls on the later date. This important safeguard is missing from some other amendments in this group, ensuring that the regulator is not hamstrung by parliamentary delay. A number of noble Lords have expressed concern about how the time taken by scrutiny—even this short time—might inhibit the regulator from acting quickly. A little constructive imagination could easily solve this problem; perhaps the chairs of the relevant committees could be delegated to provide leave to the regulators to act promptly in an emergency, subject to subsequent consideration of their actions.

On reflection, the amendments as drafted do not take proper account of parliamentary recess, as the noble Lord, Lord Blackwell, noted. They need to be corrected in that respect. That said, I commend the practical procedure advocated in these amendments to Her Majesty's Government as a constructive way of responding to the strongly expressed wishes on all sides of the House.

Earl Howe (Con): My Lords, parliamentary accountability is a subject that has clearly brought out considerable strength of feeling across the Committee; the Government agree that it is vital.

Parliament, particularly this House, has had a central role in shaping critical financial services legislation over recent decades. In many cases, that legislation has served as a blueprint for global reforms. First and most fundamentally, there was the passage of the Financial Services and Markets Act 2000, or FiSMA, which endures as the framework around which all other financial services legislation is based. Following the financial crisis, Parliament led a number of important reforms to make our regulatory framework stronger and, of course, there is the important work of the Parliamentary Commission on Banking Standards, which spearheaded important reforms such as the creation of the senior managers and certification regime.

I assure noble Lords that this Government recognise the important role that Parliament must continue to have in shaping the financial services regulatory landscape. I say that because I cannot agree with the suggestions I have heard of late that there is simply no parliamentary accountability for the UK regulators and that the Bill somehow seeks to sidestep Parliament.

I listened carefully to what the noble Baroness, Lady Kramer, said about the order-making powers contained in the Bill. I refer her to the report of your Lordships' Delegated Powers and Regulatory Reform Committee, which, perhaps unusually for the committee, raised no concerns about the inclusion of those powers.

The FCA, as I shall go on to explain, is accountable to the Treasury, to Parliament and to the public, including for the economy, efficiency and effectiveness with which it uses resources. There are a number of features in the legislation which support this accountability, as I shall explain.

The noble Baroness, Lady Kramer, argued that the Bill's scope is too wide. I say to her that the Bill is designed to resolve immediate outstanding policy issues resulting from our exit from the European Union and to meet the UK's international obligations in the short term. Its scope is limited to ensuring that we uphold our international commitments.

The noble Baroness, Lady Bowles, asked me whether there will be another financial services Bill before the FRF is complete. The Government have not made decisions about legislation in future Sessions. The FRF review is a high priority and essential for establishing the model for all future legislation.

The noble Lord, Lord Eatwell, asked me where in the Bill is there any focus on macroprudential issues. The Financial Policy Committee of the Bank of England is, as he knows, the UK body responsible for identifying and managing systemic risks to financial stability. Its remit is not affected by the Bill. It publishes a *Financial Stability Report* twice a year. This work compliments the Basel reforms and neither, clearly, is a replacement for the other.

I will set out where the Government stand on this important issue. I begin by focusing on the prudential measures: the investment firms prudential regime and the Basel framework. Implementing these rules in a timely manner is critical to the UK's reputation as a responsible and responsive global financial centre. The Basel Committee on Banking Supervision is the primary global standard setter for the prudential regulation of banks. In response to the financial crisis the Basel committee significantly overhauled and strengthened its standards, in a package now known as Basel III. Since that time, the Basel committee has continued to refine that framework to ensure that it is robust and to guard against the serious failures that led to the financial crisis.

Due to the interconnectedness of the global financial system and the fact that large financial institutions operate across the globe, the UK Government remain committed to the development and implementation of a common set of standards on prudential regulation and supervision. With regard to Basel III, the UK is committed to implementing those standards for 1 January 2022, and firms have been planning on this basis.

My noble friend Lord Trenchard asked whether I could confirm the treatment of software assets in the implementation of Basel by the PRA. The PRA is currently consulting on a proposal to disallow software assets from counting as regulatory capital, which is contrary to the approach being taken in the EU.

For the investment firms prudential regime, any delay would put the UK at a significant disadvantage compared to the EU. Investment firms in the EU will be subject to a more proportionate prudential regime from the end of June 2021.

I will set out the accountability arrangements relating to these measures. The first thing to remember is that these measures in the Bill sit within the existing framework of FiSMA. As my noble friend Lord Agnew stated at Second Reading, the FiSMA model as updated after the financial crisis is considered world leading. Through it, Parliament has established the appropriate split of responsibilities between the different regulators and has ensured that those regulators have the appropriate statutory objectives to guide their work. It also ensures that Parliament and other interested parties have the information needed to scrutinise the work of the regulators and hold them to account.

[Earl Howe]

FiSMA confers broad rule-making powers on the regulators to ensure that they are able to fulfil their statutory objectives, recognising that it is appropriate for expert and independent regulators to make the detailed technical judgments about how financial services firms should be regulated in a way that delivers the outcomes that Parliament wants. I appreciate this is different from the European model we have been operating under, but it is a return to the UK model. It is evolutionary, not revolutionary. It brings us more into line with other key international peers whose regulators take the lead in the detailed firm requirements.

4.15 pm

FiSMA requires the regulators to undertake consultations before making rules, except where specific exceptions apply. These consultations must include a draft of the proposed rules, an explanation of them and a cost-benefit analysis. FiSMA also requires an annual report to be made by the PRA and FCA, explaining how they have discharged their functions and the extent to which their objectives have been advanced. This report is made to the Chancellor, who must then lay it before Parliament.

The Bill goes beyond the requirements in FiSMA by introducing a specific accountability framework for the prudential measures. It requires the FCA, when making Part 9C rules implementing the investment firms prudential regime, to have regard to any relevant standards set by an international standards-setting body and the likely effect of the rules on the relative standing of the UK as a place for internationally active investment firms to be based or carry on activities: that is, the competitiveness of the UK. The PRA, when making rules to implement Basel, will be required to have regard to those same issues—although it is the attractiveness of the UK for international credit institutions and investment firms in this case. It is also required to consider the likely effect of its rules on the ability of relevant firms to continue to finance the real economy. This is one of the key reasons why having a strong financial services sector is beneficial to the UK.

The Bill requires the regulators to set out publicly, at consultation stage and final rules, how they have considered these issues. This will allow for effective scrutiny by Parliament, which will be able to review and challenge how the regulators have fulfilled this obligation. The PRA's consultation is currently under way and the FCA's closed on 5 February. The PRA is currently consulting on a draft set of rules to implement Basel III, running to over 300 pages. As the Economic Secretary set out in the other place, on these specific areas covered by the Bill, the regulators are willing and able to engage with relevant Select Committees on their consultations and rules. They are already sending them to the Treasury Select Committee. I hope this demonstrates some of the scrutiny mechanisms which already exist, in this Bill and beyond, as well as how seriously the Government take this question.

Amendments 19 and 39 would effectively grant Parliament a veto on the regulators' rule-making, should either House disagree with their rules. I have been clear about the importance of parliamentary scrutiny of the work of the independent regulators, but the Government cannot accept any form of veto.

Amendments 10 and 26 seek to delay the commencement of parts of the Bill until bespoke "accountability arrangements" are approved by Parliament. My noble friend Lady Noakes has been quite open about the fact that it is not clear when these arrangements would be in place, what they would involve or how they would be agreed. I heard what my noble friend said about this but, however one looks at it, the consequence of what she advocates would be to delay this legislation from coming into force and therefore delay the regulators' ability to amend their rules in order to deliver the important updates to the prudential framework. Any such delay would be damaging to the UK's reputation as a responsible global financial services centre, and cause disruption to firms.

Amendments 20, 21, 40 and 41 seek to require the regulators to lay before Parliament their draft rules in relation to the prudential measures in the Bill, and to prohibit them from making them until Parliament has either reported on them or a period of 20 sitting days has elapsed. If Parliament raises any objections, the regulators must respond to those. I must admit that I have studied these amendments with some interest. However, the problem with them is that they could still delay important and potentially urgent rules coming into force until after both Houses have had 20 sitting days to scrutinise them, and the regulators have, of course, already started to conduct some of their consultations. So I say again that we would not want to take any action that might prevent them delivering the first wave of prudential reforms for 1 January 2022.

Turning to Amendment 22, I recognise the intention of the noble Lord, Lord Sharkey: he wishes to ensure that parliamentarians have sufficient sight of the rules before they are enacted. I would just say to him and the Committee that many of these rules will be highly technical and not suitable for detailed debate. For example, the PRA's consultation on Basel rules, which is out for consultation at the moment, contains regulations that, as I have mentioned, are more than 300 pages long, with many technical mathematical formulae. I accept that the power to delete by SI is quite unusual, but the power is limited to the retained EU capital requirements. The rules that will replace the EU legislation being deleted are already available in draft form. The regulators and the Treasury are working to ensure that final rules are published ahead of the debate on the relevant SIs, which have also been published in draft.

In any case, this amendment would have the effect of fixing in statute those rules presented to Parliament at one point in time. That would make it difficult to amend these rules to reflect any changes in market conditions, as they will already have been approved by Parliament. The flexibility that comes from this regulator-led model is one of the key advantages of the approach taken in the Bill. It could also lead to legal uncertainty as to which rules have effect at a point in time, once the PRA begins to update its rules using its FSMA powers.

Amendments 38 and 18 would oblige the regulators to inform Parliament of the matters discussed between themselves and the Treasury with regard to the effect

of their rules on relevant equivalence decisions. Public reporting on the effect of the regulators' rules on relevant equivalence decisions could impact delicate conversations between the UK and other jurisdictions. There are existing carve-outs in other legislation which prevent the publication of information that could undermine UK interests internationally.

I now turn to amendments that deal with regulatory accountability, but which seek to make changes which go well beyond the prudential measures covered by the Bill. I have already set out the requirement in FSMA that the FCA and PRA must prepare annual reports and have them laid before Parliament for scrutiny. Extending this obligation to include, for example, quarterly reports, would be unnecessarily burdensome and in my submission would not meaningfully increase parliamentary oversight.

The independence of the regulators is vital to their role. Their credibility, authority and value would be undermined if it were possible for Parliament to intrude in the detail of their operations or rule-making processes. Again, I think it is important to remind ourselves of the future regulatory framework review—the FRF review—which is currently exploring how our framework needs to adapt to reflect our new position outside the EU. As part of this, the Government are welcoming views on the current arrangements for accountability and scrutiny. That first consultation closed just last week and officials have started to consider the responses received. These are not matters that we should seek to answer through this Bill; rather, we should give them the full and careful consideration that they deserve. Against that background, the changes outlined in Amendment 27 would offer little in terms of enhancing parliamentary scrutiny, but would impose an outsized burden on the regulators' resources and their independence.

Amendment 85 envisages Select Committees reviewing all regulator rules. Under this model, Parliament would need to routinely scrutinise vast amounts of detailed new rules, as well as the implementation of existing rules, on an ongoing basis. This is very different from the model that Parliament has previously put in place for the regulators under FSMA. That said, there is currently nothing preventing a Select Committee from either House reviewing the FCA's rules at consultation, taking evidence on them and reporting with recommendations to influence their final form. The current framework therefore already allows Parliament to play a strategic role in interrogating, debating and testing the overall direction of policy for financial services, while allowing the regulators to set the detailed rules for which they hold expertise.

Amendment 71 would require the Treasury Select Committee to conduct an assessment of the conduct of the FCA prior to a new chief executive taking up post. The change proposed under this amendment mirrors powers that are already available to Select Committees and, in my submission, adds an unnecessary step to an appointment process that already includes measures to ensure proper parliamentary scrutiny.

Finally, I respect the intent of Amendment 137, tabled by the noble Lord, Lord Bruce of Bennachie, which is clearly to ensure that the devolved Administrations are properly consulted on matters which affect them. Financial services are a reserved policy area under each of the devolution settlements, and it is consistent with this that the responsibility under the Bill for making regulations in the area of financial services sits with UK Ministers. However, I listened with care and interest to all that was said about Edinburgh, in particular, as a vital financial centre in the UK, and I can assure the Committee that the Government are working closely with Scotland, Wales and Northern Ireland to seek the necessary consents on areas where the Bill deals with devolved or transferred matters and, of course, generally work very closely with the devolved Administrations on areas of mutual interest.

I have spoken at length, but I hope that what I have said has been helpful in setting out the Government's position on these important issues. In particular, let there be no room for doubt that the Government take the question of parliamentary accountability in financial services rule-making very seriously. The noble Lord, Lord Eatwell, invited me to muse on what might be an appropriate set of scrutiny arrangements. It is the Government's view, I say again, that the Bill allows for proper parliamentary scrutiny, and on that basis I ask my noble friend to withdraw her amendment and for the others in the group not to be moved. Having said that, I say to all noble Lords who have spoken in this debate that I recognise the strength of feeling expressed and I am very happy to continue this conversation with noble Lords between now and Report.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): I have received a single request to speak after the Minister; I call the noble Lord, Lord Holmes of Richmond.

Lord Holmes of Richmond (Con) [V]: My Lords, I thank the Minister for his very clear and thoughtful response. I have three brief questions for clarification. First, what plans, if any, are there for a Financial Services (No. 2) Bill? Any information on that would be helpful to the deliberations of the Committee today, and to the approaches noble Lords may choose to take as we move through further stages of the Bill.

Secondly, will he say what the Government's position is on the timeliness of such scrutiny? Does it err more towards rear-view rather than real-time? Thirdly, in the light of the debate that we have just had, will he consider discussions potentially to lead to government amendments coming forward on Report? I think that noble Lords would agree that, on scrutiny and accountability, if the Bill is passed as currently drafted that would be at least somewhat unfortunate.

Earl Howe (Con): My Lords, I intended the Committee to take some reassurance from the final sentences in my winding up when I said that I was very happy to continue the conversation with noble Lords on this theme between now and Report. I hope that noble Lords will take that as a signal that the door is not closed as regards a potential tweak to this part of the Bill.

4.30 pm

My noble friend invites me to speculate on whether there might be further arrangements that consist of real-time scrutiny or, alternatively, a rear-view mirror type of scrutiny. I am not going to speculate on that issue,

[Earl Howe]
if he will forgive me, because that begs the question that I adumbrated on the matters that I would like to discuss with noble Lords over the coming days.

My noble friend's first question was about whether the Government have any plans for a second financial services Bill. I endeavoured to answer the same question put to me by the noble Baroness, Lady Bowles. I said that the Government have not made any decisions about legislation in future Sessions, but I indicated that the Future Regulatory Framework Review—FRF—is a high priority for the Government and we regard it as an essential basis for establishing the model for future legislation in this area.

Baroness Noakes (Con): My Lords, I thank all noble Lords who have taken part in this debate and those who have supported my amendments. It has been a very thoughtful debate with contributions from all parts of the Committee, which sees this as a real issue that needs to be solved. On a personal basis, I welcome back the noble Lord, Lord Eatwell, to our consideration of financial services matters. We should remember that he has unique experience among noble Lords, having been a financial services regulator, so we must listen very carefully to what he has to say on many of these things.

One overriding theme has come out of our debate this afternoon. There is unanimity on the need for good parliamentary involvement in financial services. My noble friend Lord Howe affirmed the Government's commitment to parliamentary accountability. The difference comes in how we define what form that accountability could take. The Minister made a case for going back to the FiSMA model, which he seemed to forget was brought in in the context of the existing EU arrangements for scrutiny and did not exist pre-EU scrutiny, so going back to that is not saying anything at all. Now that we are out of the EU, we are trying to see what can be done to deal with the changes that we need to accommodate within our system and to ensure that there is proper accountability for that. FiSMA may, or may not, provide an adequate basis for that, and I suspect not.

My noble friend also talked about the need for timeliness. I am sure that the Basel III implementation needs to be done on a timely basis, and it is not beyond the bounds of possibility that we could get that right with parliamentary scrutiny in this Bill. However, the implementation of Basel III does not need to be done by the PRA; it could as easily be done by a statutory instrument introducing it. I am not afraid of 300 pages of detail. I have seen the formulae on risk rating. I do not relish the opportunity to do it again, but one could do so if one needed to, so it is not necessary for us.

I get the impression that this is a rubber-stamp Bill. The Government have made up their mind. The PRA and the FCA will be roaring ahead as if they have all the powers and we are now just being invited to rubber-stamp it. I think we are saying back to the Government that we do not find that a satisfactory state of affairs.

The noble Baroness, Lady Kramer, rightly said that this is not a party-political issue, and there is a commonality of views across the Committee on this. The fact that there is different detail in our amendments today does not rule out the possibility that we can coalesce around a good solution to this. I was pleased to hear my noble friend the Minister say that he was keen to maintain a dialogue with noble Lords after Committee. That would be extremely helpful; obviously, we would prefer to move in step with the Government and not against them.

I think the Minister needs to recognise that we do not find convincing the narrative that the existing framework with a few tweaks in the Bill gives an adequate accountability framework for the additional powers that are being transferred to the regulators under the Bill. I look forward to continuing the dialogue outside Committee and I hope that that will be fruitful before we get to Report. With that, I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Clause 2 agreed.

Schedule 2: Prudential Regulation of FCA Investment Firms

Amendment 11

Moved by ***Lord Oates***

11: Schedule 2, page 62, line 9, at end insert—

"(ca) the climate-related financial risks to which FCA investment firms are exposed,"

Member's explanatory statement

The purpose of this amendment is to require the FCA, in exercising its power to make general rules, to have specific regard to the climate related financial risks to which FCA investment firms are exposed.

Lord Oates (LD): My Lords, I declare my interests as chair of the advisory committee of Weber Shandwick UK, as set out in the register. In moving Amendment 11 in my name and the names of my noble friend Lady Kramer and the noble Baroness, Lady Hayman, I will also speak to the other amendments in this group. Before doing so, I put on record my thanks to a number of organisations for their briefing and patient answers to the many and often ignorant questions that I have posed to them in preparing for the Bill, particularly Finance Watch, Positive Money and Carbon Tracker.

I am also grateful to the City Corporation and the APPG for Financial Markets and Services for the helpful information they provided, and, of course, to the noble Earl, Lord Howe, and his ministerial colleagues for meeting to discuss the Bill and, if not immediately signing up to all our climate amendments, at least recognising the seriousness of the issues that they raise. I hope that over the course of Committee we will be able to convince the noble Earl and his colleagues of the urgency of acting through this legislation.

There are essentially three categories of amendment in this group. The first addresses the rule-making powers of the regulators, requiring them when making the rules to take account of the climate-related financial risks to which the entities they regulate are exposed. This issue is dealt with in Amendments 11 and 12.

The second category requires regulators when making rules to have regard to the UK's national and international climate change objectives and obligations. Amendments 13, 14, 15, 16, 17, 23, 34, 35, 36 and 37 address this issue in a number of different ways.

Finally, Amendments 48, 75, 76, 89 and 98 fall into a third category, which tackles disclosure and governance issues as they relate to climate change.

Turning to the first category, the objective of Amendments 11 and 12 is simply to ensure that the prudential regulation of FCA investment firms under Schedule 2 is fit for purpose; that is, that it properly takes account of and seeks to manage and control the risk exposure of the firms it regulates. It is hard to understand on any accepted definition of prudential regulation how it can be regarded as such if it fails to take account of exposure to climate risks, given the potential threat they pose, not only to individual firms but to the financial system as a whole.

There are those who argue that it is premature to take this approach, because the sector is in the process of working out how to measure climate risk, which is undoubtedly a complex matter, given the myriad interrelationships that exist and the fact that there is no precedent for measuring such dynamic risks. While I acknowledge that we do not have a perfect understanding of climate risk, we cannot wait for a perfect solution. We cannot accept that a potentially enormous risk exists for FCA investment firms, but, because it is difficult to measure its exact scale, we are going to act as if it does not exist at all. That is not prudential regulation; it is wantonly reckless negligence.

I hope that the Government will look at this matter very carefully and that the Minister will be able to give us some comfort that, if they will not accept our amendments, they will at least bring forward proposals to ensure that prudential regulation of FCA investment firms does not continue to ignore what is likely to be the most significant risk to which they are exposed over the coming decades.

The second set of amendments seek in different ways to ensure that the FCA and the PRA must have regard in rule-making to our net-zero target and our wider international obligations on climate change and biodiversity. Amendment 23 in my name, with the support of my noble friend Lady Kramer and the noble Baronesses, Lady Hayman and Lady Bennett of Manor Castle, would prevent the Treasury from using its power under Clause 3 to evoke capital requirement regulations unless the effect of the new regulation was compliant with the UK's net-zero target.

Amendment 13 to Schedule 2 and Amendment 34 to Schedule 3 require the FCA and PRA, when making rules, to have regard to the

"the likely effect of the rules on the relative standing of the United Kingdom as an international leader in combatting climate change".

Amendments 16 and 37 to Schedules 2 and 3 respectively require that, in considering that likely effect on the UK's standing, the FCA and PRA have regard to our commitments under the Paris Agreement. This includes our nationally determined contribution of a 68% reduction in emissions from 1990 levels by 2030 and the UK's net-zero target under the Climate Change Act 2008, as amended in 2019. Amendment 17 in the name of the noble Baroness, Lady Bennett of Manor Castle, adds the United Nations Convention on Biological Diversity to that list of "have regards".

In these amendments, I have deliberately replicated existing language in the Bill's rule-making clauses, which require the FCA and PRA to have regard to

"the likely effect of the rules on the relative standing of the United Kingdom as a place for internationally active investment firms to be based".

That is an undoubtedly an important consideration, but it needs to be specifically supplemented by a requirement that takes into account the UK's standing as a leader on climate change. This will force the regulators to raise their sights and ensure that we have the rules in place to cement the UK's position as the leading financial centre in tackling climate change and providing green finance.

On an earlier group on Monday, my noble friend Lord Sharkey quoted the Barclays CEO Jes Staley, who said when asked which amendment he would like to burn now we had left the EU:

"I wouldn't burn one piece of regulation."

He went on to say:

"I would continue pushing the climate agenda, trying to make London a centre of innovation around financing climate and transitioning to a net zero economy by 2050".

That might be a pretty brilliant idea and we agree with him, but we need an adequate system in place to allow it to happen. In the last 15 years, Governments in which all the main parties have been represented have ensured that the UK has established and retained international standing as a leader on climate issues. We need to ensure that leadership is reflected not just in our politics and Government, but across industry and society as a whole. Nowhere will this be more important than in the most significant sector of our economy.

If our financial services industry and its regulators show leadership on climate, the industry will not only have the opportunity to gain a clear market advantage in the years ahead but will help to address the current climate emergency. If they do not, instead of playing a key role in averting climate catastrophe, that same industry will be a key contributor to it. That is what is at stake here.

Amendments 14 and 35 tabled by the noble Baroness, Lady Hayman, have a similar objective although I must admit that they are a little more concise than my version. They would require the FCA and PRA, in making rules, to have regard to

"the likely effect of the rules on the United Kingdom meeting its international and domestic commitments on tackling climate change".

Amendments 15 and 36 in the name of the noble Baroness, Lady Jones of Whitchurch, have a similar objective again but focus specifically on the net-zero target under the Climate Change Act, as amended. I put my name to both these sets of amendments because the purpose of all our amendments is a common one: the essential task of ensuring that our regulators take account of the most significant threat that faces the financial services industry, and indeed every one of us on this planet—the climate emergency. The intent of

[Lord Oates]
these amendments has support across the Committee, so I hope that the Minister will recognise the need to act and the Government will either accept a version of these amendments or bring forward one of their own. If they are unwilling to do so, I think the spirit of the House will be to come together on a joint amendment on these matters on Report.

4.45 pm

The final category of amendments relates to disclosure and governance. The purpose of my Amendment 48, which has cross-party support, is to bring forward from 2025 to 2023 a mandatory requirement for climate-related disclosure consistent with the recommendations of the final report of the Financial Stability Board's Task Force on Climate-related Financial Disclosures. The TCFD's final report was published in June 2017. Five and a half years should be plenty of time for the industry to get its head round these issues. Let us remember, after all, that these requirements are about not mitigating climate-related risk, just disclosing it—the absolute minimum requirement so that investors can make informed decisions, regulators can understand risk exposure, and the risk can be priced appropriately. The financial services industry has to wake up and understand that its glacial pace in addressing these issues is unsustainable. Climate change is not waiting on their prevarication; it is advancing because of it.

I am also pleased to support Amendment 75 in the name of the noble Baroness, Lady Hayman, which would require the appointment of a member of the FCA governing body with specific responsibility for climate change. As I indicated previously, the financial services industry's progress on climate change has been far too slow. A dedicated member of the FCA governing body charged with that responsibility will help to drive the sense of urgency that is so obviously lacking and is desperately needed.

Amendment 76 in the name of the noble Baroness, Lady Hayman, would establish a duty for the PRA to report on climate risk. Amendment 98, also in her name, would establish a climate-related financial risk objective for the FCA. These are key issues that the Government will need to address. It is not sustainable for them to acknowledge the significant risks posed by climate change—whether its actual physical effects, the disruptive impact of transition or the liability costs that it will impose—but then fail even to charge our regulators with properly assessing and reporting on such risks.

Finally, I am pleased to support Amendment 89 in the name of the noble Baroness, Lady Jones. It would amend the Financial Services and Markets Act to place a duty on the Treasury, the FCA and the PRA to have "due regard" to the contribution of financial services to climate change targets, and would require the Treasury to

"lay before Parliament a strategy outlining the policies Her Majesty's Government will pursue to ensure financial services operating within the United Kingdom make a positive contribution to climate change targets."

The amendments in this group address in different ways the stark fact that, in the year in which we will be the president of COP 26, the Government have presented to Parliament a Bill that relates to the sector that will have perhaps the single most profound influence on whether we act fast enough to ensure that we can manage the impacts of climate change or tip into climate-driven systemic collapse, but which contains no mention of climate change—not one word, despite the fact that finance-fuelled climate change poses a fundamental threat to us all and, in turn, to the stability of the financial system itself. That could set off a catastrophic cascade which we must avoid. This Bill should be the place where we start doing that.

I hope that the Government are listening and will work with Peers on all sides of the House during the remaining stages of the Bill to ensure that we address these vital issues effectively. I beg to move.

Baroness Hayman (CB) [V]: My Lords, I declare my interests as set out in the register. It is a pleasure to follow the noble Lord, Lord Oates, who, both at Second Reading and today, has argued passionately and cogently about the need to remedy the absence from the Bill of any reference to the risks and opportunities that climate change presents to the financial services industry. I have tabled Amendments 14, 35, 75, 76 and 98 and added my name to Amendments 11, 12, 23, 48 and 89 in the names of the noble Lord, Lord Oates, and the noble Baroness, Lady Jones of Whitchurch.

As the noble Lord, Lord Oates, said, all the amendments in this group seek to put a climate change lens on the provisions of the Bill. There are various approaches, but the amendments focus, as he said, on ensuring that the regulators take into account climate-related risks when they are making the new rules and regulations proposed in the Bill. They seek to address the remit of the regulators and thus ensure that climate risk is considered at a systemic level.

The increase in firms reporting on such risks at an individual level is both necessary and welcome; however, there is a widely recognised and existential threat to our entire financial system from climate change. Last year, the Governor of the Bank of England, Andrew Bailey, said:

"Compared to the financial crisis and the pandemic, the risks from climate change are even bigger and more complex to manage."

We need to ensure that those with the responsibility for financial stability at a macro level are assessing and reporting systemic climate risk as a core function.

On numerous occasions, the Government have recognised the integral role of our financial services industry in driving the change to a green economy, with an urgent focus on aligning investment with the objectives of the Paris Agreement and the Climate Change Act. Our amendments would put that into reality. The Chancellor spoke on 9 November about

"putting the full weight of private sector innovation, expertise and capital behind the critical global effort to tackle climate change and protect the environment".—[*Official Report*, Commons, 9/11/20; col. 621.]

Yet, as has been said, this crucial piece of financial industry legislation remains totally silent, hence the importance of our debate on this group of amendments and the urgency, in this year of COP26 when our own domestic performance will be integral to the success of our global leadership, of making progress before the Bill leaves this House.

Turning to individual amendments, I have tabled Amendment 14, which, as the noble Lord, Lord Oates, says, addresses the same issues as his Amendments 11 and 12, but in a slightly less detailed way. The intention of Amendments 14 and 35 is to ensure that the FCA makes new prudential regulations for investment firms and that, before the PRA makes any new rules in relation to the capital requirements regulations, these regulators must have regard to the likely effect of those rules on the UK meeting its net-zero commitments. "Having regard" is an important issue and one to which, when this was debated in the other place, I sensed that the Government were not completely antagonistic, but took rather a St Augustine view—being happy to be made green, "but not yet".

I see no reason whatever for awaiting the consultation on this issue, especially because when one reads the consultation document, apart from a few words in the foreword by the Minister, there is no reference to climate change and no request for views on it. Given the importance of the issue, this is something on which we should be making progress straightaway.

I am grateful for the support of the noble Lord, Lord Oates, and the noble Baronesses, Lady Altmann and Lady Bennett, for Amendment 75, which focuses on the current remit and governance provisions of the regulator. It proposes amending Schedule 1ZA to the Financial Services and Markets Act 2000, which deals with the constitution of the governing body of the FCA, and provides for the appointment of a board member with direct responsibility for climate change issues. This would enable a focused and strategic approach to be taken to climate change across the sector at the highest level of the regulator.

Essentially, the amendment requires the regulators to do what they have asked of the sector itself, because those are the same provisions that they now require financial institutions to comply with, and they replicate the senior management regime, which requires those institutions to appoint a board member responsible for identifying and managing financial risk from climate change, and reporting on it.

As part of the process to embed climate risk and the net-zero transition into investment and supervisory decisions, institutions are asked to

"embed the consideration of the financial risks from climate change in their governance arrangements"

and

"demonstrate an understanding of the distinctive elements of the financial risk from climate change and a sufficiently long-term view of the financial risks that can arise, beyond standard business planning horizons."

That long-term view is particularly important, and there is no reason for the FCA not to take on this responsibility. The Bank of England itself has appointed an executive sponsor for climate-related risks, who is responsible for recommending to the governors the Bank's strategy for addressing the risks that climate change poses to its objectives, and overseeing the implementation of that strategy. So I hope that, when he winds up, the Minister will be able to respond positively to this very limited but still important amendment.

Amendment 76 deals with the need to ensure that the regular mandatory reporting mechanisms for a sector-wide climate risk assessment provide for FSMA to be amended; the need for the PRA to provide a regular report on how it has evaluated exposure to climate risk; and the impacts that it would have on the stability of the United Kingdom financial system. That could form part of the annual reporting that the regulators are required to provide to the Treasury, and to Parliament via the Treasury Select Committee.

The amendment also provides that, as part of the reporting process, the PRA must seek advice from the climate change committee. It is important that we join the dots between the different bits of government, and ensure that a statutory body such as the climate change committee is integrated into the advice received by regulators and those responsible for economic stability.

My final amendment in this group is Amendment 98, which seeks to amend the Financial Services and Markets Act to insert a new FCA climate-related financial risk objective. While the regulators are moving forward with approaches necessary to address climate-related financial risks, such as through the UK Climate Financial Risk Forum, their statutory remit does not currently include a duty to consider the impact of climate change on the stability of the financial sector overall.

The theme running through this group of amendments is to seek to embed climate risk and the net-zero obligation into the financial system. This is one critical step towards doing that, by ensuring that they are embedded within the scope and remit of the regulators at every level.

5 pm

In the interests of time, I shall not speak to the other amendments to which I have put my name, because many different approaches are encompassed by the group of amendments that we are discussing and I am by no means precious about how we can best approach these issues. However, all have a common purpose: to ensure that we do not miss the opportunity that this Bill gives us to recognise the crucial importance of risk and opportunity inherent in the financial services industry in relation to climate change and to recognise that not just in ministerial speeches but in legislative reality, which leads to real progress. I look forward to the Minister's response and hope for constructive discussions with him and his team before Report, not on the principle of introducing issues of climate change into the Bill but on the most appropriate ways to do so.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it is a great pleasure to follow the noble Baroness, Lady Hayman, who is such a champion of climate and other environmental issues in your Lordships' House. As she said, it is astonishing that the Bill, in the year 2021, presented by the Government with the responsibility of chairing COP 26, who talk so often about being "world-leading" on climate, could have got so far without any mention of the climate emergency.

The noble Baroness and, in introducing the amendment, the noble Lord, Lord Oates, have set out extensively the detail of the range of climate amendments

[Baroness Bennett of Manor Castle]
and the need for their incorporation in the Bill, so I shall focus the bulk of my words on Amendment 17 in my name. It is distinct in that, while all the others address the climate emergency, this is the only amendment that also brings in the crucial issue of our nature crisis, and the collapse in biodiversity and bio-abundance that is obviously of concern to the Treasury given its commissioning of the recently-released *Dasgupta Review*.

I doubt that many noble Lords taking part in the debate on this group need an outline of it, but it is important to highlight that the *Dasgupta Review* identifies nature as "our most precious asset". It says that we need vastly more protection for our scant remaining natural world—on this, one of the planet's most nature-depleted lands—which means making sure that money is not going into destructive actions. That should be of concern to the Financial Conduct Authority. It says too that we should begin to implement large-scale and widespread investments that address biodiversity loss—again, a matter for the Financial Conduct Authority.

While it is great to see in the *Dasgupta Review* these critical issues to all of our futures expressed in terms that even mainstream economics can understand, being comfortable for those whose philosophy is embedded in growth-orientated, 19th-century politics, it falls down in trying to apply the same unrealistic, abstract mathematical models, driven by financial calculations, to provide tools to guide what to do. We have so little left of biodiversity and bio-abundance, with 50% of our species in decline and 15% at imminent risk of extinction, that we cannot be calculating what we can afford to destroy or write off in this land. We have to preserve everything that is left, while acknowledging that the destruction that we have wrought has given us an insecure, poverty-stricken society that is frighteningly short on resilience, as the Covid-19 pandemic has demonstrated and, as we have just seen on the global scale in Texas, precious little ability to endure the climate shocks inevitably coming our way.

I point noble Lords and the Government to the recent, crucial United Nations Environment Programme report, *Making Peace with Nature*. In his foreword to it, the UN Secretary-General, António Guterres, says that

"our war on nature has left the planet broken".

That is where we are. The often piecemeal response to the climate crisis, biodiversity loss and pollution is

"not going to get us to where we want",

according to Inger Andersen, executive director of the United Nations Environment Programme.

Just considering the remit of our international climate obligations as a central part of the FCA's responsibilities is not nearly enough, as crucial as that is. Adding our equally binding and important obligations through the Convention on Biological Diversity is a significant improvement, and I give notice to your Lordships' House that this is an issue that I intend to pursue strongly at the next stage of the Bill. I will listen carefully to today's debate, and any responses we get from the Government, and consider where best to place this amendment among the range of amendments, although I hope that the Government will pre-empt any need for me to do that.

Yet this is still not nearly enough, as the UNEP is highlighting. We also need to consider pollution as a key concern, and a circular economy, on which the European Union is leading. We need a systems thinking approach—a complete view of how we stop treating this planet as a mine and a dumping ground and treasure its immensely complex systems of life, of which we still have so little understanding. Of course, we also have to consider the billions of people—millions in the UK alone—whose basic needs are not being met while we trash our planet. As a species we are using the resources of 1.6 planets every year; in the UK, our share is three planets.

This morning I was present at a briefing about New Zealand's modern, 21st-century living standards framework, on which there has been wide public and expert consultation. It provides a guide for Treasury decision-making on all government spending. That is truly world-leading, and I hope that the UK Treasury is looking urgently at developing a similar system. In the meantime, however, the inclusion in this Bill of our climate emergency and nature crisis—the understanding that our financial sector is 100% contained within it—is at least progress.

The other place has before it the Climate and Ecological Emergency Bill, which could help to create a framework for such a structure. Given that it is "oven-ready"—to quote a once-familiar phrase—and the continuing delays to the Environment Bill, the Government should be looking at a rapid delivery of whatever emergency steps could be taken—as many as have been taken over Covid.

I revert to the Bill before us. I was told that the 2020 Pension Schemes Bill was the first financial legislation in British history to contain a reference to climate change—no doubt the first to refer to the natural world. Listening closely to the briefing that I referred to earlier, I sense that the Government are at least prepared not to step backwards in this 2021 Bill, and to include some reference to climate change. But if it is to progress it also needs to include biodiversity.

In concluding this section of my comments, I ask the Committee to listen to a short quote:

"Obviously it is right to focus on climate change, obviously it is right to cut CO_2 emissions, but we will not achieve a real balance with our planet unless we protect nature as well".

That was a quote from Prime Minister Boris Johnson's speech of 11 January as he announced that £3 billion of UK climate finance was to be spent on supporting nature. I ask the Minister how, given the Prime Minister's words, he could not have included an amendment such as Amendment 17, in addition to one or more climate change amendments.

Allowing money to pump the systems that are wrecking the natural world is, to put it mildly, not a good idea. It is something that should be considered in every action and every regulation of every government body, particularly the Financial Conduct Authority, given the extreme financialisation of our economy, whereby almost every element is now regarded as a potential profit source. Those profits, which go to the few, must not be at the expense of the living future of all of us.

I turn briefly to the other amendments to which I have attached my name, the first of which is Amendment 23, in the name of the noble Lord, Lord Oates, also signed by the noble Baronesses, Lady Kramer and Lady Hayman. This amendment simply ensures that regulation is compliant with the amended Climate Change Act and the Government's much-trumpeted 2050 net-zero target. That is a bare, indeed inadequate, minimum, because it fails to acknowledge the need for urgent action now to achieve major cuts in emissions in the 2020s. Not waiting but acting now should be at the forefront of every government action.

I backed Amendment 75, in the name of the noble Baroness, Lady Hayman, and supported by the noble Baroness, Lady Altmann, because of the need for expertise in these issues within the FCA. Its many failings in traditional areas were powerfully outlined earlier by the noble Lord, Lord Sikka. It certainly needs a specialist, expert voice at its heart to address environmental issues.

I also attached my name to Amendment 98, in the name of the noble Baroness, Lady Hayman, and also signed by the noble Baroness, Lady Jones of Whitchurch, which focuses particularly on climate risk. I would suggest that this falls, in the terms of the Paris climate agreement, in the areas of both climate mitigation and adaptation. The need for mitigation is a risk in itself. We heard the astonishing news this week that local government pension funds still hold £10 billion in fossil fuel investments, despite large numbers of local councils having declared climate emergencies. That is astonishing in terms of money being invested in trashing the climate in ways already hitting close to home—flooding, heatwaves and biodiversity damage—but it is also as though the term "carbon bubble" had never been invented. Perhaps we cannot blame local government for the oversight when our current Government have continued to put money into fossil fuel assets and to subsidise the operation of existing ones to the tune of billions. These are issues that certainly need to be considered.

However, there is also adaptation. I do not feel like I need to stress so much—as the Green Party has for years—that the climate emergency is a current reality, not a problem for future generations. I think, finally, the Government and even parts of industry and finance have got that fact. I note that, today, Fitch Ratings warned that the rising cost of natural catastrophes arising from climate change could mean that insurers withdraw from the market, leaving it to Governments to pick up the pieces. Amendment 98 would be a modest step towards ensuring that the FCA has rules fit for operating in such an environment.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I am delighted to follow the noble Baroness, Lady Bennett of Manor Castle, and pay tribute to her green credentials and the work that she and her colleague, the noble Baroness, Lady Jones of Moulsecoomb—both my friends—have done, as have so many others who have contributed to this debate so far today. I look forward to the other contributions.

This group of amendments has much to commend itself, as do many of the individual amendments. It helps to green-proof, if I may say that, the provisions of the Bill. I am sure that my noble friend Lord Howe will tell me if I am wrong when he comes to reply, but I cannot find anything else in the Bill that covers the provisions set out in these amendments. I pay tribute to the noble Lord, Lord Oates—I celebrate, again, the fact that we joined the House together; I always look forward to debates in which he and I contribute—and to the noble Baronesses, Lady Hayman and Lady Bennett. My slight concern with this group is that while the focus and main thrust of their amendments is on climate change I am slightly confused that they have chosen that form of words—as they also have in other amendments—because so much progress has been made in investment generally. I personally believe that that should extend to banking and financial services as well as other investments, but there is general recognition now of ESG investments. The Wikipedia encyclopaedia tells us that:

> "Environmental, Social, and Corporate Governance"

are generally recognised as measuring

> "the sustainability and societal impact of an investment in a company or business."

It goes on to say that:

> "Threat of climate change and the depletion of resources has grown, so investors may choose to factor sustainability issues into their investment choices."

We are increasingly seeing a move in general investments towards individual small shareholders buying very small, limited shareholdings in a company precisely for the purpose of raising these issues at the AGM. I think we will see this trend continue. This must extend, as I said earlier, to banking and financial services as well. I believe that there should be a place for ESG provisions and regulation by the FSA in the Bill, and these amendments identify where they should go.

However, I am mindful of the fact that ESG covers all sorts of possibilities, such as climate change, greenhouse gas emissions, biodiversity, waste management and water management, so I put to the authors and to my noble friend the Minister that ESG provisions would encapsulate this and would perhaps be a neater—and recognised—way of introducing this into the Bill.

In many instances, particularly in all the work that we have done on rural affairs, we rural-proof legislation as it goes through and I am very keen that we green-proof new legislation as it comes online. I therefore welcome the main thrust of these amendments. I repeat to my noble friend the Minister that if this is an omission, these amendments, or something along the lines of ESG terminology, should find a place in the Bill and a role for the regulators specified in it to follow. If these amendments do not fit the Government's thinking or should we follow more of an ESG terminology, will he consider coming forward with amendments of his own at the next stage?

5.15 pm

Baroness Sheehan (LD) [V]: My Lords, it is always a pleasure to speak after the noble Baroness, Lady McIntosh. We are often in agreement. The point that she raises about ESG is pertinent and, sadly, it is not mandatory. We are seeing a continued increase in the billions of pounds and dollars being spent on fossil fuel infrastructure.

[Baroness Sheehan]

The young people whose futures will be mostly affected by what we do today are increasingly calling for action across all sectors, as demonstrated by the worldwide UNDP poll of 1.2 million people that I cited at Second Reading. I should also put on record that the poll carried out by YouGov last October at the behest of Global Witness showed that two-thirds of the British public want the UK to be a world leader on climate change. In fact, the highest percentage of those was recorded in Scotland at 69%.

The Bill depicts the landscape that will drive the investment of billions of pounds at a crucial juncture in our country's history to reshape our future financial services post Brexit. The legislation will form the basis of how investment decisions will be regulated as we spend massive amounts of taxpayer money to build back better post Covid. Serendipitously, the Bill also comes at a time when we will be in pole position to provide global leadership through COP 26 and the G7. Italy, our co-host for COP 26, will then host the G20. We have an opportunity to showcase the route map presented to us by the Climate Change Committee's recent report to get us to net zero by 2050, while steering a course to meeting the Paris goals. What an opportunity.

The Covid-19 pandemic has focused minds on what can happen when we push natural ecosystems too far, and I agree with every word of the contributions of the noble Baroness, Lady Bennett. However, the timeframes to get innovative technological solutions engineered to scale to tackle climate change are substantially longer than those needed for vaccines—and they were long enough and overturned by human endeavour, hopefully just in time. Decisions have to be taken now if we are to reach net zero by 2050, and we have to get it right because we are in the last chance saloon.

Governments do not have the sums that will be needed, so we need private sector money too, and pots of it. However, business needs certainty and absolute clarity about which way the wind is blowing politically.

It is getting clarity from one quarter. Here is an extract from the letter sent by BlackRock CEO Larry Fink in 2021 to client CEOs. I remind the Committee that BlackRock's assets under management come to, give or take, $7 trillion. This is what he said:

"BlackRock is a fiduciary to our clients … This is why I write to you each year, seeking to highlight issues that are pivotal to creating durable value—issues such as capital management, long-term strategy, purpose, and climate change."

He went on to remind client CEOs:

"In January of last year, I wrote that climate risk is investment risk."

I repeat: climate risk is investment risk, says the CEO of BlackRock. He went on to issue what can only amount to a stark warning: if you risk saddling your investors with stranded assets, with no demonstration of how you are moving to de-climate risk your operations, there will be consequences.

The writing is on the wall. The Prime Minister knows this. Here are his words from last November:

"This 10-point plan will turn the UK into the world's number one centre for green technology and finance, creating the foundations for decades of economic growth."

He went on to describe his 10-point plan as

"a global template for delivering net zero emissions",

ahead of the UK hosting the COP 26 climate summit in Glasgow this year. Someone should tell the Prime Minister that his Government are attempting to put through a Financial Services Bill, in 2021, which is devoid of the words "green", "net zero" or "climate".

I was delighted last December when the Prime Minister announced that the UK will end all support to overseas fossil fuels projects. How could I not be, when it is one of the asks in my Private Member's Bill, the Petroleum (Amendment) Bill? The Prime Minister should know that then to allow 17 fossil fuel projects to be railroaded through to beat an arbitrary deadline before COP 26 is not really showing that he gets it. For example, there was a headline in the *Telegraph* on 6 February this year:

"Major Brazilian oil and gas project could get UK backing despite promised end to fossil fuel funding".

Are we really going to allow UK Export Finance support for the east Africa crude oil pipeline? These investments, using UK taxpayers' money today to fund what will amount to stranded assets tomorrow, are nothing short of immoral.

As if those examples of the abuse of UK taxpayers' money on fossil fuel projects abroad were not bad enough, we still have the threat of the go-ahead for the first deep coal mine in the UK for 30 years, in Cumbria. How is that "powering past coal"? These examples alone, if they are allowed to go ahead, show a deplorable lack of fiduciary duty on the part of our Government. These amendments, which refer to climate risk, are sorely needed.

A good number of them are about mandating the FCA and the PRA, and strengthening their structures to ensure that all investment organisations that fall under their jurisdiction have regard to climate-related financial risk and protect Britain's international reputation by having regard to her international and domestic commitments. I support the intent behind them and look forward to the movers bringing them back on Report, in amalgamated form. There is cross-party support for many of these amendments.

I single out Amendment 48, in the name of my noble friend Lord Oates and the noble Baronesses, Lady Hayman, Lady Jones of Whitchurch and Lady Altmann, as important. Bringing forward by two years the date by when the recommendations of the final report of the task force on climate-related financial disclosures come into force, to 2023, will send the right signals.

Amendment 17 in the name of the noble Baroness, Lady Bennett, amends Amendment 16 to include the United Nations Convention on Biological Diversity. I have every sympathy with the intent behind the amendment, especially in light of the recent excellent Dasgupta review, *The Economics of Biodiversity*, but I agree with the noble Baroness, Lady Bennett, that this is such an important issue that it might be better tabled as a stand-alone amendment.

In conclusion, if one looks at the first page of NASA's "Vital Signs of the Planet" fact page—and I urge noble Lords to have a look at it—it tells us that we are hurtling towards disaster unless we transition away from burning fossil fuels to power our way of life. Vulnerable communities and developing nations,

many of them already exposed to the worst physical impacts of climate change, can least afford the economic shocks of a poorly implemented transition. We must implement the changes we need in a way that delivers the urgent change that these communities need without worsening their dual burden. We have alternatives proven to deliver at scale, so let us use the opportunity presented by the Bill to address the urgent need to unlock private sector finance and give the actors therein the confidence to accelerate the investment needed to deliver net zero by 2050.

Lord Sharpe of Epsom (Con): My Lords, I draw attention to my interests in the register, specifically the directorship of a research company that has published extensively on environmental, social and governance matters. I am also chairman of the Conservative Party's investment committee. We are currently shortlisting fund managers for our long-term funds, and I reassure noble Lords that ESG rigour will be a key factor in our decision-making.

This is my first outing in Grand Committee, so I crave a little forbearance. I will make a few general points before turning to the specific. First, as regards climate change and full disclosure, the industry is moving in the right direction anyway, and I think that that needs to be acknowledged. For example, I read that the Investment Association, which represents 250 members managing £8.5 trillion, intends to quiz companies at their AGMs on the quality of their climate-related reporting and will relate any of those inadequacies to their members. This is partly a commercial imperative: customer attitudes have shifted materially and will no doubt continue to do so. For example, assets under management at ESG ETFs—that is, exchange traded funds—rose from $54 billion in November 2019 to $174 billion a year later. Those are not large amounts of money in the broad investment sphere, but they show the direction of travel.

Therefore, I was very pleased that this Government have committed to the highest of standards. On 9 November last year, the Chancellor of the Exchequer was unequivocal on this. He said that he wants

"an open, attractive and well-regulated market"

which will continue

"to lead the world in pioneering new technologies and shifting finance towards a net zero future."

I welcome that and, referring back to some of the work that my company has done in areas such as fast fashion and marshalling scarce water resources—and here I echo the noble Baroness, Lady McIntosh—I believe that these standards should be applied not just to carbon emissions but across the ESG piece.

I also agree with the noble Lord, Lord Oates, and his quote from Jes Staley that the industry absolutely should push the climate agenda. However, in order to build the open, attractive and well-regulated market that the Chancellor described, I believe that we need to be very careful with some of the proposed climate change-related amendments at this stage. I have considerable sympathy with the argument of the noble Baroness, Lady Hayman, about embedding the principles into the Bill, particularly those amendments that the noble Lord, Lord Oates, grouped together in his second group, including Amendment 14. A series of well-meaning amendments at the margin perhaps do not seem individually onerous, but they may end up being counterproductive, and I would like to try to explain why.

The worry we should have is that, if we overcomplicate this at this stage, the rules are more likely to be honoured in the breach than in the observance and/or work to the benefit of other regulatory regimes. I would not like to see the difficult issues we are debating here shifted into other jurisdictions. As always, the main beneficiaries of that would be compliance departments; it would naturally favour larger players and ultimately, as I said earlier, end up being counterproductive, partly by stifling innovation. This is also an important consideration in the context of equivalent discussions with the EU.

5.30 pm

To move to the specific, I believe that Amendment 48 falls into this category—I fear I will disappoint the noble Lord, Lord Oates, as I will argue that it is premature. I note that the noble Baroness, Lady Sheehan, made the point that business requires certainty, but this amendment seeks to bring forward the mandatory imposition of the task force on climate-related financial disclosures from 2025 to 2023. The Government have already committed to the 2025 date and, in doing so, we would become the first country in the world to impose this. The problem here is not the intent but the quantification of the risks defined by the task force.

For example, portfolio managers are very aware that they need to focus much more attention on matters such as scope 3, on emissions, and category 15, investments. Scope 3 relates to indirect emissions at an upstream and downstream level and category 15 basically tries to capture the carbon footprint of an investment portfolio. There are quite a few initiatives seeking to calculate these, and some good work is being done by the likes of the Partnership for Carbon Accounting Financials, but the reality is that it is extremely complex and still in its relative infancy. In many cases, the relevant data does not even necessarily exist yet. Unfortunately, that is the case in much of the ESG world.

The law of unintended consequences seems to be a risk; it would suggest that, if well-publicised timetables are compressed in the way that this amendment proposes, corners will end up being cut, which would lead to other sorts of financial risk, such as "greenwashing" in managed portfolios. There are already examples of companies with limited sales that operate in promising areas such as hydrogen and are trading at stratospheric valuations. This harks back to the dotcom boom; it may well be that they deserve to trade at these levels, as they offer what a particularly gifted salesman once described to me as an "option on an addressable market", but it may equally be that purchasing such stocks adds a little superficial virtue to a portfolio.

To take another example from the corporate world, on Monday the *Financial Times* carried a story about "creative accounting" in the biomass industry. Apparently this is perfectly legitimate under the current rules, but clearly these rules require review. Speaking of unintended consequences, the *FT* yesterday carried a fascinating article that should worry us all: the highest-rated

[Lord Sharpe of Epsom]
companies on an ESG basis pay less tax than those that are lower rated. According to the study, AAA-rated ESG members of the US-based Russell 1000 Index paid, on average, 18.4%, while CCC-rated companies paid 27.5%. Microsoft is an ESG exemplar with a human rights policy, a biodiversity policy and a plan to be carbon-negative by 2030, yet it pays an effective tax rate of only 16%. Here I think one might argue that you should be very careful what you wish for—well done Microsoft for being ahead of the curve, but do we really want to encourage investors to sell companies with lots of employees to buy those with lots of robots which are good at seamlessly shifting their revenues across borders?

I have given considerable thought to the wording in Amendments 11 and 12, and I confess to being a little confused about their intent. My problem is with the wording "climate-related financial risk"; I understand climate-related risk and financial risk, but I am not sure I understand them when combined in this way. I therefore looked to Amendment 98, which has a stab at defining them but, to be honest, I am still struggling to understand. I appreciate that Amendment 98 attempts three definitions, but I do not think any of them makes anything particularly clearer.

The first definition relates to specific weather events and longer-term shifts in the climate. How on earth is the FCA supposed to regulate for risks associated with specific weather events before the fact? Recent events in Texas, which have been referred to by other noble Lords, would suggest that is largely impossible—and anyway, were not climate change deniers always being told that they should not conflate weather and climate?

The second amendment is more comprehensible in that it seeks to judge transitional risks resulting from the process of adjustment towards a low-carbon economy. However, I would argue again that forecasting the nature of those risks, never mind the specifics, would be nigh on impossible at this stage. For example, there would be plenty of transitional risks associated with our move to a fleet of electric vehicles. It is generally accepted that in the UK, we are going to need to generate an additional 25% electricity and, apparently, that can be done with renewables and other exciting new technologies. But these new technologies might not work. As has been said many times before, the wind might not blow, people's behaviour may not change in predictable ways, investment in grid capacity may not be adequate, et cetera. I am not saying that all of those things are going to happen, but how is the FCA supposed to anticipate them in order to regulate for them? There are myriad possible outcomes here; it seems unbelievably complex and would, in many ways, require a crystal ball.

The last definition makes even less sense. It specifies that the liability risks arising from parties who have suffered loss seeking to recover those losses from those they deem responsible. I ask again: how is the FCA supposed to judge who might, on one unspecified day in the future relating to some unspecified event, be deemed responsible for such losses?

By these amendments, the FCA would be obliged to make rules that impose prudential requirements, but I believe that these attempts at definition are imprecise. As many noble Lords in this debate and at Second Reading have noted, the FCA is stretched enough as it is, and has not had a particularly commendable run of late. Are we now suggesting that the FCA and PRA should provide their own definitions on such critical issues?

I would note that a more straightforward amendment on climate change was defeated in the other place. The Minister stated that it was not necessary as the Government would,

"carefully consider adding climate change as an issue to which the regulator should have regard, in the future."—[*Official Report,* Commons, 13/1/2021; col. 364.]

However, any such addition needs careful consideration and consultation on how it can best be framed. The conclusion as regards the climate-related financial risk amendments must be right. This should be done. My argument is not that this is wrong, but that it is premature. It should be done in the future when all the teething problems that I have highlighted, along with the issues over data collection and reporting and, yes, the likely unintended and broader societal consequences, have been thought through and solved. On that point, noble Lords might like to join a Bankers for NetZero event to be held on 15 March, which will look at some of these issues.

Owing to the complexity and the necessity of getting this right, which can happen only with industry participation and support, it would be wrong to burden the Bill with amendments that are a little imprecise and may therefore keep the lawyers busy for years, but are unlikely to produce the desired outcomes. The Chancellor and the Minister have been clear that change is coming and that business expects and welcomes it. But society deserves this to be carefully calibrated in a way that I think this group of amendments fails to deliver. We have an opportunity to lead the world here, which we have done consistently with regard to climate change, and to do so in a way that enhances the UK's competitiveness.

On that point, I agree with my noble friend Lord Howe, that, as he noted earlier, in practice, good regulations are exported. We have an opportunity to craft some good regulations here and I do not believe that these amendments achieve that aim.

Baroness Altmann (Con) [V]: My Lords, I support all the amendments in this group. It is a pleasure to follow my noble friend Lord Sharpe, but we may have slightly different views on some of the issues he has mentioned. I also support the wide-ranging aims of the amendments in this group to ensure that our financial services sector and its regulation faces stronger requirements to take responsibility for, and consider its role in addressing, and hopefully managing and mitigating, climate change risks.

I congratulate the noble Lord, Lord Oates, on his excellent introduction to the amendments in this group and his comprehensive summary of the issues. These amendments, or a version of them, are in my view essential to the success of our financial services sector and its role as a global leader. This is not a party-political matter. It straddles the role of our country and its financial system in saving the planet from the clear and catastrophic risks faced by humanity across the globe.

I declare an interest in this issue as a member of the cross-party group, Peers for the Planet, and the Conservative Environment Network.

I share the view of the noble Lord, Lord Oates, and other noble Lords that it is astonishing to see that this Financial Services Bill makes no mention of assessing, encompassing and managing the risks from climate change that have the potential to undermine the financial system. Failing to require any regulatory oversight or demands on such existential risks is surely a failing in this legislation. The noble Lord is correct that difficulties in measuring these risks cannot justify simply ignoring them. The risks are real and rising.

I understand the point just made that we cannot anticipate the weather or other climate matters before the fact, but the financial industry is surely well used to anticipating risks that have not yet arisen. I argue that the regulators can indeed require firms to conduct scenario analysis with reasonable assumptions about the risks of certain rises in temperature or other activities that are threats to the planet, just as financial firms are already required to do for interest rate or demographic and other risks.

I have added my name alongside that of the noble Lord, Lord Oates, to Amendments 14 and 35 in the name of the noble Baroness, Lady Hayman, and I thank her for all the excellent work that she has been doing in this area as well. The amendments seek to ensure that the FCA and the PRA must have regard to both our international and domestic climate change commitments. I also support Amendments 11, 12 and 13 in the name of the noble Lord, Lord Oates, supported by the noble Baroness, Lady Kramer, and I have added my name to Amendment 75, which seeks to have a board member of the FCA with responsibility for climate change by amending FiSMA 2000. As other noble Lords have said, that is already required by the SMCR, with firms having to have board members taking long-term views of risks such as climate change, so it seems eminently sensible to propose that the FCA itself has that too.

I have also added my name to Amendment 48 in the name of the noble Lord, Lord Oates, which seeks to bring forward the 2017 TFCD recommendations to 2023, accelerating the climate-related disclosures rather than waiting until 2025. Again, I accept that the industry needs certainty, and this would be a change. However, I hope that having a bolder ambition can still be justified. This is of course a probing amendment, but I hope my noble friend will consider the issue. Indeed, I believe that the Covid-19 global pandemic, along with leaving the EU, offers an opportunity and potentially an obligation to take climate risks more seriously and recognise that there are issues that can be more important than short-term profit and quarterly reporting.

Businesses have been asked to forgo their operations and invest massive amounts in changing their practices at short notice, and have been forced to accept that they cannot continue as they have done in the past. This shows that previously unimaginable changes can be thrust on the global economy and on industries, sectors and individual firms to which they simply must adjust. I hope we can build on that to realise that forcing financial firms to live up to expectations on climate change, planetary temperature rise and associated biodiversity risks, as the noble Baroness, Lady Bennett, mentioned, is possible, even if painful. The asset management, pensions and banking industries can be encouraged to take more responsibility for driving climate-friendly operations, and regulatory oversight surely can—indeed, in my view, must—direct firms to improve their operations in these areas. So do the Government indeed intend to introduce the issue of climate change into the legislation to ensure that financial services are asked to operate more in the interests of long-term economic and climate sustainability?

Climate risk is inevitably investment risk, both to markets globally and to human beings, who are, after all, the customers of firms across the planet. Surely we have a responsibility to override the externalities that have hitherto prevented individual countries taking direct actions. So will my noble friend comment on some of these issues and the Government's appetite to address what is clearly a view from across the House that these issues are important?

5.45 pm

I also want to ask my noble friend one particular question. He may not be able to respond to it immediately, but perhaps he can come back to me. What is the Government's position on the issue of cryptocurrencies such as Bitcoin, Zcash and many others? They seem to pose a threat to our financial system, as well as causing environmental damage with the massive energy use which is involved in cryptocurrency mining and trading. As we prepare for G7 and COP 26 this year, can my noble friend comment on how the Bill might consider investigation of the trading and creation of cryptocurrencies and their potential threat to energy use and self-sufficiency across the globe?

If we really want to put financial services at the heart of green growth—and I hope we do—I also hope that my noble friend will take back to the department the strong view from this House that this group of amendments needs in some way to be incorporated into the Bill.

Baroness Noakes (Con): My Lords, I will not speak on the substance of most of the amendments in this group. In general terms I do not believe that alterations are required to legislation governing the PRA and the FCA, in view of the enthusiastic work that they have already commenced to embed climate-related financial risks in their work and in the work of the institutions that they regulate. Neither the FCA nor the PRA needed any alteration to their statutory powers and duties to start this process, and I do not believe they need anything in statute to carry on their work.

My noble friend Lord Sharpe of Epsom said that he was worried about the meaning of "climate-related financial risk". In practical terms, the sectors of the financial services industry have an understanding of what is meant by climate-related financial risk in relation to them, and that will inevitably evolve over time. If you take banks, it is fundamentally a credit risk problem; you can track almost all the issues back to credit risk. If you take an investment company, it is an investment risk problem, as I think the noble Baroness, Lady Sheehan,

[Baroness Noakes]
said in an earlier contribution. With insurance, we are talking about something like the shifting nature and scale of conventionally insured risks in that sector. I am sure that other parts of the financial services sector will have an understanding of climate-related financial risk. So I am not concerned about the definition of that; I am just not sure that it is necessary to find its way into legislation, because it is already being done.

I would also caution people who want change overnight in this area that a huge amount of work is needed to implement, for example, measuring the carbon intensity of a bank's balance sheet, or indeed an investment company's balance sheet. These are not simple things to do but require huge amounts of new data and new ways of manipulating it, and the industries need to work out how efficiently to do that. I know a little about insurance companies and I am sure that there are similar challenges to overcome there too. I make a plea to leave it to the regulators to determine the pace of change that is required and not to impose additional duties on them. They must judge themselves how best to achieve the aims which I believe they share with the people who have tabled and moved this amendment.

I have a couple of comments on two of the amendments. Amendment 48 would bring forward the timing of the disclosures from the task force on climate-related disclosure to the end of next year, with the draconian penalty of not allowing companies to continue to operate in the UK if they have not made the disclosures. Are the proposers of this amendment seriously saying that they will stop a FTSE 100 company from doing business in the UK if its disclosures are not quite in line with the recommendations? Are they prepared for UK employees to lose their jobs because of technical disclosures? I do not believe that the amendment does anything to advance substantive climate change measures, only disclosures in annual reports which, at the end of the day, very few people actually read. This is not a real-world amendment, in my view, and it seems to be drafted in a disproportionate way.

My main reason for putting my name down to speak on this group is Amendment 75, which provides for the appointment of a member of the FCA board to have responsibility for climate change. This contains a fundamental misunderstanding of the nature of boards, whether of public bodies such as the FCA or of private sector companies. Boards are there for governance purposes. They set strategy and hold chief executives to account for delivering against that strategy. They should review performance against what is required of them by statute and what they themselves set. They do not make operational decisions and should not get involved in day-to-day activities. That is why the FCA, like most major organisations, has to have a majority of non-executives on its board.

The amendment is silent as to whether this board member is to be an executive or a non-executive but I believe that either would be wrong. A non-executive should not have responsibility for particular activities within an organisation. This distracts from the core function of a non-executive which is around strategy, oversight and accountability. If the amendment is intended to create an executive board member with responsibility for climate change, that is misconceived as it implies that climate change is not the responsibility of the chief executive. The only way for any policy—whether it is climate change, diversity, social purpose or whatever—to gain traction in an organisation is through its leadership and that is sourced in the chief executive. I believe that the amendment is wrong, likely to be counterproductive or both.

I want to pick up on something that the noble Baroness, Lady Hayman, said. She said that this would bring it in line with the requirements of the senior managers and certification regime, which requires—I think she said—a board member to be responsible for climate change. That is not what the SMCR requires. It requires only the identification of a senior manager, as defined within the SMCR, who has to have identified responsibility. It is absolutely not required that it is a member at board level, so that is not an appropriate precedent to cite in aid of this amendment.

Baroness Kramer (LD): My Lords, listening to today's really outstanding speeches, I think most of us can agree that tackling climate change is not an optional extra. It is necessary to the survival of a liveable and civilised world, and it is urgent. The noble Lord, Lord Sharpe of Epsom, seemed rather the stand-out among the speeches. If I understand him correctly, he shares the general principles but would like them parked in some very long grass for a very long time. That fails to recognise the real urgency that we face. We are past the point where long grass is an appropriate place to put concerns.

This is a substantial group of amendments. It looks to the financial regulators, influencing the financial sector as they do, to become part of the solution. The amendments break roughly into three parts—a cluster of "have regards" and "considerations" that would influence the FCA and the PRA in shaping the rules to support the net-zero target; disclosure and reporting requirements; and the setting of a climate change objective for the FCA, together with appointment to the governing board of an individual responsible for climate change. Here, I disagree with the noble Baroness, Lady Noakes. I think there should be an individual with particular responsibility at the highest level to make sure that things happen in organisations.

I almost wonder that we are having to discuss disclosure, because, in American terminology, it seems to me a slam dunk. Andrew Bailey, in his Mansion House speech last November, called for "data and disclosure", and repeated that time-honoured but real truism:

"What we cannot measure we cannot manage".

The other measures proposed are equally straightforward—it is a very straightforward set of amendments. I have my name to many of them, but the range of names on various amendments underscores the cross-party nature of the concern and the determination of this House to use the Bill to leverage change. I join others in saying, that if you cannot tackle the issue of climate change in a financial services Bill, it is going to be hard to tackle it at all.

The hour moves on, so I do not want to repeat the brilliant discussion, except to say that speaker after speaker detailed the urgency of acting on climate change and the necessity that it become a priority for this sector. My message to the Government is carpe diem,

because this House will if the Government will not. If the UK is to be a leader—and of all the years in which we wish to show leadership, it must be this one—it must break new ground.

There will be more to say on the next group of climate change amendments, which I consider more powerful and radical. They deal with risk and capital requirements. I very much hope that we receive a strong response from the Minister. I can understand that someone looking at the Bill and a template of previous financial services Bills may not have thought that climate change had a place. By now, Ministers surely must. Included among this group of amendments are so many that are exceedingly reasonable and, frankly, quite uncontroversial. I hope that the Government will begin to shape some amendments of their own, drawing on the content so very firmly placed before them.

Baroness Jones of Whitchurch (Lab) [V]: My Lords, I am pleased to respond to this substantial group of amendments, several of which are in my name and all of which address the need for better regulation to ensure financial services meet their climate change obligations and the associated financial risk. These amendments correct a fundamental failure of the Bill to address those obligations.

As was pointed out at Second Reading, we find ourselves entangled in an argument from the Minister that these issues are not covered in the Bill, and therefore amendments inserting climate change obligations are inappropriate for it. We reject that argument; it makes nonsense of the scrutiny and revising process that we are here to enact. If we find an omission, it is perfectly proper that we seek to correct it by tabling amendments to the Bill.

That is why we regret that the Government did not bring forward their own amendments, following the excellent arguments put forward by my shadow Minister colleague, Pat McFadden, and others in the Commons. As he pointed out there, and as others have pointed out today, the Chancellor set out green goals for the UK financial services industry back in November. Therefore, the Bill was an ideal vehicle to set out an accountability framework to underpin those goals. Every sector of our economy will have to play its part in delivering the climate change net-zero target—whether it is in energy, transport, housing or agriculture—and all these changes will require large-scale financial investment. Financial institutions will thus have to play a central role in delivering it, and it is right that we use this opportunity to spell out how it should be done in practice.

During the Commons debate, the Minister, John Glen, also argued that this issue would be dealt with elsewhere as part of a separate review—again, reference was made to this today. This cannot wait for another review or consultation. We are already falling dangerously behind, and as the climate change committee has made clear, we are not on track to meet the net-zero 2050 target. We need action now to galvanise both public and private finance to step up to the mark and to be accountable for the promises made. The noble Lord, Lord Sharpe, said that we were in danger of complicating regulation, but I do not think our asks do anything like that. Our asks are simple: they set out core principles that we expect the regulators to embrace, but we leave them to sort out the detail of how to follow that through and enact it. That is the right way to go about it.

6 pm

Why are these amendments important? First, they would ensure a level playing field across the sector. It is not good enough that more progressive companies take action now while others drag their feet. Of course, we welcome the recent statements of significant investment managers such as BlackRock setting out how net zero will deliver a historic investment opportunity for their clients. However, this needs to be balanced against the fact that none of the world's biggest oil and gas companies is on track to meet its climate goals. Many continue to bury their heads in the sand regarding the ensuing environmental disaster that faces us. A strong regulatory framework to ensure compliance with Paris would address this inconsistency between the good guys and the bad guys.

Secondly, a recent survey by ClientEarth showed that, although 50% of FTSE 100 companies disclosed some form of net zero target in their annual reporting last year, the strategies that they set out and are developing to reach those targets often lack credibility and priority. The noble Baroness, Lady McIntosh, talked about ESG, but, as she recognised, these standards are not underpinned by regulations in any way. If we are serious about ESG, it needs to be spelled out and companies need to be held to account.

Sadly, greenwashing is all too common. We saw that with the ill-fated BP adverts, which it was eventually forced to withdraw, and the action against HSBC by shareholders who saw that its continued investment in fossil fuel assets was at odds with the bank's hollow promises on addressing climate change. However, it should not be left to individual groups to police these actions; that is why transparent targets and methodology are required by the regulators as key to reforms.

Thirdly, the institutions that are dragging their feet on climate change risk damaging consumer confidence in the sector as a whole. There will undoubtedly be further shareholder and customer demands for reduced investment in fossil fuels; they need to be reassured that the Government have the means to take action against transgressors.

Finally, and perhaps most importantly, the reason why Mark Carney and now Andrew Bailey at the Bank of England have become more vocal on climate change is that they understand the micro and macro risks that could occur if institutions continue to invest in dying sectors such as fossil fuels. This could result in stranded assets, which damage institutional resilience and have an adverse impact on the global economy. As the noble Baroness, Lady Altmann, said, institutions are already expected to conduct scenario planning, so all we are asking them to do is add an extra risk to the process that they are already expected to undergo.

We believe that this Bill should be amended to deliver a consistent approach to the regulation of financial institutions to underpin all Paris-aligned strategies, which in turn would strengthen our economy. Our Amendment 15 would require the Financial Conduct

[Baroness Jones of Whitchurch]
Authority to have regard to the climate change targets as set out in the climate change legislation when applying the Part 9C rules. Our Amendment 36 would require the Prudential Regulation Authority to have similar regard to the climate change legislation in carrying out its duties. We believe that these are necessary to spell out that not just the Government but the agencies acting on their behalf have obligations to abide by the Paris treaty.

This is in parallel to the obligations on pension investment fund trustees that the Government helpfully added to the recent pensions Bill. I would say to the noble Lord, Lord Sharpe, that the Pension Schemes Act already contains obligations to address risks arising from climate change. There has not been the cause for confusion or anger among pension regulators that he fears; they have just got on with the work.

Our Amendment 89 would place a requirement on government to draw up within 12 months

"a strategy … to ensure financial services … make a positive contribution to climate change targets".

This would be put together in conjunction with key stakeholders including the FCA, the PRA and the Committee on Climate Change.

We also support other amendments in this group which would, respectively, broaden the FCA's responsibility to address climate-related financial risk, bring forward the date by which organisations must make disclosures in line with the report of the Task Force on Climate-related Financial Disclosures, and add a new objective to the FCA's responsibilities to address climate change-related financial risks.

As the noble Baroness, Lady Hayman said, we are not precious about our wording—we have had a diverse debate today and a diverse set of wording in the amendments—but we believe that this package of amendments is essential to deliver robust and meaningful financial regulation on institutional climate change targets which would be fair, consistent, transparent and measurable. It would also ensure that the regulators were accountable to Ministers and Parliament for delivering these objectives—this point was made powerfully in the previous debate.

We believe these changes are timely and urgent. I hope the Minister will feel able to reflect on them and we would welcome further discussions about how they can be achieved. Failing any progress, we intend to return to this issue on Report. I hope that the Minister can hear what we say with some sympathy and avoid that scenario. I therefore look forward to his response.

Earl Howe (Con): My Lords, I have indeed listened, and I welcome the opportunity to talk about the crucial role played by the financial services sector in supporting the Government's climate change objectives. Given the strong levels of interest in this topic and the number of amendments we are considering, I hope noble Lords will forgive me if I speak at some length.

Green finance was one of the cornerstones of my right honourable friend the Chancellor's vision for financial services, as he set out in November in the other place. The Government want to put the full weight of private sector innovation, expertise and capital towards tackling climate change and protecting the environment. Real change requires embedding our climate change goals across all sectors of the economy, including the financial services sector. As my noble friend Lady Noakes has pointed out, the regulators are able to do this already under their current statutory objectives.

I would like to set out a small amount of detail about how the Government are delivering on this agenda. In 2019, the Government set out our vision in the *Green Finance Strategy*. This strategy also set out the Government's commitment to use "remit letters" to set ambitious recommendations relating to climate change for the PRA and FCA. These letters will be issued at the next opportunity.

Late last year, the Chancellor announced our intention to make disclosures aligned with the Taskforce on Climate-related Financial Disclosures, or the TCFD, mandatory in the UK across the economy by 2025, with a significant portion of mandatory requirements to be in place by 2023. The Government also published the UK TCFD's interim report and road map, which set out a clear pathway to achieving that ambition. As my noble friend Lord Sharpe highlighted, the UK expects to be the first country to make TCFD-aligned disclosures mandatory across the economy. The UK is also planning to issue a green gilt, subject to market conditions, to help fund projects to tackle climate change, finance much-needed infrastructure investment and create green jobs across this country.

I understand noble Lords' appetite to go further and faster, and this is the motive behind many of the amendments we are debating. We are all in agreement that the financial services sector plays a role in meeting our commitments, but the thinking on how this should be factored into legislation and regulations in specific areas such as capital requirements and other prudential standards is still in its infancy. While we are certainly committed to remaining world leaders in this area, it is important that we act carefully and rationally, consult appropriately with interested parties and therefore make progress in the right way.

Before I cover the amendments, I hope my noble friend Lady Altmann will allow me to write to her on the Government's approach to cryptocurrencies. I shall also write to the noble Baroness, Lady Sheehan, on government funding for fossil fuel projects overseas.

Amendment 23 seeks to prevent the Treasury revoking provisions of the retained UK capital requirements regulation, or CRR, where the rules made by the PRA are not aligned with the UK's target to achieve net-zero emissions by 2050. Lest we forget, the changes the Bill enables serve to implement a number of vital reforms following the financial crisis. These reforms reinforce the safety and soundness of the UK financial system. This amendment would prevent us giving effect to updated prudential rules and thereby undermine our ability to uphold our G20 commitment to the full, timely and consistent implementation of the Basel standards. There is no evidence that "greener" means "prudentially safer", at least not yet, and therefore it is not clear that a regulator whose primary objective is the safety and soundness of financial institutions could meet such a requirement now.

Amendments 12, 13, 14, 15, 16, 17, 34, 35, 36 and 37 are all similar in nature. Specifically, they would insert an additional consideration into the accountability frameworks of the FCA and the PRA. In essence, their intention is to require the regulators to take climate change, biodiversity and related issues into consideration when implementing the prudential regimes. Amendments 11 and 12 are also similar, but arguably go further and would impose a duty, rather than a "have regard", on the FCA to make prudential rules for FCA investment firms and their parent undertakings to manage the climate-related financial risk to which they are exposed.

I agree with the principle that the regulators should have regard to our climate change commitments. I believe that the goal—if I am interpreting the amendments correctly—is to make the regulators consider how to channel private financing towards greener investments. I agree with this goal, but there are some very real challenges to note. First, to hold the regulators to account and achieve what we want, we need to be able to define what we mean by "green". A programme of work is under way domestically and internationally to achieve that through a green taxonomy; that is, agreeing how we classify what is "green" and ensure consistent standards on that. There is also the important matter of understanding the financial risk of such green investments and the extent to which changing prudential requirements according to the greenness of the investment is justified. Again, work is ongoing on how to capture climate change risks in prudential regulation, both within the Bank of England and by the Basel committee task force, which is leading work to understand how climate risk is transmitted, assessed and measured. This is a significant undertaking and the evidence will take some time to examine. I note the excellent points made by my noble friend Lord Sharpe on some of the complexities in this area.

While the UK is committed to being a world leader in this area, given the global nature of the climate change threat and the interconnectedness of financial markets, this means bringing other jurisdictions with us and, while being bold, it also requires careful thought and robust evidence. These are global discussions and global consensus takes time. Any amendment or "have regard" introduced now would therefore naturally be a stopgap until fuller definitions have been established. In the short-to-medium term, there could well be minimal changes to the prudential framework as a result of this have-regard until the appropriate capital treatment is established.

Secondly, there is a time constraint. We are committed to implementing these Basel standards, the first batch of which the Government aim to implement by the end of this year, lest we risk damaging our international reputation. Further, if we do not implement the investment funds prudential regime by the end of the year, we will have a more burdensome regime than the EU.

6.15 pm

The noble Lord, Lord Oates, the noble Baroness, Lady Hayman, and other noble Lords asked why we cannot include some kind of green "have regard" in the accountability framework to start with. There is a very simple answer to that: as I said, both the Government and the regulators see climate change as a priority in financial services across the piece, but the current "have regards" in the Bill are those the Treasury found immediately and specifically relevant to the implementation of two prudential regimes with specific aims. I emphasise that this is not a case of the Government dragging their feet or wanting to hide in the long grass. As I have tried to argue, it is unclear what integrating climate risks into prudential requirements would look like, so Parliament would be giving the regulators responsibility for important public policy without a good understanding of what it is asking the regulators to do, or what impact that might have. I suggest that that would be deeply unwise.

I hope I have succeeded in setting out some of the different questions that this set of amendments has raised. However, I am aware that this is an important topic. We have spoken at length about the prudential regimes in the Bill, but I will now focus on the amendments which relate to financial services policy more generally. Amendment 75 would require the appointment of a member of the FCA board with responsibility for climate change. Amendment 98 adds a new statutory objective for the FCA to consider climate-related financial risk. In a similar way, Amendment 89 would require the PRA, the FCA and the Treasury to have regard to the net-zero target and international climate change treaties when conducting their functions.

I have already set out a number of actions that the Government are taking to address climate change in financial services. I will return to this point in a moment, but I want to say a little more about what the FCA and the PRA are doing in particular. We work closely with regulators on a variety of green finance issues and have established effective mechanisms to advance areas. We clarified these roles and responsibilities in the *Green Finance Strategy* and through a regulators' joint statement. In June 2020, the FCA announced the Climate Financial Risk Forum, established jointly with the FCA and the PRA, reflecting the importance of climate change to their respective strategic objectives, with the aim to build capacity and share best practice across the industry, to advance the sector's responses to the risks presented by climate change. Therefore, I am content that the FCA and the PRA are aware of, and currently determining, how best to respond to the risks presented by climate change.

On Amendment 75, no other FCA board roles are appointed by the Treasury with specific instruction as to their focus. I am grateful to my noble friend Lady Noakes for what she said in that connection. It would be inappropriate for the Government to dictate the responsibilities of members of an independent board. On that basis, I ask that that amendment is not moved.

Amendment 48 seeks to introduce a blanket requirement for specified firms to disclose in line with the recommendations of the task force on climate-related disclosures by 2023. The UK was one of the first countries to endorse the TCFD recommendations in 2017. As I have mentioned, in his Statement to the House of Commons last November, the Chancellor announced the UK's intention to make TCFD-aligned disclosures mandatory in the UK across the economy by 2025—becoming, as I said, the first major economy to commit

[Earl Howe]
to fully mandatory disclosures, going beyond "comply or explain" or "as far as able" approaches taken elsewhere. The TCFD framework will be a powerful tool, but only if implemented properly. The recommendations do not, on their own, contain the requisite level of prescription to elicit disclosures that are comparable, consistent and decision-useful to end-users, including retail and wholesale investors. Robust implementation will be crucial to enabling investors and businesses to better understand the financial impact of their exposure to climate change and ensuring that financial markets appropriately price climate-related financial risks and opportunities.

The UK TCFD taskforce interim report and road map, published alongside the Chancellor's announcement, outlines a co-ordinated, fit-for-purpose and proportionate regime, with requirements that are appropriate in a UK context. This regime takes account of cross-cutting issues such as interdependencies, capability and capacity across market participants, as well as practical issues around implementation, supervision and enforcement across the UK economy.

The proposed amendment does not contain the requisite level of prescription, supervision and enforcement mechanisms to mandate meaningful disclosure. It also does not take into account sectoral data, capacity and capability challenges, which must be addressed before disclosure can be required on a mandatory basis from all relevant firms, as well as legislation lead-in times and legal obligations to consult and carry out cost-benefit analysis.

As outlined in the road map, we have proposed an ambitious timeline, according to which the bulk of mandatory requirements should be introduced by 2023, without compromising on our commitment to ensuring that proposals contain the requisite level of prescription, supervision and enforcement mechanisms to mandate meaningful disclosure. Significant progress towards achieving that ambition has already been made. As such, while I agree with the noble Lord's push for TCFD-aligned disclosures to be published as quickly as possible, we believe that our co-ordinated approach represents the most ambitious pathway to implementing the TCFD recommendations in a way that will actually elicit meaningful disclosure across the whole UK economy.

Amendment 76 would amend the PRA's annual reporting requirements to make it report on how it has evaluated exposure to climate-related financial risks and the impact of such risks on the stability of the UK financial system. In conducting this evaluation, the amendment requires the PRA to seek input from the Committee on Climate Change and to publish the advice that it receives.

I believe that this amendment seeks to do three things that I am happy to confirm that the PRA already does. First, it wants the PRA to take steps to preserve the safety and soundness of financial institutions and ensure that climate change risks are included in that. The PRA is already taking steps to do this through its climate change stress test, which will build our understanding of the risks posed to the financial system by climate change so that we can develop policies for managing them.

Secondly, the amendment aims to bring such analysis to the attention of the Government or the public. In addition to its work on the stress tests, the PRA participates in the UK's Task Force on Climate-Related Financial Disclosures and the Climate Financial Risk Forum, as well as the research papers that they have developed.

Finally, the amendment seeks to ensure that the PRA engages experts. The climate change stress tests that I just mentioned will be based on scenarios developed and published by the Network for Greening the Financial System, which brings together eight central banks and supervisors with a purpose to size the risks from climate change to the financial system and the macroeconomy.

I am aware that, once again, I have spoken at length, but I trust the Committee will agree that this is a crucial topic that should be considered in detail. I hope I have explained what the Treasury and the regulators are doing to tackle climate change and address green issues, and I hope it is apparent to the Committee that it is an ambitious programme of work. However, this is an area where we must continue to be ambitious, and I hope the noble Baroness, Lady Hayman, will forgive me if I do not allow myself to be drawn on the challenge that she issued at the conclusion of her remarks. I simply say that I have listened to the ideas that have been put forward, and I welcome noble Lords' engagement on the issues that we have debated, which I am sure we will return to throughout our scrutiny of the Bill. On that basis, I ask noble Lords not to press their amendments.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I have received one request to speak after the Minister from the noble Baroness, Lady Bennett of Manor Castle, who I now call.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I thank the Minister for his comprehensive answer, although I ask again, how can the Government justify having included climate change considerations in the then Pension Schemes Bill last year, but not in this far larger, more significant Bill in 2021?

I want to respond to what the Minister said: that there is no evidence that greener means prudentially safer. I hope I am quoting him accurately. I refer specifically to the fossil fuel companies that the noble Baroness, Lady Sheehan, mentioned earlier, as well as to mining companies with a substantial role in environmental destruction. As the UNEP report to which I referred earlier said, this is unlikely to continue to be tolerated on the international stage. Surely the Government are aware and are taking account of the Carbon Tracker Initiative, which is responsible for popularising the term carbon bubble, if not for inventing it. The excess of carbon beyond climate limits is termed unburnable carbon, some of which is owned by listed companies. This has the financial implication of potentially creating stranded assets and destroying significant shareholder value.

The Carbon Tracker Initiative says that valuations tend to be based on near-term cash flows, which are less likely to be affected by climate-related factors. However, exposure varies, and some companies will be in a far worse position than others, as the demand for

fossil fuels and the ability to burn them reduces. Surely, this is a potential concern and a risk that the greening of companies can tackle.

Earl Howe (Con): My Lords, I failed to cover the Pension Schemes Act. I apologise to the noble Baroness. The Act provides a power to bring forward regulations, placing various obligations on pension schemes relating to climate change risks. The provisions in the prudential package of the Financial Services Bill do something slightly different. They place a duty on the regulators to have regard to certain matters and to explain how they have been considered, given that the Bill imposes duties on the regulators to make rules relating to Basel and the IFPR. I reassure the noble Baroness that my officials and I have considered these provisions carefully, as we have the other amendments discussed today.

As regards her main question, my point was simple. As yet, there is no international agreement on what the term "green" means. Therefore, we cannot say with certainty that greener means prudentially safer. I do not say that we will never be able to, but it is not possible at present.

Lord Oates (LD): My Lords, I am grateful to all noble Lords for their thoughtful contributions to the debate. I thank and pay particular tribute to the noble Baroness, Lady Hayman, for her important leadership on these issues through Peers for the Planet which is recognised across the Committee. I also thank all noble Lords who signed or spoke in favour of amendments for their co-operative, cross-party approach.

In quoting the Government's approach, the noble Baroness, Lady Hayman, paraphrased St Augustine: "Lord, make me greener, but not yet". I thank the Minister for his comprehensive response and characteristic courtesy, but it felt a little complacent. One could also quote from St Paul—that it was about "the good that I would I do not". There is no doubt about the Government's intentions, ambitions and targets. We welcome and are impressed by them, but it is now reaching the point where we have to act.

6.30 pm

However, perhaps the most appropriate quotation would be from Martin Luther King in a different context, where he spoke about what he called,

"the fierce urgency of now",

and warned against,

"the tranquilizing drug of gradualism".

The threat that is posed both by climate change and, as the noble Baroness, Lady Bennett, rightly pointed out, the ecological emergency—the threats to nature—is now aptly described in that phrase,

"the fierce urgency of now".

The IPCC has warned that, if we do not get this issue under control, we could see between 4 and 7 degrees of warming by the end of the century. That is in the lifetime perhaps not of me but certainly of children who are nieces and nephews. This matter has to be acted on now. I did not get that sense of urgency.

There was much talk about acting cautiously and consulting widely on all the various things that we have to take into account. What we have to take into account is that we face a unique, existential threat, both to the financial system and to all of us alive on the planet. The noble Lord, Lord Sharpe of Epsom, talked about the difficulties of measurement, which was reflected by the noble Earl the Minister. I commend to both noble Lords the excellent report that Finance Watch has published, entitled *Breaking the Climate-Finance Doom Loop*. It makes the point that

"The lack of prudential action so far is grounded in a paradox: policy-makers recognise the near-impossibility of modelling climate-related risks but say that they need such modelling to be done before intervening."

We do not have time, and we have to act now.

We cannot say that the regulators of the financial services sector—which is, after all, the vector through which we finance much of the action, either to the good or, unfortunately at the moment, very much to the bad—do not even have to have regard to issues of climate change. The Minister said that the Treasury had looked at the "have regards" in the Bill and put in those that it felt were most relevant and appropriate, but it has not put in those that are most important and critical.

We have had a long debate and I will not detain the Grand Committee longer. I am grateful to the Minister for listening and being willing to talk. I hope that we can go on talking. However, I would say to him that what cannot be acceptable to the House is the approach taken by the Economic Secretary to the Treasury, referred to by the noble Lord, Lord Sharpe. The Economic Secretary, in Committee in the House of Commons, conceded that there might be a case for a green "have regard" but that

"The Bill grants the Treasury a power to specify further matters in the accountability framework at a later date, which could be used to add a requirement to explicitly have regard to green issues in the prudential framework".—[*Official Report*, Commons, Financial Services Bill Committee, 24/11/20; col.157.]

Wherever one comes down on this issue, whether one is in favour or against that sort of "have regard", it is surely a matter for Parliament and not the Treasury to decide.

I hope that we can work with the Minister and find a way in which to amend the Bill in co-operation and advance these goals. But if we cannot do so, as I said earlier, the spirit of the House is that we will come together on some consolidated amendments, which will be put down for Report.

Amendment 11 withdrawn.

Amendments 12 to 21 not moved.

Schedule 2 agreed.

Clause 3: Transfer of certain prudential regulation matters into PRA rules

Amendments 22 and 23 not moved.

The Deputy Chairman of Committees (Baroness Fookes) (Con): We now come to the group beginning with Amendment 24.

Amendment 24

Moved by ***Lord Tunnicliffe***

24: Clause 3, page 4, line 14, leave out "adequately replaced by" and insert "replicated or otherwise reflected in"

Member's explanatory statement

This probing amendment aims to understand the degree of flexibility that the Treasury will allow the PRA when it replaces provisions of the CRR via general rules.

Lord Tunnicliffe (Lab) [V]: My Lords, I shall speak also to Amendment 25. This is a Christmas tree Bill with many attractive decorations, to which the Committee has tried to add. They have all been important issues, but in my view Clause 3 is the most important clause in the Bill.

Clause 3 takes away a system of regulation without a clear replacement and, if we get it wrong, it could create another crisis. We have all started to forget the crisis of 2008-09 and we do not recall, I fear, just how close that crisis came to being a catastrophic worldwide crisis. We were saved by a number of very small margins, and I think many Members of the Committee have sensed this. That is why we spent the first part of the day addressing what, at Second Reading, the noble Baroness, Lady Noakes, called "the accountability deficit". I hope the Government heard the debate and we can come to a satisfactory consensus. I draw some comfort from the Minister's closing remarks that that is, indeed, his intention.

Amendments 24 and 25 address the Clause 3 problem from a different direction. What should replace what Clause 3 takes out? This particularly relates to the "have regard" provisions. If we look at the history of legislation in this area, it starts with the now unrecognisable FSMA 2000. That was the original Act, but 2012 brought significant change and created the FCA and the PRA. The model was supposed to be that the Government and Parliament would create a framework and the regulators would invent the rules. However, in many ways, that was overtaken by the European Union capital requirements regulation. It is worth noting that, while we were a rule-taker in that regard, the EU regulation went through a significant democratic scrutiny process in the EU Commission and, particularly, the EU Parliament. The noble Baroness, Lady Bowles of Berkhamsted, may be able to assure us of that, since she took a considerable part in that scrutiny.

Then came 1 January 2021, and the effect of the European Union (Withdrawal) Act 2018 was effectively to translate the regulation into UK primary legislation. Clause 3 revokes the regulation, so the real question is, what is to replace it? One has to delve quite deeply into the Bill to find out.

The Bill inserts new Section 144C,

"Matters to consider when making CRR rules"

into the now-famous FSMA 2000. Subsection (1) states:

"When making CRR rules, the PRA must, among other things, have regard to … (a) relevant standards recommended by the Basel Committee on Banking Supervision from time to time."

As far as I know, there is no democratic input to the Basel Committee on Banking Supervision. I believe that UK interests are represented not by a politician or by government but by the Governor of the Bank of England. It seems that we are to be a rule-taker yet again.

Subsection (1) has three other paragraphs: paragraphs (b) and (c)—which I did not understand when I read them; I gather from a reference during an earlier debate that they are probably something to do with competition—and (d), which refers to

"any other matter specified by the Treasury by regulations".

About the only good thing that can be said about that is that it has a parliamentary process and is subject to an affirmative statutory instrument. At first sight, it is the only democratic control in the regulations.

What has all this got to with Amendments 24 and 25? They are an attempt to prescribe what goes into the "have regard" section. Clause 3(4) of the Bill states:

"The Treasury may only make regulations under subsection (1) or (3) revoking a provision if they consider that … (a) the provision has been, or will be, adequately replaced by general rules made, or to be made, by the Prudential Regulation Authority."

The weakness of this provision is that it is not at all clear what "adequately replaced" means, hence we propose that it be substituted by

"replicated or otherwise reflected in".

That would mean that every provision in Clause 3(2) would have to be considered and replaced. The exception is in subsection (4)(b), which states

"consider that … it is appropriate for the provision not to be replaced".

We cover that in Amendment 25, which would insert:

"Where the Treasury makes regulations in reliance on subsection (4)(b), the Treasury must, when laying a draft of the regulations before Parliament, also lay before Parliament a statement explaining why, in the Treasury's opinion, there are good reasons for revoking the provision."

The constraints which our amendments propose would mean that the initial, "have regard" rules would be at least as comprehensive as those they replace. I hope that the Government will consider with care these two modest amendments and accept them or incorporate their essence into their own proposals to achieve consensus on Clause 3. I beg to move.

6.45 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I thank the noble Lord, Lord Tunnicliffe, for his clear and incisive introduction to this group, and the identification of the problem of Clause 3, which I am proposing in a probing amendment should not stand part of the Bill. Amendments 24 and 25 seek to improve Clause 3 and appear to do so, but this group is crucial for debating the very issues that the noble Lord has raised. He reflected some of the concerns that I expressed in the first day of the debate: namely, that the language we are hearing from the Government and some Members of this Committee closely resembles that of 2006, most notably in the then Chancellor Gordon Brown's infamous Mansion House speech.

Clause 3 transfers certain prudential regulation matters into PRA rules. The Treasury may by regulation revoke provisions of capital requirement regulations relating to the matters listed—a list that then amounts to a couple of pages. This Bill is often presented as primarily simply a matter of transferring and translating technical regulations from Basel and the EU into UK statute. Many of us have spent much of the last year in this Room working on just such statutory instruments. However, when considered more deeply, vesting such powers in the Treasury would seem to be a kind of discretionary deregulatory charter. It has been described to me as potentially a clause allowing Singapore-on-Thames to run riot.

I would not care to take an examination on the detail of what Clause 3 does, but I am being advised by someone who could set that exam, and I take great heart from the earlier expression of support from the noble Baroness, Lady Kramer, for this probing amendment—for Clause 3 potentially hands quite substantial discretionary

powers to the Treasury to get more involved in PRA matters. It could be used to soften up or undermine the PRA. I can already predict some of the answer that I may hear from the Minister, that "Our intentions are good". But, as we go around this merry-go-round again and again, what matters is what is written on the face of the Bill, not whatever the current Minister or Government's intention might be.

My question, to which I would appreciate an answer now and perhaps in more detail later, is: does the Bill as currently written—perhaps improved by Amendments 24 and 25, but certainly without them—hand too much discretionary power to the Treasury and should the wording not be tightened to specify more precisely the circumstances in which the Treasury would involve itself in these matters of the PRA?

Baroness Neville-Rolfe (Con): My Lords, as the noble Lord, Lord Tunnicliffe, intimated when he introduced his amendments, Clause 3 is very important to prudential regulation and the banks and financial institutions concerned. However, we must make progress with this Bill, so I will speak briefly. I look forward to the Minister's explanation of what is intended here and why, and what the safeguards will be for those entities regulated by the PRA in terms of purpose, consultation, impact, cost benefit and so on. I do not read it in the same way as the noble Baroness, Lady Bennett of Manor Castle.

I would like to understand the competitive position. My son works in London for a French investment bank regulated primarily in Paris rather than London, under the equivalence arrangements that we have granted. I suspect that the local branch here may be part of a legal entity based in Paris. How would such an EU bank be affected by the proposed changes in Clause 3 and whatever replaces the revoked regulations? Is there a level playing field?

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, the noble Lord, Lord Tunnicliffe, has reminded us that this is the clause where the legislation on the CRR gets waived away into rules without any legislative replacement. This follows the pattern that the Government proposed in their consultation: once there are rules from the regulators, the statutory instruments are revoked.

Paragraph 2.25 of the Financial Services Future Regulatory Framework Review states:

> "The default approach would be for any retained EU law provision that is in scope of the regulators' FSMA rule-making powers to be taken off the statute book to become the responsibility of the appropriate regulator."

Therefore, although there may be consultations on replacement rules at the point of revoking the SIs, there are no checks further down the track, so at some time further on all the rules could be revoked too. As a practical matter, that will not happen, but it is possible that for some things big changes could happen. It is probably more of a worry when it is happening to the wider generality of financial services legislation than with standards that are underpinned by Basel provisions, but I make this point because the Minister said on Monday at the start of Committee that everything is being listened to in the context of the consultation, although I must say that his replies so far do not inspire too much confidence.

It may seem convenient to have a more flexible arrangement of having regulators doing everything and not bothering Parliament with statutory instruments, and the view being pushed by the Government seems to be that Parliament should not become too bothered by rules because they contain frightening Greek letters such as Σ that really just indicate some very simple sums that could easily be explained in a sentence. Underlying that is that there should not really be challenge, only fig leaves and what the noble Lord, Lord Holmes, called the rear-view mirror.

Even though I have no great love of statutory instruments as a measure for showing parliamentary consent, there is a qualitative difference compared with rules, and I want to flag up that this clause is where the notion that we will no longer have any firm policy against which to hold the regulator accountable is endorsed. From here on, the regulator makes the policy, and there is no policy guidance between the regulator's rules and the simple objectives, have-regards clauses and perhaps a few generalised statements, such as supporting UK economic growth. I do not like this sparseness, and it is ridiculous to suggest that rules are constantly, rapidly needing change. That is not true and not internationally sustainable.

To some extent the Government acknowledge this, otherwise there would not be the statement in the consultation that some things may have to be put into SIs as a consequence of equivalence decisions. So other countries can measure our standards, but not Parliament. How embarrassing. I heard what the Minister said in reply to my equivalence information point in the first group today. He said that such things may have to stay out of the public domain—at least until they become a statutory instrument—but I never suggested that they be public, just that there should be some sharing with Parliament about the policy direction. I am pretty sure that the EU will take the view that regulator rules alone are not enough and are potentially too transient when it comes to such a large financial centre as London, not least when it comes to looking at the lavish use of "bespoke", which was always one of Brussel's most hated words because it thought, and I tend to agree, that it was tailoring cut to flatter and trick the eye. That is fine for clothes, but not so good for financial services rules.

As I want to mark resistance to this passing of all policy to the regulators so they end up held accountable only to their own rules, I support the noble Baroness, Lady Bennett, in the suggestion that Clause 3 does not stand part.

Viscount Trenchard (Con): My Lords, I understand the purpose of Amendments 24 and 25, in the name of the noble Lord, Lord Tunnicliffe, but do they suggest that he would like to stick with the enormously detailed and prescriptive provisions of the CRR as they are in retained EU law? The Government's intention to transfer most of the provisions of the CRR into more flexible rules is right. The PRA will be able to react more quickly if it needs to change particular rules, and this should reduce the risk of failure of banks in the future.

The Government have been clear that the UK's regulators are the right people to set the detailed, firm-level rules to implement the remaining Basel standards.

[Viscount Trenchard]
Of course, as discussed in previous debates, and supported by noble Lords on all sides of the Committee, we need proper parliamentary oversight of the PRA before it starts to use its new powers. The wording in the noble Lord's amendments suggests that he wishes to reduce the degree of flexibility that the Treasury will grant the PRA, but I think that that might be counterproductive. Does he not accept that, as we move to a simpler, more flexible, outcomes-based regulatory framework, there should be less detailed prescriptive rules?

The noble Baroness, Lady Bennett of Manor Castle, wants to retain all the CRR rules in legislation. I cannot agree with her approach, which might damage the attractiveness of the City as a financial centre. She referred to Singapore-on-Thames, which is becoming a fashionable way to describe a light-touch regulatory regime, but is she not aware that Singapore is one of the best and most strictly regulated centres in the world? It is strict, yes, but much simpler and less cumbersome and bureaucratic. Does the Minister agree that we need to return to a simpler, different, more flexible and agile regulatory style?

Baroness Kramer (LD): My Lords, I do not have a great deal to say but there are a couple of points that I would like to make. First, the two probing amendments from the noble Lords, Lord Tunnicliffe and Lord Eatwell, make a great deal of sense to me, so I hope that the Government will pay attention to them and provide some substantial answers.

However, what struck me more than anything else was that this was an opportunity to comment on Clause 3. That suddenly dawned on me as I looked at the language both in the Bill and in two amendments which appear in later groups. One I have added my name to and the other is in my name only at this point in time. The first, in the name of my noble friend Lord Oates, looks at capital adequacy ratios for investments in fossil fuel relating to exploitation and exploration. The other amendment, which stands in my name and is in what could loosely be called a regulatory group, deals with MREL thresholds for medium-sized banks.

It occurred to me that this is the last time that we will be able to raise issues such as these in government time in this House if the Bill passes with Clause 3 in it. All the rules issues detailed in Clause 3, which are in effect fundamental to policy, will be transferred to the book of the regulator. Were I to look for an opportunity to raise these issues, which I shall follow up on in later debates on the Bill, the Government would say to me either, "You're out of scope", or, "Those are dealt with by the regulator, so wait a year or two and the regulator might do a consultation on one of these issues, then you can make your opinions heard." They might say to me, "Write a letter to the Treasury Select Committee and see whether it considers the issue important enough to take up its very precious time, in dealing with its very heavy workload, by picking up your issue as part of one of its broader consultations."

If ever we needed a graphic illustration of the loss of authority of Parliament and the loss of accountability to it, this is the time to illustrate and say it. I am really curious to hear from the Minister how he feels that that is justified and why he will explain to me that the amendments we have tabled are such an irritant to him that he is quite determined that never again will they fall into the scope of a debate on government time.

7 pm

Earl Howe (Con): My Lords, perhaps it will be helpful if I take as my starting point Clause 3, which enables the Treasury to revoke provisions in retained EU law to enable the PRA to implement the remaining Basel standards. As I discussed in an earlier debate, the UK Government are committed to the Basel prudential standards as a member of the G20. While a member of the EU, our adoption of the latest Basel standards was achieved through EU legislation. The capital requirements regulation implemented the previous set of Basel reforms in the EU and, therefore, in the UK. However, regulation is not static: it must continually evolve to mitigate emerging threats and respond to developments in the financial markets.

As I set out in earlier remarks, the most recent set of internationally agreed Basel standards now needs to be implemented in the UK. The capital requirements regulation, or CRR, forms part of retained EU law in the UK and therefore continues to form the basis of the UK's prudential framework for credit institutions. In order to comply with the latest Basel standards, the CRR needs to be updated. The EU is updating its own standards through the second capital requirements regulation, CRR2. Rather than implementing the new provisions through detailed primary legislation to amend the retained CRR, Clause 3 gives the Treasury a power to revoke relevant provisions of the CRR that need to be updated in order to comply with the latest Basel standards. This then allows the PRA to make rules implementing the latest standards.

As I have already set out, the Government stand by the delegation of the responsibility for implementing those standards to the PRA but with an enhanced accountability framework. In that general context, and in response to the noble Lord, Lord Tunnicliffe, and for that matter the noble Baroness, Lady Bennett, I might usefully repeat something that I said in an earlier debate: the rules that will replace the EU legislation being deleted are already available in draft form. The regulators and the Treasury are working to make sure that the final rules are published ahead of the debate on the relevant statutory instruments, which have also been published in draft.

It is the PRA that has the technical expertise to implement these essential post-crisis reforms. This is a novel approach, so the Bill ensures that there are checks and balances in place. First, Clause 3 ensures that we transfer only some elements of the CRR to the PRA. The extent of the Treasury's powers to delete will be confined to those areas of the CRR that are necessary to ensure that the UK upholds its international commitments. It is for the PRA to write the rules. The Treasury's involvement is merely to enable the rules to be updated by deleting old rules that no longer meet international standards.

Secondly, the clause ensures that the deletions the Treasury makes take place only when it is clear that adequate provision has been made by the PRA to fill the space. Deletions will be subject to the draft affirmative

procedure, providing the proper opportunity for scrutiny. The clause also allows the Treasury to make consequential, supplementary and incidental deletions to parts of the CRR. This is to ensure a coherent regime across the CRR and PRA rules, which are critical to industry.

Furthermore, Clause 3 gives the Treasury power to make transitional and savings provisions to prevent firms facing cliff edges from the deletion of a provision in the UK CRR. This will allow the Treasury to save, for example, permissions to modify capital requirements that have already been granted to firms under the CRR and avoids the need for firms to reapply for those permissions under the new PRA rules.

Amendment 24 would remove the requirement on the Treasury to ensure the PRA's rules "adequately replace" revoked parts of the CRR. It would replace this requirement with ensuring that the rules "replicate or otherwise reflect" them. I understand that the intention of this amendment is to probe the degree of flexibility allowed by the current drafting. The intention is not for the new PRA rules to completely mirror the CRR provisions that they will replace. The PRA rules will update the CRR provisions they replace to achieve compliance with the revised Basel standards, and the language of "adequately replaced by" is intended to allow for this.

The wording in the Bill— "adequately replaced"—is also phrased to ensure that the rules are written in a language appropriately tailored to the PRA's rulebook, which is specifically for the UK sector, and that the regime remains coherent. The amendment replaces this with the word "replicated", which suggests that the language of the EU CRR is copied over exactly into the rulebook. This may not be the most suitable language for the UK's rulebook and may prevent the PRA making the necessary changes to ensure compliance with the latest Basel standards.

In response to the noble Baroness, Lady Bowles, the EU—as I am sure she will recognise with her immense experience—is an outlier in the extent to which it specifies these matters in the equivalent of primary legislation. The approach taken in the Bill will bring us more into line with other major financial centres. This means that the EU is used to assessing rules set in the equivalent of regulator rules.

Amendment 25 would bind the Treasury into setting out why it thinks it is appropriate for the rules not to be replaced before laying the relevant regulations before Parliament. Clause 5 already provides for the PRA to prepare a document setting out whether its rules correspond to the revoked provision and, if so, how. The Government's view is that that should be the primary document to explain why a CRR provision is not being replaced to provide a coherent explanation. If that document does not reflect a revocation where the CRR rule is not being replaced, this can be explained by the Treasury in the Explanatory Notes accompanying the statutory instrument revoking the rules. The amendment is therefore unnecessary, and I hope noble Lords will feel able not to press it.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I have received no requests to speak after the Minister, so I call the noble Lord, Lord Tunnicliffe.

Lord Tunnicliffe (Lab) [V]: My Lords, I thank all Members who have taken part in this debate. The statement of the noble Baroness, Lady Bowles, that Clause 3 waives away a whole series of rules, without any clarity about how they are replaced, is very prescient. She rightly made the point that it may not be helpful in our aspiration to achieve EU equivalence.

The noble Viscount, Lord Trenchard, asked if I want the old. No—I want the old to be used to test whether the new is equally as comprehensive. He also spoke about simplicity. As someone who has been involved in rules in all sorts of environments, I know that they are not usually complex because people want them to be but rather because, in the operation of simple rules, questions come up and teach you that you need more complex ones. What impact will that have in this situation? The probability is that the apparent rules will be simple and the complex ones will be hidden from us in a series of rules that we do not see, which the PRA will inevitably have to create to make its supervision practical.

Furthermore, we had the comment that we are looking for light-touch regulation. In 2008 and 2009, we discovered light-touch regulation. This was not solely a British mistake but one made almost throughout the western world. However, the consequence was very close to disastrous. I find it interesting that, in his response, the noble Earl said that we have the Basel standards and already know what they are. This suggests that they are a system of rules ready-made for this purpose; if that is true, where is this flexibility that everyone praises so much?

Finally, we were told to rely on the checks and balances. We had a long debate at the beginning of today's session, in which many people around this table, to a greater or lesser degree, were not at all convinced that the processes we are being asked to adopt have sufficient checks and balances. I will have to consider whether I want to bring this further forward on Report but, in the meantime, I beg leave to withdraw Amendment 24.

Amendment 24 withdrawn.

Amendment 25 not moved.

Clauses 3 and 4 agreed.

Clause 5: Prudential regulation of credit institutions etc by PRA rules

Amendment 26 not moved.

Clause 5 agreed.

Amendment 27 not moved.

Baroness Penn (Con): My Lords, I suggest that this is a convenient moment to conclude our debate in Grand Committee today.

The Deputy Chairman of Committees (Baroness Fookes) (Con): That concludes the work of the Committee this afternoon. The Committee stands adjourned, and I remind Members to sanitise their desks and chairs before leaving the Room.

Committee adjourned at 7.13 pm.