Vol. 811
No. 206

Thursday
18 March 2021

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

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

House of Lords

Thursday 18 March 2021

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Winchester.

Arrangement of Business

Announcement

12.07 pm

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

Office of Communications: Chair

Question

12.08 pm

Asked by ***Lord Foster of Bath***

To ask Her Majesty's Government what plans they have to appoint a new Chair of the Office of Communications.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, the process to appoint a new permanent chair of Ofcom is currently under way. The process will be fair, open and robust. As with all public appointments, it will be conducted in line with the governance code and regulated by the Commissioner for Public Appointments. The preferred candidate will also appear in front of the DCMS Committee. The Government are committed to finding an outstanding individual, and we very much encourage all qualified candidates to come forward.

Lord Foster of Bath (LD): My Lords, I thank the Minister for that reply. Given that one of the most important functions of Ofcom is to uphold the broadcasting impartiality regime which lies at the heart of our most trusted media, such as the BBC, does she agree that it would be unacceptable for the new chair to be someone with a long record of extreme political partisanship, and who, as a newspaper editor, presided over such headlines as "Enemies of the People" in relation to our trusted and independent judiciary, and "Crush the Saboteurs" in relation to those who voiced opposition to Brexit?

Baroness Barran (Con): I am sure that the noble Lord will understand that I am not going to speculate on any potential candidate for the role, but I absolutely agree that it is critical that Ofcom remain impartial, independent and an evidence-based regulator.

Lord Black of Brentwood (Con) [V]: My Lords, I refer to my interests as set out in the register. Does my noble friend agree that just as important as the new chair of Ofcom are the new powers that Ofcom will have? The regulator will have significant extra responsibilities following online harms legislation and will have a vital role in working with the new digital markets unit to ensure that the platforms are subject to fair competition. Can she tell us what progress is being made on bringing forward the online harms legislation and, crucially, a Bill to give the digital markets unit the statutory powers it needs, particularly in the area of payment for content?

Baroness Barran (Con): My noble friend is right that it will be extremely important in future for Ofcom to co-ordinate its activities with other digital regulators, including the new digital markets unit being set up in the CMA. We are working at pace to prepare the online harms legislation, which will be ready later this year. In December, the Government received advice from the CMA on design and implementation of the new regime. We are carefully considering this and will consult on it as soon as possible.

Lord Hastings of Scarisbrick (CB): My Lords, we all remember the foundation of Ofcom, when all it was about was spectrum allocations and channel licensing—and now it has the BBC as well. However, the biggest elephant in the communications room is the urgent need for social media regulation, given its regularised misinformation and distortion of reality. Will the new chair and the ever-expanding Ofcom take on this duty, and should media literacy better fit with Ofcom than Ofsted?

Baroness Barran (Con): Ofcom is the Government's preferred regulator for the new online harms regime and the new legislation, which will be introduced later this year. The Government will announce their media literacy strategy later this year.

Lord Dubs (Lab) [V]: My Lords, is the Minister aware that there is a great deal of concern about the Government's stated attitude to the BBC and, indeed, to public service broadcasting generally? Ofcom has been particularly successful to date. Does the Minister agree that it would be a tragedy for the high standards of British television broadcasting if we lost the traditions we have had and denigrated the standards to those of Fox?

Baroness Barran (Con): The Government are supportive of a modern system of public service broadcasting that remains relevant and continues to meet the needs of UK audiences in future. Obviously, Ofcom, with its regulatory role in this capacity, is a crucial part of delivering this.

Lord McNally (LD) [V]: My Lords, earlier this week the Government published their external review, which said that the BBC is the most trusted broadcaster in the world. Is it not about time they started showing that they believe that in their statements and policies?

Baroness Barran (Con): The Government have been very clear about the value of the BBC, particularly in the pandemic, during which it has served to educate, inspire, inform and act as a crucial and reliable source of news.

Lord Bassam of Brighton (Lab) [V]: Several noble Lords have already referred to Ofcom's expanding remit and the additional responsibilities to be introduced through the online safety Bill and the challenges they will bring. What conversations has the Minister had through her department with Ofcom's new chief executive about the body's current and future resourcing? Can she assure us that the various changes envisaged in the forthcoming legislation will be accompanied by commensurate increases in staffing budgets, training opportunities and, vitally, political support?

Baroness Barran (Con): The noble Lord raises a very important point. Work is already starting within Ofcom to recruit the appropriate skills and experience that will be needed to deliver on the online safety regime, including the recent recruitment of a head of emerging technologies from Google.

Lord McColl of Dulwich (Con) [V]: My Lords, can the Minister give the House any valid reasons why the committee wants the power of veto over such appointments?

Baroness Barran (Con): I am afraid I do not follow my noble friend's question, so, if I may, I will write to him.

Lord Wigley (PC) [V]: They will need an understanding not only of fast broadband connectivity issues in rural areas, which Covid homeworking has highlighted, and the pressing questions of online security and harm, but of the far-reaching changes in the television sector with the streaming of content by international providers such as Facebook, Amazon, Netflix and Google. Does the Minister accept that the appointment must be future-proof and not given as a reward for yesterday's achievements?

Baroness Barran (Con): The role profile for the chair of Ofcom was discussed, including with the DCMS Select Committee, and updated with exactly the intention the noble Lord suggests.

Lord Foulkes of Cumnock (Lab Co-op): Does the Minister recall that the noble Baroness, Lady Harding, was appointed to an NHS position without any proper scrutiny? Her main qualification was being a member of the Jockey Club. The main qualification of the acting chair of Ofcom, Maggie Carver, is being chair of the Racecourse Association. Can we have an assurance that this appointment will be made in a proper fashion and that the person appointed will have knowledge of the communications industry and not of the racing fraternity?

Baroness Barran (Con): If the noble Lord looks at the role profile, he will see that it is extremely clear about the level of professionalism and experience required—although, it being Cheltenham week, I cannot exclude racing connections.

Lord Addington (LD): My Lords, moving away from Cheltenham, does the Minister agree that the only independent member of the board's being closely associated with the Murdoch stable might make us a little nervous about the results of any appointment?

Baroness Barran (Con): The process regarding the independent panel member to which the noble Lord refers has been carefully considered. The Commissioner for Public Appointments has approved them and they are recusing themselves from all areas of discussion where they have a conflict of interest.

Baroness Gardner of Parkes (Con) [V]: My Lords, what expectations do Her Majesty's Government have of a new chair of the Office of Communications in enhancing Ofcom's role in preventing online abuse?

Baroness Barran (Con): This will be a very important part of the new role, but I stress that the role of the chair is to lead the independent board. It is for the board, together with the chair, to deliver on that responsibility.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked.

Food Prices: Agricultural Policy

Question

12.18 pm

Asked by ***Lord Carrington***

To ask Her Majesty's Government what assessment they have made of the impact on food prices of the changes to agricultural policy set out in *The Path to Sustainable Farming: An Agricultural Transition Plan 2021 to 2024*, published on 30 November 2020; and what plans they have to mitigate any such impact on lower socio-economic groups.

Lord Carrington (CB) [V]: My Lords, I beg leave to ask the Question standing in my name on the Order Paper and take the opportunity to declare my farming interests.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con) [V]: My Lords, I declare my farming interests as set out in the register. Our assessment is that consumer food prices are not likely to be significantly affected by farming reforms. The main drivers of food prices include import costs, exchange rates and domestic production and manufacturing costs. We regularly monitor prices, and the food security report will inform any appropriate policy responses. The Government are committed to supporting the most vulnerable in society.

Lord Carrington (CB) [V]: My Lords, I thank the Minister for his valuable response. With action necessary to address climate change, biodiversity, food waste, diet, trade issues and much more, it all points to higher food prices, which have a disproportionate effect on the poorest, largest and elderly households. Ensuring

a safety net is essential. Who in the Government will be accountable for co-ordinating the actions of departments to achieve the desired but sometimes conflicting outcomes around food, health, farming, land use and trade?

Lord Gardiner of Kimble (Con) [V]: My Lords, that is one reason why, since the Covid outbreak, the Department for Work and Pensions has established a working group on the cost of living, where food vulnerability is discussed alongside other issues by all Ministers whose departments have a role in ensuring food security. I accept that farming will have to do many things, one of which is to produce very healthy food. There has been £280 billion of support since March 2020 to families and children, which I think is a good record from the Government.

The Lord Speaker (Lord Fowler): The noble Baroness, Lady Ritchie of Downpatrick, has withdrawn so I call the noble Baroness, Lady Jenkin of Kennington.

Baroness Jenkin of Kennington (Con) [V]: My Lords, my noble friend will be aware of concern about the impact of potential trade deals on food prices and quality. Is my noble friend aware of a recent Sustain LSE report which showed that obesity rose in both Mexico and Canada following their trade deals with the United States? Does he agree that, if the Government were tempted to solve the problem of rising food prices by importing cheap, poor-quality food, it would nudge lower-income families into buying it, thereby exacerbating the obesity problem?

Lord Gardiner of Kimble (Con) [V]: My Lords, the Government are very clear that our trade deals will not compromise our food standards. All food, regardless of agreement, will have to meet our import requirements. Clearly, obesity must be addressed. The Government's strategy of July last year took forward actions of the childhood obesity plan, setting out measures and ambitious targets to halve by 2030 the number of children living with obesity and to get the country fitter and healthier.

Lord Curry of Kirkharle (CB) [V]: My Lords, the level of home production could well have an impact on food prices. Can the Minister confirm what assessments the Government have made of the effect that their current policies will have on the level of self-sufficiency of homegrown food? What efforts are the Government making to increase the volume of homegrown food in public sector procurement?

Lord Gardiner of Kimble (Con) [V]: My Lords, clearly it is important that there is strong domestic production. We currently produce 66% of our national supply and 77% of indigenous foods. Food production is extremely important and, with Section (1)4 of the Agriculture Act in particular, we will be working with farmers on that as well as on the environmental enhancement we want.

Baroness Young of Old Scone (Lab) [V]: My Lords, 8.4 million people in the UK live in food poverty. It is no coincidence that those worst affected are precisely those who were most hard hit by Covid—minority ethnic communities and older and disabled people. Research by the Food, Farming and Countryside Commission, of which I am a commissioner, makes it clear that future agriculture needs to deliver food, particularly fruit and vegetables, that is healthy, environmentally sound and affordable. How will the Government amend the agricultural transition plan, which is strangely silent about food, to prioritise not cheap food but healthy food grown in agroecological systems and ensure that this will be widely available at accessible prices?

Lord Gardiner of Kimble (Con) [V]: My Lords, noble Lords will remember, and as I have said, Section 1(4) of the Agriculture Act is precisely to ensure that financial assistance schemes are within that context, and it is the duty of the Secretary of State to consider food production. Our purpose is to ensure that there is healthy food for all to eat at affordable prices.

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, the Government's ambitious plans to move farmers from direct farm payments to a system whereby they manage their whole business differently to deliver profitable food production and the recovery of nature must be a step in the right direction. However, as other noble Lords have said, we are currently seeing the queues at food banks increasing as people struggle to feed their families. Surely food prices are likely to rise and increase the cost of food for those on low incomes. The Government say they have strategies to deal with this but give no details. Can the Minister give some detail on how feeding those on low incomes will actually happen?

Lord Gardiner of Kimble (Con) [V]: There are two points. In the last year, food prices have fallen by 0.8% and, as I mentioned, there is the £280 billion of support. Obviously with a successful economy, recovery from Covid and more people returning to work, matters will improve. There will always be a safety net and that is why I mentioned that £280 billion has gone towards supporting the vulnerable.

Lord Dobbs (Con) [V]: Does my noble friend agree that every grain of evidence, from the Corn Laws onwards, shows that free trade and innovation provide more plentiful food, of a higher quality and at a lower price—thank you Aldi, Lidl, Tesco and all the others—and that systems of trade protection in the past have led to higher prices and shortages for poorer families? Does he agree that, once we have sorted out the inevitable adjustments that we face in leaving the protectionist common agricultural policy, British consumers can expect to feed themselves better and for less, rather than paying higher prices to subsidise inefficient farmers in other countries? For the many, not the few, you might say. Do not we all have a great deal to look forward to?

Lord Gardiner of Kimble (Con) [V]: My Lords, we will champion free and fair trade and lower barriers at every opportunity. There are great opportunities for British food to be exported. In all the trade agreements that we negotiate, we will stand up for British farming

[Lord Gardiner of Kimble]
and we will always ensure that the UK FTAs are fair and reciprocal. There is great opportunity for our domestic producers to export as well as have very strong production. Yes, I agree that free trade has been a great success over the centuries.

Baroness Jones of Whitchurch (Lab): My Lords, as we know, the sustainable farming proposals are for England only. The devolved nations are drawing up their own proposals for reform, which could lead to differential food prices across the UK. Can the Minister update the House on the progress of the joint working group set up to carry out market surveillance and ensure that the UK internal market does not end up with winners and losers in the food price sector?

Lord Gardiner of Kimble (Con) [V]: My Lords, we have set up the UK agricultural support framework precisely to ensure that there is non-legislative collaboration and co-operation on agricultural support between the four UK Administrations. We will continue with this effective co-ordination and dialogue, so that the internal market of the UK is secure.

Lord Bird (CB): Does the Minister agree that a low-wage economy is one reason why we have food poverty? If we look at the agricultural industry, we see some of the lowest wages in the UK. How are we going to square that one? We want cheap food, but we want it by having cheap labour in the countryside.

Lord Gardiner of Kimble (Con) [V]: My Lords, agricultural innovation will make a considerable difference to the qualifications and skills of the next generations of agricultural and horticultural workers. This is going to be an area of great expansion.

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

China: Treatment of Uighurs and Taiwanese Airspace Incursions

Question

12.29 pm

Asked by ***Baroness D'Souza***

To ask Her Majesty's Government, further to reports of the government of China's (1) treatment of Uighurs, and (2) incursions into Taiwanese airspace, what discussions they have had with other governments about what action can be taken in response.

Lord Parkinson of Whitley Bay (Con): My Lords, the UK has led international efforts to hold China to account for its gross violations of human rights in Xinjiang, working closely with a wide range of international partners. In October, 38 countries joined the UK in a joint statement at the UN, expressing deep and shared concern, sending a powerful message to China. We do not support any action that risks undermining stability in the Taiwan Strait and are in regular touch with partners.

Baroness D'Souza (CB) [V]: I thank the Minister for his Answer. The integrated review of UK foreign policy makes it clear that progress on any of the major issues of today, including democracy and human rights, will be achieved only by co-operating with new and old allies. Will HMG now engage with national, regional and international groups, such as the Five Eyes, the quad, D10 and ASEAN, to deter China from continuing its ever-increasing threats to Taiwan's sovereignty and the Uighurs' integrity?

Lord Parkinson of Whitley Bay (Con): The noble Baroness is right to point to the integrated review, which sets out how we will work with international groupings, including our Indo-Pacific tilt and our international leadership of the G7 and COP 26 this year. The UK has led international efforts to hold China to account, including by leading the first two joint statements on this issue at the UN. Last week, my right honourable friend the Foreign Secretary released a joint statement with his G7 counterparts, expressing their concerns at the continued erosion of rights in Hong Kong.

Baroness Goudie (Lab) [V]: Following on from the noble Baroness's question, is it not true that the Foreign Secretary still thinks that we should continue to trade and not worry too much about human rights, as he said to members of Foreign Office staff yesterday, which was leaked to the *Guardian*? Secondly, can we take note of what America is doing with companies that are trading with China and other countries that are causing genocide? Should we not be putting on the same pressure and asking the same questions of companies here, particularly those in the garment trade?

Lord Parkinson of Whitley Bay (Con): The noble Baroness should see what my right honourable friend said in full, at least what he said in his speech at the Aspen Security Forum this week or what we say in the integrated review, which makes clear that open countries such as the UK need to engage with China and remain open to trade and investment. We will engage with confidence, which is important because China is an increasingly important partner in tackling global challenges, including climate change, biodiversity and preventing future pandemics.

Baroness Northover (LD): Could the Minister be clearer: what comes first, trade deals or human rights?

Lord Parkinson of Whitley Bay (Con): My Lords, the integrated review sets out that open trading economies such as the UK need to engage with China, but we must also protect ourselves against practices that have an adverse effect on prosperity and security. We will do so standing up for our values and human rights. The integrated review sets out that these are all held in balance.

Baroness Rawlings (Con) [V]: My Lords, what is the present situation with Her Majesty's Government joining the quadrilateral security dialogue of the US, Japan, India and Australia? If so, what does the Minister see as our potential role?

Lord Parkinson of Whitley Bay (Con): My Lords, there are no plans for the UK to join the quad although, as set out in the integrated review, we will continue to look positively at ways to increase our engagement with regional security groupings in the Indo-Pacific. We noted with keen interest the outcomes of the first quad summit, convened by President Biden last week, notably on vaccine distribution, climate change and technology co-operation.

Lord Alton of Liverpool (CB): My Lords, will we be laying before the United Nations Security Council the 25,000-page report on the Uighurs published last week? It said that the Chinese Communist Party had breached every article of the 1948 convention on the crime of genocide. Or will we, as the House of Commons votes on the House of Lords genocide amendment next Monday, continue to shelter behind the fiction of an imaginary judicial mechanism capable of declaring a Uighur genocide—a declaration that has been made by the Canadian and Dutch parliaments, the United States and elsewhere?

Lord Parkinson of Whitley Bay (Con): On the noble Lord's second point, as he knows, it is a long-standing policy of the British Government that any judgment of whether genocide has occurred is for a competent court, rather than governments or non-judicial bodies. The UK has led international efforts to hold China to account at the United Nations, including by leading those first two joint statements on this issue at the UN. The Foreign Secretary addressed the Human Rights Council, in February, calling for China to grant urgent and unfettered access to Xinjiang for the UN High Commissioner for Human Rights or another independent fact-finding expert.

Lord Collins of Highbury (Lab): My Lords, the Minister keeps repeating that the UK is leading the way on this issue. Yesterday's *FT* reported Antony Blinken, US Secretary of State, identifying 24 officials whose actions have reduced Hong Kong's high degree of autonomy after China passed its law last week. Blinken warned that any financial institutions that had significant business with these officials would also be subject to sanctions, so why can we not mirror our strongest ally on this issue? Why can we not work together?

Lord Parkinson of Whitley Bay (Con): My Lords, I repeat the point that the impact of our diplomacy is reflected in the growing number of countries supporting the statements that we are leading at the UN and elsewhere, and that we are working with our closest allies. Earlier this month, the Foreign Secretary issued a statement about the decision to charge Hong Kong politicians and activists. In January, he released a statement with his Australian, Canadian and American counterparts underscoring our concerns at the arrest of politicians and activists under the national security law.

Lord Scriven (LD) [V]: My Lords, when in discussion with other countries, will the Government promote Taiwan as an observer of the UK-proposed D10 alliance?

Lord Parkinson of Whitley Bay (Con): As the noble Lord knows, the UK's long-standing policy that we do not recognise Taiwan as a state remains unchanged. But we have a vibrant unofficial relationship and support Taiwan's participation in international fora where statehood is not a requirement.

The Lord Bishop of St Albans [V]: What consideration have Her Majesty's Government given to the suggestion of a diplomatic and economic, rather than full-scale, boycott of the 2022 Beijing winter Olympics, in response to China's ongoing repression of the Uighur Muslim minority?

Lord Parkinson of Whitley Bay (Con): My right honourable friend the Prime Minister has made clear that we are not normally in favour of sporting boycotts. The broader question of the participation of the national team at the winter Olympics is a matter for the British Olympic Association, which is required to operate independently of the Government under the International Olympic Committee regulations.

Baroness Helic (Con) [V]: My Lords, I welcome the steps that the Government have taken to help ensure that no British companies are complicit in the appalling human rights abuse in Xinjiang. However, a BBC investigation earlier this month reported that Uighurs are being forcibly resettled around the country, and women are being sterilised, raped and assaulted. Can my noble friend reassure me that these reports have been taken into account and will be reflected in further government guidance?

Lord Parkinson of Whitley Bay (Con): I thank my noble friend for her support for the action that we have taken to ensure that UK businesses are not complicit in human rights violations in Xinjiang. They also show China that there is a reputational and economic cost to its policies there. As well as the financial penalties for organisations that fail to comply with the transparency obligations of the Modern Slavery Act, we have funded research to help build the evidence base and provided guidance to help UK businesses to conduct due diligence to ensure that their supply chains are free of forced labour.

Baroness Finlay of Llandaff (CB) [V]: My Lords, how will the Government ensure supply chain transparency and determine links to Xinjiang and its human rights abuses, so that we have up-to-date evidence that is accessible to members of the public who are rightly concerned about buying ethically? How will the Government commit to full transparency about where official development assistance funding is being used in China, so that no government or taxpayer funds are contributing to these human rights abuses?

Lord Parkinson of Whitley Bay (Con): On the noble Baroness's second point, all UK ODA spend, including to China, complies with the OECD's ODA rules. Relevant details are provided in the statistics on international development, which are published on GOV.UK. The action that my right honourable friend outlined in January is strengthening the transparency of supply chains for UK consumers and businesses.

Lord Browne of Ladyton (Lab) [V]: My Lords, the Minister surprised me with a catalogue of compelling evidence, revealed in yesterday's BEIS Committee report, that many major companies with large footprints in the UK are complicit in the forced labour of Uighurs in Xinjiang. Does he agree that a Minister-led campaign of business engagement—as the noble Lord the Minister of State at the FCDO proposed on 19 January at column 1139—is an insufficient response? Simply put, companies that do not meet their obligations to uphold human rights throughout the supply chains should not be doing business in the UK.

Lord Parkinson of Whitley Bay (Con): The noble Lord refers to the work we have been doing to strengthen the overseas business risk guidance to make clearer the risks to UK business. That applies as well to the public sector: we have increased support for UK public bodies to exclude suppliers where there is evidence of human rights violations from their supply chains. He refers to the BEIS Select Committee report, which was published only yesterday in another place, and we will of course look at that with interest. The department will reply to it in the usual way.

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

UK-EU Trade

Question

12.41 pm

Asked by ***Lord Adonis***

To ask Her Majesty's Government what assessment they have made of the impact of the United Kingdom–European Union Trade Cooperation Agreement on the reduction in trade with the European Union since 1 January.

The Minister of State, Cabinet Office (Lord Frost) (Con): My Lords, the Trade and Cooperation Agreement provides for 100% tariff-free and quota-free access to each other's market for the UK and the EU. It is first trade agreement in the world to do so. A unique combination of facts has made it inevitable that we would see a reduction in trade with the EU in January, and we should use caution in drawing any conclusions from the initial figures released on 12 March.

Lord Adonis (Lab): My Lords, I thank the Minister for that Answer. We are, of course, where we are, but I am sure he would agree we have a particular problem at the moment with the export of animals, meat and shellfish, where exports are down by between 56% and 83%. Will the Minister agree to meet me and other noble Lords from across the House who are acutely concerned about this issue and wish to see it sorted, including the possibility of the Government negotiating a sanitary and phytosanitary agreement similar to that which Switzerland currently enjoys with the European Union?

Lord Frost (Con): My Lords, I am always happy to meet anybody to talk about the issues relating to the Trade and Cooperation Agreement. We have, of course, pulled out all the stops to help businesses deal with the changes to our trading relationship with the EU, whether they are operating in these fields, whether they are SMEs or whether they are working in the agri-food or any other area.

Lord McNicol of West Kilbride (Lab): My Lords, new figures released last week, as the Minister touched on, show that UK exports to the EU have plummeted by 40% since the transition period. Do Her Majesty's Government take responsibility for that and, more importantly, will the Minister elaborate on the plans to rectify that reduction in trade?

Lord Frost (Con): My Lords, there are several potential factors affecting trade with the European Union, as well as any direct impact coming from the TCA. There is clear evidence of stockpiling at the end of last year, which will of course affect the flow of trade, and obviously there is the general economic impact of the coronavirus pandemic, which has depressed economic activity in many ways. That is why we must be cautious before drawing any firm conclusions from the January figures.

Viscount Trenchard (Con): My Lords, the TCA gives us the freedom and the opportunity to develop our own regulatory regime for the City, to maintain and enhance its position as the leading global financial centre. Does the Minister agree that we should be bold and swift in making necessary changes to our EU legacy regulatory framework, while taking a proactive leadership role in international fora such as IOSCO in developing proportionate principles-based rules at the global level? Does he also agree that it will manifestly not be the EU's interests to continue to try to prevent European companies raising capital and accessing services provided in the UK's financial markets?

Lord Frost (Con): My Lords, I very much agree with the thrust of my noble friend's question. I endorse his view that we should use our freedom to develop our financial services industry, and the framework that regulates it, over time in a way that suits us, and build the City's huge advantages as a global financial centre.

Lord Purvis of Tweed (LD): My Lords, last year I asked the noble Lord, Lord True, what work the Government were doing to forecast an assessment of the various complexities that the Minister referred to. He wrote to me on 19 May, saying:

"A call for evidence will open in the coming months, and we will provide further details in due course. The call for evidence will capture complexity and represent the varying impacts that will be felt across different parts of the economy. We will continue to keep Parliament informed."

There was no call for evidence, and the Government have not kept Parliament informed. Does there exist any forecast from the Government that shows that by value to the UK economy, UK trade with the EU will grow?

Lord Frost (Con): My Lords, the question of the economic benefits or disbenefits of our relationship with the European Union has been extensively debated over the last few years. There have been many publications on the subject, including from this Government. The economic situation last year, the impact of the pandemic and the huge uncertainties made it very difficult to conduct an analysis. We of course continue to keep this question under very close review.

Lord Lucas (Con) [V]: My Lords, there are clearly problems with companies not being used to the new procedures. I know from experience how helpful BEIS and HMRC can be to a European company that has made a pig's ear of its paperwork. Are their European equivalents being similarly helpful to British companies which have not got the procedures right?

Lord Frost (Con): My Lords, it is true that there have been some problems and some overzealous enforcement in isolated cases, which have been well publicised. However, I take this opportunity to say that generally the European authorities have been very supportive and pragmatic in the way they have dealt with issues at the border, and we welcome that fact. Operational co-operation with member states, in particular our closest neighbours, has been excellent.

The Earl of Clancarty (CB): My Lords, the Minister will be aware of the huge problems in relation to work in Europe confronting our valuable music sector. Jobs have already been lost and tours cancelled as a result of the lack of suitable arrangements in the TCA. Is the Minister aware that the main ask of the performing arts is for a separate, bespoke visa waiver agreement, which would go a long way to resolving key concerns? Will he promise to discuss such an agreement with Maroš Šefčovič at the earliest opportunity?

Lord Frost (Con): My Lords, the Government of course recognise the importance of the UK's cultural industries. We made proposals during the negotiations last year that would have allowed musicians to travel and perform in the UK and the EU more easily without work permits. They were rejected by the European Union. Now that negotiations are over, we are working with the sector to help it adjust to this new relationship. We have a working group with industry representatives which is feeding into our process. We are of course discussing a range of issues with Maroš Šefčovič as regards the implementation of the TCA.

Baroness Smith of Basildon (Lab): My Lords, I thank the Minister for agreeing to meet the noble Lord, Lord Adonis, on the issues he raised, but in response to my noble friend Lord McNicol, he seemed reluctant to admit that there was a problem and he certainly did not answer the part of the question about what the solutions were, so I shall try again. Your Lordships' House has been fully engaged in preparing the UK for its new relationship with the EU. There has been an unprecedented number of documents, Bills and statutory instruments that we have all waded our way through to get to the detail, but all behind ensuring support for the Government's border plans. Yet here we are, less than three months in, and that model is creaking. The Minister is now tearing up plan A in order to push back implementation dates. Can he tell us what he thinks has gone wrong?

Lord Frost (Con): My Lords, as I say, it is too early to draw conclusions from any figures in January; there are too many other factors influencing the economic situation. We have always made clear and are assiduously implementing our plans to get businesses the support they need to manage the changes to our trading relationship with the EU. There is a new Brexit support fund and a Brexit business taskforce. We are supporting the fisheries industries and many others through the initial difficulties of the change in relationship.

Baroness Ludford (LD) [V]: My Lords, rather than trying to deny the reality of the massive drop in exports to the EU, the Government need to address how practical improvements can be made regarding Brexit red tape. So far, their approach to solving border problems is simply to refuse to apply the rules that they agreed to. How will the Government establish trust and a good relationship with Brussels and member states that are essential to getting those improvements to help business and consumers?

Lord Frost (Con): My Lords, of course we seek a constructive relationship with our European friends in all areas relating to the trade and co-operation agreement, and we look to build a friendly relationship between sovereign equals. That is what we intend to do. That is what we are working towards. We are acting constructively when we can, but we are standing up for our interests when we must.

Lord Loomba (CB) [V]: My Lords, after leaving the EU, the UK has the advantage of trading with any country around the world. The EU has already negotiated a trade agreement with China and, considering our present relationship with China on account of human rights, can the Minister tell us whether the UK will be able to sign a trade agreement with China? If so, when is it likely to happen?

Lord Frost (Con): My Lords, the Department for International Trade made a huge and successful effort last year to roll over many of the trade agreements that we benefited from as an EU member and is negotiating a large number of new agreements at the moment. I note that in its 12 March press release relating to the trade figures the Office for National Statistics noted that there was already a visible potential benefit from our agreement with Singapore and markets in Asia. That shows the benefits we can gain from such agreements in future.

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

12.52 pm

Sitting suspended.

Levelling Up
Statement

The following Statement was made in the House of Commons on Tuesday 16 March.

"With permission, Mr Deputy Speaker, I will make a Statement on levelling up. Levelling up is central to the Government's agenda, and we are working with local areas to ensure that every region, every city and every town will recover from Covid-19 and level up. Investing in our local areas has the potential to improve lives, give people pride in their communities, bring more places across the UK closer to opportunity, and ensure that everywhere can build back better.

Economic differences remain between places across the UK, and those economic differences have real implications. They affect people's lives through their pay, their work opportunities, their health and their life chances. Tackling them, and driving prosperity as part of levelling up the UK, remains a priority for the Government. As set out in the spending review, the Government's capital spending plans for the coming financial year, 2021-22, will total £100 billion—a £30 billion cash increase compared with 2019-20. That is part of the Government's plans to deliver more than £600 billion in gross public sector investment over the next five years, delivering the highest sustained level of public sector net investment as a proportion of GDP since the late 1970s. In the Budget, we published the prospectus for the new £4.8 billion levelling-up fund. The fund will operate UK-wide, extending the benefits of funding for priority local infrastructure across all regions and nations. This cross-departmental fund represents a new approach to local investment and will end silos in Whitehall that make it difficult to take a holistic approach to the infrastructure needs in local areas.

The fund will invest in the infrastructure that matters to local areas, creating economic benefits and bringing communities together as we recover from the economic impact of the pandemic. The levelling-up fund will invest in regenerating our town centres and high streets, upgrading local transport and investing in our cultural and heritage assets across the UK. That could be repairing a bridge, investing in new or existing cycling provision, upgrading an eyesore building, regenerating key leisure and retail sites to encourage new businesses, or even maintaining museums, galleries and community spaces that are important to the local area.

The fund will create opportunity across the country, prioritising bids from those places in need of economic recovery and growth, improved transport connectivity and regeneration. In order to target those places in need, an index has put places in categories 1, 2 or 3, with category 1 representing places with the highest levels of identified need. However, it is important to stress that the bandings do not represent eligibility criteria, nor the bid amount or number of bids that a place can submit. Bids from categories 2 and 3 will be considered for funding on the merits of their deliverability, value for money and strategic fit.

We published the index, and the methodology used to develop the index, to help the fund to deliver its core objective of improving local communities by investing in local infrastructure that has a visible impact on people. The Government recognise the important role of Members in championing the interests of their constituents, and we expect them to be consulted as part of wider local stakeholder engagement on bids, although it is not a necessary condition for a successful bid. Members can have a positive role in prioritising bids and helping to broker local consultation. When considering the weighting given to bids, the expectation is that an MP will back one bid that they see as a priority, and any bid may have priority backing from multiple MPs and local stakeholders. Members may also want to support any bid that will benefit their constituencies in the usual way.

Where appropriate, the UK Government will seek advice from the devolved Administrations as part of bid assessments in their geographical areas on shortlisted projects regarding alignment with existing provision. The fund is part of a broad package of complementary UK-wide interventions. Along with the levelling-up fund, the UK shared prosperity fund will create a package of UK Government support which invests in skills, infrastructure and innovation at local, regional and national levels, enabling the Government to provide the same support to communities in all nations as we build back from Covid-19. To help local areas prepare for the introduction of the UK shared prosperity fund, the UK Government are also providing an additional £220 million of funding through the UK community renewal fund. This fund aims to support people and communities most in need across the UK to pilot programmes and new approaches. Through these funds, we will establish new ways of working between the UK Government and places right across the UK.

The UK Government will work more directly with local partners and communities across England, Wales, Scotland and Northern Ireland, which are best placed to understand the needs of their local area and more closely aligned to the local economic geographies to deliver quickly on the ground.

In the Budget we also announced the eight successful locations in England, which will move to the next stage of freeport designation. Teesside, Liverpool City region, Humber region, Plymouth, Solent, Thames, Felixstowe and Harwich and East Midlands Airport will benefit from this investment. Freeports will bring together ports, local authorities, businesses and key local stakeholders to achieve a common goal of shared prosperity and opportunity for their regions, and they will allow the UK to take advantage of the benefits of leaving the EU.

As part of the towns fund, 101 towns were selected to develop proposals for town deals. All towns have now submitted their proposals, and 52 towns have so far been offered town deals, meaning that we now have committed £1.28 billion to the programme. Assessment continues for the remaining towns, with further announcements expected in due course. Through the towns fund, we will invest up to £25 million in each town, or more in exceptional cases, to drive the economic regeneration of towns to deliver long-term economic and productivity growth. We are also creating a new £150 million community ownership fund to ensure

that communities across England, Scotland, Wales and Northern Ireland can support and continue benefiting from the local facilities, community assets and amenities that are most important to them.

From summer 2021, community groups will be able to bid for up to £250,000 match funding to help them buy or take over local community assets that are at risk of being lost and run them as community-owned businesses. In exceptional cases, up to £1 million match funding will be available to help establish a community-owned sports club or to help buy a sports ground that is at risk of being lost without that valuable community intervention.

Working with mayors and local enterprise partnerships, the £900 million Getting Building fund will also deliver jobs, skills and infrastructure across the country, targeting investment at those areas that are facing the biggest economic challenges as a result of the pandemic.

We want to devolve and decentralise to give more power to local communities, providing an opportunity for all places to level up. Through an ambitious programme of nine devolution deals, £7.49 billion-worth of investment is being unlocked over 30 years. The recently implemented West Yorkshire devolution deal will give the newly elected mayor control over an annual £38 million investment fund, as well as new powers over transport, education, housing and planning.

The department has also recently announced plans for more homes in urban areas and on brownfield land, as well as changes to our funding rules to ensure that we level up all parts of England as we progress towards 300,000 new homes every year. The Prime Minister announced that seven mayoral combined authorities were each receiving a share of the £400 million brownfield housing fund. That will help unlock 26,000 homes by bringing under-utilised brownfield land back into use and contribute to levelling up our country.

I hope that honourable Members will agree that this demonstrates the importance that this Government attach to the levelling-up agenda and the many ways in which we are addressing the causes of inequality. I am confident that the measures that I have set out today will make a real difference to people and places across the whole of the United Kingdom. I commend this Statement to the House."

1.01 pm

Baroness Wilcox of Newport (Lab) [V]: My Lords, I draw attention to my entry in the register of interests as a vice-president of the Local Government Association.

The levelling-up fund is a UK-wide £4.8 billion fund announced at the spending review, with a view to investing in local infrastructure that has a visible impact on people and their communities. It should drive regeneration in places in need: those facing particular challenges, and areas that have received less government investment in recent years. Some £600 million will be available this year for projects that have the support of their local community, and up to £4.8 billion will be available by May 2024.

All local authorities across Britain can bid for the fund, but they were placed in three categories of need, with the first more likely to get funding, including help to construct their bids. Areas were selected through a deeply flawed methodology that ignores most measures of deprivation, including the Government's own index of multiple deprivation, which takes into account income, levels of crime and health, and instead favours areas with low productivity and where people have long commutes to work—typical characteristics of rural areas.

Covid-19 has had a catastrophic effect on the finances of local government. The LGA estimates that because of the pandemic up to a further £2.6 billion of support will be needed to cover the cost pressures and non-tax income losses of 2020-21 in full. The Government's long-term neglect of the UK's high streets and local businesses, with footfall down 10% since 2012, had left around one in 10 high street shops standing empty even before the coronavirus hit. Councils in England have seen their core funding from central government reduce by £15 billion in the last decade, and 773 libraries, 750 youth centres, 1,300 children's centres and 835 public toilets in England have closed.

Not a single one of the 200,000 starter homes that the Conservatives promised in 2015 has been built, despite nearly £200 million being spent. The Government have now been forced to concede that they will not keep their promise to deliver nationwide gigabit broadband rollout by 2025, and now look highly likely to miss even their reduced target of 85% coverage. Unlike the Welsh Government's highly successful 21st-century schools building programme, the UK Government have refurbished less than half of the schools that they had promised by this year; the programme has been delayed by four years and is running £300 million over budget.

A list of local authority areas grouped and prioritised according to economic need has been published, but with no real detail as to how that was calculated. In November the House of Commons Public Accounts Committee published its report into the towns fund, announced by MHCLG in the summer of 2019, and which invited 101 English towns—out of 541 assessed—to apply for money from the fund. The committee found that the process by which towns were selected was "not impartial" and that the department

"has a weak and unconvincing justification for not publishing any information on the process it followed."

The Government's treatment of the levelling-up fund is symbolic of their divide-and-rule approach: Richmondshire is in the top level, while Sheffield and Barnsley, both of which have notably higher deprivation levels, are in tier 2. The funding metric must be published. The list as it currently appears is proof that this Government's actions are levelling areas down, pushing regions and nations and some of the poorest places in the UK to the back of the queue for investment. It appears to be about this Government using the money to level up the Conservative Party's electoral prospects rather than the economic realities of left-behind communities. I call again on the Government to publish the methodology behind the allocation and then revise how Whitehall makes these spending decisions.

Out of 45 areas allocated money from a pre-existing £3.6 billion towns fund by the Chancellor, 40 have Conservative MPs, and five of them are Cabinet Ministers. Can the Minister explain why the Government's bizarre

[Baroness Wilcox of Newport]
formula for determining priority areas appears to use car-journey distance over levels of poverty? The Chancellor has said that the metric was based on an index of economic need that is transparently published, but the fund's official prospectus says that the information is coming "shortly". Again I ask: when will this metric be published? Last year the National Audit Office said that the choices in 2019 of which towns could access the towns fund were based on "sweeping assumptions" and may have been politically motivated, as a number were marginal constituencies.

The actual amount of money being distributed by the levelling-up fund is just a drop in the ocean compared with what the Conservatives have taken away from the public realm over the last 10 years. I am afraid it looks weighted towards the interests of the Conservative Party rather than the interests of the British people, who have suffered over a decade of austerity. The past year has shown us how woefully unprepared public services in the UK were to deal with the onslaught of the pandemic. If you keep taking and not putting back, eventually the edifice will crumble. This time last year, when Covid hit us with such force, it found a weakened UK in every corner of its public services.

So what would Labour do in order to bring about fairness in distributing public funding? We support funding for every region and nation, but it is crucial that it is done transparently, fairly and with a say for local communities. This fund fails on all those counts. All regions and nations should get their fair share of investment. This fund pits regions and nations against each other for crucial funding, and hands money to wealthy areas held by Cabinet Ministers ahead of those in greater need. We need to be pushing power down to spread prosperity, but the fund puts control in the hands of Ministers in Whitehall instead of local communities.

This piecemeal funding does not make up for failure over the past decade, which has seen services decimated as £15 billion of cuts have been made to local government. Under the fund our regions will be getting less than they did before the crisis and, unlike before, they will have to fight against each other for every penny of investment. We should have transparent funding metrics in place and leave every part of this country a good place to grow up and grow old in.

The Government's failure to invest for the past decade has meant that the UK has had the worst crisis of any major economy. The Government now need to secure our jobs, support our high streets and strengthen our communities through investment that truly delivers the aspirations of people in every region. If the Government care about levelling up, why have they not come forward with a plan to fix social care, which in some areas of the country is close to collapse?

Does the Chancellor's approach to prioritising funding for the levelling-up fund not show that, if you vote Conservative, your money will go to wealthy areas? How can this Government claim to fix regional imbalances when the fund pits regions and nations against each other? What assessment have they made of reports that Cornwall Council will take the Government to court over the decision not to prioritise its area? Does the Minister expect further court cases?

What about the positions in the nations? The fund bypasses the devolution settlement by directly allocating funding for regional and local development in Wales, directly counter to the expressed position of the Senedd and directly contrary to what was announced at the 25 November spending review, when the Chancellor said the £4 billion commitment in England

"will attract up to £0.8 billion"

in funding

"for Scotland, Wales and Northern Ireland in the usual way."

This is the UK Government taking funding that would previously have been allocated to Wales to spend in line with the priorities that the Senedd—elected by the people of Wales—has identified. Decisions are to be made by Whitehall departments with no history of delivering projects in Wales, no record of working with communities in Wales and no understanding of the priorities of those communities. In practice, this means that the UK Government will be taking decisions on devolved matters in Wales without being answerable to the Senedd.

The Governments in Wales, Scotland and Northern Ireland now face the prospect of a centralised, Whitehall-led approach instead of a regional and nation-focused approach. The UK Government are going out of their way to take money away from the nations and pick a needless constitutional battle to weaken devolved powers in the middle of a global pandemic. Their fixation with undermining democratic devolution is driving a cynical attempt at rebranding existing spending as new and rolling back progress on a model of national and regional development by democratically elected Governments and councils across the United Kingdom. They are indeed levelling down.

Baroness Pinnock (LD) [V]: My Lords, I draw the attention of the House to my relevant interests as a vice-president of the Local Government Association and a member of Kirklees Council. I read the Statement on levelling up with great interest. My own area of West Yorkshire includes towns and cities that, by any fair measure, will qualify for focused help to support their residents. I am therefore particularly keen to understand what it is all about.

"Levelling up" is a rather nebulous phrase. I want to understand precisely what it means and, more importantly, what is hoped to be achieved by it. Perhaps the Minister can help, as I have not been able to find anywhere either a definition or an explanation of how improvements will be measured. Can the Minister please provide a definition of levelling up and the metrics that will be used to determine whether the funding allocated has been a success? I appreciate that sharing metrics data orally is not easy, so will the Minister provide that information and make it available to all colleagues through the House of Lords Library?

The tools that the Government are proposing and which are outlined in this Statement are resonant of previous attempts to improve the lives of parts of our country that do not enjoy the same level of well-being as the more affluent one. Previous Governments have used similar funding packages. There was City Challenge, the Single Regeneration Budget and then SRB2. This was followed by investments through the regional development agencies. The common feature was infra-structure investment, although some aspects of SRB

had elements of support for jobs and skills. Will the Minister provide the data that demonstrates that the areas that benefited from the funding packages I just listed have prospered as a result—or, better still, data that explains the reasons why some of the same places are still suffering from multiple deprivations? I can name them if the Minister is not sure which places they are. I ask these questions because the Government are in danger of repeating some of the less successful aspects of past attempts at regeneration. They need to explain whether providing shiny new roads and revamped town centres is the way to improve lives and level up.

The Covid pandemic has shone a bright light on the areas of our country that suffer from considerable deprivation. There is a strong link between deaths from Covid and living in deprived parts of our country. Can the Minister explain why some of these areas will not benefit from any of the funding packages outlined in the Statement? Are these places just going to be ignored? What plans do the Government have for providing support for them? Does the Minister agree that reviving local government by enabling local authorities to provide self-help may well be the best way forward? Of course, that depends on adequately funding local government and devolving to councils the right to bring in local knowledge and talent to take responsibility for making the towns that they represent proud places once again. Does the Minister agree?

What we do know is that people who live in areas of multiple deprivation have lives that are literally limited. They die younger; they live in poor-quality housing; their access to healthcare, training and well-paid jobs is limited. Does the Minister, with his wealth of local government experience, agree with this? If he does, can he also explain the reason for these measures not being the main ones used to determine which places will benefit from the funding packages outlined in the Statement?

This brings me to the selection of the places that are due to benefit from those funding packages. Of course, metrics can be carefully selected to ensure that the towns that the Government wish to benefit from additional funding come out top of the pile. That is clearly what has happened in these instances. Using the metric of distance to travel to work will target those places that are of a more rural nature. If that is the aim, the Government should be honest about it and focus on improving public transport in rural areas. If the heart of so-called levelling up is providing focused support to places suffering from multiple deprivations, the Government should use the metrics that enable that to happen. If they do not, they are being hypocritical and make those of us looking on regard what they are doing with some cynicism.

Much of the content of this Statement is of packages that are being announced as new yet again. The miserable levels of funding to mayoral combined authorities of £30 million or so a year in areas that serve, say, 2 million people, is just another example of re-announcing old packages of funding. The support for the well-to-do areas that can raise £250,000 as matched funding to buy and run a community asset has been re-announced. These packages are not new and not aimed at poorer parts of our country.

I want those post-industrial towns that have experienced considerable decline—economically and socially—to benefit from long-term and sustained support that will revive their communities, improve the health and well-being of their residents, enable training and skills that lead to well-paid jobs, and bring hope for the future. Unfortunately, the package of funding announced does none of that. I look forward to answers to my questions when the Minister replies.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, the Front-Bench speakers have taken most of the 20 minutes allowable, but I can confirm that the Minister has plenty of time to reply and that the Bank-Benchers will still get their 20 minutes.

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): My Lords, I point out that, in order to assess the efficacy of something like the levelling-up fund, we need to recognise the overall policy objective, which is to deal with the long-standing variation in economic performance between different areas and within areas.

The Government have set out their approach to the wider levelling-up agenda through a number of critical documents, such as the *National Infrastructure Strategy*, which focuses on energy, digital and transport, and the recent spending review, which announced £27 billion for those areas. There is also *Build Back Better: Our Plan for Growth*, published by Her Majesty's Treasury, and the capital spending plan, which will be £100 billion—£30 billion more than in 2019-20. So, the overall package of funding around capital and infrastructure projects is at unprecedented levels.

The approach to levelling up needs to be seen as a package of measures. The levelling-up fund is more capital-focused and follows on from the £3.6 billion towns fund, while the community renewal fund—the precursor to the UK shared prosperity fund—is more revenue-focused. Alongside that, we have the increasing devolution of funding, which amounts to around £7.49 billion over 30 years for the nine currently agreed devolution deals.

The approach to the levelling-up fund has focused on making it very clear how we allocate funding. The index and the methodology used to develop it have been published. It focuses on areas that need economic recovery and growth, improved transport connectivity and regeneration. I am absolutely clear that Ministers did not see a list of specific places before agreeing the metrics; no changes to the index's weightings or metrics were made as a result of Ministers having sight of the list of places.

We are also clear that this needs to be seen as a package of measures and that the levelling-up fund focuses on productivity, unemployment, skills and transport. Richmond scored low on productivity, which is one of the reasons why it is a category 1 area. Newark, which was also mentioned, scored "average to low" on productivity, skills and the unemployment rate. The approach we have taken has yielded those areas that are highest on the index. However, I repeat: all areas, in all categories, can apply to the fund and should be encouraged to do so.

[Lord Greenhalgh]

With regard to the devolved Administrations, let me make it absolutely clear that we are seeking advice from them as part of this fund, and they will be consulted at the shortlisting stage. At least £800 million is being set aside for the devolved nations. On regions such as the north and north-west, a significant amount of funding, beyond the levelling-up fund, has been committed to the north to help level up, such as the £319.7 million from the Getting Building Fund. I point out that the UK infrastructure bank will be headquartered in Leeds and will play a key role in the levelling-up agenda.

The Deputy Speaker (Baroness Garden of Frognal) (LD): We now come to the 20 minutes allocated for Back-Bench questions. I ask that questions and answers be brief so that I can call the maximum number of speakers.

1.23 pm

Lord Young of Cookham (Con): My Lords, I welcome the Government's commitment to levelling up those parts of the country that, by general consent, have been left behind. I also welcome the very substantial sums of money that the Minister has just referred to. Further to the question of the noble Baroness, Lady Pinnock, when the Minister in another place was asked how we would know whether levelling up was achieving its objectives, he basically said that the next general election would provide the answer. Are the Government working on a measurement, or system of measurements, that would enable us to measure value for money for the levelling-up agenda in the meantime?

Lord Greenhalgh (Con): I reassure my noble friend that the Government have established a series of provisional priority outcomes and metrics, which has been published as part of the spending review. Table 2H is a particular example of an outcome that will help to measure the success of the fund.

Lord Singh of Wimbledon (CB) [V]: My Lords, the Statement rightly recognises the disparities in wealth and earning opportunities across the country, and it contains some imaginative funding initiatives. What is missing is any quantification of existing disparities and any targets to measure the success of the levelling-up programme. One way of doing this is to state what would constitute success or failure. Does the Minister agree that the initiative will have failed if there is no visible diminution in the need for food banks or in the number of homeless on our streets?

Lord Greenhalgh (Con): We can be very clear that the objective of levelling up is to deal with all the issues the noble Lord raises. The metrics are clear: for instance, the performance metric that I mentioned in my previous answer concerns the

"Economic performance of all functional economic areas relative to their trend growth rates".

Baroness Grender (LD): My Lords, in answer to Clive Betts on Tuesday, the Minister, Eddie Hughes, clearly stated that the way of measuring the success of this programme will be at a general election. Is it the intention to circulate table 2H, as previously mentioned? What is the open, accessible way that the electorate will be enabled to judge whether this programme is a success—or, indeed, not a success, as some of us suspect may well be the case?

Lord Greenhalgh (Con): My Lords, I refer to my previous answer: there is a series of provisional outcomes and metrics. I just pointed to table 2H as an example of one that affects my department. Those metrics are then captured by departments in their outcome delivery plans.

Baroness Pidding (Con) [V]: My Lords, at the last election, people voted Conservative, some for the first time, because they believed in levelling up and our vision of spreading prosperity to areas neglected by Labour. Does my noble friend agree that, by ensuring that every part of the country can bid for, and benefit from, the levelling-up fund, we are accelerating our transformational levelling-up agenda?

Lord Greenhalgh (Con): My noble friend is right that the levelling-up fund will operate right across the United Kingdom. It will invest in infrastructure and improve everyday life across the United Kingdom by regenerating town centres and high streets, upgrading local transport and investing in cultural and heritage assets.

Lord Bird (CB): We know that a commonality among people who suffer poverty is, on most occasions, that they did not do very well at school. This leads to a low-wage economy, low-wage health and low social mobility and opportunity. We are talking about poverty —it is the only reason you would talk about levelling up. If are going to level up and to address poverty, then is this not the chance we have to take to excel with our schools and to put an enormous amount of investment into our children and the children of the next generation?

Lord Greenhalgh (Con): My Lords, I completely agree that education is very much the engine of social mobility and addresses the points that were raised. We need to judge our levelling-up agenda against a package of measures that could also support skills development through things such as the new community renewal fund and the UK shared prosperity fund.

Lord Farmer (Con): My Lords, can the Minister confirm whether the levelling-up fund will accept bids containing social infrastructure elements such as funding to transform family support into a family hubs model? Transformation typically requires revenue funding to redeploy senior staff and backfill their roles, the development of missing services et cetera, as well as capital funding to refurbish buildings. Is this fund open to both capital and revenue funding bids?

Lord Greenhalgh (Con): My Lords, local government does tend to separate capital and revenue, and the UK levelling-up fund will have more of a capital focus. However, this could include community spaces important to local areas that support the family policies that my noble friend has raised.

Lord Wallace of Saltaire (LD) [V]: My Lords, the Minister will be aware that England is the most centralised democratic country, and that the greater the centralisation that a country has, the greater the regional inequality. Here we have competitive funding decided by Ministers in London as the answer to devolution. Can the Minister tell us what he understands by the word "devolution"? Can you have devolution without transferring real power and long-term finance to local and regional governments?

Lord Greenhalgh (Con): My Lords, I fear that this is a mixing up of issues. We need to see that the levelling-up agenda is around the duty of a national Government helping to level up all areas of the United Kingdom, while devolution of funding is also occurring, as I have already mentioned.

Lord Haselhurst (Con) [V]: My Lords, while I warmly support the Government's levelling-up plans, would my noble friend acknowledge that, regardless of their geographical location, perceived prosperity or supposed political affinity, too many parts of the country are still unreached by digital connectivity and superfast broadband? They would appreciate their own bit of levelling up in this increasingly important respect.

Lord Greenhalgh (Con): My Lords, the Government recognise the need to deal with the wider issues around the levelling-up agenda. I have pointed to the national infrastructure strategy, which is putting some £27 billion towards issues such as the zero-carbon agenda, transport infrastructure and, importantly, digital connectivity and infrastructure.

Lord Taylor of Goss Moor (LD) [V]: My Lords, Cornwall is in complete shock. Until last year, we were regarded as one of the poorest places in the whole country, with incomes 25% below the national average and 17 areas in the bottom 10% of the index of multiple deprivation. Miraculously, in the new index, we appear to be as rich as Bath, which is in the top 25% in the UK. Can the Minister explain how this algorithm can possibly be correct, or is this not actually, quite clearly, an error as poor as the algorithms used for last year's exams?

Lord Greenhalgh (Con): I have attempted to explain several times that, as opposed to the index of multiple deprivation, the metrics of the levelling-up fund focus on productivity, unemployment, skills and transport. Its approach is to improve, in particular, transport infrastructure and other capital projects, as opposed to general deprivation levels.

Lord Lancaster of Kimbolton (Con): My Lords, I am sure that the whole House supports the Government's agenda in what it is seeking to do with levelling up. I confess that I am always slightly nervous of the habit of successive Governments of judging success by financial input. My noble friend has already mentioned that there will be an ongoing assessment of these projects. Can he reassure me that, should that ongoing assessment demonstrate that the projects are not delivering a return for the taxpayer, they will be stopped and the money reallocated?

Lord Greenhalgh (Con): My Lords, I can give that assurance that, as we go through the rounds, we will make assessments and judge on outcomes. That is why it is terribly important to have an outcomes framework, as has been published, and that we continue to see progress against those metrics identified in that framework.

Baroness Stuart of Edgbaston (Non-Afl) [V]: My Lords, the levelling-up fund was a bit West Midlands-light, but there is still time for this to be remedied. When the Minister looks at success and repeats that the framework is about productivity, skills, transport and unemployment, I urge him to pay particular attention to the 50% of young people who do not go to university. If we do not deliver for them, whatever other levelling up we are doing, we will have failed.

Lord Greenhalgh (Con): My Lords, I point out that this fund is available to all authorities, including those in the West Midlands. Those not in category 1 should apply. All bids will be judged on their deliverability, strategic fit and value for money. I am sure that there will be opportunities for the West Midlands Combined Authority to be one of those who will be a beneficiary of the fund.

Lord Oates (LD) [V]: My Lords, does the Minister agree that, while we are levelling up, we also have an important opportunity to advance the UK's green objectives? In that context, will the Government ensure that the bid criteria are designed to encourage bids that would help increase biodiversity and tackle climate change?

Lord Greenhalgh (Con): My Lords, I have been clear that the focus of this fund is to prioritise those areas where there is a need for economic recovery, transport connectivity and regeneration. I am sure that this will be done in the most environmentally friendly way possible.

Baroness Warsi (Con) [V]: My Lords, I welcome the Statement and the Government's levelling-up agenda. Levelling up is about ensuring that we strip away the barriers stopping people and places from achieving their full potential. As evidenced in numerous reports—some commissioned by the Government—race has, sadly, been a de-leveller for many in our country. Does racial equality inform the Government's levelling-up agenda and, if so, how?

Lord Greenhalgh (Con): My Lords, in order for there to be a reduction in economic disparity, of course that needs to touch on the issues that my noble friend raises. The proof of the pudding will be that we see those left-behind areas with large minority communities level up with those areas that are economically more successful.

Lord Inglewood (Non-Afl) [V]: My Lords, as chairman of the Cumbria Local Enterprise Partnership, I welcome these levelling-up initiatives. As the Minister has pointed out, levelling up is not simply a northern or an urban challenge. As has been pointed out, the headings of expenditure described in the Statement are a mere drop in the ocean of what is needed nationally, but

[Lord Inglewood]
they are a start. Can the Minister tell the House how, and in what specific ways, public expenditure and policy will be recalibrated to take this levelling-up agenda forward, at the same time ensuring that this is not done at the expense of global competitiveness?

Lord Greenhalgh (Con): My Lords, I do not see the levelling-up agenda as being anything other than helping us to be more economically competitive at a global level. I am sure that there will be opportunities to refine the outcomes frameworks and the metrics used to ensure that we are successful in our desire to raise all boats.

Lord Scriven (LD) [V]: My Lords, can the Minister explain why the time to travel to work in a car, such as a Bentley or a BMW, is a weighted factor worth nearly 20% of all weighting to steer funding for levelling up economic recovery, growth and regeneration of an area?

Lord Greenhalgh (Con): My Lords, I do not think that it is entirely fair to categorise an area with poor transport infrastructure by reference to the speed and distance travelled in a Bentley. The focus of this fund is to deal with the challenges that we have around the need for greater connectivity, and it is those projects that will be funded.

Lord Lucas (Con) [V]: My Lords, I congratulate the Government on the superb structuring of this fund: the insistence on collaboration; the way in which councils and MPs are involved; and, in particular, the seeking of support from civil society in all its forms. In the context of Eastbourne, this has produced a ferment of ideas and enthusiasm which will do us a great deal of good going into the future. But as a seaside town whose income has been wiped out by Covid and which is staying solvent only by the grace of my noble friend's department, how are we allowed to fund our 10% share of the bid that is asked for? If we bid now for phase 1 of our regeneration, can we include 5% or so of our bid to finance the feasibility study for phase 2? For that, we ought to have widespread public consultation and consideration of alternatives to give our larger plans a firm base, but in our current financial state we do not have the revenue out of which to take that funding.

Lord Greenhalgh (Con): My Lords, I know that my noble friend will be delighted that Eastbourne is within category 1 in terms of being prioritised within the index of places. That means that Eastbourne and its council can draw on support, where there is an absence of capacity or perhaps not enough funding available, of up to £125,000 for the preparation of the bid. I point out that councils are merely encouraged to put some of their own resources towards the bid funding; it is not necessarily a prerequisite. In the case of Eastbourne, the Government are providing that funding to make sure that there is the best possible opportunity for the council to be successful in its bid for the fund.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, all supplementary questions have been asked and answered. Congratulations to the Minister and congratulations to the Back-Benchers.

Public Health (Coronavirus) (Protection from Eviction) (England) (No. 2) Regulations 2021

Motion to Approve

1.40 pm

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

That the Regulations laid before the House on 19 February be approved.

Relevant document: 47th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, the instrument before us prevents enforcement agents—bailiffs—attending residential premises in England to execute a writ or warrant of possession, except in the most serious circumstances. The House will be familiar with the structure and content of the instrument. Although I will deal with the content of the instrument in due course, I want to begin with its duration, because that matter was raised by several noble Lords in the debate we had on 2 February about this SI's predecessor.

This instrument applies to enforcement action in England and will be in force until 31 March this year. It extends restrictions on the enforcement of evictions that have been in place since mid-November. The current SI expires on 22 February. On 2 February, when we debated the previous statutory instrument, a number of noble Lords raised concerns that the ban was not in place for long enough and that both landlords and tenants would benefit from greater clarity about how long the restrictions would be in force. We have had to balance that need for clarity against an ongoing and changing pandemic, but we have listened to the views expressed by noble Lords. On 10 March, the Government announced that we intend to extend these protections until 31 May, and we will lay legislation to do so shortly. So although the formal position is that this SI takes us up to 31 March, the legislation we will bring forward, as we have already announced, will give people clarity and assurance until 31 May.

That 31 May date is broadly in line with the roadmap out of lockdown. Noble Lords will need no reminding from me that step 3 of the roadmap will be taken no earlier than 17 May, following a review of the data as it appears at the time. Step 3 sees a number of restrictions lifted, including the ban on domestic overnight stays, which is relevant in this context. Noble Lords might ask why the proposed date is 31 May and not linked to step 4, which is scheduled for no earlier than 21 June. The short answer is that we have to remember, when looking at 31 May, that in most cases, bailiffs are now required to give 14 days' notice of an eviction. In practice, protection from enforcement of evictions will be afforded, in most cases, until mid-June. We believe that that strikes the right balance in the circumstances.

The substantive provisions of the instrument are the same as in the one we debated on 2 February, apart from the duration, which I have already addressed. As I set out on 2 February, the Government have put in

place unprecedented financial support to protect renters directly through measures such as these regulations and increasing the local housing allowance rate to the 30th percentile of local market rates in each area. We have made £180 million available to local authorities in discretionary housing payments. Of course, there is also the furlough scheme, support for the self-employed and bounceback loans.

While I will not go through the detail of that again, let me highlight two provisions in the Budget that are relevant in this context. First, as noble Lords will be aware, the furlough scheme was extended until the end of September. Secondly, the support for the self-employed was extended in scope—600,000 people who were not previously entitled are now entitled—and duration, to the end of September. We continue to provide limited exemptions from the ban on enforcement. They are, as previously set out, broadly as follows: where the claim is against trespassers who are persons unknown; where the order for possession was made wholly or partly on the grounds of antisocial behaviour, nuisance, false statements, domestic abuse in social tenancies or substantial rent arrears equivalent to six months' rent; and where the order for possession was made wholly or partly on the grounds of the death of the tenant, and the enforcement agent is satisfied that the property is unoccupied. Those exemptions are applied by the court on a case-by-case basis.

The critical point is that given that broad sweep of financial support, we consider it unlikely that a full six months of arrears would have accumulated solely because of the effects of Covid-19. Rather, where that exemption applies, it will likely involve significant levels of rent arrears that predate the pandemic, where landlords may now have been waiting for over a year without rent being paid.

In addition, where the court applies an exemption, bailiffs have to give tenants at least 14 days' notice of an eviction in most circumstances and have been asked not to enforce evictions where a tenant has symptoms of Covid-19 or is self-isolating. In addition, we have introduced a requirement in the Coronavirus Act that landlords in all but the most serious circumstances must provide tenants with six months' notice before beginning formal possession proceedings in court.

Previously, in Section 21 cases, two months' notice was needed, and other grounds required as little as two weeks' notice. The requirement for longer notice was to apply until 31 March, but the Housing Minister laid an SI last week to extend that period also to 31 May. Extending the notice period obviously gives additional protection to tenants. Taking this in the round, that requirement to provide six months' notice in the majority of cases means that most renters now served notice by a landlord can stay in their homes until September 2021. Our statistics show that the number of possession cases has fallen significantly. In the last quarter of 2020, they were down 67% compared to the same quarter the previous year.

In the limited time I have, I want to take a moment to express my gratitude to the Civil Procedure Rule Committee for addressing the challenges the coronavirus pandemic has caused the justice system and for the considerable work done at some pace by both that committee and the working party under the chairmanship of Sir Robin Knowles. Since I mentioned the judiciary, I extend my respectful welcome to the noble and learned Lord, Lord Etherton, a former chancellor of the High Court and, more recently, Master of the Rolls. Like all noble Lords, I look forward to his maiden speech later in this debate.

So far as the courts are concerned, temporary arrangements remain in place to ensure appropriate support. We have introduced new review stages and a requirement that cases have to be reactivated, and we are piloting a new, free mediation service until August this year. We are conscious that we also have to think about landlords. We consider that the best way to protect landlords is to provide the financial help we have been providing to help renters pay their rent. We are grateful to landlords for their forbearance during this unprecedented time, and we encourage all renters not only to pay their rent but to have an early conversation with their landlord if they are in difficulties.

This instrument provides tenants with protection from eviction up to 31 March. We have announced that we will bring forward legislation to extend that to 31 May. We are trying to strike an appropriate balance during an unprecedented public health crisis to avoid placing additional burdens on the NHS and local authorities. For those reasons, I commend these regulations to the House.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, I should have added that there is time in this debate for the maiden speaker to have a whole extra minute and the welcomer a whole extra 90 seconds if they wish to be so indulgent.

1.49 pm

Lord Hain (Lab) [V]: My Lords, I thank the noble Lord, Lord Wolfson of Tredegar, Nye Bevan's home village, for his cogent, clear summary of this extension of the ban on bailiff-enforced evictions in England during the Covid-19 pandemic. I look forward to the maiden speech of the noble and learned Lord, Lord Etherton.

The regulations are welcome, but I am afraid that other Covid-19 regulations have morphed to create police state-type restrictions on legitimate, peaceful protests. The police's dreadful handling of Saturday night's Sarah Everard Clapham Common vigil was because of the Government's coronavirus regulations, argued Assistant Commissioner Helen Ball. Of course, social distancing must be maintained, including in public protests, though it is worth noting that last year's Black Lives Matter protests in some 300 US cities did not cause a spike in cases, according to the US's National Bureau of Economic Research, partly because the outdoor air helped dispel any threat of the virus.

Protest is the lifeblood of a healthy democracy. Everyone should have the right to stand up to those in power and make their voices heard. Coronavirus-safe, socially distanced, peaceful demonstrations, with participants wearing masks, are perfectly feasible, and the police should have a duty to facilitate, not to block, them. It is a real indictment of the Government's harsh curbs on protest in other regulations that the

[LORD HAIN]
organisers of the Sarah Everard vigil last Saturday, who engaged openly in negotiations with the police, were unable to proceed with the peaceful, socially distanced vigil they intended. Tragically, coronavirus has precipitated a fundamental erosion of the right to protest in Britain, and I hope the Minister will respond to that point.

1.51 pm

Lord Shipley (LD) [V]: My Lords, I too very much look forward to hearing the maiden speech of the noble and learned Lord, Lord Etherton, this afternoon.

A further extension to the ban on bailiff enforcement is right, given the long duration of the pandemic, but the previous debate on private rented sector evictions was only a few weeks ago, which makes me ask why the Government keep coming back with short extensions. It would be better to draw up a policy now for addressing the underlying crisis, which is not going to go away, which is the huge level of debt of many tenants who will continue to be dependent on the private rented sector. At its heart, this is an issue of low incomes and job insecurity caused by the pandemic. So, are the Government going to keep their promise, made by the Secretary of State, Robert Jenrick, a year ago, that

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

Why are tenants with more than six months' rent arrears not covered by the ban on eviction, when the pandemic has now lasted for just over a year? The Government should increase the budget for discretionary housing payments and local housing allowance and reassess the housing benefit cap. There is then a need for a Covid rent debt fund—a level of £300 million has been suggested—to compensate landlords, as proposed by both the National Residential Landlords Association and Generation Rent. The problem is that without this policy change, debt levels will continue to rise. The Government should look at the subsidies they give for owner occupation and compare those to the subsidies they give to the rented sectors. There is an imbalance which the Government will have to address.

1.53 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, it is a great pleasure to follow the noble Lord, Lord Shipley, who always has something of value to say—indeed, I agree with much of what he said today. I thank my noble friend Lord Wolfson of Tredegar for setting out these regulations. I declare my interests as set out in the register. Like other noble Lords, I look forward very much to the maiden speech of the noble and learned Lord, Lord Etherton, a fellow member of Gray's Inn.

These regulations are familiar; they repeat earlier, similar restrictions. I predicted last time that we would be here again—no great insight, I admit. It is clear that we will be here again. I asked last time why we could not look at this on a longer timeframe; the problem will not disappear. Of course, I do not oppose the regulations, but the Explanatory Memorandum states, somewhat misleadingly:

"This is a temporary measure lasting less than 12 months".

Well, yes and no, Minister. It keeps being renewed in very similar terms and, as I say, I am sure we will be here again. When will the Government look at a medium to long-term solution for tenants who cannot pay and landlords who are not being paid? We are kicking the can down the road; the debt remains. These regulations do not stop the debt accruing. The tenant still owes the money; the landlord has still not been paid. The tenant is developing a poor credit rating and their ability to re-enter the housing market will be shot. As I say, I do not oppose the regulations, but they do not provide a long-term solution. The Government need to consider something along the lines of tenant hardship loans or grants. Sooner or later, this problem will need dealing with. I suggest that it should be sooner.

1.55 pm

Lord Etherton (CB) (Maiden Speech): My Lords, it is a great honour to make my maiden speech in this debate and I thank the Minister and other noble Lords for their warm welcome today. That I am in position to make my maiden speech today is due to the support and kindness of many people. Time constraints mean that I can mention only a few by name. I thank, in particular, my supporters, the noble and learned Lord, Lord Woolf, and the noble and learned Baroness, Lady Hallett; the Lord Convenor and his private secretary, Kate Long, and executive assistant, Daisy Christy; the noble and learned Lord, Lord Thomas of Cwmgiedd, and Donna Davidson. My thanks go also to the Clerk of the Parliaments, Black Rod and all the staff who have been so helpful to me.

I do not wish to comment directly on the merits of the statutory instrument, as that might be considered to be raising a controversial issue, but as Master of the Rolls and Head of Civil Justice until the beginning of this year, I would like briefly to remind the House of what the judges were doing in relation to residential possession proceedings from the first lockdown in March last year. In that month, I issued a direction requiring a stay of possession proceedings for 90 days. The object was initially to consider how possession actions could proceed appropriately in the pandemic and the lockdown. There were extensions of the stay until September 2020, the final one to enable the courts to consider, once the stay ended, how best to determine the anticipated thousands of residential possession actions that had to be heard. I asked Mr Justice Knowles to chair a unique cross-sector working group to advise on new court procedures in light of the extraordinary conditions. It advised me on a new procedural framework which would, in particular, support vulnerable tenants in the litigation process and encourage compromise and restraint on the part of social landlords, in particular.

Following the ending of the procedural stay, the Government in November 2020 secured the implementation of the first of their three successive statutory instruments restricting the carrying out of evictions by bailiffs. I pay tribute to those judges, overwhelmingly district judges and deputy district judges in the county courts, effectively the civil justice front line, and the members of Sir Robin Knowles's working group, who have worked and continue to work so hard in seeking to make residential possession proceedings as appropriate as possible in the present, difficult circumstances.

1.58 pm

Lord Best (CB) [V]: My Lords, I am delighted to follow the noble and learned Lord, Lord Etherton, and congratulate him on an important maiden speech. As Master of the Rolls and Head of Civil Justice, he has been no stranger to controversy, and I suspect has many admirers among your Lordships for the line he has taken on several high-profile issues. In December, the Lord Chief Justice's valedictory speech for the noble and learned Lord, Lord Etherton, noted that he had been a great champion of access to justice and of support for vulnerable people in the civil courts, not least during the months of the pandemic. We have heard his wise comments from that perspective today. In recounting the noble and learned Lord's treatment at the hands of the *Daily Mail* following the two famous Miller judgments, the Lord Chief Justice quoted JK Rowling's comment on that "Enemies of the People" article:

"If the worst they can say about you is you're an openly gay excellent Olympic fencer top judge, you've basically won at life."

We are indeed fortunate to have such a distinguished addition to your Lordships' House and hugely look forward to further contributions from the noble and learned Lord.

I declare my housing interests as on the register, and I want to address the underlying cause of the problems which these regulations seek to mitigate. The arrears and eviction situation resulting from the pandemic has shown up the fundamental fragility of the private rented sector. The PRS has doubled in size in less than 20 years to around 20% of our homes, with over 2 million landlords. Now many landlords, as well as tenants, are facing difficulties coping with the consequences of Covid-19. Meanwhile, the social housing sector—housing association and council housing—has halved in size, from some 32% to 17% of the nation's homes, yet the pandemic has underlined the need for this sector to provide far more decent, secure and affordable housing.

Does the Minister now see merit in last year's proposal from the Affordable Housing Commission—I declare my interest as its chair—for a national housing conversion fund, which would enable private landlords wishing to exit the market to sell to social housing landlords who are equipped to withstand financial difficulties and provide permanent homes that are affordable to those on modest incomes?

2.01 pm

Lord Cormack (Con): My Lords, I am delighted to follow the noble Lord, Lord Best, and to echo his tributes to the noble and learned Lord, Lord Etherton, for a very modest but model maiden speech. He even did it within the extended time limit. He will bring lustre to our Benches, as well as experience and expertise, and he is most welcome.

I also congratulate my noble friend the Minister for the clarity and precision with which he introduced this order. It was admirable and exemplary. I am sure he will understand, however, that I share a certain dissatisfaction with the way in which Parliament has been consistently marginalised when we have had to deal with coronavirus regulations. I fully understand the terrible problems under which the Government have had to operate, but Parliament must not be marginalised, and we have to do something about retrospective legislation. This order, introduced and laid a month ago and debated today, was due to expire in a fortnight—although I was glad to hear of the extension to 31 May.

I have a brief suggestion to make to your Lordships' House. I know that we cannot vote in Grand Committee. It is important that we have the facility to vote on these orders—even though I would never vote against this one or, indeed, most of the others—but I suggest that it would be a good idea, in the new Session of Parliament at the latest, to have a special Grand Committee for coronavirus regulations which can vote. Therefore, the regulations could be dealt with more expeditiously, and we would not have so much retrospective legislation which, I am sure, cannot commend itself to our new colleague, the noble and learned Lord, Lord Etherton.

2.03 pm

Baroness Tyler of Enfield (LD) [V]: My Lords, I refer to my interests in the register. While I welcome this short extension, it is only kicking the can down the road. As we have heard, private renters have been hit particularly hard by the pandemic. Research has found that twice as many private renters—who often have little or no savings—have suffered job losses compared with homeowners since coronavirus restrictions began.

As a Londoner, I note with real concern that one in seven London renters are in arrears, and women are twice as likely as men to have lost their job in the first lockdown. I am greatly concerned that women will be hardest hit by the end to the eviction ban. Before the pandemic, average rents took up 43% of women's median earnings, compared with 28% of men's, which reveals an invidious gender divide.

Simply suspending repossessions does nothing to address the underlying rent debt problem in the sector. It is vital that the Government develop an urgent financial package to help all those renters affected to pay off arrears, otherwise many tenants will have debts that are unsustainable, as we have heard. If they cannot pay them off, they will have to move home and face significant damage to their credit score, making it more difficult for them to access housing in the future.

The cost of rent debt is estimated to be around the £300 million mark, which is frankly relatively modest compared with the £1.6 billion that has been wiped off stamp duty for homeowners. Up to £3.8 million of funding was announced in the Budget to pilot no-interest loan schemes to help vulnerable consumers who will benefit from affordable short-term credit to meet unexpected costs, something I very much support. While we are still waiting to hear the details of this scheme, surely it would be possible for a scaled-up version of it to form the basis of a model for renters.

2.05 pm

Lord McCrea of Magherafelt and Cookstown (DUP) [V]: My Lords, evictions should be viewed as a last resort, only after all other avenues have been exhausted, and even more so at this time when the global pandemic is having a serious adverse impact on household incomes and employment.

[Lord McCrea of Magherafelt and Cookstown]

Affording sufficient breathing space to tenants who have found themselves in financial difficulties through no fault of their own during Covid-19 is, therefore, a constructive and compassionate gesture. This reflects separate measures taken across the UK to suspend insolvency proceedings and protect commercial tenants from eviction where their circumstances have been directly influenced by Covid-19.

It is appropriate that we encourage landlords not to issue any new notices to evict or quit at this time unless absolutely unavoidable. Collectively, landlords, tenants, local authorities and departments should be able to examine what steps can be taken, short of eviction, where a tenant is in arrears due to financial difficulties arising from Covid-19. Having that early, joined-up conversation can help to prevent situations escalating and chart a better way forward.

However, it is absolutely right for us to recognise that continuing enforcement of eviction or repossession will be entirely justified in some cases. This includes cases of anti-social behaviour and domestic abuse or where rent arrears are at such an advanced stage to pose a disproportionate burden on a landlord. The Government are right to highlight the need for practical discretions in these situations.

The pandemic will ultimately have a negative and long-lasting impact on jobs and prosperity right across the province, and therefore I believe that these regulations are appropriate.

2.07 pm

Baroness Greengross (CB) [V]: My Lords, I welcome and support this regulation, laid before the House on 19 February, which further extends the eviction ban during the Covid-19 restrictions. I do so, however, with some trepidation about the long-term implications of this crisis for renters and landlords in this country.

Figures from Generation Rent show that one in three private renters have lost income because of the Covid-19 pandemic, and half a million of these people are currently behind on rental payments. We know that increasing numbers of young people are in private rental accommodation, but so, too, are many older people—there are more than 750,000 private renters over 60 years of age in the UK. The extension of the current eviction ban through this regulation does not apply to tenants who are six months or more in arrears. We know that many of these people will be in dire financial situations or at a very high risk of becoming homeless.

At the start of the pandemic, the Government managed to house all the homeless people in London in temporary accommodation, meaning that, for the first time in decades, there was a significant reduction in the number of rough sleepers in the city. But more recently, the number of people sleeping on the city streets has increased again. Given the number of empty office buildings in the city—many of which may remain empty even after restrictions lift due to increased levels of remote working—we now need to look at how buildings can be repurposed to house the homeless. Also, how can we support businesses to facilitate this change where appropriate?

This is not an easy issue and the Government have done the right thing in stopping evictions at this time—but other measures are going to be needed to ensure that there is no explosion of rough sleeping and homelessness, once this eviction ban ends.

2.10 pm

Lord Lilley (Con): My Lords, I congratulate the noble and learned Lord, Lord Etherton, on a quality maiden speech, which has whetted our appetites for his future contributions.

It is a disgrace that the Government have consistently failed to give Parliament time to debate regulations such as these before they come into effect; it is a disgrace that Parliament has acquiesced in this; and it is a disgrace that both the Government and Parliament have agreed on measures to curtail freedoms way beyond those needed to tackle the pandemic and for which there is no scientific evidence. The ban on outlawed demonstrations, for example, lacks any evidential justification. Not one of the Black Lives Matter demonstrations throughout the world resulted in a detectable spread of infections. We saw at the weekend how such ill-thought-out legislation put the police in an intolerable dilemma.

The measures in these regulations are desirable and necessary, but the justification for stopping evictions is economic and social, not medical. It is to prevent the evictions of people who are unable to pay their rent because they have been prevented from working. Yet the legislation pretends that it is necessary to stop evictions simply to avoid the spread of the virus. That is palpable nonsense. Because of lockdown, we would have wanted to prevent evictions even if we had absolute certainty that they would not result in the spread of infections—just to prevent hardship.

I take it that the assertion by the Minister in the preamble to the legislation that it is necessary purely for medical reasons is to justify bringing this measure under the Public Health (Control of Disease) Act 1984. This provides further evidence that we should be operating under the Civil Contingencies Act, not under the control of disease Act. If we were, Parliament would have had far greater control of these matters and the measures would have been carried out on a cross-United Kingdom basis.

2.12 pm

Lord Greaves (LD): My Lords, these debates are interesting because I find myself agreeing so much with Members with whom I often do not agree, including the noble Lord, Lord Lilley. I agree with everything that he has just said. I also agree with the comments of the noble Lord, Lord Hain, regarding bans on protests. That does not relate to this particular statutory instrument but nevertheless needs to be stated. I also agree with the comments of my noble friends Lord Shipley and Lady Tyler, who said many of the things that I might have said.

My noble friend Lady Tyler said that this is kicking the can down the road. A better metaphor would be that it is shunting the issue further along the track—and the track is actually a siding, so sooner or later it will hit the buffers. When that happens, there will be a major problem.

The debt advice organisation StepChange says 150,000 private sector tenants are at risk of being evicted within 12 months. Then, of course, there are all the children, dependants and other members of those families. Do the Government have a figure on the number of people they think are seriously at risk of eviction when this particular truck finally hits the buffers and the Government stop shunting it down the track because there is no track left?

The Minister referred to the road map out of lockdown, but the question for so many of those people is: what is the road map out of debt? Many of them cannot see one at all.

2.14 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it is a pleasure to follow the noble Lord, Lord Greaves. His metaphor is tragically apt.

I join others in welcoming the noble and learned Lord, Lord Etherton, to the House. Given the Government's now regular practice of playing fast and loose with the law and destroying long-cherished freedoms, we certainly need the legal reinforcement.

We debate the details of this SI while facing an epidemic of homelessness. The noble Lord, Lord Shipley, has already detailed how the Government are breaking their promise of ensuring that no-one becomes homeless as a result of the Covid-19 pandemic. However, I want to look forward. The Minister referred to the support that the Government have supplied through furlough schemes and to the self-employed. However, millions have missed out on the latter and the former will come to an end, leaving many facing a deeply uncertain future, even while 80% of their salary has not been enough to keep many afloat.

A survey two months ago by the National Residential Landlords Association warned of a "rent debt crisis". Among renters, those aged between 18 and 24 are particularly likely to be in trouble, as are a significant number of the self-employed—unsurprisingly, given the gaping holes in the Government's support for that group. So I have a simple question for the Minister. Can he confirm that the Government are at least considering a fund to deliver grants to those who cannot, and will in no way be able to, pay rent arrears?

We have a huge problem with our housing sector, as noble Lord, Lord Best, outlined. Individual tenants are victims of a system that has treated houses primarily as financial assets, and which has privatised public assets at huge cost to the common good through right to buy. This is a problem caused by policies of successive Governments over decades. It requires government action to assist the victims and, in the longer term, a major shift in policy to stop treating homes as assets to be sweated for maximum profit.

2.16 pm

Lord Carrington (CB) [V]: My Lords, I declare my interests as set out in the register. I also congratulate the noble and learned Lord, Lord Etherton, on his thoughtful maiden speech.

Every coin has two sides but, in respect of this measure, one side has been ignored and the other not properly thought through. Clearly, private renters have been hard hit, but this measure ignores the likely build-up of arrears by renters, giving rise to eventual court cases and repossessions. This will result in serious damage to their credit score and ability to access housing. It also does not consider the position of those renters who can afford to pay but hide behind these measures and decide not to pay their landlords.

The National Residential Landlords Association, representing landlords who account for 20% of UK households, reports that 60% of its members have lost rental income. We are talking about a sector in which 94% of the properties are owned by individuals who, in the main, own only one property and regard it as their pension. This is not about the Cadogan or Grosvenor estates, and these landlords continue to have financial obligations regarding their properties. This is not healthy for either side, but to regard landlords as bankers to their tenants is totally inappropriate.

One solution to avoid that situation is for the Government to provide tenant hardship loans along the lines of the schemes in Scotland and Wales, supported by a range of bodies such as the charity StepChange, Citizens Advice and the Resolution Foundation. Loans would be interest free, government guaranteed and paid directly to the landlord, with repayment due as the affected tenant recovers. It would enable the orderly recovery of the renter and would protect his credit rating. The landlord would be able to continue to invest in his property and the courts would be free from a deluge of cases leading to hardship for all concerned.

2.19 pm

Lord Balfe (Con): I join in the congratulations to the noble and learned Lord, Lord Etherton. The more decent lawyers we have in this place to call the Government to account, the better.

The Explanatory Memorandum to this SI beggars belief. It states:

> "The purpose of this instrument is to protect public health and reduce the public health risks posed by",

Covid-19. This is a complete and utter nonsense. Perhaps I may mention that the point made by my noble friend Lord Cormack is very sound. We need a proper committee to look at these SIs before they come into force, not when they are almost at the date of expiry.

Most of all, we need to get back to normal. The way in which this House has functioned in the past year has, frankly, been sub-optimal—to put it mildly.

We are now asked to endorse this measure. It provides for limited occasions when people can go to court to get possession. However, what it does not say is that the whole court system is in chaos and meltdown, and it is almost impossible to get a date in a court. Can the Minister tell us what is being done to free up the courts for landlords?

There is a small amount in the budget—£3.8 million—and, we reckon, something like a hundred times that much is needed. How will that gap be covered? Finally, is this system being played by people who just do not want to pay their rent? Have the Government made any estimates, and if so, what are they?

2.21 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I congratulate the noble and learned Lord, Lord Etherton, on his maiden speech, and I thank the Minister for his explanation of these regulations.

[Baroness Ritchie of Downpatrick]

I believe that the Government should strengthen and extend the ban on evictions and repossessions until the restrictions are over; extend the mortgage holiday; raise the local housing allowance to cover median market rents; reform housing law to end automatic evictions through the courts; reduce the waiting period for mortgage interest payments support; make the £20 uplift to universal credit permanent and end the five-week wait; and suspend the benefits cap. That would help enormously the many people who are trying to exist in very difficult circumstances and facing eviction.

There is also a need to address the rent debt problem in the social housing sector, particularly for private renters. What steps will the Minister and his colleagues take to develop an urgent financial package to help all those affected renters pay off arrears built up since the pandemic began? We have to be able to assist people and not encourage the perpetuation of debt, which is detrimental to them later. If this does not happen there is a concern that many tenants will have debts that are unsustainable for themselves, their families and their children—and for the landlords.

2.25 pm

Lord Bilimoria (CB) [V]: My Lords, it is so good to see my university friend the noble Lord, Lord Wolfson of Tredegar, at the Dispatch Box. I also congratulate my noble and learned friend Lord Etherton.

When these regulations were debated before, in February, it was the noble Lord, Lord Kennedy of Southwark, I think, who pointed out that Citizens Advice had estimated that close to 500,000 renters were in arrears and at risk of Covid-19-related eviction. Already, more than 174,000 private tenants have been threatened with eviction by their landlords or letting agents. Even at the start of the pandemic, a year ago, two-thirds of private tenants had no savings, and 45% of private renters have lost income since March.

The Government are right to say that nobody will lose their home because of coronavirus. We understand that the majority of residential evictions are on hold until 31 May. It is right to continue supporting renters with the cost of living and to align ourselves with the timelines of the Prime Minister's road map, particularly as tenants may continue to be on furlough, or working in sectors that cannot reopen, for some weeks yet. With around 49% of hospitality workers and 36% of retail workers currently renting, the new measures will protect jobs as businesses reopen and many more renters can return to work. The hospitality industry has been decimated over the past year.

Landlords may be asking how, in some cases, the growing rental debt will be managed after the protection ends. The issue cannot be addressed if the parties fall out with each other the moment the protection ends. Does the Minister agree that the Government should seek to avoid a cliff-edge in June for residents and landlords, and, where possible, help them to work together to secure fair tenancy agreements as we move forward? That should be the priority.

Does the Minister also agree that the Government have promised mediation support for resolving disputes, and that that must be available to all who need it? We could reduce a heavy caseload for mediation if the Government published guidance for tenants and landlords. It would help negotiations to be conducted fairly and transparently and in good time, ahead of the end of May deadline.

As President of the CBI I know that the Government have provided huge support—£400 billion over the past year—and that in the Budget two weeks ago the Chancellor rightly extended that support into the summer, with measures that included extending the furlough, business rates relief and a reduction in VAT to 5%. This will give businesses the chance to bounce back and emerge from the pandemic. It will save jobs and businesses.

2.26 pm

Baroness Altmann (Con): My Lords, I thank my noble friend Lord Wolfson of Tredegar for introducing this SI so clearly. I also express my appreciation for the Government's efforts to strike the difficult but important balance between the essential need to protect tenants during this pandemic, when many may have lost jobs and businesses, and enabling property-owners to exercise their rights to the properties that they own. An individual has a legitimate expectation of being able to protect their rights and income, with many pensioners, for example, having relied on a property, such as a buy-to-let, to support their retirement. I declare my interests as set out in the register.

I congratulate the noble and learned Lord, Lord Etherton, on his masterful maiden speech. I am also pleased to welcome exemptions to this ban for squatters, anti-social or abusive tenants, and those with severe rent arrears. Will the Minister, however, consider another exemption: one for the rising number of landlords who need to move into their own home, which they had rented out before 2019? They may have lost an overseas job, or need to move near to loved ones, and are unable to move into their house or apartment.

It is, of course, important to help tenants pay their rent, and tenants need to feel secure during their tenancies. The help available, however, is perhaps in need of improvement, given that these measures are going on for much longer than had previously been expected. The National Residential Landlords Association and Generation Rent are calling for more support. Landlords have worked hard to help tenants wherever possible. Can my noble friend comment on the mediation pilot that is in progress for possession cases, which seeks to achieve compromise rather than court proceedings? That could be a very welcome step, given the situation in the courts.

2.28 pm

Lord Bhatia (Non-Afl) [V]: My Lords, this SI has been prepared by the Ministry of Justice with the purpose of protecting public health in England and reducing the risks posed by the spread of the severe acute respiratory syndrome that causes Covid-19. This instrument prevents the enforcement of evictions, including the serving of notices of eviction, against residential tenants, other than in the most serious circumstances, until 31 March 2021.

By restricting the enforcement of evictions at a time when pressure on public services is acute and the risk of virus transmission is very high, this measure will

help control the spread of infection, prevent any additional burden falling on the NHS and avoid overburdening local authorities in their work of providing housing support and protecting public health.

This instrument was made on 17 February 2021 and came into force on 22 February, at the same time as the previous regulations expired. Having been made under the emergency procedure, it will automatically cease to have effect at the end of 28 days, beginning with the day on which it was made, unless during that period it is renewed by a resolution of each House of Parliament. It applies only to England. It is a temporary measure that lasts less than 12 months, and because it is a part of the Government's coronavirus emergency response, requirements for a formal regulatory impact assessment do not apply.

I believe that this is a good and proper instrument and will protect not only tenants and local authorities but also the NHS.

2.29 pm

Baroness McIntosh of Pickering (Con): My Lords, I warmly welcome the noble and learned Lord, Lord Etherton. I thank him for his maiden speech and congratulate him on his work in his former role on easing repossessions, which helped to ease a difficult situation. I also welcome my noble friend to the Dispatch Box yet again. I look forward to his robust defence of the statutory instrument, the main thrust of which I support.

In the catalogue of support that my noble friend outlined, I do not think that there is any cover for directors who have been caught in the trap of taking a low salary and relying on dividends. I do not know whether there is any evidence that they will be caught by the thrust of this statutory instrument; I would be interested to hear whether there is any support in the pipeline for them. Like my noble friend Lady Altmann, I am quite excited about the new free mediation service that is being piloted; it is very welcome. What does my noble friend the Minister expect to happen at the end of the pilot? Does his department plan to roll that out more widely from August? What will the legal situation be after 31 March? If this order is extended until 31 March but the Minister is not expecting to bring forward the replacement until the middle of May, will there be a legal vacuum? Can he clarify what the situation is in those circumstances?

I join noble Lords, particularly my noble friend Lord Bourne, in raising the issue that has been brought to the Floor by Generation Rent. We do not appear, as a Government, to be tackling the underlying problem of rent debt. Does my noble friend the Minister have a long-term solution? Finally, does he share my concern about the non-payment of council tax? Will this jeopardise the future payment of rent arrears as well?

2.32 pm

Baroness Uddin (Non-Afl) [V]: My Lords, I welcome and congratulate the noble and learned Lord, Lord Etherton.

I echo the wise words and advocacy of the noble Lords, Lord Hain and Lord Lilley. I send my heartfelt respect to the family of Sarah Everard. I agree and am in solidarity with all those families whose children have been lost, and the peaceful protestors. It was an appalling application of lockdown policies and strategies.

The CAB helps someone every two minutes regarding privately rented housing, and half a million renters are in arrears and facing eviction. While I acknowledge the Government's promised extension of support, is the Minister aware of the research by Generation Rent, the Resolution Foundation and StepChange? It indicates that the debt crisis is compounding the health of our most vulnerable communities, which are often charged high rents for appalling housing conditions; this leads to the considerable deterioration of their health and mental well-being, particularly among women-led households.

We all agree that no one should lose their home or be evicted during this pandemic. What are we to say to the more than 200,000 families that have sought council assistance over the threat of homelessness in the last six months? Generation Rent says that we may not know the true extent of the harm caused, particularly to those who are most vulnerable. Does the Minister agree that these stop-and-start, ad-hoc outbursts, have been inconsistent? Uncertainty regarding packages places immense burdens and pressures on families. The only solution is to eradicate the debt incurred during the pandemic.

I hope that the Minister will heed the call of all parliamentarians.

2.34 pm

Baroness Grender (LD): My Lords, I thank the Minister for his explanation of the welcome extension of the ban on bailiff enforcement until 31 May, and I thank all noble Lords for participating in this debate. I also thank the Minister for his letter to me, dated 10 February, following the previous SI debate on 2 February.

As the noble Lord, Lord Bourne, and my noble friends Lord Shipley and Lord Greaves have said, it is regrettable that we continue to have this piecemeal approach. For us, it is regrettable, but for thousands of tenants teetering on the brink of eviction that often ends in homelessness, this piecemeal approach can be devastating—and for the children involved, it can be life-defining.

Perhaps the Minister looks to the devolved nations with a little envy as he goes through this Groundhog Day experience once more. The Northern Ireland Executive, for example, have just announced an extension of eviction protections to the end of September, providing tenants with greater stability. Can he consider the feasibility of an extension of that nature? In possible anticipation of the response, I recall the Government's argument against ending the unfairness of tenant fees—already introduced in Scotland—which was that it was a different marketplace. In the end, it was not a different marketplace, and they did introduce that change. Can the Minister share with us what evidence he has that landlords are applying this only in the most egregious of cases? Does he acknowledge that, over the winter lockdown, 500 households were evicted from their homes?

In his letter to me, the Minister makes the case that the policies are working because only 7% of tenants are affected. However, as the noble Lord, Lord Best,

[Baroness Grender]
described, the astonishing growth in the PRS over the past decade alone means that this 7% are the 460,000 tenancies that have fallen behind on their rent, as StepChange reported only this week. Indeed, 150,000 private sector tenants face the risk of eviction in the next 12 months. Given that one of the main causes of homelessness is the end of a private tenancy, and given that the Government are committed to ending rough sleeping, prevention in this area is fundamental.

The noble Lord, Lord Bilimoria, said that evictions are on hold. That is not the case. This SI stops bailiffs at the final stage of an eviction, but your landlord still may serve an eviction notice and you still may have to go to a hearing. Often, when a Section 21 notice is served, it finds no resistance because it is a fait accompli. Therefore, they are often not measured or known about. Can the Minister undertake to re-examine the issue of allowing judges to have discretion to prevent an eviction if rent arrears are due to the Covid pandemic, thereby fulfilling Robert Jenrick's promise, referred to earlier? The discretion on such issues of judges such as the noble and learned Lord, Lord Etherton, would be most welcome, as evidenced by his considered and eloquent maiden speech. I look forward to hearing many more speeches from him, hopefully with more generous time slots.

The noble Lord, Lord Carrington, and the noble Baroness, Lady Altmann, made the case that the majority of landlords are not businesses, but the Government's English private landlord survey shows that over half of all tenancies now are with landlords who own five or more properties—and that number is growing. The same research shows that the main reasons why people become landlords are a preference for investing in property over other investments, and as a pension contribution. Only 4% became a landlord to let property and rely on that income as a full-time business.

I thank Generation Rent and the NRLA for their briefings. Landlords and charities are united in their calls for the 800,000 renters in arrears to get urgent help with their debt crisis, which is damaging their credit scores and will make it even harder for them to access housing in future. Generation Rent goes on to propose, as the noble Baroness, Lady Bennett, described, a Covid rent debt fund. It would cost £288 million, clear rent arrears and compensate landlords for up to 80% of the rent owed. However, these must be grants, not loans, because so many renters started this pandemic without any savings, as the noble Baroness, Lady Tyler, described. They were already spending a third of their income on rent. Citizens Advice tells us that the tenants who use its services would take seven years to pay off their current arrears.

The Minister has already told us about the unprecedented package of financial support, but £180 million for discretionary housing payments was at the start of this pandemic; it has not been increased to recognise the significant increase in universal credit claims. The local housing allowance is now frozen, and that is for only the bottom 30%. This level of spend pales into insignificance when compared to the stamp duty holiday that cost the Government £1.5 billion, whereas Generation Rent's proposed scheme to help tenants would cost £288 million. The shocking disparity in subsidies to home owners in comparison speaks volumes about the attitude of this Government. What we need is a similar level of subsidy and support for those who rent.

2.41 pm

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, I open by congratulating the noble and learned Lord, Lord Etherton, on his maiden speech. The noble Lord, Lord Cormack, described it as a modest maiden speech. I assure the noble and learned Lord that that was a compliment. I thought that it was a very good maiden speech, as well as a modest one.

There have been various themes to today's debate. As the noble Baroness, Lady Grender, said, it is a bit like Groundhog Day. We have had a number of statutory instrument debates on this subject; we have also had a regret Motion. The themes have been similar—not surprisingly—but the numbers are growing, and that is not surprising either.

Before I come to that, I want to pick up a point made by the noble Lords, Lord Balfe and Lord Cormack, about possible procedural changes so that we are not in the position we are in now where we are debating measures that have already come into place and which will expire fairly shortly. I was interested in the proposal made by the noble Lord, Lord Cormack, that some sort of Grand Committee should be set up where these matters could possibly be debated and voted on in good time.

The themes of this debate have focused on urging the Government to come up with some sort of long-term plan to get round this mounting debt problem. We have all received the same briefings from Generation Rent, Citizens Advice and the National Landlords Association. The figures have been quoted by a number of noble Lords. The central point, which all noble Lords have made, is the need for a plan to get out of this problem, whether by low-interest loans or giving people who are in debt money. There are different solutions, and I understand that there are pros and cons to each solution. What I would like to hear from the Minister is the plan. How are the Government trying to address this issue so that there is a solution and so that, as landlords and tenants emerge from the pandemic, they are not lumbered with a lifetime of debt, which they will find very difficult to get out of? If they have court orders against them, that will make it even more difficult for them.

I do not want to repeat all the numbers that have been quoted, but the central point—on which I hope we will hear something from the Minister—is whether the Government are looking at solutions that have been adopted in other countries in the United Kingdom and whether they are looking at a long-term solution so that we will not come back here again wondering how to find a way out of this massive and mounting debt crisis.

2.44 pm

Lord Wolfson of Tredegar (Con): My Lords, I fear that the somewhat innocuous title of these regulations ought to have a health warning below it along the lines of "Light blue touchpaper and stand well back" because some of the speeches have taken us far and wide.

Let me start with some of the central points. The noble Lord, Lord Hain, said that we live in a police state. We do not. We live in a state with police. I assure the noble Lord and the House that, as I have said on a number of occasions, the rule of law runs through me like "Blackpool" runs through a stick of Blackpool rock. I acknowledge the importance of protest; we will debate that issue in other Bills. I assure the noble Lord and other speakers that that is not an issue so far as I am concerned.

As I have mentioned the rule of law, I want to take a moment again to welcome the noble and learned Lord, Lord Etherton. I regret that he had such limited time for his maiden speech, although at least he got to the Chamber—I was stuck in Grand Committee. He made two points in the short time he had. First, he used the word "unique". We are indeed living in unique times and must have unique responses. Secondly, he talked about a cross-sector working group. Indeed, a number of the points made by noble Lords in this debate show that what we are talking about is not just a Ministry of Justice issue; it is really an MHCLG issue, and a number of the issues will have been heard by that department. I will personally make sure that they are passed on because, although the Ministry of Justice is responsible for courts and procedures, underlying housing policy, which a lot of contributions have gone to, is not the responsibility of my department. However, the noble and learned Lord, Lord Etherton, is right that, in this area, as in so many areas of government—in my short time here, I have realised this—the acronym OGD, standing for "other government departments", is about the most important acronym there is. In fact, it seems that all acronyms in the Civil Service are three letters. It loves its three-letter acronyms. I might start calling them the TLAs.

My noble friend Lord Cormack and other noble Lords made another broad point about the way we deal with coronavirus business in this House. I say with great respect that that is well above my pay grade, not least because my pay grade is an unpaid pay grade. I am sure that that point will have been heard by the relevant authorities, but I hope that my noble friend Lord Cormack and others will forgive me if I do not respond to them particularly.

My noble friend Lord Lilley made a broad point about the pandemic measures. In so far as I was included in his charge of palpable nonsense, I respectfully but firmly disagree. What we are seeking to do here is within the public health regulations. We are seeking to provide a balance between the undoubted needs of renters and the undoubted demands of landlords.

Turning to some of the points that are more relevant to this SI, the noble Lord, Lord Shipley, asked about short extensions. That is why I indicated to the House—clearly, I hope—that we will extend this to 31 May. I assure my noble friend Lady McIntosh of Pickering that there will not be a gap. We will ensure that the regulations are seamless.

Why do we not want to put a loan system in place? It is because we do not think that adding more debt is the way out here. We prefer to proceed as the Chancellor has proceeded by giving non-repayable finance to renters and enabling landlords to benefit from such things as mortgage payment holidays, which are available until July.

My noble friend Lord Bourne of Aberystwyth—I am also a former tenant of Gray's Inn, though I should make it clear I was not evicted—asked whether we are putting something in place for the long term. That is, as I have said, a matter for the Ministry of Housing, Communities and Local Government, but I assure my noble friend and the House that, while it is always a pleasure to speak from this Dispatch Box, I do not want to have to come back time and again with Groundhog Day regulations either. That is why I have done my best to ensure that everybody now has visibility until the end of May.

I will pass on to my colleagues at MHCLG the proposal from the noble Lord, Lord Best, that housing could be sold to social housing landlords.

The noble Baroness, Lady Tyler of Enfield, said that stamp duty helps homeowners; it helps homebuyers, and the reasons for the stamp duty holiday were set out in the Budget. We are trying to maintain a fair balance here between renters on the one hand and landlords on the other. In that context, the point made by the noble Lord, Lord McCrea of Magherafelt and Cookstown, is absolutely right. Evictions are the last resort, which is why we have structured the exemptions in the way we have. The exemptions list is designed to ensure that evictions take place only in cases where they are really required.

One exemption, as the noble Baroness, Lady Greengross, said, is the six months of arrears. As I said in opening this debate, those arrears must be looked at in the context of the unprecedented financial support that this Government have provided to renters.

The noble Baroness, Lady Bennett of Manor Castle, said that we are playing fast and loose with the law. I assure her that that is the last thing I would allow to happen. She may disagree with my views on legal matters, but I can assure her that respect for the rule of law is, as I have said, part of my very being.

Ultimately, as a number of noble Lords mentioned, including the noble Lord, Lord Carrington, we have a balance between renters and landlords. He was right to highlight small landlords. Although I take the point made by the noble Baroness, Lady Grender, that some landlords own a number of properties, there are vast numbers of landlords who own only one or two properties and look to the income from them to pay their outgoings and, for a number of people, their pension income. Although I heard with respect the passionate speech of the noble Baroness, Lady Ritchie of Downpatrick, she looked at it only—I say respectfully—from the point of view of renters.

Our measures have had significant results. The noble Baroness, Lady Grender, said there were over 500 eviction orders in the last quarter of 2020, but that must be compared with the last quarter of 2019—a normal quarter—when there were 22,444. These measures have had a very significant impact. As this debate has shown, I am assailed on the one hand by renters for not doing enough and on the other by landlords for not considering their position. In response to my noble friend Lady Altmann, I am afraid we do not see overseas landlords coming home as a special case; their right to possession will have to be found in the regulations as they are set out.

[Lord Wolfson of Tredegar]

I conclude the time I have available on a more positive note. A number of speakers mentioned the mediation scheme. Mediation is quite new to our system of law but, in the time that we have had it, it has proved its worth time and again. This is only one area where I am confident that mediation schemes can in many cases achieve far more than a formal court process, and I am proud that we have started the pilot. I confirm that we will look at its results very carefully to see whether we can roll out mediation not only in these cases but across civil justice much more broadly. My experience from my previous incarnation as a practising lawyer and the materials I have read as a Minister show that, in many cases, mediation enables people to resolve their disputes and vindicate their legal rights in a better way than a formal court process can.

In the short time still available, I will respond to a couple of points which I have not yet referred to. When at university, the noble Lord, Lord Bilimoria, squeezed a five-hour essay into two hours' preparation; today he squeezed a five-minute speech into the two minutes he was allotted. He highlighted the balance we are seeking to draw, and that is the response I give, with respect, to the two Front-Bench speakers, the noble Baroness, Lady Grender, and the noble Lord, Lord Ponsonby of Shulbrede. We will look at what other parts of the country do; I am a great fan of Scots law and will impress on my MHCLG colleagues that they should look at Scotland and other parts of our United Kingdom for answers on this as well.

I assure the noble Lord, Lord Ponsonby, that there is work on what he calls a long-term plan. It is not for me—a mere humble Ministry of Justice Minister—to reveal on a Thursday afternoon the details of that plan, but I am conscious that it is being worked on. Of course we do not want a cliff edge. We need to work out what the response will be from 31 May onwards.

Given the time, I hope that the House will permit me to respond in writing to the points I have not been able to deal with orally. I apologise to those speakers to whom I have not been able to respond personally. I acknowledge the strength of feeling across the House which goes beyond these regulations but, if I may ask the House to focus for a moment on these regulations, I commend them to the House and beg to move.

Motion agreed.

2.57 pm

Sitting suspended.

Arrangement of Business

Announcement

3.10 pm

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, the Hybrid Sitting of the House will now resume. I ask Members to respect social distancing. We come to the joint debate on the three Motions relating to the Drivers' Hours and Tachographs (Temporary Exceptions) Regulations 2021. The time limit is one hour.

Drivers' Hours and Tachographs (Temporary Exceptions) Regulations 2021

Motion to Regret

3.11 pm

Moved by ***Baroness Randerson***

That this House regrets that the Drivers' Hours and Tachographs (Temporary Exceptions) Regulations 2021 (SI 2021/58) will have a detrimental impact on heavy goods vehicle drivers and the hours they will be required to work, and does not provide clarity for such drivers on how the temporary exemptions to requirements for rest breaks will operate.

Relevant document: 44th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

Baroness Randerson (LD) [V]: This instrument was laid on 21 January and came into force on 22 January. As a negative instrument, we had no opportunity to debate it here before it came into effect. It was an extension of the temporary suspension of regulations on drivers' hours and tachographs which applied from 23 December to 21 January. These regulations allow an increase in the maximum drivers' hours from nine or 10 hours to 11 hours driving per day. They also allow a weekly rest period to be taken after seven days rather than six, and the fortnightly limits on hours driven increase from 90 to 96 hours.

These restrictions were initially introduced in the face of disruption in December due to coronavirus restrictions and the very heavy traffic to the ports caused by pre-Brexit stockpiling. There were long queues on the motorways in Kent and elsewhere, amid stories of drivers stuck in their cabs for days with the accompanying lack of toilet and washing facilities. There was an expectation, which I think we all shared, of further disruption to traffic through the borders as the additional Brexit bureaucracy kicked in during January. The last-minute nature of the agreement had not allowed time for hauliers to prepare.

However, what happened was rather different. Although it takes much longer to deal with the paperwork, the lorry queues did not materialise because many hauliers and many companies, particularly SMEs, simply opted out of the market and ceased to send goods to the EU. Hence, the officially confirmed 41% drop in EU trade during January. Covid has had an impact as well, of course, but trade within the EU dropped by only 10%.

Let me remind noble Lords why we have these strict rules on driving hours. They are part of our previous EU membership. They are there for road safety reasons, based on accident statistics. As a country, we have always been very proud of our road safety record. It is nevertheless true that some of our worst motorway accidents have been caused by lorries, where a significant factor has been driver tiredness. Limits on drivers' hours are also an issue of decent, humane working conditions. This is especially important in an international industry with lots of small companies and solo operators.

I have a number of questions for the Minister. Given that long queues have not been a problem, why is it necessary to renew these exemptions? The Government

cite shortage of drivers as a reason why longer hours are necessary. However, the Road Haulage Association reports a fall in the number of drivers—especially foreign drivers—willing to drive in the UK because of border bureaucracy. Does the Minister have any figures on this?

The Government talk about temporary teething problems at the borders but Brexit is permanent, and so is the bureaucracy that comes with it. Can the Minister give us an assurance that she will not be back here next month asking for further relaxation? This decline in road safety standards and erosion of workers' rights cannot become permanent. If she cannot give us that assurance, can she at least ensure that in future this will not be slipped through by negative procedure. The trade union Unite emphasises the cumulative impact of fatigue, so the longer this goes on, the more dangerous it becomes.

When the Secondary Legislation Scrutiny Committee drew our attention to these regulations, it emphasised how vague some aspects are. Can the Minister provide clarity on the meaning of the guidance that these exemptions should be applied only "where necessary"? How has it been enforced? The DVSA monitors and checks these records, so can we have an analysis of those checks from the last couple of months?

The exceptions are very broad and apply across the country, not just on particular routes to the ports. Why not? Are checks being undertaken outside port areas to see if there is any abuse of these laxer rules? The relaxation of the rules was requested by industry bodies and Defra. Can the Minister confirm that road safety bodies were consulted? What was their view?

I put down this regret Motion primarily out of concern for road safety, but also because of concern about the situation at our borders. Can the Minister update us on progress with the inland border facilities the Government are building? Those are designed to allow drivers to rest up as well as to process loads and provide border paperwork facilities. Those facilities should solve any problems and make further relaxation of these rules unnecessary. I do not intend to call a vote at this time. My purpose is to seek answers and I look forward to hearing the Minister's response.

3.17 pm

Lord Berkeley (Lab) [V]: My Lords, I am very pleased to follow the noble Baroness and to speak to my regret Motion on these regulations. I share many of her concerns. I find the Explanatory Memorandum particularly arrogant and vague on the reasons for the need for this regulation. Paragraph 7.2 says that

"disruption to … supply chains could occur at very short notice."

There has been no evidence of this happening—I shall come on to the number of vehicles going through in a minute—or even of any fear of it happening ever since the new regulations came in at the beginning of January.

Everybody knew that there were new regulations. We had spoken before in this House about the fact that many people were unprepared and that the Government were pretty unprepared as well, but there is no change likely to happen at the moment. As for the situation having worsened substantially during the last month, how has it worsened?

The Explanatory Memorandum says:

"Some usual mitigations (such as training more drivers) are not available."

There has not been a need for more drivers because the traffic has dramatically dropped. Then it says:

"The situation is exacerbated by the impact on vehicle flows of changes to border controls following the end of the transitions period of the UK's exit from the EU."

Where is the evidence for that? There have just been fewer trucks because a lot of people are deciding not to go, for reasons that we have debated.

The noble Baroness talked about the extension of hours permitted in these regulations. On the face of it, it is not very great but, on the other hand, it comes on top of some pretty long hours limits anyway. As she so rightly says, this is actually a serious road safety issue. Can the Minister tell us whether there is any evidence of further accidents due to this? How much enforcement of the longer hours has taken place, and has any action been taken? I suspect that, as with most other tachograph issues, it is done only very rarely.

I think the real issue here is that we have fewer drivers, and we also have many fewer trucks. I want to spend a minute or two looking at the chaos that I think there has been over the statistics of how many trucks have been counted going out of the UK. The Government published a press story on, I think, 7 February disputing the figures published by the Road Haulage Association. The Road Haulage Association looks after its members' interests, and it suggested that the loads to the EU—I quote from its press release—had

"reduced by as much as 68 percent"

since January this year. It wrote to the Chancellor of the Duchy of Lancaster explaining this, and the Government are basically saying it is not true. Somebody must be able to count; it is surely pathetic. I tend to believe the RHA because it has an interest in looking after its members' interests—they do not want to see delays—whereas the Government are trying to say that everything is all right. This has gone on, with an argument in a letter between the Office for Statistics Regulation and Richard Laux, the chief statistician of the Cabinet Office, talking about whether the data is published or not. The Cabinet Office then published a note to accompany the original press story. In other words, this is damage limitation. The key, to me, is a quote from the Port of Dover on 8 February that said:

"Traffic continues to flow smoothly through the Port of Dover post-Brexit transition."

Does that not tell us that there is no problem that needs to be cured?

As the noble Baroness, Lady Randerson, mentioned, I hope the Minister will assure the House when she responds that this will be the last time that they try to extend these regulations, and there will be no more of these because, as the noble Baroness said, this is a road safety issue. The limits that were necessary before the Covid epidemic and before Brexit are still necessary now. It seems to me that, in the eyes of the Government, the supply chain is more important than road safety, and that is a very serious issue.

3.23 pm

Lord Rosser (Lab) [V]: These regulations have the effect of increasing the fortnightly driving limit from 90 hours to 96 hours. They also, as a result, raise the likelihood of a driver not being able to take proper rest away from work—that is, away from the cab of their vehicle. There have been other relaxations of drivers' hours since April 2020, with this latest one following the UK-EU agreement being for the longest period of time. Normally, such relaxations are for very short periods of time and have been very specific to particular sections of the industry. However, due to the definition of "exceptional circumstances", this latest relaxation in reality covers practically every professional HGV driver in the country, including those delivering to the UK from other countries.

It also needs to be said that the key purpose of drivers' hours regulations is road safety and the welfare of drivers. Any relaxation potentially puts not just the drivers covered at risk but all road users as well, through HGV drivers either not having appropriate periods of rest or working for longer periods of time or both. Could the Government indicate in their response whether these latest regulations, which come to an end in about two weeks' time, are going to be further extended beyond then? If so, why?

In laying these regulations, the Department for Transport said that the relaxations

"continue to be required because of both delays at the borders and the reduction in driver numbers due to Covid-19."

Could the Government in their response say what these delays at the border are and what has caused them? The Secondary Legislation Scrutiny Committee considered these regulations and concluded:

"Although a contingency provision may be needed, we were not clear about the conditions in which these exemptions are intended to be used and where the responsibility for implementing these decisions lies. The House may wish to ask the Minister to provide a fuller explanation."

That is what I am now doing. Expanding on this, the committee said:

"These relaxations are not restricted to port areas or to essential supplies, and the definition of when they can be used, 'when necessary', is very vague. There is also some blurring in this policy between the responsibilities of the driver and the operator in deciding when to use the extended hours, and we are concerned that drivers may feel under pressure to use them. A submission from Unite the Union illustrates the problems likely to arise. The sector is very diverse, with both employed and self-employed drivers, and the balances of risks and advantages may differ between these groups."

No doubt the Minister will wish to comment on those observations from the committee.

Could the Government also say in their response to what extent the increase in the fortnightly driving limit—from 90 hours to 96 hours—has actually been used, and whether it has been used more in relation to some routes than others, whether it has been used more by some firms than others, and whether it has been used more by some sectors than others? Could the Government also say under what circumstance and why the allowable increase in hours has been applied, so that we can have an idea of how and address what situations the "where necessary" criteria has actually been brought into play.

The Secondary Legislation Scrutiny Committee referred to the submission from Unite the Union. One gets the impression that the committee gave rather more consideration to what Unite had to say than perhaps the Government did. When asked by the committee who had been consulted, and whether any drivers' representatives had been included, the Department for Transport replied:

"Relaxations to drivers' hours rules were sought by a number of individual firms, representative bodies and Defra … Unite the Union was consulted informally — and for the record was not in support of the relaxation as made."

What a dismissive response. The view of Unite—and the drivers' regulations are there for safety reasons—was simply "for the record" following informal consultation as far as the DfT was concerned, not views that should be reported with reasons given why they were not taken on board. How revealing that we have to turn to the Secondary Legislation Scrutiny Committee to find out the concern of Unite, since there is nothing in the Explanatory Memorandum, which simply states:

"There has been no formal consultation on this Instrument, although advice has been taken from representatives from the logistics and retail sector",

and that

"an impact assessment has not been produced".

Could the Government tell us what their assessment was, and the basis of that assessment, of the potential impact of this instrument on safety, bearing in mind that a key part of Unite's concerns was that, the longer the period of relaxation from the drivers' hours rules—now some three months—the greater the potential risk to safety? It is not enough to say that, under the relaxation,

"Drivers should not be expected to drive whilst tired".

If that is deemed a responsible approach, then there is no need for any rules at all beyond that. In its submission to the committee, Unite expresses concern about the ability of enforcement officers to be able to enforce the relaxed regulations effectively, not least in respect of international drivers whose operating base may be in another country. No doubt in their reply the Government will wish to provide the hard evidence that enforcement officers had enforced the regulations effectively.

Unite welcomes the fact that drivers and their unions should be involved in managing any relaxation, but said that

"in reality drivers are not given the choice, operators simply plan drivers' routes and then apply a relaxation if needed."

Do the Government accept that that is the reality? If not, could they provide the evidence that it is not the case?

Concluding its submission to the committee, Unite said it understood

"that there are often genuine reasons for using a relaxation in very limited circumstances. This relaxation, however, is far more than that and in our opinion goes much further than is actually necessary even under these very difficult circumstances".

Unite believes this could be

"the start of watering down vital safety rules for professional drivers."

This is now the opportunity for the Government to provide the hard evidence to prove that these potentially safety-compromising regulations, applicable to practically every professional HGV driver and for a longer period

than normal, have been necessary and that it was not a case of bringing them in simply because some firms wanted them so that they were there if required across the board without the Government really knowing either whether they really were required across the board or the extent to which they would be required.

3.31 pm

Earl Attlee (Con) [V]: My Lords, I am grateful to the noble Lords who have introduced this debate. Before speaking to it, I remind the House that I still drive heavy goods vehicles under the drivers' hours rules from time to time and for private purposes. Some of these vehicles are very heavy indeed and are not just a horsebox. However, the new regulations in question are very unlikely to affect me.

In the distant past I have driven more extensively for commercial reasons under the drivers' hours rules. Many years ago, either under military authorisation or on international aid operations, I drove hours far in excess of what are allowed under civilian rules. The House should know that the military nowadays adheres—I would say slavishly—to the civilian rules, even on operations. It may help the House to be aware that I am a qualified HGV driving instructor, although I accept that I might be a little out of date.

There are two reasons why we have limits on drivers' hours. The first and most important is safety, as observed by many noble Lords. Clearly, if a driver drives for too long or takes insufficient rest, there is a direct safety consequence. However, there is another important reason for having the rules, and that is to set an economic level playing field. Road haulage operations are extremely competitive, and one easy way of securing an economic advantage is to make the drivers work harder for longer and to take greater risks with fatigue. The combination of the drivers' hours rules and the working time directive sets a floor so that drivers are not abused, safety is maintained and, most importantly, operators have to find other ways of being more competitive. The Minister is helping in that regard by looking more closely still at longer and heavier vehicles.

The rules have been carefully set and devised over many years, perhaps before we even joined the EU, so that a competent driver, adhering to the rules over many years, can earn a living while not putting himself or herself or others at risk of fatigue, and, as I have already indicated, the rules set an economic baseline. This means that relaxing the rules very slightly for a few months will not create a safety problem, and I do not believe the Minister would have made this order if that were the case. These are very minor flexibilities designed to cope with the current situation, or with one that could arise. I do not believe that businesses will build them into their business model because they are such temporary exemptions, nor do I believe that they will plan their day-to-day transport operations taking account of the flexibilities. The flexibilities are designed to deal with something that goes wrong; they should not be regarded as normal.

Another point that should not be overlooked is that it can be very stressful for conscientious drivers to adhere to the drivers' hours rules, especially in the face of disruption. Avoidably stressing drivers is not, I suggest, a sensible course of action.

From my direct personal experience of these matters, I can tell the House that the amending regulations do not compromise safety. I urge the House to kindly reject the Motions and support the Minister and the sensible, temporary flexibilities that she has provided the industry with.

3.35 pm

Baroness McIntosh of Pickering (Con): My Lords, I am delighted to follow my noble friend. I will be supporting the regulations before us, but I have a number of questions for the Minister.

The regulations expire at the end of March but, as we learned when the Minister summed up the debate called by my noble friend Lord Taylor of Holbeach on 4 March, controls are to be introduced at UK ports for the first time in April and again in July. Does it not seem simple sensible to keep these extensions on the table until the new controls have had the chance to bed down, so that we can see whether they cause any serious delays at ports?

The exceptions are marginal; it is an extension of six hours in every fortnight, so I imagine the Minister will say the impact is quite low. I note the dismay that was expressed by the Secondary Legislation Scrutiny Committee on a number of issues in looking at the this instrument, not least, I understand from paragraph 6 of the report, that Parliament was not one of the bodies notified of the exception. Could the Minister confirm whether the Health and Safety Executive and the Royal Society for the Prevention of Accidents have been involved in the drafting and reviewing of the measures before us?

Like the noble Lord, Lord Rosser, I have a number of concerns, which he has eloquently addressed, about the level to which the measures are deemed to be necessary and about why the legislation is all framed in relation to the driver, putting a lot of emphasis regarding enforcement and the understanding of what is necessary on the driver. The Minister will be aware that there is a severe shortage of drivers of heavy goods vehicles in this regard. I note in passing that a number of these drivers, based in North Yorkshire, come from Poland and other parts of the European Union, meaning that, at least initially, they are not used to driving on the left-hand side of the road. I do not know whether that is a factor that the Minister has taken into consideration.

Is it the Minister's intention that, when the Driver and Vehicle Standards Agency looks at the operator records, including tachographs, following on from this extension, the checks will be reported to Parliament so that we in both Houses can form a view as to whether the system has been abused in any way? That would enable both her department and this House in particular to come forward with simpler, clearer legislation without the need for so much administration, as called for in paragraph 16 of the committee report.

The normal restrictions on drivers' hours are based on accident statistics for safety reasons. So why will they be lifted? On what basis? Have there been fewer accidents?

Does the Minister stand by the remarks that she made on 4 March that the measures taken regarding the Northern Ireland protocol are temporary, technical

[Baroness McIntosh of Pickering]
steps? Were they perhaps ill advised, given that we have now been taken to court by the European Union in this regard?

I will add two further questions. Is the Minister in a position to address the issue of a potential shortage of drivers? There is also a particular problem of trucks returning empty from the European Union. Are these issues that the Government are likely to address?

I welcome the fact that the Minister is committed to communicating, as she put it on 4 March, with the interested parties in the UK and with our European Union counterparts. It would be helpful to know what communications she is having in connection with the further controls in April and July.

This is quite a nostalgic journey for me, as I started my days in politics as a staffer for the European Conservatives in the European Parliament, working with eminent spokesmen such as the late James Moorhouse and, latterly, Bill Newton Dunn. I take a close and continuing interest in these matters before the House this afternoon.

3.40 pm

Lord Snape (Lab): My Lords, the House of Lords Secondary Legislation Scrutiny Committee had, if not harsh words, some words of doubt about the Government's proposals. Partly for those reasons, I support some of the sentiments expressed by those who seek to oppose these regulations. Among the concerns that the committee raised was the lack of parliamentary scrutiny before these exceptions came into force—a familiar source of complaint. I do not particularly blame the noble Baroness for this, as it seems all too typical of the present Government that the only chance the House has to debate these regulations is when they have come into force and there is not much we can do about them. There seems to be a continuing pattern here, which Ministers should look at.

The committee went on to ask about the guidance to use the exceptions only "where necessary"—a vague phrase. On its behalf, we seek a definition from the Minister on when a "where necessary" situation will arise. It went on to talk about whether the system would be abused for commercial advantage. Most heavy goods vehicle operators in the United Kingdom are perfectly reputable people, but there is a fringe element within the road haulage industry where pressure on drivers to exceed permitted hours happens from time to time and it is difficult for drivers, particularly for smaller operators, to resist.

My noble friend Lord Berkeley mentioned consultation, particularly with the primary trade union involved in heavy goods vehicle operation in this country, Unite. A piece of Civil Service wording came back about that consultation. I forget the exact words, but it was that the union was not kindly disposed to the proposals on excessive hours. That was one way of putting it. In December, Unite issued a press release about the increase in drivers' hours, under the heading

"Unite condemns 'dangerous and useless' relaxation of HGV driving rules in response to Dover delays".

That is a bit stronger than we were led to believe from the committee's wording and a lot stronger than the Government might like. I wonder whether that informal consultation with the trade union was genuine or consisted of a telephone call from the Minister's department saying, "This is exactly what we are going to do".

What we are talking about is a solution in search of a problem. It is not a lack of drivers or drivers' hours causing delay but a lack of customs officers in the Port of Dover in particular. The noble Baroness, Lady McIntosh, referred to the number of empty vehicles coming back from the continent. It is no secret that the Road Haulage Association is annoyed by what it sees as a failure of the Government to recruit the necessary number of customs agents to ensure that these delays do not continue. It is not as though this problem has arisen unexpectedly; it is over four years since the country voted to leave the EU, yet we seem no nearer to recruiting sufficient customs agents to help prevent these delays.

I draw the noble Baroness's attention to last Sunday's *Observer*. Under a heading about how delays at ports would go on for months, Mr Richard Ballantyne, the head of the British Ports Association, said that most ports had seen a recovery in shipments over recent weeks, although the delay to import checks had

"put off a problem rather than resolved it".

The Road Haulage Association says pretty much the same. The noble Lord, Lord Frost, who has been appointed by the Government to resolve these problems, says that they are temporary and that, since January, things have picked up. I go back to the point mentioned by the noble Baroness, Lady McIntosh: there are still a heck of a lot of heavy lorries passing between this country and the European Union. The trouble is that too many of them are empty, for the reasons that I have just outlined. Increasing drivers' hours and the consequential impact on road safety are not going to help that. I hope that the Minister can reassure us this afternoon and tell us how many extra customs agents—a question I put to her some weeks ago, but no answer came—have been recruited and whether she is tackling the real problem, rather than the Government sending up a smokescreen, as these proposals appear to be.

3.46 pm

Lord Kirkhope of Harrogate (Con) [V]: My Lords, while it is inevitable that, in debating these regulations, one might legitimately feel that we have missed the bus, it would be more appropriate to apply the term déjà vu. Taking note of something that has already happened is of rather less value that scrutinising proposals and offering advice before implementation. It is now only a matter of a few days before these temporary provisions end. I assume that we might hold a similar debate in a couple of months if we see a further extension of the provisions but, with déjà vu, we can at least look back at the approach to drivers' hours and conditions to contrast and compare. In doing so, perhaps we might better judge the validity or otherwise of these regulations.

Since the 1930s, Governments have recognised that commercial pressures can lead transport operators and drivers to indulge in excessive driving that can endanger themselves and other road users. Fatigue and its effects on driving safety were first properly recognised in the Road and Rail Traffic Act 1933,

which, incidentally, was two years before we even had driving tests in this country. It was introduced to protect us all from the negative effects that I mentioned, and it began a process in which Governments ever since have followed some basic principles, namely: promoting road safety by requiring drivers to have adequate rest and breaks, and preventing excessive driving; a desire for common international rules and to ensure that competition between hauliers and coach operators is fair; and giving drivers reasonable conditions of work and leisure, and stopping exploitation.

UK legislation on drivers' hours was introduced by the Transport Act 1968. When the UK joined the then EEC, it adopted the European social regulations of 1969. The use of tachographs had been compulsory in the EU since 1975, but the UK initially failed to implement this requirement until obliged to do so in 1981. The only major changes since then have been to incorporate the provisions of the working time directive in 2005, limiting total working time, although we have introduced many detailed provisions of implementation by statutory instrument since then. By and large, with the agreement of business and the unions, we have adhered to these provisions, with the drivers' hours regulations being especially strictly followed.

In 2009, the then Government held a consultation on the clarity of the rules which indicated that the complexity and finer details were still misunderstood. Governments have expressly stated that only in exceptional circumstances could there be any amendment to the rules. Looking back, that policy has been correctly followed. Examples of variance and relaxation came about with the foot and mouth disease in 2007, a derogation for military reservists, also in 2007 and the proposed fuel tanker drivers' strike in 2012. The current Government introduced emergency relaxation, as we know, to protect the supply chain because of Covid-19 between March and May last year. They are continuing to pursue this by successive extensions, citing not only the Covid situation but the effects from us leaving the EU. To the extent that the pressures are temporary, the regulations can be accepted but, as we move out of the pandemic, any wish to continue these arrangements to cover ongoing problems brought about by our new EU status and our cross-border trade should be examined more vigorously.

There are some concerns that there could be either repeated temporary easing of regulations, or a longer-term or permanent situation. I would like the Minister to give greater assurances on this in her concluding remarks. I would also be grateful if she could confirm that the proposals we are looking at today change only drivers' hours and rest periods, and that the more extensive rules and regulations dealing with the way in which driving periods and rest are allocated in the course of any week, and compensation arrangements for reductions in rest periods, are not being affected by these provisions. Employers and operators need reassurance on this point. Employers in particular have great difficulty in interpreting anything that is not crystal clear as to the legal position. It would be most unfair if these changes encouraged unfair competition. We all have a duty to protect both employers and employees, just as was described and hoped for back in 1933—but, of course, I will support my noble friend on these measures.

3.50 pm

Baroness Foster of Oxton (Con): My Lords, first, I have listened very carefully to the comments made by the noble Lords who put down the regret Motions that triggered this debate. In particular, it is very good to see the noble Lord, Lord Berkeley, again—albeit virtually—as we met regularly over many years during my time as an MEP. He is indeed very expert on these matters. Today, however, I will be taking a rather different point of view, I am afraid.

I begin by echoing many of the points made by my noble friends Lord Attlee and Lord Kirkhope. A few days before Christmas, the President of France took the arbitrary decision to announce a travel ban on all lorries travelling between the UK and Calais. Around 3,000 drivers were thrown to the wolves and told that they would need a Covid test before they would be able to proceed. They were left high and dry in the most appalling circumstances. Despite the heroic efforts of our Armed Forces, the NHS and volunteers, it took several days and more. None of those drivers would have ever seen their families at such a special time.

Should I put these delays down to a force majeure or exceptional circumstances? Was there inclement weather? No, there was not. Was there industrial action, or were there blockades? No, there were not. Actually, it was neither: it was, unfortunately, blatant politicking of the worst order. The drivers ended up as pawns in a political game that still continues. This was an avoidable catastrophe.

No noble Lords have so far mentioned what I am about to say. The main thing about the temporary exemptions is that they had already been agreed and put in place by the European Commission as well as the UK Government because, of course, our Regulation 2021 No. 58 is a combination of EC Regulations 561/2006 and 1071/2009, which deal with drivers' hours and tachographs. Enlargement in 2004—plus Romania, Bulgaria and Croatia latterly—highlighted the challenges that the hauliers faced as, geographically, the routes became more challenging. Annexes one to four of COM(2017) were compiled following the Council reports of 2013-14 on the performance of each member state. The UK always rated highly, with top marks on roadside checks and compliance—just to dispel the myth. Agreement followed to update the regulation.

For international transport to operate, flexibility is paramount. My former career was in the most highly regulated mode of transport: aviation. I negotiated the terms and conditions of thousands of crew over many years, including their scheduling agreements, as well as the regulation in the European Parliament on flight time limitations. I am therefore fully aware of the planned and unplanned operations that are required. I also covered road, rail and maritime, and was heavily involved in the regulation that we are discussing today. Just as an aside: if it were not for the flexibility of crew and supply chain and ground staff in maritime, road, rail and all these sectors, I doubt that any of us would ever get from A to B, and neither would the goods that we receive or send.

Sadly, Covid-19 has wreaked havoc across the globe. There is a Europe-wide shortage of drivers. Small operators with one or two lorries have been particularly badly hit, yet they have kept going throughout this

[Baroness Foster of Oxton]
pandemic, delivering medicines, food, fuel, essential goods and much more. They deserve better than this. There is no evidence to suggest that these temporary measures jeopardise lives. These drivers are highly professional and use their best judgment every day. They are hugely concerned about the lack of safe parking, which still exists, for their trucks across Europe. They are now being dragged into this appalling weaponising of the vaccine by the EU and have been caught up in the backlash.

I am pleased that my noble friend the Minister is updating the House today. This is required and maintained throughout the implementation, rather than delegated, rules, which the European Union frequently favours to keep Parliament out of the loop. I hope that the whole House will support the regulations but, more importantly, actively show its support for and gratitude to our road hauliers for the invaluable work that they have done and continue to do.

3.56 pm

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, I thank the noble Baroness, Lady Randerson, and the noble Lords, Lord Rosser and Lord Berkeley, for giving me the opportunity to explain the Government's position. Of course, I thank all noble Lords for their contributions.

Let me start by saying that we are absolutely committed to ensuring the welfare of drivers and protecting road safety. This Government recognise the importance of the long-standing drivers' hours rules to achieving both of those objectives. We therefore deploy these relaxations with care.

It is worth considering the landscape back in mid-January when these regulations were laid. New customs arrangements had recently been put in place, and both traders and hauliers were adjusting to the new environment. This was still the case in mid-January. Covid infection rates were high, at 376 per 100,000, which might well have caused localised disruption to the availability of drivers. The training and testing of new drivers had stopped, causing additional pressures on a tight labour market for HGV drivers, and we were seeing a changing pattern of domestic retail demand due to lockdown. Finally, there remained the potential for unilateral interventions from third parties, as noted by my noble friend Lady Foster. For example, we saw the French Government unilaterally requiring Covid testing for hauliers. Other interventions clearly could have happened too. That was the landscape with which we were faced when we took this decision.

Furthermore, we heard concerns from those in the supply chain that localised disruptions might occur, and possibly at very short notice. We heard the concerns of Unite the Union and tried to mitigate them as much as we possibly could to ensure that any action we took was limited. The Government concluded that there was significant evidence to suggest that disruption could occur; therefore, as a precaution, we took the decision to continue with the temporary, limited extension to drivers' hours.

The 44th report from the Secondary Legislation Scrutiny Committee published on 4 February also acknowledged that contingency measures were required to deal with these risks. I thank the committee for its work on this SI, and I apologise if there was information missing from the Explanatory Memorandum that should have been included. I will encourage the department to do slightly better next time.

Some of today's debate has focused very much on international haulage, which a number of noble Lords have mentioned; the noble Lord, Lord Berkeley, talked about fewer trucks going across via the short straits. However, this is not just about international haulage: the issues I have just outlined from the landscape that we were faced with also impacted domestic haulage, which is why it was so important that we put these changes in place. A couple of noble Lords have complained that Parliament was not able to scrutinise this SI, but this is a negative SI, which is a standard parliamentary procedure. We are scrutinising it today, but noble Lords will understand that we will have to follow parliamentary procedure, as we have in this case.

I turn to the actual implementation and the safety and welfare of drivers. It is important to remember that these changes are very limited in nature. In terms of the requirements in the rules, whether it be breaks during the day, daily or weekly rest periods or weekly and fortnightly driving limits, none of these have been removed. Some have been relaxed in a limited and controlled way, and I confirm that compensatory rest arrangements, which are all related to weekly rest, stay in place, and working-time rules for drivers are unaffected.

This previously unprecedented approach of relaxing drivers' hours had already been used in the UK, in spring 2020, at the start of the pandemic. This approach was also taken by many parts of Europe at the time. The extent of the relaxations now in force is based on that experience, but it is even more limited, especially for domestic road transport. The guidance states that relaxation should be used "only where necessary" and not at the expense of driver or road safety. While we did not consult specific external parties on road safety, the Government are content that these measures are consistent with our ambitions for improved road safety.

Turning to the guidance that we published on 20 January, before the SI was laid, I note a number of concerns over the definition of "necessary", when allowing the relaxations to be used. The guidance makes it very clear that any relaxation of these rules emphasises the necessity of the relaxation, particularly when other supply-chain management interventions may be available to alleviate issues. "Necessary" is not defined in the regulation itself, and it is liable to vary significantly case by case. Published guidance assists the consideration of what is and is not necessary, but the circumstances for each use will be different. Operators using domestic relaxation are required to indicate that they intend to use, or have used, the relaxation, which assists transparency and the later checking of compliance, including the context of necessity.

The guidance is material to whether the relaxations have been used correctly and reputably by operators and their transport managers—and, if they have not been, they can be held to account. The DVSA has extensive powers to investigate: it can investigate domestic and international hauliers and domestic operators,

and it does this across the country, not just at the ports. Of course, it can issue penalties and refer operators and transport managers to the transport commissioners if there are infringements.

The guidance about relaxation explicitly confirms that

"employers remain responsible for the health and safety of their employees".

It also confirms:

"Driver safety must not be compromised. Drivers should not be expected to drive while tired".

It clearly states:

"The practical implementation of the temporary relaxation should be through agreement between employers and employees and driver representatives",

such as Unite the Union. As noted, a requirement of the use of the current relaxations for domestic journeys is that the operator informs DfT that the relaxation will be used. Reported use of the current domestic relaxation has been very limited.

There are 16 haulage firms still using the relaxations that end on 31 March 2021—that is a total of 25 operating licences because, of course, one haulage company can have a couple of them. The noble Lord, Lord Rosser, asked which sectors these companies are in. I do not have a detailed breakdown, and I am not entirely sure that, with 16 haulage firms, it would be useful, but most of them transport freight, and the rest supply fuel. As such, the information about the people using these relaxations is passed to the DVSA—obviously, its enforcement operators will be aware of who is using these relaxations, and they can check how they were used. It is also the case that drivers using them must note on the back of their tachograph charts or the printouts the reasons why they are exceeding the normally permitted limits.

There was also a comment in the SLSC report about the initial exceptions that the Government made in December, and I reassure noble Lords that, as with these regulations, we followed the agreed process. These were put in place administratively for up to 30 days—that is the process set out in the regulations.

The noble Lord, Lord Snape, returned to the subject of customs agents, and I am delighted to be able to return to it again. Noble Lords will be aware that the Government have set out a new timetable for introducing border control processes to enable UK businesses to focus on recovering from the pandemic. This will also give us time to ensure that the inland border facilities are fully functional. Full border control processes will now be introduced on 1 January 2022, six months later than originally planned.

The Government do not directly employ customs agents or customs intermediaries, and we do not have a target for the number of customs agents. However, traders and hauliers are responding to customs requirements in a wide variety of ways. Many in the sector have innovated and brought in IT solutions to automate the process. This has reduced the number of staff required. We have helped by making more than £80 million of support available, including flexible grants that can be used for IT and training, as well as for recruitment.

There is an alternative universe. For a moment, let us assume that the Government had not taken this precautionary action and that, for whatever reason, freight flows had been impacted—perhaps to the extent set out in the Government's reasonable worst-case scenario. In such circumstances, I could quite understand being hauled before your Lordships' House to explain why, if we saw the possibility of freight disruption coming, we did nothing about it and were negligent in not temporarily extending drivers' hours. Hindsight is a truly marvellous thing—and there has been a fair dollop of it in today's debate. I remain content that we made the right decision and I hope that I have been able to reassure noble Lords. I can confirm to the noble Baroness, Lady Randerson, and to all noble Lords, that we will not be extending the relaxations beyond 31 March 2021, when this SI expires.

In summary, by enabling and extending the relaxations when we did, we reduced risk and enabled the supply chain to function. If there is a vote on the regret Motion, I respectfully ask noble Lords that they vote not content.

4.07 pm

Baroness Randerson (LD) [V]: My Lords, I am grateful to the Minister for her reply. I will look carefully in *Hansard,* and I am sure that she will write to us in her usual courteous manner to answer any questions with which she has not been able to deal. I appreciate the detail and her final reassurance. With that, I beg leave to withdraw the Motion.

Motion withdrawn.

Motion to Regret

Tabled by ***Lord Berkeley***

That this House regrets that the Drivers' Hours and Tachographs (Temporary Exceptions) Regulations 2021 (SI 2021/58) will allow the continuation of relaxed restrictions on the normal rules on heavy goods vehicles drivers' hours without evidence having been provided of the need for such a continuation or of its effect on road safety.

Relevant document: 44th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

Motion not moved.

Motion to Take Note

Moved by ***Lord Rosser***

That this House takes note of the Drivers' Hours and Tachographs (Temporary Exceptions) Regulations 2021 (SI 2021/58).

Relevant document: 44th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

Motion agreed.

4.08 pm

Sitting suspended.

Arrangement of Business

Announcement

4.10 pm

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

National Bus Strategy: England

Statement

The following Statement was made in the House of Commons on Monday 15 March.

"I would like to make a Statement about bus services. Britain is often described as a railway nation, but if we have a national form of public transport, it is definitely the bus, carrying more than 4 billion passengers a year in England—more than twice as many as rail—over a vast network. No other type of public transport comes close for convenience, affordability and popularity. If anyone needs persuading of the bus's value, surely the 2020 experience has provided us with the evidence we need. Without buses operating day and night, many key workers would have been unable to get to work, so we owe a debt of gratitude to the bus industry and, in particular, to the magnificent bus drivers for keeping this country moving.

Covid has shown that buses provide Britain with far more than just a means of travel. They are a lifeline for millions. In normal times, they help students to get to college, they help those without work to attend job interviews, they help the elderly get to the shops and they help us all to get about. They are crucial for the survival of our high streets, for rural businesses and for the planet, too. For many disabled people, they can be an accessible way to stay mobile. In all these ways, buses are not just an industry but almost a social service. Fundamentally, they help us to level up the country.

Buses can and should also be the transport of choice, in my view. London, Brighton and Harrogate have already proved this, with frequent modern services and dedicated lanes attracting millions of journeys a year from the private car. We want to do that everywhere throughout the country, yet in most regions outside London services have been in decline for decades. Successive Governments before this one have failed to prioritise buses, either with sufficient investment or with a workable plan. That is why this Government are taking action to revitalise bus services, and why today we have published the national bus strategy for England outside of London, with its bold vision for the industry to reform the way it has managed to deliver tangible benefits for passengers, and this is all backed by £3 billion of government investment.

Covid has hit the bus sector hard, as it has all transport, but it has also provided an opportunity to put better bus services at the heart of the community. Throughout 2020, bus companies and councils have had to co-operate as never before to keep services running for key workers. Now we want to harness the same sense of partnership and change the way the industry fundamentally works by putting the passenger and the environment first.

Passengers want simpler fares, more routes and services, easier information and greener buses, and this bus strategy reflects people's lives. In cities and towns, this means that travelling when we want and where we want becomes easy to do on a bus. We expect councils and operators to bring in simple, cheap flat fares with contactless payment by card or by phone. Up-to-date information should be available immediately on our phones, on board the buses and at bus stops. We want closer integration of services and ticketing across all forms of public transport, so that people can seamlessly travel from buses to trams to trains and we end the absurd situation where different operators do not recognise or accept each other's tickets. We want to have much more of the "turn up and go" type of service—the kind of frequency that means you do not even have to look at the timetable before you get on the bus—and more services in the evening and at weekends.

In rural areas and out-of-town business parks, we sometimes need to be able to provide buses that are available on demand from an app on your phone. Today, I am pleased to announce £20 million of investment from our rural mobility fund to trial on-demand services in 17 different locations, including minibuses booked via an app that people pick near their home at a time that is convenient to them.

I want anyone who happens to be disabled to be able to confidently travel when and where they want, so this bus strategy will make sure that all local services have audible and visible "next stop" announcements. We will consult this year on improving access to wheelchair space and priority seating for those who rely on them. A series of new bus passenger charters will define precisely what all bus users can expect in their particular areas.

Before Covid, the way in which buses were organised made it hard to arrest the decline in bus ridership—a decline that has been going on since the 1960s. The pandemic has brought councils and the industry together, and we want every local transport authority in the country and its bus operators to be in statutory enhanced partnerships or in franchising arrangements throughout. The franchising system is used in London. For example, Transport for London sets the routes and the fares, but that will not be appropriate everywhere. That is why enhanced partnerships will be required, whereby the operators and the councils reach negotiated agreements on how buses will run, with local authorities taking greater responsibility for bus services, whichever solution they choose.

By 30 June this year, we want all local authorities to commit to one of those two options, with the bus operators' support. We will need that commitment if they are to receive further emergency funding from the Covid bus services support grant. I can confidently predict that they will all be on board. Local authorities, in collaboration with operators, will then produce bus service improvement plans by the end of October this year.

These plans are pretty ambitious. By looking at the best bus services around the world and striving to match them, we expect to see how bus priority can best work without increasing congestion. We want to create plans for fares and ticketing, and we want to see how they will deliver urban, town and rural users to

the bus network. Future government financial support will depend on local authorities and operators coming together under an enhanced partnership or franchising agreement. For our part, we will work with councils to introduce bus priority schemes this year, and we will roll out marketing to attract millions of new passengers to the network—people who have never used buses before.

The strategy also sets out our road map to a zero-emission bus fleet. Bus operators have invested £1.3 billion in greener buses over the last five years, which has been supported by £89 million of government investment, and we will commit to delivering 4,000 zero-emission buses. I expect to release funding for the first all-electric bus city very soon. However, only 2% of England's bus fleet is fully zero-emission today, so after our historic move to end the sale of petrol and diesel cars and vans by 2030, this bus strategy sets out our plans to end the sale of new diesel buses in England too. We have launched a consultation to decide how and when that will happen.

This strategy marks a new beginning for buses. We will not only stop the decline that has been going on historically for decade after decade; we want to reverse it by making buses a natural choice for everyone, not just for those without any other travel options, and we want to put the passenger first. We want to build the stronger road partnerships that I have been talking about by channelling £3 billion into better services. Such a sum has never been seen before in respect of bus investment and will help us to transform buses throughout England and, by doing so, to transform our country, too. I commend this Statement to the House."

4.10 pm

Lord Rosser (Lab) [V]: I first express our thanks to all those involved in the bus industry for the invaluable work that they have always done and continue to do, not least during Covid-19, to provide a vital service to the nation which brings enormous social and economic benefits that extend way beyond crude calculations of whether a bus service is "viable" based on revenue from fares compared with cost incurred. This Statement appears to recognise that point when it says that

"buses are not just an industry but almost a social service."

I hope that this does not prove to be just a gimmicky phrase.

Over the last decade, we have seen the loss of 134 million bus miles, and some 3,000 local authority-supported bus services have been cut over the same period as a result of government policies that have led to ever-increasing fares—way above inflation outside London—and cuts in local government finances. Bus coverage in Britain is now the lowest it has been in 30 years, despite a rising population. Office for National Statistics figures appear to show that, in January, bus fares were up by 21% on the previous year—the highest yearly increase since figures began. I invite the Government to comment on that. If that is the case, the increase in fares has been some 70% over the last decade.

The Statement says that there will be £3 billion of government investment in the industry to deliver what is said in the Statement about passengers wanting

"more routes and services, easier information and greener buses … simple cheap flat fares"

and

"the kind of frequency that means you do not even have to look at the timetable before you get on the bus—and more services in the evening and at weekends."

How much does that £3 billion amount to per year, and how did the Government come to the conclusion that £3 billion was the required figure? How many of the 134 million lost bus miles will be restored as a result of that investment?

The Secretary of State said in the Commons on Monday:

"We … would not be putting £3 billion in if we did not expect, as the bus strategy says, to make buses more affordable. It is central to our vision that they are not just practical, but the affordable means of transport."—[*Official Report*, Commons, 15/3/21; col. 52.]

Do the Government regard bus fares outside London as affordable at present? If not, what does making "buses more affordable" really mean in terms of reducing existing fares?

The Statement says that, by the end of June, all local authorities, with the bus operators' support, will have to commit either to a statutory enhanced partnership with their bus operators or to franchising arrangements along the lines of those that apply in London. Local authorities, in collaboration with operators, will then produce bus service improvement plans by the end of October this year. What happens, though, if there is a difference of view between the local authority and the bus operators, since future government financial support would depend on there being no difference of view on whether there should be enhanced partnership or franchising arrangements? The Secretary of State appears to be keeping the power to himself to decide who has the capability and capacity to run franchising, which does not sound much like devolving responsibility, and rather more like continuing with tight central control. If the local authority wants franchising arrangements but the bus operators do not agree, against what criteria will the Secretary of State decide whether the local authority can or cannot run franchising?

The Statement also says that

"we will work with councils to introduce bus priority schemes this year, and we will roll out marketing to attract millions of new passengers to the network—people who have never used buses before."—[*Official Report*, Commons, 15/3/21; col. 49.]

How much will the Government invest in this marketing, and what form will it take? How many millions of new passengers will have to be attracted to the network—

"people who have never used buses before"—

for the Government to deem this marketing to have achieved its objective?

The Statement refers to passengers wanting greener buses. The Government promised 4,000 zero-emission buses over a year ago, but very little appears to have happened yet. There are over 30,000 buses in England alone. Under this new bus strategy, what percentage of the bus fleet will be zero-emission in two, five and eight years' time, and how many new green jobs will be created in the bus and coach sector? We have already seen more than a thousand jobs lost in the bus and coach manufacturing industry since the pandemic started.

At the moment, this Government's bus legacy is ever higher fares, ever fewer passengers, ever fewer bus services and little or no progress on zero-emission vehicles. If the new strategy delivers a major reversal

[Lord Rosser]
of that policy, that will be very much welcomed, certainly when it happens. The Government's responses to the issues and questions I have raised will give an indication of whether the new strategy is largely words, or whether it reflects a clearly thought through delivery plan with clear, specific and ambitious timetabled targets and the resources already committed to enable them to be delivered.

Baroness Randerson (LD) [V]: My Lords, this Statement is obviously welcome because it is so long overdue. We have been expecting it since 2019, and in the meantime the bus crisis has worsened in ways that we could not have imagined. At this point, I must specifically thank all who work in the bus industry and, in particular, remember those who have died from Covid during the last year. They have all undertaken a difficult and unexpectedly dangerous job. Because of the virus, the Government have spent the last year discouraging us from using buses, and it will be a hard task to get us back into the habit.

We welcome this strategy because it inherently accepts that the deregulation of the bus services outside London in the 1980s was a failure. It is a pity that it has taken so long to recognise this.

For the sake of the climate, to reduce congestion, and to reduce harmful emissions and their effects on our health, I welcome the intention to move to zero-emission buses. It is just a pity that it comes a week after the Budget which froze fuel duty and proposed reductions in APD, neither of which suggest a strategic approach to our climate change commitments.

The Government apparently do not have a firm date in mind for an end to sales of diesel buses. The Campaign for Better Transport suggests that 2025 is a reasonable and feasible date. Can the Minister explain how long they expect their consultation on this to run? Every week of consultation eats into the preparation time for the industry.

Encouraging British-built zero-emission buses is an excellent scheme. The Government announced in 2020 that they would invest £120 million in 4,000 zero-emission buses. More than a year on from that announcement, we still see nothing productive from this promise and await an announcement in the spring. The Government have already lost a lot of valuable time on this and the Minister herself recognises that only 2% of our bus fleet is electric. For a more just and equal society, I welcome the commitments to cheaper fares and more regular and frequent services. What the strategy lacks is any detail on how these cheaper fares will be paid for.

Fares are the result of a combination of factors that include several separate funding streams from the Government. They are hopelessly outdated and none of those funding streams incentivise greener vehicles or relate to the number of miles travelled. The emergency funding for bus services increased the confusion, with funding based on historical concessionary fare payments for passengers who were not actually travelling. I can see no detail on this but would welcome any proposals for reform that the Minister can tell us about. For certain, we will not see a significant step towards improvements in fares, such as integrated ticketing, simply by relying on current funding streams.

Most bus companies do not make excess profits. Indeed, in rural areas many have a problem just surviving. Local authorities already point to a £700 million funding gap on concessionary fares and the Government must deal with this long-standing underfunding before they can start to expect a commitment from local authorities for improvements to services. So this Statement needed to be ambitious, and indeed it is, but it lacks a level of detail and realistic steps towards targets that are essential if it is to be useful. For many local councils, the level of bus services is now so low that recovery will require a total revolution in funding. The £3 billion sounds a lot, but as there are 4.2 billion bus journeys a year in this country, I think that sets the scale of things in perspective.

This strategy is really just a skeleton. It has taken the Government two years to produce and lacks so much necessary detail. Therefore, it is way out of kilter to expect local authorities to sign up to either enhanced partnerships or franchising by June—that is less than three months for a decision requiring major financial and legal decisions. Moreover, local authorities are expected to produce bus improvement strategies by October. Many local authorities no longer have the expertise among their staff to responsibly make those decisions—but, if they do not opt for one or the other, they will not get further funding. That is a decision with a gun to their heads. So my question is, will they have the scope to change their minds after they initially opt for one or other route?

Franchising is a complex legal process. The Bus Services Act 2017 restricted franchising to authorities with elected mayors. I never understood why, and strenuous attempts were made to try to broaden this, but that is the law. Can the Minister explain if and when we can expect fresh legislation to allow a broader sweep of local authorities to franchise bus services? Do the Government now accept that some of the best services in Britain are council run and owned, and that the restriction on councils setting up and owning their own services needs to be lifted?

The Statement also refers to very welcome improvements to disabled access, and I want to press the Minister on this. The 2017 Act improved and clarified access priorities. There were further improvements proposed, which the Government did not accept at that time. Can the Minister give us details of what she plans and whether we can expect legislation and when? I would also welcome more details on government proposals for encouraging on-demand services. I agree that such innovation will be important for modernisation. The Minister referred to 17 trial areas. I am very keen to know how these areas will be chosen—or have they been chosen already? What are the criteria? Do they include average income levels, car ownership and so on? Was it a bidding process? Some of the Government's ambitions rely on new infrastructure, such as bus lanes. Does the £3 billion cover that as well as buses themselves?

Finally, you cannot buy a painting-by-numbers kit and expect to produce a Rembrandt. This Statement is the bare outline of a vision for the future, and there is nothing wrong with that vision, but the Government seem to be leaving local authorities and bus companies to fill in the picture without making it clear where the resources will come from.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): Oh, my Lords—my officials and I spent a year working really hard on this strategy and it has been welcomed by bus operators, local authorities, passenger groups and groups representing disabled people. I am afraid that the response from the noble Baroness, Lady Randerson, completely took my breath away. I have never heard such a negative response to a strategy that has been so widely welcomed by pretty much everybody else. It may be that she has not fully read it. However, I hope to address some of her concerns, because I am really proud of it and I think it will do a really good job.

To be honest, we know that successive Governments have not prioritised buses. They have put them to one side and focused on more shiny things. That includes Labour, and the Liberal Democrats in coalition. What is different is that this Conservative Government are stepping up and delivering for buses. This is the biggest reform and support package for buses in decades. I am astonished that the noble Baroness, Lady Randerson, does not see that. The strategy will result in improved journeys for millions of passengers. It brings local authorities and operators together to get the best from both worlds to provide for passengers.

The noble Baroness said that we could not provide these services on current funding streams. Of course, "we are not gonna". We have said that we will put in £3 billion over the course of this Parliament and I am sorry that she does not feel that that is a lot of money. It think it is very significant, and substantially more than bus already gets. So perhaps I can delve into some of the topics that were brought up and I am sure we will have the opportunity to do a bit more.

The noble Baroness, for example, said that there was no expertise in local authorities to develop the plans for buses. However, we have committed £25 million in the coming financial year to ensure that local authorities have access to the skills and capabilities that they need. We will be setting up a bus centre of excellence where people can share their learning on how to set up enhanced partnerships, on how to do franchising and on how to get the most from their bus services improvement plans. All that is in the strategy if she cares to have a look.

An important thing to understand is that we want to break the vicious circle for buses. What has happened in the past has meant that congestion has increased, buses have got slower, journey reliability has gone down and, therefore, passenger numbers have declined. We have to break that. By encouraging these bus service improvement plans, which will set out ambitious plans from local authorities for bus lanes in their area, we are trying to break that vicious circle. Therefore, not only will people know when a bus is going to turn up, they will be able to get on it and know when they are going to arrive. That will lead to a greater number of people using buses and higher demand, which will also result in lower fares.

The noble Lord, Lord Rosser, talked about enhanced partnerships on franchising. It is the case that mayoral combined authorities can currently franchise, and other local transport authorities can ask the Secretary of State whether they can franchise. Given that franchising takes a lot of time, we would ask that an enhanced partnership is put in place in the meantime. However, the strategy is about giving local control over buses to local authorities, and it will be for the local authority to decide, in collaboration with operators, what type of statutory arrangement it wants to pursue. Of course, the decision by the Secretary of State will depend on the case put forward by the local authority.

On the question of marketing, it is important to remember, in the first instance, that we must get people back on to public transport as a whole. Therefore, when it is safe to do so, we will ensure that the messaging includes buses. We do not want a car-led recovery.

A number of questions were raised about zero-emission buses. I am incredibly proud of where we have been able to get to. Some £50 million is available in the current year, which we hope will be invested very soon in an all-electric bus town. Then there is £120 million for next year, which we expect, combined with the £50 million, will support up to 800 zero-emission vehicles. Further details on that will be available extremely soon.

The consultation for the end of the sale of diesel vehicles is already out there—in the wild—and the end date is 11 April. The noble Baroness said that that would eat into preparation time. We are talking about five, eight, 10 or 15 years hence—I do not think that will eat into the preparation time.

The noble Baroness also mentioned reform of BSOG. It is currently a fossil fuel-driven subsidy and clearly not fit for purpose. We will reform it and consult this year on how we can incentivise the outcomes that we particularly want to see, such as environmental ones.

There is an awful lot in the bus strategy on the needs of disabled passengers. We will roll out the audiovisual announcements, backed by £1.5 million of funding for small operators. We will require every local authority to have a bus passenger charter, to ensure that disabled passengers get the services that they need. We will review the public service vehicle accessibility regulations by the end of 2023 to ensure that they meet the requirements of disabled passengers, and we will consult on improving access for wheelchair users and on priority seating.

I have much more to say about the national bus strategy, but unfortunately I am out of time.

The Deputy Speaker (Baroness Henig) (Lab): We now come to the 20 minutes allocated to Back-Bench questions. I ask that questions and answers be brief so that I can call the maximum number of speakers. I start with the noble Lord, Lord Lucas.

4.31 pm

Lord Lucas (Con) [V]: My Lords, it is very nice to have three minutes each for Back-Bench questions. I hope to take less than that. I start by congratulating the Minister on the publication of *Bus Back Better*. It is the most powerful transport policy document of recent years. I will put my hand up for on-demand autonomous buses when they come—they will be ideal for low-density south-coast towns.

My question for the Government is: to help those LTAs that are less successful, will the DfT move quickly to set up the dissemination of practical best advice? Will it ask the star performing LTAs how bus

[Lord Lucas]
lanes were handled on shopping streets with delivery requirements; how narrow streets requiring the removal of parking were dealt with; and how fast but meaningful consultations could be carried out? These are all things that good LTAs have done well, as page 18 of the report makes clear, showing

"an average benefit-cost ratio of 4.2"

among 33 major bus schemes. The DfT knows where a lot of good practice is; it should not be hard to share it.

Baroness Vere of Norbiton (Con): I thank my noble friend for his warm words about the bus strategy—it is nice to have some. The noble Lord also makes a very important point: because we are giving more local control and accountability for bus services, the ability of local transport operators to put in place their bus service improvement plans will be critical. The noble Lord spoke of their need to share best practice. That is absolutely in the plan: the bus centre of excellence will combine learning from not only the Department for Transport but bus operators and the leading LTAs—which are already well down this track—and it will encourage everyone and ensure that they can move together at the same speed. We do not want what I call the recalcitrant LTAs: the people who have not loved buses as much as the Government have. My ambition is to make sure that we have no recalcitrant LTAs and that across the country everybody levels up so that we have good bus services everywhere.

The noble Lord mentioned demand-responsive transport. He will have seen the £20 million that we have put into 17 bids across the country. The noble Baroness, Lady Randerson, mentioned them. We published the list of 17 successful places back in early January; all of them have moved into the final stage and secured funding. Demand-responsive transport will be really good for rural areas. The noble Lord wants them to be autonomous, and so do I, but perhaps not just yet.

Lord Snape (Lab): My Lords, I congratulate the Minister on the documents. Unlike the spokesperson for the Liberal party, I welcome it. The fact that she has embraced so many policies that the Labour Party has advocated for so many years is entirely to her credit. More power to her elbow, say I. Has the Minister read the Prime Minister's foreword? I know these things are traditionally written for Prime Ministers, but it is everything we have come to expect from the Prime Minister: a mixture of comedy, hyperbole and demagoguery. Talking about the bus industry it states:

"Outside London, with a few exceptions, that lesson has not been learned."

He is comparing London to the rest of the country. As a former chairman of a major bus operator, I could have learned some lessons if we had thrown £1 billion in subsidy at buses in Birmingham over the period since deregulation, but we never had the opportunity.

Will the Minister say what happened to the £5 billion that the Prime Minister announced with suitable flair about a year ago? It has now been reduced to £3 billion. It is welcome nevertheless. How will it be distributed? Will there be proper consultation with local authorities and bus operators? Will the Minister accept my congratulations on the paper as far as it goes? Next time we take a bus trip together, which she has promised, I will see if I can sell her a few more Labour Party policies on the journey.

Baroness Vere of Norbiton (Con): My Lords, I think good ideas should not be party political. The noble Lord, Lord Snape, mentioned the £5 billion. If he were to read the—I would say "small print" but it was not small print—document, the £5 billion was for cycling, walking and buses, so there was £3 billion for buses and £2 billion for cycling and walking. However, the noble Lord makes a very serious point. I am delighted that the strategy is out of the door, but I am under no illusion: the hard work is about to start because we have £3 billion and we have to think about exactly how we spend it. At the moment we cannot decide that because we do not know what sort of bus service improvement plans are going to be coming forth from the local transport authorities.

The timeline looks like this: by 30 June, each transport authority will say that it is going to have either an enhanced partnership or franchising and that the bus operators are willing to take part; they will then have to work very hard indeed to prepare a bus service improvement plan by 31 October. On the basis of those bus service improvement plans and the amount of funding that is needed in order to provide the sort of revenue funding and capital funding required for those plans, the funding will be distributed. Of course, it could also be the case that bus lanes could be bolstered through a levelling up fund, so there is a lot of opportunity for local transport authorities at the moment to take buses by the scruff of the neck and bring them into the 21st century and beyond.

Lord Bradshaw (LD) [V]: My Lords, I give this document a very cautious welcome because it puts a lot of good ideas forward. How they will be carried out I do not know, but we have to be aware that the motoring industry is engaged at the moment in selling young people cheap motor cars, probably end-of-the-line motor cars. It is like the way tobacco companies engage young smokers. Once you have hooked them, you go on exploiting them for the rest of their life.

The Government must make the new buses very environmentally friendly. I make a special plea that they use clean air so that in future we are not recirculating dirty air into buses, which we do now, as it will give us a lead over the Chinese if we can do that. It is important that bus priority measures are given the Government's full authority. There will be lots of people who will try very hard to stop priority measures going in, often misguided chambers of commerce and local authorities. Priority measures are essentially because we have no choice but to deal with pollution, which is one of the biggest killers of our time. It is unseen but is steadily going on with its work of killing people. I am very pleased to see that moving traffic offences are going to be decriminalised, which will help matters no end.

The last thing I want to mention is that right at the end of the report concessionary fares get some attention. They are out of control. If the Government want an idea that may work and perhaps will not cost too

much, maybe they will have to get to a situation where younger pensioners do not get a free pass but are able to purchase a concessionary pass. Older or disabled pensioners will still be able to get free passes. A lot of people who use the concessionary fares could very well afford to make some subscription to a better service.

Baroness Vere of Norbiton (Con): I thank the noble Lord for his somewhat lengthy contribution.

A noble Lord: Very lengthy.

Baroness Vere of Norbiton (Con): Other noble Lords are saying very lengthy; I would not say so.

I might pick out something of great importance that the noble Lord said about bus priority, because it is a big issue. The Government support local authorities putting in careful bus priority measures because, as I said, it would break the vicious cycle. Perhaps the noble Lord did not see it, but the Government are going to update the statutory traffic management guidance. It will make sure that local authorities promote bus reliability as part of the highways authority network management duty. That will be a really helpful way to put a rod in the back of some of the recalcitrant LTAs and help them to put things into place. The noble Lord also noted that we are going to commence Part 6 of the Traffic Management Act, which, again, I think will be helpful.

Lord Holmes of Richmond (Con): My Lords, I welcome the bus strategy for cleaner, greener, better buses and bus services. The regulations on the information on accessibility are not due to be done until summer 2022. Would my noble friend consider a more ambitious timetable? Similarly, when it comes to the physical nature of vehicles at the end of 2023, might the Government consider a more ambitious timetable there too? Finally, in terms of accessibility for disabled people and older people, what innovations are being deployed? There is much that can be done. Technology can play a brilliant part, both in terms of the vehicles themselves and in delivering inclusive buses and bus services for all.

Baroness Vere of Norbiton (Con): I thank my noble friend for his warm welcome of the strategy. I note that he has been a doughty campaigner on the issue of audio-visual announcements on buses. I feel very sorry that we have not been able to bring it in sooner. I will take the question back to the department to see whether we can do the regulations earlier than summer 2022. I do not want to overpromise and underdeliver, but I can definitely ask. I will also do the same on the accessible vehicle regulations.

My noble friend mentioned innovation when it comes to disabled people and, indeed, everybody, travelling. It is important to remember is that it is the bus operators who are the innovators in the industry. They are the ones who know their customers and they often go far beyond the regulations that government puts in place. They do it because it is the right thing to do; it is what their passengers want. That is why I am delighted that operators will still be at the heart of what we are doing with buses. I am sure that they will innovate in the way that I expect.

Lord Greaves (LD): My Lords, for the last four or five years, we have had a Government who have produced lots of very black and white-looking documents, usually a thousand pages long and full of lots of impenetrable words. Suddenly we are into glossy brochures again. I am not complaining, because I can cut the glossy brochures out and pin them on the wall for my grandson.

In the 20 years that I have been a Member of this House I have accumulated a vast number of glossy brochures produced by Governments. When I look at them now, most of them bear little relationship to what actually happened. I welcome the fact that the Government have noticed buses again. I welcome the passion that we have seen from my noble friend Lady Randerson and from the Minister. If buses are the modern passion of the House of Lords, that is great, but will the Minister accept that a national bus strategy can work only if it consists of myriad local bus strategies which must be in the hands of local people who know what is needed and what is wanted?

Will the Minister also accept that, while the document says that people want simpler fares and more routes and services, in many areas they also want much cheaper fares? I think noble Lords would be astonished at how much it costs to take a simple, short ride on a bus in many parts of the country outside big cities. It is okay if you are in a metropolitan area where it is subsidised—it is nirvana in London—but out in the sticks it is very expensive indeed and people will not leave their cars unless it is much cheaper.

Finally, will the Minister accept that, in addition to the concentration on cities and rural areas, a huge number of important bus services serve ordinary small and medium-sized towns? Towns are the most difficult places in which to provide frequent, cheap services because they do not have the demand of cities, and there is not the requirement for at least a skeleton service in rural areas that people recognise. Towns—the places in between and on the edge—are the places that this strategy will succeed or fail by.

Baroness Vere of Norbiton (Con): The noble Lord is right, and in the middle of his contribution he basically set out what is in the strategy: giving control and accountability to local authorities. He made some important points about services and how different areas will have different needs. One of the bits buried in the bus strategy is how local authorities will be expected to set up something like a bus advisory board or equivalent, which will take into account the views of local people, services and businesses—everyone who has an interest in making the network run as well as it can. Even though all those people will put in their contributions, it will be up to the local authority to have the skills and capabilities to meet those needs and devise the sort of network that will be required. That bit is probably quite challenging, which is why we have put quite a lot of money into it.

Alongside listening to people and putting the network into place, it will depend on the situation; the strategy is not focused on rural and urban—it is focused on everywhere, as we recognise that every single place will be different. In some areas, turn-up-and-go on bus corridors will be perfectly acceptable and we will be

[Baroness Vere of Norbiton]
able to put in more services in the evenings and at weekends. The other area that concerns me, to be honest, is cross-border services: how we make sure that longer services between two local transport authorities continue to function in an effective fashion. I recognise there is a lot to do. The Government stand ready to provide guidance, advice and support to local authorities as they take this challenge and run with it.

Baroness McIntosh of Pickering (Con): I warmly welcome the bus strategy and congratulate the department and my noble friend on the document they have brought forward. I particularly welcome the rural mobility fund and place on record that it will be a huge help in rural areas, for much the same reason that the noble Lord, Lord Greaves, gave. It will ease parking in market towns such as Thirsk and Northallerton if people can access a bus.

I also welcome the concessionary fares funding. The document states on the very last page:

"While the bus market is recovering, we will still look to Local Authorities to contribute to the operation of their bus markets, though to a decreasing extent."

It refers in an earlier passage to the national concessionary travel scheme. I want to place on record that, while the Labour Government came forward with the scheme, which was very welcome in rural areas, neither for the initial scheme when it was local nor for the extended scheme when it became national were sufficient funds made available to the local transport authorities. From which budget, in these times when local authority budgets have been particularly stretched, does my noble friend think the money for concessionary fares will come?

Baroness Vere of Norbiton (Con): The noble Baroness raises an important point which is directly relevant to the support we are providing to the bus sector at the moment. Noble Lords will be aware that we have asked local authorities to continue funding bus operators in terms of their concessionary fares contributions at the same level as they did previously, even though the demand is significantly reduced. The vast majority are still doing that, and it is very welcome—indeed, essential—for their local areas. That funding comes from MHCLG; it is within the budgets that local authorities set and the funding streams they receive.

The Deputy Speaker (Baroness Henig) (Lab): My Lords, all questions have now been asked.

Heather and Grass etc. Burning (England) Regulations 2021

Motion to Regret

4.50 pm

Moved by ***Baroness Jones of Whitchurch***

That this House regrets that the Heather and Grass etc. Burning (England) Regulations 2021 (SI 2021/158) do not provide a basis for significantly reducing the amount of peatland burning that occurs in England, in part because the restrictions extend only to certain areas of deep peat; notes that while there are appropriate uses of peat burning, the protection of peatland ecosystems should be prioritised to provide a haven for wildlife, the safe storage of carbon, and the prevention of natural catastrophes such as flooding and wildfires; and therefore calls on Her Majesty's Government to reconsider its approach to restricting the burning of peatland ahead of the season's commencement on 1 October.

Relevant document: 48th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

Baroness Jones of Whitchurch (Lab): My Lords, I am moving this Motion to Regret over the Government's so far inadequate response to restoring our historic and precious blanket bog wetlands to their original native state, thereby improving conservation and reaping the huge benefits that could have been brought to achieving our net-zero climate change targets. As such, we contend that the SI should be reconsidered and strengthened, on the grounds that it does not achieve its stated policy objectives.

I thank the RSPB and Wildlife and Countryside Link for their helpful briefings on these issues. Our arguments have been strengthened by the report of the Secondary Legislation Scrutiny Committee, and today by the report of the Joint Committee on Statutory Instruments, which has reported the SI as requiring elucidation, as well as for defective drafting.

I will first say something about the broader issues raised by this SI. We are blessed in the UK with 13% of the world's blanket bog. It is hugely important to our ecosystem, attracting important species, such as golden plovers and sundew plants, as well as nurturing the development of sphagnum moss species. However, as the Explanatory Memorandum points out, much of it has been degraded and is in a poor state, with less than 12% in a near natural state. It is a threatened habitat, which is why the Government, under the Conservation of Habitats and Species Regulations, have a responsibility to protect this habitat type and return it to a favourable conservation status.

In the UK, we are fortunate to have a particularly rich level of peat, which stores some 3.2 billion tonnes of carbon and can offset our carbon emissions to help us meet our climate change obligations. Sadly, this crucial natural resource is being eroded by habitat encroachment, artificial drainage, the excavation of peat for horticulture and, most damagingly, the burning of peatlands. This is primarily carried out to create better conditions for breeding grouse for the shooting industry. Regrettably, this has a reverse effect on its role as a carbon store, releasing around 260,000 tonnes of CO_2 into the atmosphere each year.

It is now widely accepted that action to control peat burning is necessary. The Committee on Climate Change, in its report on land use in January last year, said:

"Burning heather promotes young shoots, which grouse feed on, but it is highly damaging to the peat, and to the range of environmental benefits that well-functioning peat can deliver (e.g. water quality, biodiversity and carbon sequestration). A voluntary cessation of this activity by landowners has not produced the desired outcome so the practice should be banned across the UK with immediate effect."

In their 25-year environment plan, published in January 2018, the Government promised

"a new ambitious framework for peat restoration in England."

They committed to publishing an England peat strategy later in 2018, and to delivering it, so, we might ask, where is that strategy? It is already nearly four years since the proposal first appeared in the 25-year environment plan, and as we know, even a strategy is no guarantee of action.

This brings me to the specific wording of the SI. I am grateful to the Secondary Legislation Scrutiny Committee for drawing it to the attention of the House. In particular, the committee points out that much of the detail of how licences to burn will be granted will be set out in guidance, which gives the Secretary of State huge discretion in implementation before the start of the burning season on 1 October.

The committee also points out that the department should have been much clearer about the size of the areas of peatland that will be affected by a ban, on which the SI is hugely constrained. It only applies to upland peat in sites of special scientific interest, special areas of conservation or special protection areas. As Wildlife and Countryside Link has calculated, this equates only to about 109,000 hectares in England out of a total of 355,000 hectares. This is a maximum of 30% of the total of upland peat.

The scope of the ban is further limited by the series of exemptions which would allow burning to continue, for example: for conservation, enhancement or management of the natural environment; to reduce the risk of wildfire; or because the land is rocky or on a slope. The end-result of these exemptions is that, in large swathes of upland blanket bog, burning will take place much as before. We will also miss a golden opportunity to expand the use of blanket bogs to mitigate flood risk and improve water quality.

Turning to the arguments around wildfires, I believe that we are in danger of making the wrong link between cause and effect. Burning is only done to regrow the easily flammable heather vegetation. When you burn it, you get locked into an ever-smaller cycle of the heather growing back quicker and thicker. Ultimately, the most effective way to address the threat of wildfires is not to allow localised burning but to return the landscape to a state less like moorland and more like actual bog, full of muddy pools of water, which clearly do not catch fire. We should also acknowledge that most wildfires in the UK are not spontaneous but caused by accident or thoughtlessness on the part of the public or, indeed, arson. And controlled burns in themselves can become out-of-control wildfires.

Finally, I shall address the concerns about the need for greater scientific research into the management of peatlands. Anyone reading the Committee on Climate Change report will see that its recommendations are absolutely predicated on the latest national and international science. Furthermore, the recent report from Natural England, which has once again reviewed the latest science, concluded that burning on upland peatland had a largely negative impact on the flora, fauna, carbon and water. In response to an Oral Question on 14 October, the Minister said Defra had kept abreast of all the latest scientific evidence, and

"overall, the evidence shows that the burning on blanket bog is detrimental as it moves the bog away from its original wet state and risks vulnerable peat bogs being converted to drier heathland habitat."—[*Official Report*, 14/10/20; col. 1087.]

We agree with this analysis, which I hope gives noble Lords some comfort.

I know the Minister cares about these issues; I hope he will listen to our concerns about the limitations of this SI and accept the need to revisit it. I also hope that he is able to address the specific concerns of the Secondary Legislation Scrutiny Committee and the Joint Committee on Statutory Instruments. If he is unable to give the reassurance that we seek, I give notice that I am minded to test the opinion of the House on this issue. I look forward to his response.

4.59 pm

Baroness Sheehan (LD): My Lords, I thank the noble Baroness, Lady Jones of Whitchurch, for tabling this regret Motion and moving it so effectively. At the same time, I regret the way important legislation is being rushed through half-baked. Thank goodness that the Joint Committee on Statutory Instruments is not similarly constrained to two minutes. It has rightly condemned this SI for defective drafting. I also thank the Wildlife and Countryside Link for its invaluable work in helping to draw out the elucidation needed to make sense of this SI.

My contribution will concentrate on the mismatch between the Government's words and their deeds. I shall leave it to other contributors to query the wisdom of making legislation before thinking through the guidance that will inform it.

I welcome the inclusion of nature-based solutions in tackling the climate emergency as one of the five themes of COP 26. However, it begs the question: why make an SI to protect peatlands that leaves 60% unprotected? Does the Minister accept that the optics of justifying this on the grounds of "jam tomorrow" are poor?

Secondly, the Minister has said that

"the UK will use our presidency of COP 26 to persuade other countries to put nature at the heart of their climate response."

How can those words be reconciled with the inevitable live-time pictures of burning peatland during the November peak burning season that will surely, as night follows day, accompany them during COP 26?

Lastly, will the Minister restate the Government's response to the Wildlife and Countryside Link's first briefing, which states that,

"exemptions from the prohibition of burning in protected areas should only apply when burning can be shown to be part of either a restoration plan or wildfire management plan."

5.01 pm

The Duke of Montrose (Con) [V]: My Lords, I declare my family's interest in managing an area of blanket bog in Scotland which is now in a peat restoration programme.

I agree with the noble Baroness, Lady Jones, on the need for more research, but I am afraid I do not agree with some of her other points. The guarded tone of this measure is appropriate but, as the noble Baroness said, until the promised guidance is issued, it cannot be of much comfort.

In high rainfall areas, such as the one in which I live, any burning is totally site-specific and governed by the wind and weather on the day in question. Given all this trouble, it is easy to wonder why we should bother with burning.

[The Duke of Montrose]

By way of illustration, on National Trust land on the Isle of Arran, near my home, an ecologically oriented policy of no burning was adopted for a number of years, until someone on a day out dropped a match, which resulted in a fire which burned for two or three days.

There have been commercial incentives for installing fire breaks. If these activities are being limited, the guidance will have to consider what incentives there will be for this necessary work. My experience with blanket bog is that, provided a controlled fire is handled in the right way, it will consume the surface vegetation and only scorch the waterlogged peat moss, thus sparing the peat. It is a very exact science. Licensing will have to take account of all this practical experience. So I give this measure only a guarded welcome until we have more detail.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): The noble Lord, Lord Botham, is not participating in this debate, so I call the next speaker, the noble Lord, Lord Knight of Weymouth.

5.03 pm

Lord Knight of Weymouth (Lab) [V]: My Lords, first I want to thank and congratulate my noble friend Lady Jones on ensuring we have this important opportunity to question the Minister on these flawed regulations.

We have already heard that the main problems with this SI, beyond its drafting, are that it is limited in scope to only 40% of upland peat in England and that it is also undermined by loosely worded exemptions, so that the protection for the 40% can be revoked by licence, with little clarity on how exemptions from the prohibition on burning would apply.

I would like to use my limited time to ask the Minister a few questions. First, given that 86% of our upland peat is currently classed as being in poor condition, how will Defra measure the impact of these regulations in correcting this problem for these globally rare ecosystems? Secondly, does the Minister agree with the RSPB that the only long-term way to reduce the risk of wildfires is to re-wet and restore peat to its natural "boggy" state? If so, how will burning heather help that process? Thirdly, how will the department measure whether these regulations reduce burning—the stated policy intent—and will he ensure that data is published to Parliament on an annual basis on that progress? Finally, will he resist vested interests who resist a ban on rotational burning, and agree with the 60% of the British public who want a burning ban on all of England's peatland?

These are deeply flawed regulations. I look forward to the Minister's answers and strongly support the noble Baroness's Motion.

5.05 pm

The Earl of Caithness (Con): My Lords, I agree with the noble Baroness, Lady Jones, about where she wants to get to, but I think that her regret Motion is like driving down the wrong side of a motorway.

The regret Motion talks about peatland, but the statutory instrument does not even mention it. Peatland is not defined anywhere, but what definitions one can find of it do include peat. Nobody is talking about burning peat; they are talking only about the vegetation on top of the peat.

The regret Motion goes on to say that peatland should be "a haven for wildlife". It can be a haven for wildlife only if it is properly managed. I have lived on blanket bog, or beside blanket bog, for many years in my life, and the best biodiversity was found on the managed peatlands.

My main concern is wildfires. One can talk about the amount of carbon that is produced from cool burns—managed burns—on hillsides, but they produce about 1% to 5% of the carbon emissions from peatlands; 95% of the carbon emissions come from lowland peat, which is not covered by this statutory instrument.

I want to talk about the Flow Country in Caithness and Sutherland, which is the biggest blanket bog in Europe. In 2019, there was a fire there. Every day that fire burned, and it burned for six days, it doubled the amount of Scotland's CO_2 emissions—700,000 tonnes of CO_2 equivalent—because it got out of control. With climate change advancing, we need to manage peat so that we minimise the chance of any fire spreading.

5.07 pm

Lord Greaves (LD): My Lords, where I live, we are surrounded by moors. I would describe them as peat moors; a lot of them are heather moors and a lot are grass moors. Every year, there are fires on them. Some of them are managed fires on the grouse-shooting estates. Others are unmanaged fires caused by people who accidentally drop cigarette ends, or whatever, or have barbeques. It is not quite central to this statutory instrument, but I have asked questions of the Government previously about banning people from having barbeques on open country of this kind. The answer I get is that it is up to local authorities. The problem is that many of these moors are, by definition, the places where local authority boundaries are drawn, because they are up on the hills and the tops between the valleys, and getting local authorities together to organise jointly on this is not easy. I will just make that point.

The Joint Committee on Statutory Instruments has written a pretty damning report on the SI that has been presented. I think it is another example of how regrettable it is, with the way that parliamentary business is being organised at the moment, that there has not been the opportunity or the time available for the Government and the Joint Committee to discuss it and negotiate properly in the way in which it always happened in the past. We are told by the Government that they do not agree with it; the department says that it does not agree with it. That is not satisfactory—they should be having a discussion, getting together and sorting it out before it comes here. It is very unsatisfactory for us to have a statutory instrument where the JCSI is basically saying, "Don't pass it".

5.10 pm

Baroness Meacher (CB) [V]: My Lords, I thank the noble Baroness, Lady Jones, for tabling this regret Motion. I wonder what proportion of the population knows that, globally, peat holds twice as much carbon as all the world's forests, and that peatlands, not forests, are the UK's biggest carbon sink? I certainly did not until this week.

We understand from Bill Gates that the entire world emits 51 billion tonnes of CO_2 each year, and this number needs to drop to zero by 2050 to prevent catastrophe. This helps us put the contribution of peat in perspective, in my view. We should surely treasure the fact that the UK's peatlands store around 3.2 billion tonnes of carbon. While reducing CO_2 emissions in the production of steel, plastics and cement will involve vast investments in new technologies, all we have to do with our peat is to leave it alone. As the noble Duke, the Duke of Montrose, said, it needs very careful precision work to burn the surface and not burn the peat.

At this point, I must acknowledge the Government's regulations which, as the noble Baroness, Lady Jones, has explained, do go a little way to reduce peat burning—but why is the scope of the regulatory controls so very limited? Can the Minister tell the House whether the Government have come under pressure from the grouse-shooting industry or, indeed, from landowners, to limit the controls over peat burning? I hope the Minister will respond to that question.

The very informative briefing from Wildlife and Countryside Link makes the interesting connection between peat burning and cars, suggesting that removing upland peatland burning would be as beneficial in tackling CO_2 levels as removing 175,000 cars from the road. Link also gave us evidence of the strong public support for a peat-burning ban, with 60% support and only 3% against. I very much support the two amendments to the regulations proposed by Link: first, that the restriction of the controls over peat burning to SSSIs, SACs or SPIs should be dropped; and, secondly, that the exemptions within those areas should be tightened to ensure that peat burning really is limited to that absolutely necessary for safety purposes. If the Government will accept those amendments, I would welcome the regulations as a very helpful step forward.

5.12 pm

Baroness Mallalieu (Lab) [V]: My Lords, I am sorry that I am unable to support my noble friend Lady Jones. The Government have been caught in the middle between those who want all rotational burning stopped and those who believe that no additional restrictions are necessary or supported by the most recent research, and I think they have produced a not unreasonable compromise.

I will offer a caution: living in Exmoor national park, I have seen the adverse consequences of the over-restriction of rotational burning. Swaling, as we call it, has been used since medieval times over large areas of moorland to encourage the growth of young heather and grasses to the benefit of grazing animals, both domestic and wild, and evidence shows that curlews and golden plover benefit from it too—not grouse, because there are none. In the 1980s, SSSIs and stricter controls on both the timing and extent of the burns were introduced. It is now clear that the amount of burning that took place afterwards was wholly insufficient.

Heather needs to be cleared, ideally every 20 years or so. If not, as we have seen, there are large expanses of over-mature plants, a lot of them dead or dying. Heather and mosses have now dramatically declined in some areas, and instead Molinia grass, bracken, gorse and scrub have taken over. So have ticks, Lyme disease and tick-borne diseases of livestock. There have also been damaging wildfires, which, unlike carefully controlled and limited swaling, are not superficial but burn hot and deep, with very serious carbon-loss consequences. The noble Earl, Lord Caithness, pointed to the major one in Scotland.

There is plenty of peat on Exmoor but no blanket bog, so these regulations will not affect us, but calls for further restrictions may well. On the evidence I have seen, the consequences would not be good for wildlife, carbon capture or those who love the heather-clad moors.

5.14 pm

Viscount Ridley (Con) [V]: My Lords, I declare my interest as president of the Moorland Association and as the owner of moorland in County Durham. I shall address the issue of emissions. There is good scientific reason to think that the SI to restrict burning might actually increase net CO_2 emissions—some noble Lords may vote this evening to regret that possibility—and here is why: cool heather burning generates only a very small percentage of the emissions from heather moorland, as we have heard, and it enhances the sequestration of carbon. Recent scientific research by the University of York has revealed that, if you cut heather, it releases high levels of CO_2 as it rots. By contrast, burning turns some of it into inner charcoal, which does not rot but remains in the ground for many decades. More importantly, heather burning prevents the shading out of sphagnum mosses, which are by far the largest sequestrators of carbon in blanket bogs. This has been demonstrated by experiments, but it is also obvious to anybody who has spent time examining the vegetation on moorland.

I ask my noble friends, and I also ask the noble Baroness, Lady Jones, to recognise the fact that grouse moor managers have already delivered 25% of the Government's 2025 peatland restoration target for the whole of England. They have blocked 4,000 miles of drains over 20 years and restored at least 66,000 acres of bare peat. This work is saving 60,000 tonnes of CO_2 emissions per year. Peat restoration partnerships are an effective example of stakeholders working together. Blocking agricultural drains resulted in the North Pennines area of outstanding natural beauty peatland programme being award the climate change award at the Durham Environment Awards 2015. Its management plan recognised that sound grouse moor management can contribute significantly to the conservation and enhancement of natural beauty. So will the Minister agree to keep the science under review, so we can find out whether this burning restriction actually increases emissions from peatland, as is entirely possible?

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): My Lords, the noble Lord, Lord Howard of Rising, is not participating in this debate, so I call the next speaker, the noble Lord, Lord Bradshaw.

5.16 pm

Lord Bradshaw (LD) [V]: Peat is an extremely valuable resource in terms of carbon, as has been noted by several other noble Lords. I ask the Minister, although

[Lord Bradshaw]
it is not strictly in accordance with these regulations, what are the Government doing to prevent so much peat being used in horticulture? There is no doubt that much of our peat reserves are being used in that respect. I have a fairly open mind on the question of whether peat burning is a good thing or not, but I too would like to see further scientific evidence to prove what the best thing is.

5.17 pm

Lord Mancroft (Con) [V]: My Lords, the Uplands Partnership, which comprises leading countryside organisations, has produced *Peatland Protection the Science*: four key reports that collate the latest scientific findings. This dossier is highly significant in that it strongly recommends that any policy discussions should take cognisance of the latest research. In summary, the findings indicate that, first, heather burning can have a positive effect on carbon capture and, secondly, that burning does not cause water discolouration. Environmentally important sphagnum moss recovers quickly from low-severity cool burning. The loss of controlled burning in the United States led to a severe decline in birdlife and an increase in damaging wildfires. Greenhouse gas emissions from controlled burning are relatively insignificant compared with emissions from wildlife, or indeed severely degraded lowland peatlands used for agriculture.

It is true that the evidence is uncertain on these questions, which is why continued research is vital. The studies on which Natural England has relied are mostly short-term studies, and they do not give the full picture. Longer-term studies by Andreas Heinemeyer at York University point to very different results. Will the Minister confirm that an exemption must be made to allow these studies to continue? Will he further comment on the extreme reluctance of Natural England to revisit the science on this question, which is now very out of date? A review of research from 2013 to 2020, carried out by respected independent scientists, has now found that the conclusions of the previous science are out of date and could not be regarded as a safe basis for policy-making today. This is particularly important given that the Government are currently developing a strategy for peatland.

5.19 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I congratulate the noble Baroness, Lady Jones of Whitchurch, on tabling the Motion because the new regulations will not adequately protect peatland or reduce UK carbon emissions through a partial ban. There is a definite need for action to control peat burning, which is required as a matter of priority. That fact has been raised by the House of Lords Secondary Legislation Scrutiny Committee as well as the Joint Committee on Statutory Instruments.

Further to that, Wildlife and Countryside Link has been particularly instructive in relation to this issue. It believes that this statutory instrument will not achieve its policy objectives of protecting upland peat habitats from the impact of burning; that it is limited in its scope in terms of partial burning and only on designated sites; that the SI is undermined by loosely-worded exemptions; and that the SI's weaknesses undermine the Government's advocacy of nature-based solutions to climate change. We cannot be a champion of nature-based solutions to climate change while at the same time allowing our nature carbon store to be burned.

There is strong public support, around 60%, for a comprehensive ban, because the public recognise the importance and value of upland peat. They wish to see its potential as a nature-based solution to climate change realised, and they support a comprehensive burning ban to deliver that. What steps will the Minister take to ensure that this legislation is reworked and that he comes back to your Lordships' House with a new statutory instrument with a comprehensive ban?

5.22 pm

Lord Robathan (Con): My Lords, I declare that I do not have an interest because, sadly, I do not own a grouse moor. It seems to me that the Motion is prompted more by an antipathy towards grouse shooting than by care for biodiversity. Nearly two years ago a university friend of mine, who is a parish priest in a rather challenging part of Bradford, asked me to join him on the Pennine Way. We walked for three days from Marsden Moor to Malham across a lot of peat moorland. We saw golden plover and redshanks and, at some stages, fabulous numbers of curlew and lapwing. Where we saw them, there were no crows, because if there were any crows then there were no curlew or lapwing. That is because where there is predator control, on keepered moors, wildlife flourishes. If noble Lords do not believe me, they should go to see for themselves.

The same applies to heather burning. Controlled heather burning lets invertebrates and, indeed, plants flourish. It was a very dry spring. When we were walking, there had just been the most terrible fire at Marsden; seven square kilometres had been destroyed on Marsden Moor. Ilkley Moor nearby was burning and was being devastated as we walked.

Those severe fires in dry weather, burning into the peat and getting it burning, were very difficult to put out. However, they were not started by cool heather burning: Marsden was started by a discarded barbecue and Ilkley by arson. Wildfires spread especially in dry, old, shrubby heather, which controlled cool burning gets rid of. How many controlled fires have been undertaken by keepers or estates and got out of control in the past 10 years, and how many acres of peat were thereby destroyed? At the same time, how many wildfires on moorland have there been, started either by arson or by accident, and how many acres of peatland were thereby destroyed?

I would like to see what exactly the problem is that the regulations seek to address. If, in reality, arson and wanton carelessness are the causes of the destruction of peat moorland, surely we should be looking at them rather than at controlled cool burning.

5.24 pm

Lord Benyon (Con) [V]: I refer noble Lords to my entry in the register. As Environment Minister, I was often berated by upland managers who complained that they were being prevented from rewetting their moorland—but then, their mantra was "The wetter the better"—and there was much frustration with

Natural England at the time about how long it took to get permission to block grips and drains. Therefore, I do not recognise this idea that upland managers are somehow trying to dry out their moorland.

The areas of upland that we are talking about are, by and large, extraordinarily rich in biodiversity. Indeed, many of them are exceeding their biodiversity action plan targets by huge margins. The area where managed cool burns take place are almost the only places where one can go to see proper populations of rare curlew and other waders, as has been proved by research carried out by Fletcher et al.

The message has to be that we do not want to get this wrong; it is too important. Upland managers would be offended to see this regret Motion mention peat burning. The only peat that is burned is from the 32,000 wildfires that we have every year, some of which get into the peat, as we have heard, doing huge damage. That damage could be exacerbated by a ban that allowed fuel loads to increase and the increasing risk of devastating wildfires through climate change. Fire and rescue services need to be listened to here.

As with so many issues, the science is varied and there is certainly increasing evidence of the value of cool burning for the restoration, protection and enhancement of upland peat. The truth is that neither side is entirely happy on this matter, which could mean that the Government might be getting it about right. I was pleased to hear the RSPB say earlier in the week that the UK was edging towards being a world leader in restoring upland peatlands. That is welcome news but if there were to be a blanket ban on any burning, we would lose the mosaic of natural habitats that are so necessary to the biodiversity of these precious landscapes and seriously put at risk many hectares of uplands to wildfires that will release vast amounts of carbon.

5.26 pm

Lord Krebs (CB) [V]: My Lords, I thank the noble Baroness, Lady Jones of Whitchurch, for bringing forward this Motion, which I support. I will not repeat what other noble Lords have said about the ecosystem services provided by upland peat, such as flood protection, water purification and carbon storage, as well as its importance for rare species such as sphagnum imbricatum.

We are all critical of Brazil's burning of the Amazon, but we are doing something similar to one of our most precious habitats of global importance. As other noble Lords have said, nearly all our upland peat bog has been damaged or destroyed by a combination of burning, overgrazing, drainage and pollution. The Climate Change Committee concludes that climate change will increase the rate of degradation and carbon loss from peat bogs and that only by restoring them to good condition now will we be able to benefit from their ecosystem services in the future.

Can the Minister say whether the proposed regulations follow the Climate Change Committee's advice and, if not, why not? Some noble Lords have argued that burning is actually good for carbon storage. There is, indeed, dispute about the precise effects. I do not have time to go into the literature but let me quote Professor Peter Smith of Aberdeen University, arguably the UK's leading expert on soil carbon. He states:

> "While there might be some merit in the suggestions that peatland burning could lead to a longer term carbon storage, we know that peatland burning does lead to additional carbon release now. At a time when we should be focused on restoring peatlands to help meet our net zero by 2050 climate change targets, allowing peatland burning does not seem very compatible from a climate change perspective."

Does the Minister agree with Professor Smith?

5.28 pm

Lord Marland (Con) [V]: My Lords, I am afraid that we are in danger of armchair meddling in an ancient tradition that is of benefit to our countryside. This is part of a continued onslaught on rural Britain and its management. It is not as if we are not living in a green and pleasant land. As my noble friend Lord Ridley says, many initiatives are taking place to maintain the ecosystem that is upland moorland.

The noble Baroness, Lady Mallalieu, clearly enunciates the cost if we do not continue this type of activity and what happens to flora and fauna if they are not managed properly by burning. I ask my noble friend the Minister to update the research, which is changing the whole time, and work further with the Moorland Association, which, after all, has greater knowledge of these matters than most in coming up with a pathway for the benefit of all concerned.

5.29 pm

The Earl of Shrewsbury (Con): My Lords, I refer noble Lords to my entry in the register. I am also a member of the Game & Wildlife Conservation Trust and the APPG.

Burning benefits many rare species. The mosaic of high and low vegetation that it creates, with mosses, grasses, rushes and flowers thriving alongside heather, is a much richer habitat than wall-to-wall heather. Curlew and golden plover benefit especially from this form of habitat management. So do red grouse, Britain's most unique bird and a huge conservation success story in only those areas where grouse shooting occurs.

The Eurasian curlew is the bird of greatest conservation concern in the United Kingdom because its international stronghold is the British Isles. One-quarter of all the world's population breeds in this country. Its stronghold in the British Isles is grouse-moors. It has become very scarce in the meadows and pastures of southern England, and in the hills of Wales, Devon and the English Lake District. Despite heroic efforts, the number of pairs of breeding curlews in the RSPB's reserve at Lake Vyrnwy in Wales went from three in 2003 to—guess what?—three in 2015. In other parts of Wales, after management for grouse ceased, golden plover numbers fell by 90%; curlew, by 79%; black grouse, by 78%; and lapwing, by 100%. These are scientific facts.

Curlew, redshank, lapwing and golden plover live at five times the density on managed grouse-moors as on unmanaged moorland, and have three times the breeding success. Over the past 20 years, merlin numbers have doubled on grouse-moors, while halving elsewhere. In 2020, there were 19 successful hen harrier nests in England, 12 of which were on managed grouse-moors. Some 60 chicks fledged—a number not seen for at least a century. I welcome these regulations; they are a sensible compromise.

5.31 pm

Lord Cameron of Dillington (CB) [V]: My Lords, I declare an interest as chair of the UKCEH and a lowland farmer. No one is trying to burn peat. Fire prevention in peat is, in fact, an objective of a cool burn. On a managed burn, the fire skims across the vegetation, not affecting the winter sodden peat. Cool burns happen every 15 to 25 years, creating a mosaic of localised firebreaks and habitats for golden plover, grouse, curlew, black cocks, ptarmigan, lapwing et cetera —all incredibly important species.

Where the cool burn is recent, chicks scratch at seeds and invertebrates encouraged by the burn, then regrowing heather, mosses and sedges provide more seeds and crane flies. Adjacent to that, you have mature heather providing weather protection for all. However, one thing to avoid is miles of two-foot-high leggy heather, in which biodiversity is limited and summer fires can explode.

Meanwhile, the research is pretty contradictory. In spite of the biodiversity benefits, you get a release of carbon in a cool burn, but some believe that this is neutralised by reinvigorated growth over the following seasons. Others say that, over the years, there has been a gradual loss of carbon. More long-term research is needed. Meanwhile, is the alternative of mowed heather better for biodiversity and firebreaks or not? Again, research is needed. Most importantly, we need more accurate data on the current condition of all our upland peatlands as a template for the future—namely, how extensive they are, how deep and what sort of condition they are in. Every site will be different.

One thing is sure: one out-of-control summer fire, where the peat itself burns for days, is more damaging to our environment and climate than anything else we can do. We must not let that happen by producing simple answers to a complex problem.

5.33 pm

Viscount Trenchard (Con): My Lords, the regret Motion in the name of the noble Baroness, Lady Jones of Whitchurch, is factually wrong. I am surprised that she was allowed to table it because the statutory instrument does not relate to peat burning; it relates to the rotational burning of heather and grass. This is not a trivial point. The Motion talks about "peatland burning" and "peat burning". It seems to be a deliberate attempt to mislead the House. I trust that your Lordships will reject such an inaccurate and loaded Motion.

The distinction between heather and peat burning is crucial. Heather burning is carried out, among other purposes, to protect peat from being burned. It significantly reduces the risk of wildfires and is the best way to maximise biodiversity, from insects to reptiles and mammals to birds, by providing the full range of habitats that they require. The cool burning of heather, done in winter, does not significantly affect the moss and litter layer beneath the heather, as shown by the Mars bar test.

The new regulations have already led to an increase in cutting, as a substitute for burning, in large areas of blanket-bog moorland, in anticipation of their coming into force. Aside from the fact that cutting is not possible on rocky or steep ground, it is a less effective method of ensuring renewed, healthy heather and grass growth. The brush left behind is a wildfire risk, and other unintended consequences include the fact that, as it rots, it releases high levels of carbon dioxide and phosphorus—as shown by the recent research by the University of York, referred to by my noble friend Lord Ridley. High phosphorous loading in reservoirs can lead to toxic algal blooms and taste and odour problems in drinking water. At least the statutory instrument allows some sensible and pragmatic exceptions to the new restrictions.

I look forward to the Minister's reply to this debate.

5.35 pm

Lord Berkeley of Knighton (CB) [V]: My Lords, the noble Viscount, Lord Trenchard, made some interesting points there. The noble Baroness, Lady Jones, told us that 13% of the world's blanket bogs are here in the UK. That is a pretty amazing figure, given how relatively small that area is in this country. As such, it is clearly important that we have this debate and consider the dangers of burning.

Living on a farm surrounded by a shoot, I want to argue for an alliance between ecologists and landowners; I think that it is possible. For centuries, farmers here have burned or laid low bracken and areas like that to help the wildlife we have been hearing about to prosper. I draw particular attention to the comments of the noble Duke, the Duke of Montrose, the noble Earl, Lord Caithness, and the noble Lord, Lord Mancroft, because we need information from people who have direct experience. Let us not forget that, biblically, fire purifies and can allow plants to grow. I have seen extraordinary examples of that in Australia.

I have taken from this interesting debate the fact that, if we can agree to limit—and somehow do so —surface material to protect the peat bog, we should be able to make progress. I encourage the Minister, who cares passionately about these matters, to see whether he can draw these two sides together in that way. I wish him the best of British luck.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): I call the noble Lord, Lord McColl of Dulwich. Lord McColl? We can see you, but, regrettably, we cannot hear you. We will move on to the noble Baroness, Lady Bennett of Manor Castle.

5.38 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I thank the noble Baroness, Lady Jones, for this Motion, but I begin my two minutes by regretting that it is only a Motion to Regret. This House should be acting like an old-fashioned movie schoolmaster—that is, theatrically tearing up the Government's homework, throwing it back in their face and saying, "Do it again, and do a proper job this time".

This statutory instrument is a tiny nod to the public desire to end the disastrous management of land for driven grouse shooting. It is clear that, behind closed doors, the Government are still sitting around in comfortable armchairs, whisky glasses in hand, guffawing loudly and toasting their shooting mates—which, of course, means toasting themselves.

A few benefit from this land management; the rest of us, in the UK and around the world, pay. Whichever way you turn, as on any moor in the Peak District National Park, there is destruction. Look north, and this statutory instrument shows just how little this Government actually gets that this is a climate emergency: they are prepared to allow the driven grouse shooting industry to set fire to the planet—literally. Some say, "Oh, it's protecting 40% of upland peatlands". Yes, but it is leaving 60%, or 213,000 hectares, for the shooting industry's convenience.

Look south, and the regulation means that, in one of the worst countries for nature on this planet, many millions more mammals, reptiles and insects will die a fiery death so that—the industry hopes—there will be a few more grouse to lumber before the guns on the Inglorious Twelfth.

Look east, and this regulation shows utter contempt for the people who have to live nearby and suffer the air pollution in a country where tens of thousands of people die prematurely every year as a result of it. Look west, and the employment in ecotourism and biodiversity management that could come from flourishing uplands, soaring eagles and dancing hen harriers is denied to communities that desperately need it by a criminal industry linked to the illegal slaughter of raptors.

Our Secondary Legislation Scrutiny Committee describes this regulation as confusing and "difficult to assess". That is obviously deliberate. This is a disgraceful abdication of government responsibility and the obfuscation demonstrates that the Government know it.

5.40 pm

Lord Randall of Uxbridge (Con) [V]: My Lords, I declare my interest as a council member of the RSPB as well as my other environmental interests. These regulations have been a rather long time in coming forward. Without seeming to be too mealy-mouthed, quite frankly, they are disappointing, to say the least. I welcome them as far as they go, but they needed to be more wide-ranging. As my noble friend Lord Benyon said, the real answer to this is to ensure that the wetlands are restored to their wet state. Wetting will reduce heather growth and increase sphagnum growth. Increased wetting will also reduce the effect of wildfires. My disappointment with these restrictions is that they extend to a very limited number of areas only and even then there are potential exclusions from the banning of burning. Blanket bogs are an incredible natural ecosystem, as I think we all agree. They must be restored to their natural state. I fear we cannot do this with such a limited designation. If this ban is justifiable on SSSIs because it is beneficial, why not elsewhere?

Several noble Lords have mentioned that burning helps with the breeding success of wildlife, notably waders. However, I believe that such success is more a result of active predator control in those areas, as my noble friend Lord Robathan, observed. When it is done legally I have no great objection to it, but what I have a huge objection to is the totally illegal persecution of birds of prey which is more akin to the Victorian era, but those practices are still prevalent in pockets of our uplands. I add that those practices besmirch the reputation of the many gamekeepers who do not flout the law and manage the countryside well.

Finally, I say to those who use the burning of our precious peatlands in order to maximise the number of red grouse to shoot that I have visited uplands in Norway where such burning does not occur and which sustain healthy populations of willow grouse, which, as many noble Lords will know, is the same species as the red grouse. However, this debate should not be a dispute between those for and against grouse shooting. We need more concerted efforts to restore our blanket bogs. I do not take any pleasure in saying that if the noble Baroness pushes her Motion to a vote, I will join her in regretting that these regulations are inadequate and confusing. We should be doing far more.

5.43 pm

Baroness McIntosh of Pickering (Con): My Lords, I join my noble friend the Duke of Montrose in suggesting that it is difficult to welcome regulations when so much of the detail is in the guidance, of which we have not had sight. It would have been helpful if the guidance could have been published at the same time as the regulations so we could see how they applied.

My starting point is the fact that it takes 200 years to create a peat bog. It is obviously a cause of celebration that the UK has 13% of the world's blanket bog and that 40% of England's deep peat reserve is made up of blanket bog. North Yorkshire has made its contribution to creating a new peat bog when we had the Pickering "slow the flow" pilot scheme, which included, among other measures, creating dams and mini bunds, planting trees to soak up water where appropriate and creating a peat bog.

I think the noble Baroness, Lady Jones of Whitchurch, has raised some valid points but part of the reason that I will not be supporting her Motion today is that a lot of her concerns will be addressed in the guidance, one would hope. It is important to note that burning will take place only during the burning season, from 1 October to 15 April, which is the wettest time of the year in my experience. It is very seldom that we have a drought during that time. There are powers with Natural England to take action for future events—which I realise is after the event—through Regulations 6 and 7 if a party breaches the terms of the regulations. With those provisos, I am prepared to accept the regulations before us this afternoon. It is a cautionary message to the wise that we should have the guidance at the same time as the regulations are before us.

5.45 pm

Baroness Bakewell of Hardington Mandeville (LD): My Lords, this is a very emotive subject and one that often generates contradictions. The subject of the SI is the licensing of heather burning on moors which are within an SSSI, an SAC or an SPA area.

Arguments have suggested that allowing heather and grass burning on a rotational basis leads to increased flooding and wildfires. I am not convinced by these arguments. I live close to the Somerset Levels, where the peat does not catch fire but does flood on a regular basis. Those of us living in the south-west saw extensive television coverage in February of an intense wildfire on Dartmoor which burned out of control overnight. Fire crews attended from a large area over the south-west.

[Baroness Bakewell of Hardington Mandeville] At the same time, there was a fire on Bodmin Moor. I cannot speak for the wildfire on Bodmin, but the fire on Dartmoor was started deliberately. Dartmoor is a site of a blanket peat bog.

Many noble Lords, including the noble Earl, Lord Caithness, have referred to the effect of wildfires. Of the wildfires in the Devon and Somerset fire authority region since 2016, 36 have been accidental, started by sparks from bonfires, chimneys, discarded cigarette ends, barbecues et cetera—the noble Lord, Lord Greaves, referred to this. Some 32 fires were started deliberately on others' property, four were started deliberately on the owner's property and 19 were started deliberately where the owner was unknown. This is a total of 91, or an average of 15 per year. However, there was only one wildfire in 2016 but a peak of 30 in 2019. There have been three so far this year; only one was accidental.

The fire that raged on Saddleworth Moor in 2018 burnt for 10 days. It was started deliberately, involved fire crews from seven counties and destroyed four square miles of moorland in an area covered by a no-burn policy. Management of the moorland is a very delicate balance between protecting the wildlife, regrowth of the heather and sphagnum moss and protection of the peat bog. It would seem to me that having well-organised and regulated cool burning is far better than leaving the heather to become old and dry and suspectable to largescale wildfires which could ignite the underlying peat, causing far more damage.

In 2019, 153 fires took place in the Scottish Fire and Rescue Service area, only four were in areas of moorland managed for grouse and none happened during the burning season. All were due to accident or arson. The issue of licencing for burning is obviously not likely to reduce the risk of wildfires.

I sit on the Secondary Legislation and Scrutiny Committee and have been involved in discussions there. The Explanatory Memorandum accompanying the SI is confusing, with inconsistencies in figures for just how much of the moorland is affected by the instrument and how much of the peatbog is covered.

However confusing the SI is, one thing is clear: blanket bog is a valuable resource for carbon storage and sequestration. As referred to by the noble Baroness, Lady Jones of Whitchurch, the UK's blanket bog represents 13% of the world's resource and therefore needs protecting. There are currently consents to burn over 142,000 hectares, which is 90% of the SSSI designated deep peat and 40% of upland deep peat. Licences to burn cover peat only to a depth of 40 centimetres. This is not deep peat. This is a cool burn. Since 2017, 47% of consents have been removed. Of those that remain, 50% are in perpetuity. Can the Minister tell the House, in numbers not percentages, just how many consents to burn have been granted in perpetuity and how the Government plan to deal with these licences?

Defra has not helped itself with its answers to the Secondary Legislation and Scrutiny Committee questions. There was an element of arrogance that has not moved the arguments forward, in particular in relation to the blurring between what constitutes guidance and what is legislation. Today the Joint Committee on Statutory Instruments published its report; it also had difficulty in getting elucidation from Defra on access to the map referred to in the instrument. I regret that I found the comments by the noble Baroness, Lady Bennett of Manor Castle, unnecessarily offensive.

I am concerned that the peat strategy, first trailed in the 25-year environment plan, has yet to be published, and we are dealing with these important environmental issues on an ad hoc basis. It was expected that the peat strategy would be published in early 2021. We are a quarter of the way through the year—I would describe that as early, but there is no sign of this document. Will the Government continue to deal with peat on a piecemeal basis? A proper overarching strategy is needed —and it is needed now.

My noble friend Lord Bradshaw referred to peat for horticultural use. Given the debate, the comments of the noble Baroness, Lady Ritchie of Downpatrick, and the concerns of the Secondary Legislation and Scrutiny Committee and the Joint Committee on Statutory Instruments, I strongly suggest to the Minister that he withdraw this SI, publish the peat strategy without delay, and encourage Defra to rewrite this SI to reflect that strategy.

5.51 pm

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]: I thank noble Lords who have contributed to today's debate. As we look forward to COP 26 this autumn, it is essential that we debate such matters fully. I will address as many of the questions put to me as I can.

This instrument—the Heather and Grass etc. Burning (England) Regulations 2021—which was laid on 16 February 2021, seeks to ban the burning without licence of specified vegetation on peat over 40 centimetres in depth on sites of special scientific interest that are also special areas of conservation and/or special protection areas.

In response to comments from my noble friend Lord Randall, I can say that its purpose is to prevent further damage to approximately 142,000 hectares of protected deep peat by clearly setting out the circumstances in which a Secretary of State, as the licensing authority, may grant a licence for burning.

The noble Baroness, Lady Sheehan, talked about the need to restore England's peatlands. That is a priority for the Government: it will help us achieve net zero carbon emissions by 2050, and it will protect valuable habitats and the biodiversity therein. Blanket bog is a fragile peatland habitat of international importance, as a number of speakers have said; the UK has 13% of the world's blanket bog.

England's peatlands store, overall, around 580 million tonnes of carbon, but they emit around 11 million tonnes of carbon dioxide equivalents per year. Therefore, restoring our peatlands is a crucial part of addressing climate change and achieving net zero emissions by 2050. Blanket bog is a habitat at risk of being further degraded where it is not protected from damaging activity. Under the Conservation of Habitats and Species Regulations 2017, the Government have responsibility for protecting this priority habitat—maintaining it as an active bog and restoring it to favourable conservation status.

The Government's ambition is to have healthy peatlands that will provide us with a wealth of ecosystem services. This includes, as a number of speakers have pointed out, carbon storage and sequestration, a natural habitat for wildlife, high-quality drinking water and—as the noble Lord, Lord Krebs, and the noble Baroness, Lady Jones, pointed out—flood mitigation. Blanket bog makes up around 40% of England's deep peat reserves and is one of our most extensive protected habitats, yet only about 12% of it is in a near-natural state. The remainder is degraded by practices that impact on the natural functioning state of that habitat.

Rotational burning as a moorland management tool is carried out to manage unnaturally dominant heather species in winter months, typically on a 12 to 15-year rotation. While this activity does not have a significant impact on carbon emissions per se, there is now an established scientific consensus that burning of vegetation on blanket bog can be damaging to peatland formation and habitat condition, making it difficult or, in some cases, impossible to restore these habitats to their natural state and to restore their hydrology.

The Government recognise that by allowing repeated burning on protected blanket bog sites in England, they were not fulfilling their obligations under the conservation regulations. This instrument has been drafted to ensure compliance with our domestic obligations, as well as our international obligations under the Bern Convention on the Conservation of European Wildlife and Natural Habitats.

Landowners and managers required consent from Natural England to burn on protected blanket bog. To answer the noble Baroness, Lady Bakewell: since 2017, only 47% of those consents have expired or been removed by Natural England, and the majority remain in perpetuity, covering 52,000 hectares of protected priority habitat.

The Government have previously stated that if voluntary measures to cease burning on blanket bog did not work, they would look at the role of legislation. This voluntary approach has not worked, and this instrument aims to plug that gap. These regulations do not, however, simply ban the use of burning as a management practice on protected blanket bog sites. First, the prohibition does not apply on land that could never be accessed by cutting equipment by virtue of it being exposed rock or a steep slope. Such land can continue to be managed without need of a licence. Secondly, where land is otherwise inaccessible to cutting equipment, perhaps by virtue of its remote nature, then a licence may be considered to allow burning to take place.

The Government have also included in the regulations explicit reference to the objective of preventing wildfires. Wildfires can be devastating, as a number of speakers have made clear, for the environment, and this risk has not previously been given sufficient weight.

The evidence and process by which the Secretary of State will make decisions on licence applications will be set out in accompanying guidance—this point was raised by a number of noble Lords, including the noble Duke, the Duke of Montrose, the noble Lord, Lord Greaves, the noble Viscount, Lord Trenchard, and the noble Baroness, Lady McIntosh. The Government recognise that any application process will need to be accessible to all landowners and managers. We have extensively engaged with stakeholders, and it is clear that many agree that good-quality, cohesive management plans are the key to supporting a licence application. That is why these plans will be at the heart of the process we develop. We will continue to listen to the sector and will conduct a post-implementation review of the guidance to ensure it is right.

The guidance will emphasise an aspiration that the management of the protected sites should be complementary to high-quality natural habitat restoration plans for those sites. It is hoped that through such plans, the need to manage these sites by burning will diminish and, ultimately, become unnecessary. Work to develop and produce this guidance is well under way. The Government's engagement with the upland management sector and environmental NGOs is well established and extensive. The guidance will also set out whom the Secretary of State will consult, which will be not only Natural England but other interested stakeholders, including, for example, the local fire and rescue service when considering issuing a licence for wildfire mitigation.

The Government are very aware that the management of upland habitats, on which this regulation will have an impact, is complex and unique. They are also aware that the guidance must be capable of being understood by both large land management organisations and small estate teams. And they aware of the view, backed up by science, that there is a risk that burning heather to reduce wildfire risk could itself dry the land and exacerbate the risk. So, we are looking closely at this.

In July 2019, all consent holders on the protected sites were made aware, as part of our survey work, that the Government were considering legislation. Further targeted stakeholder engagement, as a result, was carried out in August 2019. Twenty-six key stakeholders, including environmental, shooting and conservation bodies, major landowners and protected landscape authorities took part.

The Government recognise that the new regulation may place additional burdens on some landowners and managers. However, they also recognise that inaction and the continuation of burning on protected sites will be unacceptable.

All peatland is important, and these regulations represent an important step in delivering the Government's nature recovery and climate change mitigation targets. We will set out further measures to protect England's peatlands this year as part of a package of measures to deliver nature-based solutions. This instrument attempts to strike the right balance between protecting our habitats from harm and ensuring that our landowners and managers have the right tools available to protect those habitats and restore them to their natural state.

A number of additional questions were raised by noble Lords. The noble Baroness, Lady Jones, asked about flooding, and the answer is that acting now to protect our peatlands from further degradation and investing in their restoration will mean they are resilient to further climate change and will begin to contribute to our net zero targets. In a healthy, functioning state,

[Lord Goldsmith of Richmond Park]
our peatlands will help us mitigate carbon emissions and adapt to climate change while also providing a whole wealth of public goods, including flood mitigation and provision of good-quality drinking water.

I was asked when the peat strategy will be published. We will publish it soon.

The noble Lord, Lord Knight of Weymouth, asked about monitoring. The monitoring of specific impacts from burning is not done on a granular scale. However, the Environment Agency and Natural England monitor the overall condition of our rivers and moorlands, and Natural England keeps up to date with all the latest scientific studies, which include monitoring the specific impacts of burning.

I was asked whether the Government agree with the comments of the RSPB, a comment echoed by my noble friend Lord Caithness. Some of the clearest evidence points to improving the resilience of our peatlands to wildfire by ensuring that they are wet and in a natural state. Managed burning results in an increase in vegetation type, such as heather, which have a higher fuel load compared with natural blanket bog vegetation.

I was asked by the noble Baroness, Lady Meacher, if we had been subjected to pressure from landowners. Yes, of course we have. We have been lobbied by all interest groups—everyone from the large landowners to the small and from the conservation groups to the NGOs, as would be expected. We have balanced the information that we have received from all of them.

My noble friend Lord Ridley raised a number of issues, particularly around the science. The growing evidence base shows that, on balance, the consensus of scientific opinion in the UK is that burning on blanket bog is detrimental, as it moves the bog away from its original wet state and risks vulnerable peat bogs becoming converted to drier heathland habitat. However, the Government are aware that research is ongoing and there are findings both in support of and against the practice; I am therefore happy to confirm to him that we will continue to listen to the science and keep our policy and our minds open.

The noble Lord, Lord Bradshaw, asked about the use of peat in horticulture. We are committed to phasing out the use of peat in horticulture in England, and we intend to publish a formal consultation shortly.

My noble friends Lord Benyon and Lord Caithness raised a number of issues around wildfire. I hope that I have addressed them. I simply say that some of the clearest evidence that we have points to improving the resilience of our peatlands to wildfire by ensuring that they are wet.

My noble friend Lord Marland, pointed out that we were lucky to live in a green and pleasant land. We do live in one: this country is among the most beautiful in the world, but it is also—we must be honest—one of the most nature-denuded. The biodiversity decline just in my lifetime—the last 45 or 50 years—is not far off 70%, so we do have a biodiversity crisis in this country and it requires us to address it.

My noble friend Lord Shrewsbury also made the point about biodiversity. Blanket bog in favourable condition will have a minimum of six plant indicator species, including heather, cotton-grasses, feather mosses and sphagnum species. The best examples might have as many as 12 indicator species. Where bog is degraded, dry and heather-dominated, there might be only heather and a few feather mosses—in some cases only two indicator species.

The noble Baroness, Lady Bennett, made a number of points. We, of course, recognise that the significant amounts of peat—this is in response to the noble Lord, Lord Randall, as well—will fall outside the scope of this regulation. It will enhance the protections afforded to about 142,000 hectares, but we will be setting out further measures to protect England's peatlands this year as part of a package of measures. This is a first step.

The noble Baroness also asked whether I enjoyed doing toasts with my shooting mates while we guffawed at the ruination of the countryside. I do not have a particularly large number of shooting mates and I do not engage in shooting. As I approach these issues, I do so with a keen interest in ensuring that I am looking at the science and aiming for a balanced policy—one that is, above all, in the interests of our country and its natural environment.

I can see that I am running out of time. I hope that I have covered most—I do not think all—of the questions raised by Members. To conclude, I trust that noble Lords understand the need for this instrument. It represents an important first step in our efforts to restore, recover and protect all of England's peatlands. All peat is important; while these regulations only extend additional protections to our most protected sites, they are just a first step. They will ensure that burning is a management technique that only takes place in the right place and for the right reasons. Once again, I thank noble Lords for their contributions and support today. I commend the regulations to the House.

6.03 pm

Baroness Jones of Whitchurch (Lab): My Lords, we have had a very good debate and have given the issues a very thorough airing despite the restrictions on time. I am grateful to the Minister for his response. I just make a few quick comments.

On the issue of science, which a number of noble Lords raised, the evidence has been reviewed and reviewed again. Each time it comes to the same conclusion, which is that we need to stop burning blanket bog or vegetation on blanket bog. Several people referred to the science produced by MA, et cetera, but even that has been disputed in a peer review. The Minister and I were agreed on the science issue, so I am glad that that is not really an issue for debate.

I also accept the point, which a number of noble Lords raised, that there is interesting biodiversity and a growth in biodiversity in the burned areas. But it is a very different biodiversity from that found in our historic, deep blanket bogs. You cannot equate one with the other; we need to protect both. I do not think that just replacing moorland with blanket bog is the right way to go about it. Both have their place, and we certainly need to do our best to restore what blanket bog we have or have had.

Secondly, it is true that there have been some voluntary cessations of rotational burning and there have been some partnerships on peat restoration, and I am very pleased that a number of landowners have co-operated on this. But as the secondary legislation points out, these are not on the scale needed to be effective. Thirdly, I accept that there are other initiatives running at the same time as this SI, such as the Nature for Climate Fund. But, again, this a voluntary scheme when we need firm legislative action.

Finally, we are running out of time—there is a climate change emergency. Restoring our unique and valuable blanket bog habitat has to be harnessed as part of that solution to help deliver our net-zero targets. Although it is great that the Government are addressing their conservation responsibilities, where are the regulations to meet our climate change responsibilities as set out in the Climate Change Act and, indeed, our international obligations on the same issue?

I do not detect any of the required urgency in what the Minister has had to say today, and I do not accept that sight of the guidance will give any of the answers that we are looking for, because they are predicated on the basis of the restricted land area and the loose exemptions for which our Motion to Regret is critical. So, I do not think that seeing the guidance is the answer.

On this basis, I once again regret that the Minister has not felt able to reconsider his approach to peatland burning and to come back with a more comprehensive programme of action to apply this year. Therefore, I would like to test the opinion of the House on this issue.

6.08 pm

Division conducted remotely on Baroness Jones of Whitchurch's Motion

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House adjourned at 6.20 pm.

Grand Committee

Thursday 18 March 2021

The Grand Committee met in a hybrid proceeding.

Arrangement of Business

Announcement

2.30 pm

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

Representation of the People (Proxy Vote Applications) (Coronavirus) Regulations 2021

Considered in Grand Committee

2.31 pm

Moved by ***Lord True***

That the Grand Committee do consider the Representation of the People (Proxy Vote Applications) (Coronavirus) Regulations 2021.

Relevant document: 48th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, across all parties and none, we are all resolved that democracy should not be cancelled because of Covid. The Government have confirmed that the election scheduled for May will go ahead and are providing a package of measures to support the statutorily independent returning officers to deliver these elections successfully and with the right precautions in place. Those measures were set out in a delivery plan published by the Government on 5 February.

These draft regulations would temporarily change the eligibility criteria for emergency proxy applications, so that electors who are self-isolating due to coronavirus on election day have an additional option to vote remotely. The provisions in this SI would also allow those with an existing proxy to change the person acting as their proxy if their original proxy were affected by coronavirus.

The last opportunity for a routine proxy application is at 5 pm six working days before election day. After this deadline, the only other option to create a new absent voting arrangement is to apply for an emergency proxy vote. Emergency proxy applications on medical grounds are usually required to be attested by a medical professional. Not everyone will be able to seek such attestation—for example, those who become symptomatic with Covid too late to take a test. The statutory instrument would remove this requirement for those affected by Covid. Removing attestation will also avoid adding more pressure on already busy medical professionals.

Furthermore, if an elector was informed that a member of their household tested positive for coronavirus but they were unable to evidence that they also had the virus, under current regulations the elector would be ineligible to apply for an emergency proxy vote even though they ought to remain at home. This statutory instrument will remove these limitations for those affected by Covid-19 and provide a more flexible approach for those who ought to remain at home on election day.

The changes proposed would mean that, if an elector believed that their particular circumstances would lead to an increased risk of transmission of the coronavirus to themselves or others in a range of circumstances, they would be eligible to apply for an emergency proxy vote. For example, an elector who has been made aware they may have been exposed to the virus at home or work in the days leading up to the election can apply for an emergency proxy vote even if they are not yet showing symptoms.

Beyond removing attestation, the usual security measures for absent voting applications—such as the signature requirement, providing date of birth, and the requirement that electors declare that they understand that all the information provided is true and that providing false information to an ERO is illegal—remain in place.

Electors who are granted emergency proxies will be included in the absent voting lists, which are available to candidates and agents on request, for the express purpose of ensuring scrutiny and integrity.

These temporary changes are both necessary and proportionate to ensure that those affected by coronavirus can still exercise their right to vote. This SI does not affect the regulations regarding any other route for emergency proxy applications. Almost all provisions in it will expire at the end of February next year, so will not apply to any regularly scheduled elections, such as those in May 2022.

The only permanent provisions in this SI simply clarify and add certainty to the existing position that electors with long-term proxy arrangements, such as those with a disability, can replace the person acting as a proxy without having to go through the entire application process again. Going through the full application process would require an elector to prove their eligibility for a long-term proxy vote again, simply to change the person who was their proxy; that should not be necessary.

The statutory instrument has been considered by both the JCSI and the SLSC, neither of which has drawn the attention of the House to it. For the avoidance of doubt, I should state that we have consulted the Electoral Commission, which is supportive of the proposed changes. We also shared a draft of the SI with the Association of Electoral Administrators, SOLACE and officials in the Welsh Government.

There is broad support among stakeholders for the proposed changes in the instrument. Both the Welsh and Scottish Governments have put similar measures in place for the polls on 6 May for which they are responsible. It is important that we are able to offer

[LORD TRUE]
voters consistency of approach wherever possible, and I am pleased that all three Governments are working to support voters in this way. I hope that noble Lords will welcome these proposals. I beg to move.

2.35 pm

Lord Naseby (Con) [V]: My Lords, I am pleased that the title contains "draft", because I have some thoughts that I hope my noble friend the Minister might take on board. I am not clear why we need an expiry date of 28 February 2022. Surely we do not know whether isolation will continue for some unknown period. There is talk of a third wave and another lockdown and so on, so I do not know why this cannot be left open-ended. Then, when it is clear that we are through the coronavirus pandemic, we can by all means determine to remove this facility altogether.

Self-isolation is only for 10 to 14 days, depending on the circumstances. That is a pretty short timeframe, really. I have fought local elections, general elections and other elections, and part of me wonders whether there is not a degree of overkill.

After paragraph (3A), there are four categories to be inserted. I have no problems with new sub-paragraphs (a) or (b), but what is said in new sub-paragraph (c) is true for almost everyone, so in a sense it depreciates the currency. I have a question mark over new sub-paragraph (d), because there is a danger of its being made too easy to get a vote. This could be open to abuse.

In elections I have taken part in, I have known there to be personation. Indeed, there was an article about it in the *Times* or the *Telegraph* after the 1966 general election, in which I was the Conservative candidate in Islington North. I fully admit that I had no hope of winning in Islington North, which is now Jeremy Corbyn's seat, but as a keen young candidate I made sure that we had tellers on the doors, and we watched carefully what was happening. Afterwards I was in the pub talking with my key workers, and two of them said, "You know, we're quite sure we saw that chap come at 7.30 and the same chap appeared again at 9 o'clock." I said, "That's funny you say that, because I felt the same." I thought no more of it other than that, as people who know that part of London will know, there is an extensive Irish community there with large families. The long and the short of it was that some journalist from either the *Times* or the *Telegraph* was watching carefully, and along appears an editorial saying that there were clearly personations, where people had left the voting card in a house or residence where there were multiple voters, and a chap had taken a card not just for himself but for several other people in that house who were registered to vote.

On general elections, there is still some personation. I have seen it in a couple of seats and indeed—dare I mention it?—I have been on a number of overseas monitoring roles, and there is certainly less personation in general elections that I have watched in Sri Lanka than in parts of the UK. I am not at all sure what the principles are. People who are ill get a postal vote and it is done with great rigour, as my noble friend mentioned. It is done properly and carefully. Proxy votes, on the other hand, are a little more open to creative illegality. This SI talks about "long-term proxy arrangements". Why should there ever be a long-term proxy arrangement when you can get a postal vote? There is a real danger here with a low turnout or tight majority.

My first general election majority was 179. I lost on the first count, then crept in with about two or three votes on the second count, and ended up with 179 on the third count. At my second election in October 1974, I crept in with 141. In local elections, as we all know, there are some very low turnouts and very tight majorities. Single figures are quite common; majorities of 20 to 25 are very common. If, as a result of this proposal, you have people applying for proxy votes, there is no doubt that it will dramatically improve the turnout. There will probably be people who were not going to vote in the first place, but because they know they can get a proxy vote they will turn out.

I am a bit fearful about what is proposed here. This needs to be watched carefully and, frankly, I am not in favour of it at all. Maybe I am in a minority. However, as someone who has experienced elections in some depth—I note that the Liberal spokesman has also witnessed a fair number of local elections—I wonder whether this is a step too far.

The Deputy Chairman of Committees (Lord Caine) (Con): The noble Baroness, Lady Gardner of Parkes, has withdrawn, so I call the noble Lord, Lord Rennard.

2.44 pm

Lord Rennard (LD): My Lords, I thank the Minister for answering my Written Question on Monday about absent voting arrangements. I am grateful to him for confirming that

"The law does not require applicants to verify their identity or address when applying for a postal or proxy vote".

The regulations that we are considering today require little debate. In the circumstances of the pandemic, it is right to allow people to appoint someone as a proxy voter for them as late as 5 pm on polling day. But other measures could have been taken to ensure that everyone entitled to vote was able to do so. We have seen in the most recent Dutch elections this week that polling stations were opened for three days to help more people to vote without the risk of queues and crowding. Our Government are limiting increased access to voting to this very modest measure.

My concern is that some local authorities may act against the clear intention of these regulations and existing legislation about proxy voting, and try to suppress the right of voters to participate in this way or by post. The Minister will no doubt be aware that the local council in Woking has been advising potential proxy and postal voters that they should provide proof of identity with photo ID and proof of residence. People not providing this are threatened with consequences, and only in the very small print does the documentation admit that applications will be processed even if the photo ID and proof of residence is not provided.

Does the Minister think that local authorities should be free to imply incorrectly that there are such requirements to obtain a postal or proxy vote? Does he accept that such barriers may discriminate against groups such as young people who may not yet have passports or a

driving licence, and who may not have utility bills addressed to them personally? Is not this a classic attempt at voter suppression of the kind that we have become familiar with seeing from the Republicans in the United States? Will the Minister work with the Electoral Commission, the Association of Electoral Administrators, SOLACE and others to advise local authorities that they should proceed exactly as set out in these regulations and other legislation, and not seek to impose additional barriers to make it harder for people entitled to vote to participate in the elections? Does he think that the Electoral Commission may need greater powers to enforce standardisation of best practice consistent with the law for electoral administrators issuing application forms concerned with electoral registration and absent voting?

The Minister helpfully replied to me on Monday to say that electoral registration officers

"do not have the power to reject or refuse an absent vote application if the applicant does not provide additional proof of identity or residence".

Will he therefore prevent local authorities such as Woking Borough Council effectively taking the law into their own hands in such matters and seeking to exclude some of those people on the electoral rolls from being able to participate in elections? I have heard today from the Electoral Commission, which advises that local authorities should not imply that this is the case. I hope that the Minister will work with the commission to make sure that this practice is ended in the Woking borough and not begun elsewhere.

2.48 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I support the regulations. As the noble Lord, Lord Rennard, and the Minister said, they do not need a huge amount of discussion. They are very welcome, as they will enable people to have further opportunities to participate in the elections in May, and I welcome them.

The noble Lord, Lord Naseby, had a valid point when he drew attention to the fact that these regulations have a sunset clause coming up next February. We all want to ensure that the pandemic is long gone when we get to May 2022 but of course we cannot guarantee that—so why do have the sunset clause? I am assuming that, if the pandemic has not gone by next May—if we have a third or fourth wave—the Government will have to introduce something like these regulations again. We do not want that but it may have to happen, and that is a fair point.

The noble Lord, Lord Rennard, raised Woking Borough Council. I have had involvement with Woking Borough Council before and I know that this is not the first time that this authority has decided to do its own thing, as it were. It is not right for local authorities, EROs or any other official of a council to think that they can act beyond the law as agreed by Parliament. The situation is that nobody needs to provide this information and Woking Borough Council is acting beyond its powers. I hope that the Electoral Commission, and the Government, will make it very clear to the council that it cannot do this and that it has to act strictly within the regulations as approved by Parliament —no more, no less.

As I said, this is not the first time this authority has done this, and I do not think that any other authority behaves like this. I understand that the noble Lord, Lord True, has confirmed to the noble Lord, Lord Rennard, what the situation is. I hope the Government can speak to the authority and make it very clear that it should not and cannot do what it is doing. In fact, the authority knows that it cannot do this, because, as the noble Lord said, it is in the small print that people do not need to provide that information. That confirms that the council knows that it should not be doing this. For me, that is poor practice, or sharp practice, and not something that any of us in this Committee would support.

Having said that, I fully support the regulations before the Grand Committee.

2.51 pm

Lord True (Con): My Lords, I am grateful to all those who have spoken and acknowledge their great experience in electoral matters. I am not going to exchange election stories with my noble friend Lord Naseby, but I can assure him that the first majority I ever had was a lot smaller than his—not normally what people boast about, but that was the case.

Important points were raised and I shall try briefly to address them. My noble friend Lord Naseby said two things. The first was that he was concerned about fraud. We are all concerned about fraud. There is always a balance to be reached in these things. The noble Lord, Lord Rennard, implied that it is also important to ensure that people are enabled to vote, and that is ultimately what this statutory instrument is about. In the difficult circumstances we face now, with coronavirus, people who are affected by coronavirus at a late stage before the election must be enabled to vote. This is an exceptional circumstance and our judgment is that, whatever the risks my noble friend may fear, it is a reasonable stance that we are taking.

I repeat what I said in opening: it is an offence to provide false information. Electors granted emergency proxies will be included in the absent voting lists, which will be available on request to candidates and agents for scrutiny. We believe that the Government have reached a reasonable balance on that.

The other point my noble friend made was, in a sense, logically not quite on par. Like the noble Lord, Lord Kennedy of Southwark, he asked why this provision is just for a brief period. If I were concerned about fraud, I would not necessarily want to make it a permanent arrangement. I think there is a slight logical inconsistency in the questions, but I understand that my noble friend was coming at it from two different directions.

It is our belief and hope that conditions will have returned to normal by next year and that we should return to the broad established arrangements for elections. Obviously, if the worst happened—and we all pray that it will not—the Government would review it at the time. We believe that it is reasonable to place in the regulations a sunset clause and, indeed, we are often asked in other aspects of coronavirus debates to impose sunset clauses. I hope that answers also the point made by the noble Lord, Lord Kennedy of Southwark.

[Lord True]
I appreciate his support for the proposed SI, and that of his party, and equally the support put forward by the noble Lord, Lord Rennard.

The noble Lord, Lord Rennard, raised a point about a specific local authority. In my position responding to the Committee, I shall not highlight—or lowlight—any particular local authority. I made the position clear in response to a Question, as he was kind enough to say. Postal or proxy voters must by law supply their date of birth and signature at application, and again when they return their postal ballots at an election or referendum. The legal position is clearly set out in this statutory instrument and elsewhere in electoral law. I am sure that electoral registration officers, who are responsible for processing applications for postal or proxy votes and applying the legislative requirements, have a mind to the law. The points raised are properly for the electoral registration office of Woking Borough Council to respond to, but I take note of what he said. Good practice is good practice and the best practice in line with the law. That is as far as I will go on that matter.

I return to my gratitude to all noble Lords who have spoken, who raised germane and important points to which I have tried to respond. I, and I think they, believe that the instrument makes sensible change to support the effective administration of elections. It gives an option to those electors who must remain at home on election day to cast their vote remotely if they are affected by coronavirus, or to replace a proxy affected by coronavirus if they have already made arrangements to vote remotely.

I did not answer my noble friend Lord Naseby's question on long-term proxy. Those with long-term proxies often have particular reasons and conditions for having them. In a free society, where a proxy vote is a perfectly legitimate way to vote, people have a choice. They can vote by proxy, in person—although such people cannot often do that—or by post. That is a choice for each elector.

I thank noble Lords most sincerely for their support for the statutory instrument and commend it to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Lord Caine) (Con): The Grand Committee stands adjourned until 3.30 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

2.58 pm

Sitting suspended.

Arrangement of Business

Announcement

3.30 pm

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

Energy Performance of Buildings (England and Wales) (Amendment) Regulations 2021

Considered in Grand Committee

3.31pm

Moved by ***Lord Greenhalgh***

That the Grand Committee do consider the Energy Performance of Buildings (England and Wales) (Amendment) Regulations 2021.

The Minister of State, Home Office and Ministry of Housing, Communities and Local Government (Lord Greenhalgh) (Con): My Lords, these regulations were laid before the House on 22 February 2021 under paragraph 12(1) of Schedule 7 to the European Union (Withdrawal) Act 2018. They were debated and moved in the Commons Delegated Legislation Committee on Monday 8 March and considered by the Secondary Legislation Scrutiny Committee on Tuesday 9 March. Mirroring legislation is being prepared for data registered against properties in Northern Ireland, which will be presented in plenary on Monday 22 March. Scotland operates its own energy performance of buildings register and is not covered by these regulations.

This is a straightforward instrument. It relates to the statutory fees that are charged when data is registered for energy performance certificates, display energy certificates and air conditioning inspection reports for properties in England and Wales. Fees are applied to two classes of data registration, covering domestic and non-domestic properties. The regulations propose to reduce fees from £1.86 to £1.64 when data is lodged for domestic properties, and from £9.84 to £1.89 for non-domestic properties. Noble Lords may recall that fees charged for data registrations in England and Wales were last adjusted three years ago, and that they have been amended by statutory instruments on six occasions between 2012 and 2018.

The Committee will recall that the United Kingdom has set a target in law to bring its greenhouse gas emissions to net zero by 2050, to help tackle climate change. Heating and powering buildings currently accounts for 40% of the UK's total energy usage, and we must ensure that buildings are constructed to high standards of energy efficiency. The energy performance of buildings registers are a key tool in promoting energy efficiency by providing valuable information about the energy performance of buildings and encouraging home-owners and commercial building owners and occupiers to improve the energy efficiency of their buildings. An energy performance certificate is needed whenever a property is built, sold or let, and must be ordered before a property is marketed for sale or rent. At a glance, a consumer searching for a new home or commercial

premises can determine how efficient a property might be, while an owner can consider recommendations on how they might improve the energy efficiency of their property.

Historically, the Energy Performance of Buildings (England and Wales) Regulations 2012 implemented the energy performance of buildings directive. We retained those regulations after we left the European Union, as they contribute to our target of achieving net zero greenhouse gas emissions by 2050. They set out the Secretary of State's obligation to maintain registers of data so that energy performance certificates, display energy certificates and air conditioning inspection reports can be recorded in a readily accessible format and made available to everyone. Regulation 28 sets out a power to levy fees to maintain the registers. Officials in my department calculate the appropriate level of fees each year on the basis of proposed costs of service divided by the forecast number of data lodgements expected.

A reduction in fees is possible now because the Government have invested in a new cloud-based digital platform and moved away from the fixed hardware model that had been in place since 2008. This will ensure the energy performance of buildings register service is user-centred and fit for the future. The new fee rates set out in this instrument will allow the costs of operating the energy performance of buildings register service to continue to be met without profiteering, but nor do we expect lodgement fees to subsidise a loss. Costs of the service have been calculated in line with government policy and tested with Treasury colleagues and stakeholders in the property energy profession.

Domestic and non-domestic data lodgements are now made to a unified platform built on cloud-based infrastructure. There are some technical differences between lodging data for a domestic and non-domestic certificate, which give rise to additional costs for making a non-domestic data registration and hence a differentiation in fees between the two classes, although this is now greatly reduced compared to previous years.

To conclude, these regulations serve a very specific purpose: to reduce the statutory fees charged when data is registered for domestic and non-domestic energy performance certificates, display energy certificates and air conditioning inspection reports. Colleagues in Northern Ireland are proposing to introduce their own mirroring legislation to ensure coherence between different parts of the United Kingdom that make use of the same register infrastructure. This will ensure that fees charged for Northern Ireland data lodgements are in line with those for England and Wales. I hope that colleagues will join me in supporting the draft regulations. I commend them to the Grand Committee.

3.36 pm

Lord Moynihan (Con): My Lords, on the face of it, the regulations before the Committee are as simple as they come. However, my noble friend the Minister will recall from his previous encounter, over business rates relief for sport and charities, with me and the noble Lord, Lord Addington, who will of course be opening the bowling for the Liberal Democrats, that what appears to be the simplest of balls can lead to a Minister being nutmegged at the crease. While we hope that that will not happen today, I intend to press the Minister on a few key issues relating to these fees. I thank the Energy Saving Trust and all those who have offered advice on this issue.

I also draw on my experience as a resident in Ayrshire, Scotland. For while, as my noble friend the Minister has said, Scotland operates its own energy performance of buildings register and is not covered by the draft regulations, I believe there are important read-across policy implications which are pursued in Scotland and which the Committee may reflect on in the context of these regulations.

As the Minister has said, this is a straightforward SI relating to the statutory fees charged when data is registered for energy performance certificates—EPCs—display energy certificates and air conditioning inspection reports for England and Wales. Fees, as he confirmed, are applied to the two classes of data registration, covering domestic and non-domestic properties. There are significant benefits in having the energy performance certificate register and the service it provides, including readily available access to information and data. I strongly support any initiative that provides easy-to-access information and data on the land and built environment at cost.

However, there are likely to be considerable changes to building regulations. It is important that these changes are provided as far in advance as possible, so that contracts can also be amended as far in advance of any proposed changes. This would improve the lodgement process and minimise the requirement for the Minister to return to this Committee in future years over fees. Would it also be possible for government to consider sending registered EPCs by email rather than having to log into a labyrinthine database to retrieve them, as this can be inadequate and time-consuming? If so, this would provide value for the money spent. We need constantly to review and improve the system to which these fees apply.

Policies could be implemented in England that have made a real difference in Scotland and, indeed, Wales, such as the existence of a focused, directly funded scheme for installing energy efficiency measures and efficient heating for fuel-poor homeowners and private renters. I remain convinced, as I have previously proposed in the House, that this policy would be more efficiently delivered centrally. That said, in the context of these regulations the question as to how frequently charges will be reviewed and revised is important, which brings me to certainty. This is important because it bears on the frequency of registering for EPCs for properties in England and Wales. Governments can offer two very important things for energy efficiency measures to work: money, of course, but also certainty.

To develop the supply chain and to unlock investment from the private sector, a defined and adhered to long-term policy framework is needed. The biggest issue when talking to the supply chain is always the chopping and changing of energy efficiency schemes. While the nature and detail of schemes matter, that they should not be changed frequently is almost as important as what those actual details are. The supply chain can adapt to and thrive on most variants of energy efficiency schemes; what it cannot deal with is uncertainty and discontinuity.

[Lord Moynihan]

Scotland and, to a lesser extent, Wales have long-term energy efficiency policies and programmes. In this vein, one of the key components of a stable policy environment is to make energy efficiency, particularly domestic energy efficiency, an infrastructure priority. The Scottish Government have done this and reaped the benefits.

Although individual energy efficiency installations are obviously relatively small in scale, the energy efficiency of buildings is a key parameter in the overall efficiency and productivity of the economy, and the aggregate costs and benefits are of major infrastructure scale. Raising domestic energy efficiency to EPC rating C would generate 150,000 jobs, have a budget of the same magnitude as HS2 and would save the energy equivalent of six Hinkley Points. It thus makes sense for energy efficiency to be an infrastructure priority, and once it is, this drives investment and policy certainty and sends key signals to the supply chain.

While I accept that a modest reduction in fees is now possible, I question whether the reduction is not exceeded by the duplication, time input, form changing and system adjustment for such a small change for domestic properties simply because the Government have invested in new cloud-based digital platforms and moved away from the fixed hardware model that has been in place, as my noble friend the Minister said, for the past 13 years.

A recent report by the Public Accounts Committee said that the Government have no plans to meet climate change targets, two years after setting them in law. That is what is stated in the report. The UK's stock of 27 million houses includes some of the worst insulated and least energy-efficient homes in Europe. I share the views of Members of another place that I hope the Government will take the example of what is proposed in this related SI to move further with the agenda and deliver a big improvement in work to meet our climate change targets by making homes in the UK warm, dry and affordable to heat.

Should there not be some consideration of linking the fees to improvements in the future homes standards to be introduced in 2025, so that sellers can make a marketing point that there might be no charge where homes are at least 75% more carbon-efficient than when they were purchased? Correspondingly, would these charges not be an opportunity to charge more for those homeowners and businesses who fail to meet targets? They could effectively become a financial penalty and reward scheme. It would provide an opportunity for everyone concerned to have skin in the game, rather than the less efficient mechanism of being urged to take action by government. This would add further impetus to the sector.

With these suggestions now tabled, I hope my noble friend will present a defensive straight bat in response to what I appreciate may have been six difficult balls to defend. We know that he can do no more than play a defensive shot today—wild attempted sweeps to six would be a fatal error—since the last thing the noble Lord, Lord Addington, and I want to do is to take the wicket of such an impressive and erudite Minister.

3.43 pm

Lord Lansley (Con): My Lords, it is a genuine pleasure to follow my noble friend Lord Moynihan, who has made lots of good points. Some of them relate directly to points that I was hoping to make, so I will not repeat them, but the importance of the building sector in achieving our net zero carbon objectives should not be underestimated. The second largest source of emissions is from buildings.

It is easy for us to focus far too much on the commendable achievements in building net zero carbon homes, but by my calculation, we simply have to recognise that, by 2050, something like two-thirds of the homes we live in will already have been built, so retrofitting and securing energy efficiency in our existing housing stock is absolutely critical. There are government schemes for this purpose, such as the Whole House Retrofit plan related to social housing, and so on.

The scope of these regulations is modest, and I welcome that. I know that we are all grateful to the Minister for explaining the regulations at the outset, but I shall unashamedly take the opportunity to talk about not the price of EPCs but the uses to which they should be put. Far too infrequently are EPCs seen as the spur to energy efficiency improvements that they should be, which is what we are looking for.

On this occasion I will not be drawn into the private rented sector. I know that the Government undertook a consultation in the latter part of last year. I am probably slightly disappointed that, in the event, they were not a bit more ambitious, because the cost-benefit ratio they ended up with suggested that the benefits did not outweigh the costs, but that of course was at the carbon price assumed between now and 2050.

Again, I will not go down this rabbit hole for too long because it is too important and too deep, but we ought to ensure that our carbon pricing is set at a level that forces change. If it is set at that level, it is also one that is likely to deliver substantial benefits in relation to the energy efficiency of buildings and the costs that renters and landlords have to meet.

I come back to the use of the EPC. Two-thirds of the existing housing stock has a rating of D or worse, so we need to effect change. There are government schemes: my noble friend Lord Moynihan is quite right; it is not that there are not schemes. The Government have put money and resources behind grant schemes, but the supply chain and the people influenced by it need these things to be sustained over a considerable period and we need the response to be substantial and positive. I am afraid it is not.

At the moment, even in the last few weeks, we are sitting here saying, "Why are people not taking up the green homes grant?" I think it would be far too easy to blame it on Covid and say, "They do not want people in their homes, understandably, so they are not taking up the grant." However, it was true beforehand. We have had this with other insulation schemes. It is sometimes as brutally simple as people living in a house not wanting to empty their loft to let somebody up there to put the right insulation in place. They do not want the disruption.

I will put just one point to my noble friend in the hope he will convey it into the right ears across government. Like we do in the private rented sector, focusing on when there is a new tenancy, in the owner-occupied sector we must focus on the moment of sale—when the EPC is given to a potential new owner and they have a period ahead of them when they might reap the benefits of investment in energy efficiency. At that moment, they also are likely to empty the house. They may empty the loft and sometimes they can engineer a short window of opportunity for energy efficiency improvements to take place.

I suggest that, at that moment, rather than a grant scheme which comes and goes and depends on the vagaries of spending reviews, there could be a permanent allowance against stamp duty for energy efficiency improvements up to, say, the value of £5,000 that they undertake—if recommended as a result of an energy performance certificate. Such a scheme could be confined to houses with an EPC of D or worse or, to start off with, those rated F and G, to see how it goes.

I prefer tax incentives to government grant schemes. I prefer tax relief to expenditure. I prefer incentives people can permanently rely on and where they feel they are getting some of their own money back or not having to give their money to the Government. As the tax is targeted on that moment, the incentive can be deployed in that moment as well. I commend that thought to my noble friend.

I know government departments not only hesitate, but will not enter the territory of tax, because it is all the Treasury's business. But if they have an objective—and there is an objective here—and they think it can best be achieved by working with the Treasury through a tax incentive, I ask that they go down that path.

The Deputy Chairman of Committees (Lord Caine) (Con): The noble Baroness, Lady McIntosh of Pickering, has withdrawn, so I call the noble Lord, Lord Addington.

3.49 pm

Lord Addington (LD): My Lords, follow that. The noble Lord, Lord Moynihan, started with what we might call a tricky spin and then we had straight bowling at the wicket from the noble Lord, Lord Lansley.

Anybody who has been around this issue will have heard variations of these points before; they are the obvious points. If you have a scheme that people are not accessing, you might as well not have it.

One of the points I wanted to make was this. With varying savings of 22p and £7.95, it might seem churlish to complain, but are those savings at the cost of guiding people through the benefits? I am thinking of somebody wanting to pick up the phone to be told how to do it properly, especially if this is something that they do not do very often and they are not that confident.

This is a useful tool in the battle against climate change, because it gives people information about how to go on from here. But are we going to make sure that the housing stock changes? To my knowledge, there has been agreement for over 30 years that we have very badly insulated housing in this country. This is no surprise to anybody who has been around this issue; even if you had wanted to avoid knowing it, it would have been very difficult not to have found it out. How are we going to get through that?

A small reduction is lovely—everybody likes that—but are we even going to notice a 22p change and a seven quid change on the fees? What is the cost here? Have we made sure that there will be somebody at the end of a phone line, to chat through the process and make sure people know what they are getting, how it is being used and the benefit? What if you get something wrong online and there is nobody to help you? On such occasions my use of expletives goes through the roof. If you are not used to using the system online or have limited access, things may not happen as they should. How are we going to talk people through it?

I totally endorse the points made about the fact there should be a long-term, reliable strategy to address the long-term problem—that has been here long before any of us were—of badly insulated housing, and that people are wasting money and we are messing up the environment. I thank the Government for what they have been doing and the greater incentive they have brought forward. But there is a long way to go and this is an old problem. I look forward to the answers that the noble Lord gives.

3.52 pm

Baroness Wilcox of Newport (Lab) [V]: My Lords, I reassure the Minister that I will be speaking for a considerably shorter time in this debate than I did in an earlier debate this afternoon on the levelling-up fund. I am also afraid to say that I have a complete absence of cricketing metaphors in my vocabulary, but I am looking forward to Wales winning the grand slam on Saturday.

The instrument before the Committee simply reduces statutory fees in relation to energy data. It has the support of this side of the Committee, but I would appreciate clarification from the Minister in a few areas.

First, considering the application of these regulations to both England and Wales, can the Minister confirm the role of the Welsh Government in the drafting process? Secondly, can the Minister detail how the Government decided on a fee of £1.64 when data is lodged for domestic properties and £1.89 for non-domestic properties? Finally, can the Minister confirm whether his department has estimated the impact of these regulations on compliance with energy performance certificates?

I also briefly raise the Government's broader green homes agenda, of which this is a part. Earlier this month, the Public Accounts Committee said that the Government have no plans to meet climate change targets. Can the Minister confirm whether this is true? If not, how will the Government urgently support homeowners as part of a green transition to tackle the climate crisis?

3.53 pm

Lord Greenhalgh (Con): My Lords, I thank everybody for this short debate in Grand Committee considering the draft regulations and for the many cricketing metaphors, as well as the reference to the important

[Lord Greenhalgh]
rugby match taking place at the weekend. I am sure we can all agree that this is one of the shorter and easier instruments that we have been asked to debate.

The proposed statutory instrument will reduce the fees that are chargeable when statutory data is lodged to the energy performance of buildings register. The reduction is possible because the Government have invested in modernising the register by using new information technology and the latest software development techniques. The register service is now hosted on a cloud-based digital platform that is managed in-house, with lower running costs, the benefit of which can be passed on to fee-payers.

The noble Baroness, Lady Wilcox, asked how the fees were calculated. Noble Lords will be reassured that we aim for a cost-neutral service over time. As I said in my opening speech, there is no desire to profit from this. The fee modelling indicates that the data lodgement fees can be reduced, and the cost of the service has been calculated in line with government policy as set out in *Managing Public Money* from Her Majesty's Treasury. The registered service costs from April 2021 to March 2022 have been modelled at £2.25 million, and our forecast fee income over the same period will deliver approximately the same amount from a projection of approximately 1.36 million data lodgements.

In response to the noble Lord, Lord Addington, I say that there are very clear benefits from these EPCs. They provide policy-makers and markets with information about the energy efficiency of the building stock as well as supporting and encouraging individuals to make informed choices about how to improve the energy efficiency of their building. Increasingly, government policies such as minimum energy efficiency standards in the private rented sector, the renewable heat incentive, which supports installation of renewable energy production, and the Green Deal, which supported installation of energy efficiency measures, have relied on buildings having a current EPC and being linked to achieving a specific EPC rating. The most recent green homes grant, which helps with installing energy-efficient and low-carbon heating improvements to homes, also makes use of the recommendations set out in the EPC where one is available for the property concerned. I assure the noble Lord, Lord Addington, that the Government are delivering an action plan to explore better ways to identify non-compliance and review penalties, provide better consumer information and improve the quality assurance of EPCs, including better oversight, accountability and formal error reporting.

I am surprised that both my noble friends in energy efficiency—the noble Lord, Lord Addington, and my noble friend Lord Moynihan—talked about the difficulty of accessing the data. My understanding is that there is open public access to the register and on the website you can access records by address search or EPC reference numbers, so it should not be too difficult to access the information.

I thank my noble friend Lord Lansley for his policy ideas. One can see that he has tremendous experience of heading up policy thinking, and indeed implementing it as a very distinguished Cabinet Minister. Retrofit is important, but that policy area is very much led on by BEIS, and it would certainly require some thinking about how to operate that. Of course, as he pointed out, any changes to the way we collect the stamp duty land tax would require support from the Treasury. It is an important point that we consider ways in which we can drive the agenda of getting homes to be more energy efficient, and obviously, as he outlines, the existing stock requires retrofitting. However, I will take forward his policy ideas with some enthusiasm. I completely agree with the broad point that very often tax incentives are a better way of achieving policy objectives than direct grant funding.

In response to my noble friend Lord Moynihan, I take the opportunity to highlight that the Government have a plan around this. We set the future homes standard, which is very clear about the need to produce at least 75% lower CO_2 emissions than current standards. That is for our homes but, equally, the future building standards consultation, which was launched in January 2021 and which will close on 13 April, will set a future buildings standard. By having these standards and then having a suite of measures, including the energy performance certificate, I am sure that we will be in a position where we can deliver on the Government's promise of a zero-carbon economy.

I have certainly done my measured best to deal with the variety of questions that have been thrown at me from my colleagues. If I have not done so, I am happy to follow up with them in writing if necessary. I hope that noble Lords have found the debate informative and will join me in supporting these regulations.

The Deputy Chairman of Committees (Lord Caine) (Con): My Lords, despite my having a wealth of cricketing metaphors, the umpire will put the Question. The Question is that this Motion be agreed to.

Motion agreed.

The Deputy Chairman of Committees (Lord Caine) (Con): The Grand Committee stands adjourned until 4.30 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

4 pm

Sitting suspended.

Arrangement of Business

Announcement

4.30 pm

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

Corporate Insolvency and Governance Act 2020 (Coronavirus) (Change of Expiry Date) Regulations 2021

Considered in Grand Committee

4.31 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Change of Expiry Date) Regulations 2021

Relevant document: 46th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, these regulations were laid before the House on 11 February. We have shared a long and difficult journey since restrictions were first needed in March 2020. As individuals, we have had to endure the very necessary but nonetheless difficult requirement to socially distance, with limits on where we can go, what we can do and who we can see. That, of course, has had an impact on businesses, with many having to close temporarily, and many more being able to trade only under very tight restrictions.

I am sure noble Lords all shared my sense of optimism when, on 22 February, the Prime Minister was able to set out the road map for the staged lifting of restrictions in England, with plans for Scotland and Wales being published by the devolved Administrations soon after. We can at last look forward to a return to normality in the months ahead. This would not have been possible without our wonderful NHS workers, both in their caring for sufferers from the virus and in their astonishing efficiency in the successful rollout of our unprecedented vaccination programme. Over the next few weeks, businesses that have been closed for many months will be able to reopen and trade, initially subject to certain limitations but, if all goes well, free of restrictions in parts of Great Britain from late June.

Noble Lords will recall that the Corporate Insolvency and Governance Act 2020 provided urgent support for businesses severely impacted by the effects of the pandemic. Temporary measures such as suspension of the use of statutory demands and restrictions on winding-up petitions, and the suspension of personal liability for wrongful trading, were put in place to allow viable businesses the best possible opportunity to survive.

New insolvency and business rescue procedures were also introduced, which will allow companies breathing space to decide on the best course of action in the face of financial distress, or to use a new formal restructuring process. As a contingency, and to enable the Government to rise to meet unexpected challenges and strains on the corporate insolvency regime as a result of the pandemic, the Act provided the Secretary of State with a general power to make temporary amendments or modifications to the effect of specified insolvency and governance legislation through regulations.

This power was needed because at that time we just did not know what the future would bring. We had hoped, of course, that the pandemic would have run its course by autumn last year, but, sadly, as we all know, that turned out not to be the case. The general power meant that the Government could act quickly to make the urgent changes needed to prevent unnecessary insolvencies, to allow the regulatory and administrative frameworks to deal with any impact of the pandemic on case numbers, and to mitigate the impact of the legislation on the duties of those with corporate responsibility.

As this was such a wide power, its use was restricted. It can be used only for the purposes I have just mentioned, and only where the temporary change was in response to the impact of the pandemic. The general power can be used only where the need is urgent, the provision being made is a proportionate response to the challenge being met, and exercising that power is the only way to achieve the desired outcome. In addition, the Secretary of State has a duty not only to assess the impact of using the power on those affected by any changes but to keep any regulations made using the power under review and to revoke them if they are no longer needed.

The legislation creating this general power also specified that it would sunset on 30 April 2021, although that date could be extended by further regulation. The original expiry date for the general power was set when we all hoped that the pandemic would be over and life would return to normal by the autumn. It would allow the power to be used while businesses were recovering and adapting to life after the virus.

While we were of course hoping to be free of restrictions in June, businesses have suffered the impacts of the virus for a year now, and we may need to be able to use the general power while the economy recovers. The unprecedented package of Government support which has been put in place has so far allowed as many otherwise viable businesses as possible to survive, saving jobs and livelihoods in the process. But there is of course no question of it being business as usual as soon as lockdown restrictions are fully lifted. Indeed, the Office for Budget Responsibility is not expecting the economy to have fully recovered until the middle of next year.

These regulations use a power in Section 24(3) of the Corporate Insolvency and Governance Act 2020 to extend the sunset date of the general power, and will mean that the Secretary of State will be able to use it for a further year. Extending the period during which we can use the general power will mean that we can continue to be able to act quickly should the need arise, to give the best opportunities to allow viable businesses to survive the pandemic, and, in the process, save jobs and livelihoods.

The general power could, in addition, be essential to any strategy that we need to deal with any extraordinary pressures on the administrative and regulatory regimes. I can reassure noble Lords that the Government's ability to extend the life of the general power is not open-ended. In particular, any further extension of the power is limited by Section 24(4), which prohibits the power being exercised after 24 June 2022—that is to say, for two years, starting with the day after the Act conferring the general power was passed.

It is important to note that these regulations do not introduce a new power but rather extend an existing one which we think is still needed. The general power

[Lord Callanan]
has been used once since its creation to revive the suspension of personal liability for wrongful trading when national restrictions were reintroduced late last year. That suspension has not been extended, due to the apparent improvement in trading conditions at the time of its expiry at the end of September.

There are no specific plans to use the power again at present, but this could of course quickly change, and it remains an essential part of our toolkit in dealing with the impact of the pandemic on business. I commend these draft regulations to the House.

4.38 pm

Baroness Neville-Rolfe (Con) [V]: My Lords, I thank my noble friend for his explanation of these regulations, which extend the powers to regulate that we agreed last year during our lengthy debates on the Corporate Insolvency and Governance Act for a further year, until April 2022.

We know from the report by our hard-working Secondary Legislation Scrutiny Committee that the power has been used only to suspend temporarily the personal liability incurred by company directors through wrongful trading. As my noble friend said, that has not been renewed, so I cannot see why a wide-ranging power of this kind needs to be extended—and extended for a whole year. If necessary, I would have favoured a more focused provision and a six-month extension.

It is dangerous to take too much power in regulations. I do not favour the method apparently adopted by the ancient Greek state of Locris, where proposers of law change stood with a noose round their neck, ready to be hung should the proposal be rejected. However, every burden placed on business and society makes someone poorer, and we need to outgrow the juvenile temptation to meddle, using strong, grown-up powers. Perhaps my noble friend can reassure me by outlining the circumstances in which he thinks he might need to use these powers.

From the Back Benches it has seemed that BEIS, the Minister's department, has dealt with Covid relatively well. Instructed to bring in extensive controls on business, it tried its best to consult and find ways around problems like insolvency and access to business, retail, hospitality and other premises. Several sectors of the economy have kept working better than in the first lockdown. BEIS has also been a critical player in the success of vaccines, which, like all victories, has many fathers, to pick up an observation of President John F Kennedy.

However, the voice of business and economics has not been heard loudly enough. This is part of the reason that the programme of lockdown is far too lengthy. Each day of lockdown takes the country closer to a potential financial crisis, especially as bond yields start to move up. In what amounts to a reverse takeover, the objective of BEIS has become:

"Building a stronger, greener future by fighting coronavirus, tackling climate change, unleashing innovation and making Britain a great place to work and do business."

There seems to be very little emphasis on the success of British businesses, large or small, which create the wealth and pay the taxes that finance hospitals, schools, transport and social care, let alone unfashionable causes like the police and defence.

In the wider health sphere, our approach to Covid has failed. Our handling of the epidemic, which is not the Minister's fault, has undone years of progress in the NHS and threatens a decade of excess deaths. According to a left-wing think tank, IPPR, disruption to healthcare will be felt for 10 years. There will be 4,500 needless cancer deaths this year alone and doctors' appointments are down by 31 million.

In terms of mass suffering, we need to add the impact of the pandemic on mental illness and social care. That does not allow for the agony of people, especially the elderly, being unable to see family and friends. Nor does it count the cost to the young unemployed or to those who have built up businesses only to see them go bankrupt—just visit the centre of a relatively prosperous town like Salisbury, my local town. This contrasts with the United States, which has been more confident, less fearful, kept its economy going well and is on course to match our record in vaccination in a few weeks' time. Sadly, one has to conclude that it is a better friend to business, innovation and enterprise than we sometimes are.

In closing, I thank my noble friend for his letter of today and ask when we will be able to debate the changes to company law announced by the Business Secretary. As a non-executive company director who takes my responsibilities seriously and as an ex-company secretary, I am alarmed by these proposals. They seem bound to have the perverse effect of discouraging skilled people from taking positions on the boards of companies that need their help. Blaming business, as some seem to be, is not the way to rebuild confidence.

Indeed, unlike parts of government, business has done superbly during the pandemic—think of the food supply chain and the supermarkets, AstraZeneca, construction; think of the adaptability of and investment by pubs and restaurants still unable to open.

I am sure that the Minister will not wish to reply now, but I urge him to prepare a full impact assessment, not only of the benefits of these proposals but of all the risks and the costs including, perversely, the extra accountancy charges that businesses will have to pay. We need to think very carefully about these changes and consider what could be achieved by better enforcement of existing rules.

More broadly, we need an end to the fantasy that we can make things work perfectly by passing new laws. I know that my noble friend was a Brexiteer, and that a driver of Brexit thinking was getting rid of EU rules and ending Brussels bureaucracy—a cause I support. It would be unwise now that Brexit is finally secured to abandon this path.

4.44 pm

Lord Sikka (Lab) [V]: My Lords, I am very grateful to the Minister for the explanation of the regulations. It is also a great pleasure to follow the noble Baroness, Lady Neville-Rolfe, and to add to some of the comments that she has made. I am sure that many businesses welcome the extension of what were supposed to be temporary measures, especially as they struggle to re-establish themselves. At the same time, some may well resent it, because they may argue that it constrains their ability to recover money from some businesses.

Overall, I am inclined to support what the Minister has announced. Nevertheless some industries, such as aviation, hospitality and event management, will need support beyond the period from 2022, and it would be helpful for the Government to consider the specific circumstances of various industries and businesses in considering what happens over the next three to four years. The Government need a transitional plan, as it would give businesses some certainty about what is coming their way in the next two to three years. Many businesses will still face a cliff edge in that, when these measures come to an end, floodgates to insolvency will open. Those unable to pay landlords or suppliers will definitely face an uncertain future so transitional help, focusing on their particular problems, would be helpful.

The Government could and should have done more; they could have increased the survival chances of businesses by reforming insolvency practices and ensuring that unsecured creditors receive a fair share of the debts owed to them, but they have refused to act on that front. The high street is already reeling from bankruptcies. Bonmarché, Cath Kidston, Comet, Flybe, Maplin, Monarch Airlines, HMV, House of Fraser, Payless shoes and Toys"R"Us are just some of the victims of asset-stripping by private equity. Their ranks are now swelled by Debenhams. Private equity invests little in equity and usually installs itself as a secured creditor, which means that it needs to be paid before unsecured creditors can recover anything from the proceeds of the sale of a bankrupt business's assets. These insolvency arrangements have no economic or moral logic from a national perspective and are based on medieval practices that prioritise the interests of lenders over all other creditors. The Government could and should have investigated the predatory practices of private equity to create breathing space for supply-chain creditors, but they have not done so.

The survival of suppliers is also affected by the collapse of the Arcadia empire, and darker shadows loom on Liberty Steel and others. Most supply-chain creditors will be lucky to get a few pennies in the pound of the debts owed to them, and this will hit their survival chances, just when they need all the resources that they can muster. There is no logic in such insolvency arrangements, whereby the risks of insolvency are not fairly shared. The current arrangements throw a few crumbs to unsecured creditors and strangle many SMEs, which often rely on relatively few customers and stand to recover next to nothing.

The Government should have used the last year to reconstruct insolvency practices, but they did not. Last year, as the Minister knows, Labour put forward proposals for equitable sharing of insolvency risks, which would have ensured that unsecured creditors recovered substantial sums from their bankrupt customers and thus improved their chances of survival. I hope that the Government can still revisit those proposals, because they are worthy of consideration. The suppliers' chances of survival are further hampered by the Government's failure to effectively regulate the insolvency industry. Higher insolvency fees and longer time taken by insolvency practitioners to finalise the bankruptcy inevitably harms unsecured creditors.

By January 2021, PricewaterhouseCoopers, acting as special managers assisting the official receiver in the Carillion liquidation, had already collected nearly £60 million in fees. The London Capital & Finance administrators have collected nearly £8 million in fees. I have personally seen invoices from big accounting firms where their partners act as insolvency practitioners; they are charging themselves out at a rate of some £1,500 an hour. There is absolutely no justification whatever for this. Such huge fees directly deplete the amount available to unsecured creditors, but the Government have done nothing to curb such predatory practices. I am not aware of a single insolvency regulator who has even asked any questions about such high fees.

I am sure that the Minister will put up a spirited defence of the Government's action on the insolvency front. However, they are not even curious about the welfare of unsecured creditors. On 14 January 2021, I asked the Government:

"how much unsecured creditors have been unable to recover from the bankruptcy of their corporate customers".

On 28 January, the reply was:

"This information is not collated and held centrally."

The Government have no idea of the size of losses faced by supply chain creditors, far less have they been helping them.

There is no control on insolvency processes, and practitioners can continue to milk distressed businesses for years. On 27 October 2020, the Minister informed me that 7,962 corporate liquidations were still open within five to nine years of commencement; that 3,642 incomplete liquidations dated between 10 and 14 years; and that 14,328 were incomplete even after 15 years. Do the Government know that these prolonged insolvencies destroy supply chains, since the cost of these huge fees is directly borne by unsecured creditors? Secured creditors do not bear a single penny of the cost of the insolvency practitioner. I urge the Government to help unsecured creditors by reforming insolvency practices and clamping down on rapacious practices, thus giving hard-pressed businesses, especially small businesses, a good chance of survival.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): The noble Baroness, Lady McIntosh of Pickering has withdrawn, so I now call the noble Lord, Lord Lennie.

4.52 pm

Lord Lennie (Lab) [V]: My Lords, I thank my noble friend Lord Sikka and the noble Baroness, Lady Neville-Rolfe, for their contributions to this debate, and I thank the Minister for introducing the new regulations. I do not imagine he thought they would be quite as controversial as they appear to be.

However, the regulations extend the Secretary of State's powers to modify, temporarily, corporate insolvency or governance legislation in response to coronavirus until 29 April 2022. We repeatedly said during the passage of the Corporate Insolvency and Governance Act 2020 that we supported the changes the Government were making. We called many times for the end date of provisions to be delayed in order to support business through this difficult period. Businesses are still in

[Lord Lennie]
distress, and the lockdown and business disruption will continue beyond the original date in the provisions—the end of April this year.

The system of business support that was set up for three months has not proven adequate for the length of time that the crisis is continuing. In truth, we do not yet know whether all the restrictions will be lifted after 21 June, when social restrictions are due to be ended. BEIS has said that the one-year extension reflects that, while there is a vaccination programme, with national lockdowns and other restrictions on normal trading continuing, the future impact of the pandemic on business and the insolvency regime remains at least uncertain. The Minister mentioned this in his introduction, but can he clarify whether the other measures in the Act will be extended, such as on wrongful trading?

It is only sensible to maintain the option of further extending the measures in the Act in this way: we have the worst economic recession of any country in the G7. Although the Covid support measures that the Government put in place have given business a stay of execution, we are concerned that we may still see a wave of insolvencies as support is withdrawn and the safety net dissolves.

4.55 pm

Lord Callanan (Con): I thank all noble Lords for their interesting and valuable contributions to this debate. The Government's road map for the staged lifting of restrictions is cause for great optimism, and we can look forward to many businesses, including shops, pubs, and restaurants, being able to reopen successfully in April. But we have to recognise that these businesses and many others have suffered from the impact of the pandemic for a year now, and in many cases could take time to return to full pre-Covid financial health. The Government are determined to do whatever they can to continue to support businesses throughout this period of economic recovery. For example, many business owners and employees will have welcomed the Chancellor's statement in the Budget that the furlough scheme will be extended to September this year.

All the same, traders and company directors will be having to assess whether full recovery of their businesses in a post-Covid economy is possible, and government financial support, along with the temporary easements in the Corporate Insolvency and Governance Act, must at some point be brought to an end. Having a power to use regulations to make temporary amendments to corporate insolvency and governance legislation, or modifications to its effect, will mean that we can continue to act quickly to meet the challenges which arise as a result of these uncertain times.

This was illustrated when the power was used to revive the suspension of personal liability for wrongful trading. This was a Corporate Insolvency and Governance Act 2020 provision which had expired at the end of September last year when trading conditions for many businesses had improved. Other temporary easements in the Act had been extended, but given the importance of wrongful trading as a protection for creditors and a deterrent to trading when insolvency proceedings are inevitable, the suspension was allowed to expire.

Sadly, as noble Lords will recall, there was a surge in infection levels in late October leading to national restrictions being reintroduced across Great Britain and businesses once again being required to close their doors. As a result, many company directors were once more faced with great uncertainty about their companies' futures. Using the power to revive the suspension of wrongful trading meant that directors of companies which would have been viable but for the impact of the pandemic were able to make decisions as to whether they should continue to trade based solely on their knowledge and experience, rather than under the threat of becoming liable to contribute to the company's debts themselves should insolvency proceedings then follow. This meant that unnecessary insolvencies could be avoided and is an example of how the power could be used going forward to save jobs and livelihoods.

My noble friend Lady Neville-Rolfe asked why we need the power for a further year. Although we now have a road map for the lifting of restrictions, the impact on businesses will continue after return to what we would call normality. The OBR predicts that the economy is unlikely to return to pre-Covid levels before the middle of next year, so we need to keep the power on the statute book until then. My noble friend also asked how we might intend to use the power. I am afraid I must say to her that, at the moment, we just do not know. There are no plans to use the power at present, but it is a contingency and we need to be in a position where we can meet urgent challenges quickly. If the worst happens, as the noble Lord, Lord Sikka, indicated, we may need the power as part of our strategy to deal with any increases in insolvency case numbers.

We also need to keep the power because, although the Prime Minister has now announced a road map for a gradual reopening, the impact of restrictions on businesses is likely to be felt beyond the point that we would consider to be full normality. As I have said, the OBR is expecting the economy to return to pre-Covid levels by the middle of next year, but we do not know for certain what will happen in the meantime. However, we do know that many businesses are struggling and may need protection. If we were to extend for less than a year and, as likely, a further extension was needed, we would be back here debating the same question in just a few months because of the requirement for debate before the extension can occur.

My noble friend Lady Neville-Rolfe referred to the audit reform proposals. The White Paper published this morning is not, of course, the subject of today's debate, but I can certainly tell her that we have carefully thought through the director accountability proposals that she referred to. They would cover only the biggest companies, with turnovers into the hundreds of millions, and employing hundreds, or even thousands, of people. I think most people would think it appropriate that we ask directors of such companies to take a little more responsibility for the accounts and financial information produced by their companies. As I said, this will not apply to small business, to SMEs or to entrepreneurs, so I think I can put my noble friend's mind at rest.

The noble Lord, Lord Sikka, asked what was being done to prepare for the approaching cliff edge of potential insolvency cases when government support

measures and temporary easements end. Official statistics published by the Insolvency Service show that case numbers are still low in comparison with the same period last year, and it seems inevitable that there will be an impact on insolvency case numbers. This is being closely considered, and extending the power for a further year will allow any temporary changes needed to be made quickly. I thank the noble Lord for reminding the Government of the importance of closely monitoring the operation of the insolvency practitioner regulation regime.

The noble Lord, Lord Lennie, asked whether the other measures introduced by the Corporate Insolvency and Governance Act would be extended. We are considering that question at the moment, and I hope that we will be in a position to make an announcement shortly. I thank the noble Lord for asking about the other temporary measures in the Act, and I can assure him that they too are under close consideration; any announcement will be made shortly.

I think I have addressed all the points raised in the debate, and I thank all noble Lords who have contributed. I commend these draft regulations to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): My Lords, the hybrid Grand Committee stands adjourned until 5.30 pm. I remind Members to sanitise their desks and chairs before leaving the room.

5.01 pm

Sitting suspended.

Arrangement of Business

Announcement

5.30 pm

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): My Lords, the hybrid Grand Committee will now resume. If there is a Division in the House, the Committee will adjourn for five minutes.

Financial Reporting Council (Miscellaneous Provisions) Order 2021

Considered in Grand Committee

5.31 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Financial Reporting Council (Miscellaneous Provisions) Order 2021.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, I beg to move that the Financial Reporting Council (Miscellaneous Provisions) Order 2021, which was laid before the House on 8 February 2021, be approved.

The Financial Reporting Council, or the FRC, as I shall refer to it, is an independent regulator. It is responsible for regulating auditors, accountants and actuaries, and setting the UK's corporate governance and stewardship codes. Following corporate failures such as BHS and Carillion, the Government have been working to understand and address shortcomings within the UK audit environment, including the role that the FRC as the regulator plays. As a result, the Government commissioned Sir John Kingman to conduct an independent review of the FRC. This review was commissioned in April 2018 and reported on 18 December 2018.

The FRC review made over 80 recommendations; its central recommendation was for a new, stronger regulator. The review indicated that the new regulator needed to be more transparent than the FRC had historically been and should be held to the same standards as other public sector bodies—including full compliance with the *Managing public money* handbook. The review also recommended that the FRC be subject to the Freedom of Information Act and the Regulators' Code. These findings were supported by the Government and welcomed by the Business, Energy and Industrial Strategy Committee in another place.

Since the FRC review reported, the regulator has undertaken significant steps to strengthen its capabilities. Under new leadership, it has also begun to build the additional capacity needed to deliver on the ambitious mandate set out by the review. The FRC has also worked to streamline its governance structures and expand its stakeholder engagement. This order builds on the FRC's progress in taking the non-legislative steps needed to implement the review's recommendations on its internal workings.

Today represents another important milestone for audit and corporate governance reform. I am pleased that today we have published the Government's White Paper *Restoring trust in audit and corporate governance.* It sets out a comprehensive and ambitious vision for reform of the corporate landscape and outlines the Government's detailed proposals for further reform of the regulator. The instrument's legislative measures are a further step forward on the path to transforming the FRC into a new, strengthened regulator. They apply the Freedom of Information Act, the Regulators' Code and the public sector equality duty to the FRC.

I turn first to the application of the Freedom of Information Act to the FRC. As identified by the FRC review, currently only some of the FRC's statutory functions are subject to the Freedom of Information Act. Since December 2019, however, the FRC has voluntarily complied with the provisions of the Act across the range of its work. This measure designates the FRC as a public authority for the purposes of the Freedom of Information Act so that all of its public functions are covered by the Act.

The Freedom of Information Act provides a general right of access to the public for information held by public authorities, subject to the exemptions set out in the Act. Public authorities are also obliged under the Act to produce and maintain a publication scheme approved by the Information Commissioner. The FRC was consulted on the application of the Freedom of Information Act and it supported the application of the Act to its public functions. Since the FRC is a public body, it is reasonable and proportionate that this measure is taken to apply the Freedom of Information Act to its public functions. In doing so, it will help to underpin trust and confidence in the regulator.

[Lord Callanan]

I turn now to the Regulators' Code measure. The FRC is already subject to the code in respect of some of its regulatory functions. This order will apply the Regulators' Code to all of the FRC's regulatory functions, except for those that it has delegated to the relevant professional bodies. The code aims to encourage proportionate and consistent regulatory activity; it also promotes trust, open dialogue and accountability between the regulator and those that it regulates. Application of the code by legislation will enable the FRC to be more accountable and bring it into line with other regulators who are subject to the code in this way. It will encourage greater transparency for regulatory delivery, allowing the FRC to target its resources better. This in turn will support the FRC's delivery of high standards of audit, reporting and governance in the UK. The Government have worked closely with the FRC and the relevant professional bodies and have consulted them regarding this measure. All the parties consulted support the application of the Regulators' Code to the FRC through secondary legislation.

I turn to the public sector equality duty measure, which will add the FRC to the list of public bodies that are formally subject to this duty. At present, the FRC is subject to the public sector equality duty only in respect to the exercise of its public functions. The measure expands this so that the FRC itself will be subject to the public sector equality duty in respect of all of its functions. Sir John Kingman's review of the FRC recommended that the regulator should fully consider and assess equalities impacts in its work. This measure will support that recommendation.

Those subject to the equality duty must: eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by or under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not. The term "protected characteristic" refers to those characteristics covered by the equality duty and includes age, disability, pregnancy and maternity, race, religion or belief, sex and sexual orientation and gender reassignment. This order means that the FRC will need to consider the objectives of the public sector equality duty in its oversight of those it regulates. Additionally, as the FRC is the regulator that sets the UK Corporate Governance Code, it promotes diversity reporting to the UK's largest companies. It would only be right that the FRC itself was subject to the public sector equality duty in full. This measure will ensure that equality is considered as an important aspect of the regulator's day-to-day activities.

In March 2019, in their initial response to the FRC review, the Government committed to replace the FRC with a new independent statutory regulator with stronger powers. The new regulator, the audit, reporting and governance authority, will be a stronger regulator underpinned by legislation. It will have stronger enforcement powers and will be funded by a mandatory levy on the industry that it regulates. The White Paper published today sets out the Government's proposals in more detail. The Government intend to bring forward the necessary primary legislation to create the new regulator when parliamentary time allows. But we want to press forward with measures such as those in this draft instrument. They do not need to and they should not wait. These measures will ensure that the FRC is more transparent and accountable to the public as well as to the businesses and professions it regulates. It will also bring the FRC into line with the requirements of similar public bodies. These measures are therefore a further step down the road to creating the new regulator.

I conclude by emphasising that I see the measures contained in this order as important since they will help to bring about greater transparency on the part of the FRC. I hope that noble Lords will support them and commend the draft order to the House.

5.39 pm

Lord Davies of Brixton (Lab) [V]: My Lords, I declare my interest as a fellow of the Institute and Faculty of Actuaries, which in some areas is subject to regulation by the FRC. I thank the Minister for his detailed introduction. To a certain extent he has shot my fox. I was intrigued as to the conjunction of these two events—the publication of the White Paper and the statutory instrument today—and he has made it absolutely plain that it was not a coincidence. It was a coincidence to me but, clearly, it was part of a deeper plan, and I feel that it might have been better if those who like myself were coming from outside to the issue had understood that beforehand. My contribution might have been a bit more effective. But still, it is right and proper that the Government should do what they can to implement proposals in this area, and I support the regulations.

Could the Minister say a little more about the timing of the process? It is happening now, but it is happening to an organisation that is on its way out. We are to have the new audit, reporting and governance authority which the Government say will have these clearly defined roles, one of which is to protect and promote the interests of investors, other users of corporate reporting and the wider public interest. How do those things tie together? Could we have a few brief remarks about that?

There are three substantive parts to the order. First, there is the public sector equality duty, which obviously is something that we agree with. The issue of why it was not done before comes to mind, but we shall pass over that. The second leg of the instrument is the extension of the freedom of information requirements. Obviously, that is to be welcomed as well. However, the Minister seemed to imply that all the relevant statutory functions of the FRC and its successor will be subject to the requirements, but all we have is a list—and when we are given a list I always wonder what is not on it. Is there any way for the Minister to explain what has not been included and, if it has not been included, why it has not been? If it is all there, that is fine, but an assurance that that is the case would be welcome.

I just want to say a bit more about the third leg, which is the obligation to follow the principles in Section 21 of the Legislative and Regulatory Reform Act 2006 and under Section 22 to follow a code of

practice. I want to highlight the key part. In fact, Section 21 is very brief and pretty vague; it says that the principles are that

"regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent".

Well, yes, of course they should. It then says that

"regulatory activities should be targeted only at cases in which action is needed".

But if you put the converse to those principles, you are left a bit in the air. Are there really people out there keen to apply regulatory activities to cases where action is not needed? It is a statement of the obvious.

We have to turn to the *Regulators' Code* for a bit more substance. This puts a bit more meat on the bones of the principles. It is interesting to see that the regulators' purpose is supposed to be:

"to regulate for the protection of the vulnerable, the environment, social or other objective."

That is just one of the principles in the code, and those are fairly lofty objectives.

The code also says:

"When designing and reviewing policies, operational procedures and practice, regulators should consider how they might support or enable economic growth for compliant businesses and other regulated entities, for example, by considering how they can best ... understand and minimise negative economic impacts of their regulatory activities".

It also says that there should be

"simple and straightforward ways to engage with those they regulate".

That is all fine and dandy, but this is what the *Regulators' Code* says at the end, on the final page, about monitoring the effectiveness of the code:

"The Government will monitor published policies and standards of regulators subject to the Regulators' Code, and will challenge regulators where there is evidence that policies and standards are not in line with the Code or not followed."

I suppose that, to an extent, the White Paper is a reflection of the Government's intention, but I think that the word "monitor" implies something more regular and consistent. So the one big question I am raising today is this: do the Government actually have a system for monitoring all the work of all the regulators subject to the code? There are a lot of them—I understand that—but what is the Government's approach to monitoring their activities? How can we avoid the situation that we have with the FRC, whereby things got to a pretty pass before action was taken? Maybe a more consistent, measured and regular approach to enforcing the code would be appropriate.

5.47 pm

Baroness Wheatcroft (CB) [V]: My Lords, I thank the Minister for the way in which he introduced this statutory instrument, and I am delighted to follow the noble Lord, Lord Davies. His final point was very interesting, and I would be interested to hear how the Minister will address the issue of how one monitors the regulators. As the noble Lord said, there are so many of them. What they do is important, and they need to be held to account.

On one level this is a perfectly straightforward SI, imposing three new and perfectly reasonable duties on the FRC. But the anomaly is the FRC itself. In December 2018, in his review of the organisation, Sir John Kingman described it as the equivalent of

"a rather ramshackle house, cobbled together with all sorts of extensions over time."

In other words, it was not fit for purpose—a verdict that the Government themselves accepted the following March, in welcoming the review.

They were equally supportive of the findings of the Competition and Markets Authority, which called for significant changes to the way in which the audit profession operates in the UK. Indeed, the Queen's Speech in December 2019 stated as one of its priorities the reform of auditing.

What we have here is just another extension to that rather ramshackle house, which is becoming increasingly unstable. I know that the Minister acknowledged the need for root and branch reform, and for the new regulatory authority that will eventually come to us, but here we are, in March 2021, debating a minor SI relating to the still-extant FRC.

The letter that we received this afternoon—what a wonderful coincidence of timing—tells us that the White Paper is coming out and that there will be reform. It all sounds very promising, but my first question to the Minister has to be: when does he think, realistically, that we might see legislation on this, and the emergence of the new accounting regulation and governance authority?

In the meantime, we remain dependent on the FRC to conduct this crucial work and its governance is in flux. In October 2019, Simon Dingemans took over as interim chairman. This turned out to be even more of a temporary post than most had expected; in May the following year, he was lured away by private equity. He was replaced, although not until the following October, by Keith Skeoch but this was declared to be for a term of no more than six months. My second question to the Minister is: does he have a successor lined up for 12 April? It seems that the FRC will be with us for a while to come and, at the moment, I am unaware of who is going to be leading it.

It is important that the equality duty in this SI should certainly be imposed, as the Kingman review found that very few roles at the FRC actually went through an appropriate recruitment process. That might have done more to improve the gender pay gap there, which is still quite pronounced. Reform of the organisation is clearly needed urgently, as is reform of the audit profession. It continues to disappoint. In 2018, the fines levied by the FRC against the big four accountancy firms trebled. Last year, a record fine of £15 million was levied against Deloitte. But it does no good for the credibility of the audit profession if all of the big four firms are regularly seen to be guilty of misleading accounts, and misleading the investing public—and the public more generally.

The proposal we have seen in the White Paper is that there should be compulsory joint audits. But the original suggestion was that the smaller audit firm taking part in these joint audits should be jointly liable, with the larger firm, for anything that went wrong and resulted in action and fines. As far as I can see, that is absolutely unworkable. As my third and final question, can the Minister say whether he believes

[Baroness Wheatcroft]
that there will be equal liability on these smaller firms—the challenger firms—that will be brought into joint audits, or that a more reasonable system of liability will be brought into play?

5.52 pm

Lord Sikka (Lab) [V]: My Lords, I will make my comments in two parts. I will comment first on the legislative order and, secondly, taking my suit from the Minister, say a few words about the White Paper as well. On the legislative order, the Financial Reporting Council has really led a shadowy existence for far too long. Since 2004, the FRC has had the status of a public body and should therefore have been subjected to the full application of the freedom of information legislation, but it was not.

On 29 June 2018, the Department for Business, Energy and Industrial Strategy told the House of Commons, in a Written Answer:

"All our regulatory bodies are subject to the Freedom of Information Act 2000 with the exception of the Financial Reporting Council which is subject to the Act for some but not all of its functions."

Over the years, I have put in many freedom of information requests to the FRC, some relating to the secondment of staff from the big four accounting firms, its complaints procedures and the quality of investigations. Every one of them was rejected so it is good, to some extent, to see a modicum of openness. I assure the Minister that I shall soon test this new-found openness and see how far it goes. Nevertheless, I have a number of concerns about the legislative order and, more importantly, its omissions.

First, despite the government claim, which I just cited, that all our regulatory bodies are subject to the Freedom of Information Act 2000, why are the four accountancy trade associations acting as recognised supervisory bodies not within the scope of freedom of information legislation? The four trade associations are the Association of Chartered Certified Accountants, the Chartered Accountants Ireland, the Institute of Chartered Accountants in England and Wales and the Institute of Chartered Accountants of Scotland. They carry out public functions and are named as regulators in the Companies Act 2006. They licence, monitor and discipline auditors. Their role is similar that of the FRC. So why are they totally exempt from freedom of information requirements?

Secondly, Article 4(1)(c) of the order refers to "accounting standards" but no mention is made of "auditing standards", which are also issued by the FRC. I hope the Minister can shed some light on that omission.

Thirdly, Article 4(1)(m) of the order refers to:

"providing independent oversight of the regulation of the accountancy profession".

No further details are anywhere to be seen. Is it reasonable to assume that in the Government's view the FRC is now responsible for ensuring good governance of all accountancy trade associations?

Fourthly, despite claims of openness, or advances in openness, the FRC, which, as was mentioned, will soon morph into ARGA, has in fact regressed in some areas. Let me provide two examples. The first is its press release dated 2 April 2020 with the headline

"Sanctions against KPMG and a partner"

and the second is dated 6 November 2020 and headed

"Sanctions against Deloitte and a partner".

In both cases, the firm delivering the failed audit has been named, but unlike the past practice, the identity of the company receiving the poor audit has been concealed. Why is that? Do the stakeholders of those companies not deserve to know that dud audits have been delivered? Armed with that information they can question auditors and directors, and make informed decisions about auditor appointment, fees, investment, credit, reliance on the audited information and much more. The FRC's regression is not compatible with the Government's claim of new openness at the FRC.

Fifthly, the so-called openness at the FRC is not accompanied by open board meetings. I am sure the Minister would acknowledge that the FRC does not discuss troop movements or the position of spy satellites, so this obsession with secrecy and keeping the people out is hard to understand. In the US, the Financial Accounting Standards Board holds all its meetings in the open and makes full minutes and background papers available to any interested party. The same is also true of the Swedish Accounting Standards Board. As we know, openness always promotes public confidence and accountability, so why are the Government afraid of writing in open board meetings in the current legislative draft or in some other ways? Why is the UK to be a laggard in such matters?

Sixthly, the FRC publishes its board minutes, but they are sanitised and have virtually no information content—I have seen them. Paradoxically, individuals sitting on its board and various committees come from corporations and big law and accounting firms and have full access to all inside information. It must inevitably inform their worldviews and policy options discussed within their organisations. Yet the other stakeholders affected by the FRC's decisions and policy choices do not have access to the same information and must therefore be disadvantaged in any negotiations, lobbying and framing of accounting and auditing rules. Why are the Government content with this kind of information apartheid? It is almost legalised.

Seventh, the legislative order before us is full of words such as "independent" and I struggle to know what the Government mean. The FRC is not independent of corporations and big accounting firms as their personnel have colonised the FRC board, committees, working parties and its world views. Corporate thinking informs the FRC's operation and, inevitably, there is cognitive capture. Neither is the FRC independent of the International Accounting Standards Board, which issues international accounting standards that in many cases are simply rubber stamped by the FRC. I am sure the Minster is aware that the IASB is an offshoot of the IFRS Foundation, which is registered in the US state of Delaware for the sole reason of avoiding taxes on all the income and charitable donations it receives. Is that a good way to be setting accounting standards, with somebody holed up in Delaware and keen to avoid taxes? That is not really appropriate.

It would be helpful to know what exactly the FRC is independent of. What are the tests the Government will specify we should apply to test whether the FRC passes those marks? It would also be helpful for the

Minister to tell us whether any part of the FRC's operations are not subject to the Freedom of Information Act and why they are excluded.

I will say a few words about the White Paper. For the last 20 years, the auditing industry has led a charmed life. Most of the urgently needed reforms have been postponed. The White Paper does not really tackle any of the fundamental issues. I am sure the Minister is aware that the FRC has said that up to 80% of the audits in its samples are deficient. Can you imagine if any producer of cars, aeroplanes, medicines or food had an output that was 80% deficient? That industry would be put out of business and taken into special care, not allowed to play its selfish games.

In my view, the White Paper misses the fundamental points and it does not address those things. In the White Paper there is a memorable line about shareholders being company owners. Can the Minister refer me to any economic theory, legal theory, or anything in the Companies Act which says that shareholders are owners of companies? Shareholders may have controlling rights, but they have absolutely no ownership; that is something entirely different. For the last 100 years we have been relying on shareholders. Where exactly has that got us?

I was an adviser to the Work and Pensions Committee for the investigation of BHS. Shareholders appointed the auditors and everybody else, and we all know what the outcome was. In many ways the Government are reciting the past failures and repeating the past mistakes—

Baroness Sanderson of Welton (Con): Can I remind the noble Lord of the 10-minute speaking limit?

Lord Sikka (Lab) [V]: I will stop there. Thank you.

6.03 pm

Lord Lennie (Lab) [V]: My Lords, I thank the Minister for introducing this and my noble friends Lord Davies and Lord Sikka for their comments, particularly the comment made by my noble friend Lord Davies about the monetary not the monitors, and the comments of my noble friend Lord Sikka about freedom, secrecy and independence. I thank the noble Baroness, Lady Wheatcroft, for her examination of the FRC being unfit for purpose and its gender gap issues.

The regulations impose new duties and regulatory requirements on the Financial Reporting Council, which is currently the independent regulator responsible for regulating auditors, accountants and actuaries and setting the UK's corporate governance and stewardship code. These regulations impose specific duties on the FRC relating to freedom of information, the Regulators' Code and the public sector equality duty. However, as Sir John Kingman's review in December 2018 made clear, it was an institution with "leaks and creaks" and required fundamental reform.

We were first promised a new audit, reporting and governance authority in 2019, but the Government have since dithered on that promise. The Minister in the other place today published a White Paper to try to put an end to corporate scandals. We will examine it closely in due course and respond in detail, but it appears at the outset that the Government are rowing back from the proposals to tighten corporate reporting requirements. When exactly do the Government intend to legislate? The SI does not give much hope that it will be any time soon, and the White Paper consultation is set to run until July 2021.

I have some initial questions about the new proposals. The new regulator will be established as a company limited by guarantee. How was this decided? The Government note that the largest audit firms are already working with the Financial Reporting Council to implement the CMA recommendations on a voluntary basis by 2024. How is that work progressing? The Government disagree that the regulator intervening to take over the running of an audit firm, albeit on a temporary basis, would be proportionate or effective. How did the Government reach that conclusion, and what advice did they receive on that issue?

In 2017, the Department for Business, Energy and Industrial Strategy concluded that the FRC's work should comply with all relevant public body guidelines. In 2018, the Government commissioned an independent review that recommended that the regulator be subject to the Freedom of Information Act. A couple of years ago, the FRC voluntarily adopted compliance with the codes, so the SI will not fundamentally change the FRC's approach, but it is welcome that the compliance is to be put on a statutory footing.

However, with the disbanding of the FRC and its replacement with ARGA, are we not passing this SI somewhat too late? Labour supports the changes but wonders why they are being made now, on the very same day as consultation proposals to give birth to the new audit, reporting and governance authority are published.

6.07 pm

Lord Callanan (Con): I thank noble Lords who have contributed to this debate. The points that we have been discussing highlight the need for the measures contained in this order and emphasise the beneficial impacts they will have on the Financial Reporting Council and those that it regulates.

Reliable audit and corporate reporting are critical to well-functioning markets, business investment and growth. A transparent and effective regulator has a vital role in assisting the UK economy to realise these benefits. These measures will help the regulator meet the goal of ensuring that the UK maintains and advances its status as a place of the highest standards in audit and corporate reporting. They are a crucial part of the Government's commitment to acting on the findings of Sir John Kingman's independent review.

The noble Lord, Lord Davies of Brixton, asked about the timing of the SI given that the FRC is on the way out, and wanted to understand what we might not be applying to the regulator. He also asked how the Government enforce the Regulators' Code. Establishing the new regulator, ARGA, requires primary legislation, and the Government intend to introduce that when parliamentary time allows. We think it is right to ask the FRC to start now, as we mean the new regulator, ARGA, to go on in this vein.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): My Lords, there is a Division in the Chamber. The Committee will adjourn for five minutes.

6.07 pm

Sitting suspended.

6.11 pm

Lord Callanan (Con): To resume, the FRC did not start out as a public body. Since its creation in the 1980s, it has slowly accumulated public functions to the point that it has more recently been classified as a public body. Certain statutory functions of the FRC are already subject to the FoI Act. As the FRC is now a regulator acting in the public interest, we think it is right to extend the FoI Act to cover all the FRC's public functions.

The noble Lord, Lord Davies, and the noble Baroness, Lady Wheatcroft, asked whether the Government have a system for monitoring the work of all regulators. In monitoring these regulators, the FRC is required to report annually to the Secretary of State on its activities relating to the oversight of statutory auditors, and that report must in turn be laid before Parliament. We have proposed yet stronger arrangements in relation to ARGA.

I answered the question the noble Baroness, Lady Wheatcroft, asked about when we might realistically see legislation. The answer to that is, I am afraid, the standard one: when parliamentary time allows. Now that we have published the White Paper setting out our intentions for the new regulator, the Government will recruit a permanent chair of the FRC. We are making these changes as laying the foundation for the new regulator, not extending the FRC's house.

The noble Baroness, Lady Wheatcroft, and the noble Lord, Lord Lennie, also asked why we are still waiting for these changes. We are intending to legislate as soon as parliamentary time allow us, and ARGA will of course come into being thereafter. However, I cannot give any guarantees as to when it is likely that will be.

The noble Lord, Lord Sikka, raised a number of comments about the order. The FoI Act obliges public authorities to publish certain information about their activities, and entitles members of the public to request information from public authorities. As RSBs are independent professional bodies rather than regulators, we do not believe it would be proportionate to subject them to the Freedom of Information Act.

On the point about referring to accounting standards rather than auditing standards, the new UK endorsement board, not the FRC, will be the body to endorse and adopt international financial reporting standards in the UK. The FRC has exercised some oversight of the RSBs, hence this function should be subject to freedom of information. The *Regulators' Code* will promote openness at the FRC. Access to the FRC's board meetings is, of course, a matter for the FRC itself. Although the FRC has staff from companies and the industry, its chair is appointed by the Secretary of State.

In response to the noble Lord, Lord Lennie, who asked why we disagreed with the regulator taking over the running of a failing auditor, we think this would be a fairly major step and we are not totally convinced of its likely effectiveness.

The noble Lord, Lord Lennie, also raised the point that ARGA will be a company limited by guarantee. The creation of ARGA will be achieved by renaming and reconstituting the FRC, which is a company limited by guarantee at the moment, at the same time as making substantial changes to its functions. The Government will legislate to rename the existing body and make provision for its internal governance, as will be set out in its articles of association. We are clear that ARGA will be a regulator with teeth, backed by legislation. It will be funded by a mandatory levy on industry and given much stronger enforcement powers. The Government consider that this approach has the advantage of minimising the transitional costs which would be involved in setting up a new, statutory corporation.

The important measures in the order ensure that the FRC will be designated as a public authority in respect of its public functions for the purposes of the Freedom of Information Act; that all the FRC's regulatory functions will be subject to the Regulators' Code; and that the FRC is added to the list of public bodies which are explicitly subject to the public sector equality duty. As a result, its responsibility for adherence will be clear. Compliance on a statutory level with the Freedom of Information Act, the Regulators' Code and the public sector equality duty will ensure that the FRC is made more transparent and accountable to those that it regulates. It will support the FRC's effective operation and bring the regulatory requirement in line with similar public bodies. It will also further strengthen its regulated status as a public body.

Establishing the new regulator will, of course, require primary legislation. As I said, the Government will introduce this when parliamentary time allows. In the meantime, the FRC has made some progress on the recommendations from Sir John Kingman's review and those proposals can be implemented without legislation, in parallel with this order. The FRC recognises the significant role that it has to play in paving the way for the new regulator. Building trust in the UK's audit, accounting and corporate reporting regulator is an essential part of the Government's programme of work to reform audit and corporate reporting. Our proposals, published today, set out how we will achieve this.

Meanwhile, applying the measures in the order now to the FRC builds on other progress, and it does so through statute. It shows that the Government are committed to putting in place the right degree of transparency and oversight for the work of an important regulator. I recommend this draft order to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): That completes the business before the Grand Committee today. I remind Members to sanitise their desks and chairs before leaving the Room.

Committee adjourned at 6.17 pm.