Vol. 813
No. 27

Wednesday
30 June 2021

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Wednesday 30 June 2021

The House met in a hybrid proceeding.

12 pm

Prayers—read by the Lord Bishop of Gloucester.

Arrangement of Business

Announcement

12.07 pm

The Lord Speaker (Lord McFall of Alcluith): 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. I ask all Members to respect social distancing and wear face coverings while in the Chamber, except when speaking. If the capacity of the Chamber is exceeded, I will immediately adjourn the House. Oral Questions will now commence. Please can those asking supplementary questions keep them to no longer than 30 seconds and confined to two points? I ask that Ministers' answers are also brief.

Covid-19: Wuhan Institute of Virology

Question

12.08 pm

Asked by ***Viscount Ridley***

To ask Her Majesty's Government what assessment they have made of the possibility that the COVID-19 virus escaped from a laboratory at the Wuhan Institute of Virology.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, with the increasing threat of zoonotic diseases crossing the animal-human divide, learning how Covid was transmitted to humans and is spread is absolutely crucial to preventing future pandemics. The much-delayed WHO-convened Covid origin study reported on phase 1 of its investigation in March. The report made recommendations for further studies. The Government's belief is that it is vital that phase 2 of the investigation does not face the same delays and that it is given full access to the data necessary for the next part of its work.

Viscount Ridley (Con): I thank my noble friend for that Answer. Viruses like this have not been found near Wuhan in bats or any other animals. The closest relative to this virus was brought to Wuhan by scientists from 1,000 miles away to a laboratory that had been manipulating SARS-like viruses for 15 years. There it was sequenced in 2017 and 2018 in a biosecurity level 2 laboratory. Most of that information was found out by independent investigators, not volunteered by the Chinese authorities. Will my noble friend unequivocally condemn that lack of transparency and join other nations in calling for a full and independent investigation? Will he clarify who is in charge in the British Government of answering that question?

Lord Bethell (Con): My Lords, I entirely agree with the sentiments expressed by my noble friend. We are absolutely calling for a timely, transparent and evidence-based phase 2 study, including further investigation in China, as recommended by the experts' report. We agree with the Independent Panel for Pandemic Preparedness & Response that member states should give the WHO greater powers to investigate outbreaks of pathogens with pandemic potential within member states.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I commend the Minister for an excellent reply to the noble Viscount's Question—a reply obviously informed by the excellent staff at the Department of Health and Social Care. In the light of that, can I gently ask why, as a Minister, did he feel it necessary to have a parliamentary research assistant?

Lord Bethell (Con): My Lords, I have written to the commissioner for standards in response to that precise question and I should be glad to share that correspondence with the noble Lord.

Baroness Walmsley (LD) [V]: It is believed that given the slow rate of mutation of Covid viruses, Covid-19 would have taken around 35 years to evolve from its nearest known relative. What has been done to identify any intermediaries in which it may have lived during that period and any knowledge useful for preventing future pandemics that may arise from that knowledge?

Lord Bethell (Con): I entirely agree with the noble Baroness. It is extremely frustrating that we do not know the steps of evolution that this virus went through. It has come to us completely out of the blue. That leaves us in a vulnerable state when we are preparing for the next pandemic. It is absolutely essential, as any epidemiologist will say, that one knows and understands where the virus came from—whether that is the water pump handle for an outbreak of cholera or a virus from China.

Baroness Blackwood of North Oxford (Con): My Lords, the situation could not emphasise more clearly the need for genuine global participation in transparency in surveillance and pathogen sequencing to respond to future pandemics and epidemics. I was pleased to see the progress at the G7 on this but, if the global anti-pandemic action plan is to have any teeth, we will need to ensure that countries such as China contribute trustworthy data to global surveillance in the future. What steps does the Minister envisage to ensure that this happens?

Lord Bethell (Con): I completely agree with my noble friend. The international health regulations need to be amended in that respect. It was one of the aspects of the pandemic preparedness treaty that was brought to Carbis Bay for the G7 earlier this year. We are working extremely hard, through our G7 chairmanship, to ensure that this relatively obscure but absolutely critical international treaty has the teeth it needs to do the work on genomic sequencing and pathogen identification that needs to be done.

Lord Patel (CB) [V]: My Lords, does the Minister agree that for a better understanding of the current pandemic and future pandemics, identification of the progenitor genome of SARS-CoV-2 is important? We need more data, despite having sequenced more than 1 million SARS-CoV-2 genomes. The escape of pathogens from labs is not new. Examples are smallpox and anthrax, and also SARS, which escaped from several labs in different countries in 2003. Does the Minister agree that we urgently need to address global regulation of labs that undertake gain of function experiments on pathogens?

Lord Bethell (Con): My Lords, I agree with the noble Lord's appeal for more data—but, candidly, as I know he knows, it is not just quantity of data that we need; it is the right data. Where we are struggling is in getting genomic sequencing of new mutations from the furthest reaches of the virus's spread. We need a systematic programme around the world that shares the sequences of new mutations with academics who can study and assess them. Without such a systematic programme we are flying blind. That is why we are working on the new variant assessment platform and other pandemic preparedness projects.

Baroness Merron (Lab): My Lords, scientists are warning that we are in an era of pandemics, and that viruses more deadly, contagious or resistant to antibodies than Covid-19 could emerge. What steps are the Government taking to prepare themselves and the country for the next potential pandemic, and will the Minister commit to ensuring that future pandemic preparedness plans are independently assessed and reported to Parliament?

Lord Bethell (Con): My Lords, I pay tribute to the Chief Scientific Adviser, Sir Patrick Vallance, who is leading the pandemic preparedness work. He is doing an enormous amount both on the international treaties through our G7 chairmanship, and on the internal domestic re-envisaging of our healthcare system. We need to invest more in public health, and we also need the data, the diagnostics and the patient behaviours that support really rigorous tracking down of diseases when they arrive. The noble Baroness is entirely right: pandemics will come, sooner rather than later.

Lord Jones of Cheltenham (LD) [V]: Why, within days of becoming Prime Minister in July 2019, did Mr Johnson scrap the Threats, Hazards, Resilience and Contingency Committee, which was set up precisely to ensure that the UK was ready to cope with a pandemic?

Lord Bethell (Con): My Lords, with the greatest of respect to the noble Lord, I am not sure whether the pandemic that just hit us could have been solved by a committee, however august and impressive. We need a national response, and the national response to this pandemic came from the Prime Minister and the top of Government, and involved the entire nation. For that we are enormously grateful.

Baroness Pidding (Con) [V]: My Lords, in an article in the *Financial Times* in May, Sir Patrick Vallance said that the Prime Minister had asked him, ahead of the G7, to pull together relevant experts to start looking at how a future pandemic could be dealt with more swiftly—and, most importantly, on a global basis. Can the Minister advise us what progress has been made on this?

Lord Bethell (Con): My Lords, I attended the presentation by Sir Patrick Vallance at the G7 health track in Oxford in June, which was received extremely well, both by Health Ministers from the G7 countries and by the chief executives of the major pharmaceutical companies that are partners in that work. We are using our chairmanship to nudge it along, and it will cover both the pharmaceutical and the demographic elements of pandemic response. This is an example of where Britain is showing leadership in the world to carve out a clear idea of how we can respond to pandemics better in the future.

Lord Alton of Liverpool (CB): My Lords, I return to the point made by the noble Viscount earlier. Who in the British Government is in direct touch with the US National Institutes of Health, and especially Professor Jesse Bloom, about the deletion of genomic sequences, which he said had no plausible scientific rationale? If it is proven that the virus came from the Wuhan laboratory and that that fact has been concealed by the Chinese Communist Party, does the Minister agree that Magnitsky-style sanctions against individual officials would be the beginnings of an appropriate response by our Government?

Lord Bethell (Con): My Lords, specific official engagement with the investigation is done through PHE, and we have a PHE official sitting on the investigation. That is the right way of conducting a scientific dialogue. The DHSC and FCDO also have extremely active interests in this. As for the tone in which the noble Lord talked about how we should approach this challenge, I say that we have to work in partnership with other countries. There is no way in which we can demonise one country or another in this matter. Partnership is the only way ahead. What we can, I hope, bring to the party is a sense of urgency and a sense of focus.

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

Choirs: Restrictions

Question

12.18 pm

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what plans they have to review the guidance restricting the performance of indoor amateur choirs to no more than six people.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, I know that the restrictions on singing are frustrating to large numbers of amateur choirs and performance groups across the country. Following the move to step 3 of the road map on 17 May, non-professional groups of up to six people

can now sing indoors, while multiple groups of 30 can sing outdoors. We will continue to keep guidance and restrictions under review. Further details of step 4 will be set out as soon as possible.

Lord Hunt of Kings Heath (Lab): My Lords, I declare an interest as a supporter patron of the City of Birmingham Symphony Orchestra, which has more than 400 adults in its various amateur choirs. I can see no specific evidence to support the restriction on choirs. Indoor choirs are limited to six people, whereas last night at Wembley 40,000 people were singing, and the night before at Wimbledon the court was covered and people were cheering to the rafters. That apparently is allowed but indoor choirs, which can exercise proper social distancing, are not allowed. This is nonsense. The Government should reverse it immediately.

Baroness Barran (Con): I am sure the noble Lord is aware that the events to which he refers are part of the events research programme, and particular public health measures are taken for all those attending. The evidence is clear that, sadly, singing increases the risks of transmission. Hence, we have the guidance we have been given.

The Lord Bishop of Gloucester: My Lords, bearing in mind that on Monday in the other place the new Health Secretary said he hoped that church congregations would soon be able to sing together, could the Minister please give us some clarity on this and say what plans the Government have now to review the research on congregational singing with the use of face coverings, given that singing is not an add-on to worship but integral to it?

Baroness Barran (Con): I absolutely recognise the right reverend Prelate's final remarks about singing being integral to worship. We continue to be led by the science and the experts, and to follow the public health advice. As soon as that changes, we will of course update the guidance.

Lord Lexden (Con): My Lords, the Chelmsford Singers, a flourishing group not far from Lexden in Essex, would like to know why the current guidance with its totally unexpected restrictions, promised by the Government on 27 April

"in advance of step 3",

was in fact published after step 3, causing them and so many choirs throughout the country to cancel their first rehearsals for over a year at short notice and, in some cases, with severe financial penalties.

Baroness Barran (Con): I can only apologise to my noble friend and the choir in Chelmsford for the disruption to their plans. As my noble friend is aware, guidance is now available on the GOV.UK website. It will be updated in time for step 4. When it is updated, it will be clear, practical and simply set out.

Lord Berkeley of Knighton (CB) [V]: My Lords, it is completely illogical to say that a group of more than six professional singers can meet and sing but a group of amateurs cannot. It makes no sense at all. What does the Minister think people feel when they sit at home, as the noble Lord, Lord Hunt, said, and watch all these people getting together, singing, kissing, hugging and chanting?

Baroness Barran (Con): The noble Lord's tone expressed very well what many people feel. We absolutely hear that frustration. He will be aware that all ministerial and MPs' inboxes are full of correspondence on this issue, so we are aware. We are also aware that some amateur groups perform in a professional context, as the noble Lord set out. As a department we cannot advise on individual events or activities. It is up to the organisers to operate in accordance with the published guidance.

Lord Stevenson of Balmacara (Lab): I think all of us share considerable dismay about the answers we have just heard. Although we feel sorry for the Minister for her attempts to try to add a veneer of respectability to her responses, neither the science nor the reality of common sense back her up. As a member of the Parliament Choir, I want to meet with other members in a socially respectable way to sing the music that inspires us and to lead our lives as close to normality as we can. What we want is a road map and a timescale.

Baroness Barran (Con): I can only repeat what I said in response to an earlier question: we will provide that road map as soon as possible and in time for step 4.

Lord German (LD): My Lords, I declare my interest as chair of the board of governors and trustees of the Parliament Choir. Last year, the evidence that came to the Government said that singing was no different from speaking loudly or taking physical exercise indoors. With both of those now permitted—your Lordships will know that I can speak loudly, as can many other noble Lords—what is the evidence that says that speaking loudly in this Chamber is permitted but singing together in a Covid-compliant way is not permitted? Where is the evidence for that and will the Minister publish it?

Baroness Barran (Con): There are references in recent research done, for the events research pilots in particular, that links to the evidence, but the decision has been based on three scientific studies: the NERVTAG A*ssessment of Transmission of Covid-19 through Musical Events* study, the Public Health England paper *Aerosol and Droplet Generation from Singing, Wind Instruments and Performance Activities*, and the PERFORM study.

Lord Pickles (Con) [V]: In both the county of my birth, Yorkshire, and the county of my home, Essex, there are great choral traditions. My noble friend will realise that these amateur choirs go beyond just singing; they are an important part of what makes the community tick. Given that she said that amateur choirs can rehearse indoors in a professional capacity, why not follow the science? If members of the choir have been double-jabbed and it is in a well-ventilated room, why should that not be permissible?

Baroness Barran (Con): I absolutely agree with my noble friend that amateur choirs are an important part of communities. Indeed, I do not want to diminish in any way the frustration expressed by your Lordships,

[Baroness Barran]
but we have seen remarkable performances by Zoom choirs and others. I can only repeat that we are following the Public Health England guidance.

Baroness Merron (Lab): My Lords, as we have heard today and on many other occasions, members of choirs and communities across the country are feeling both fed up and overlooked. Does the Minister personally feel comfortable with the fact—and can she offer an explanation for it—that so-called business VIPs are exempted from the range of Covid-19 restrictions while choirs, singers, actors and other artists who have endured over a year of hardship remain subject to a set of rules that, unlike in other areas of life, have remained absolutely static?

Baroness Barran (Con): I know that the noble Baroness recognises the difference in the public health risks between the two activities to which she refers. I also acknowledge that she might be expressing broader sentiments in relation to this.

Baroness Wheatcroft (CB): My Lords, the Royal Choral Society is a brilliant choir, but it is an amateur one. On 30 May it performed Handel's "Messiah" at the Royal Albert Hall, with 117 singers producing a brilliant performance. I applaud its decision to go ahead, but could the Minister tell us what sanctions there are for those who break the regulations? I am sure the House and the country would like to know what sanctions there are.

Baroness Barran (Con): I will need to write to the noble Baroness with details on sanctions, but I assume that they are available on GOV.UK.

Lord Cormack (Con): My Lords, does not my noble friend understand that she has been trying valiantly to defend the totally indefensible? Does she not accept that the cultural life of this country rests to some degree on the continuance of amateur choirs? If she goes on repeating these answers and the Government do not show a proper degree of flexibility, many of these choirs will cease to exist.

Baroness Barran (Con): The Government have acted incredibly powerfully to support the cultural life of this country. We absolutely recognise its importance in relation to amateur choirs and the whole spectrum of performing arts, which is why we are progressing with phase 3 of the more than £2 billion Culture Recovery Fund.

The Lord Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed. We now come to the third Oral Question.

House of Lords Reform

Question

12.29 pm

Asked by ***Lord Grocott***

To ask Her Majesty's Government what plans they have, if any, for reform of the House of Lords.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, the Conservative manifesto committed to looking at the role of the House of Lords. That is the manifesto position. We are keeping these issues under consideration but have been clear that we do not want piecemeal reform.

Lord Grocott (Lab): My Lords, with respect to the Minister, I do not think that was much of an Answer. It was a pretty simple Question; a yes or no would probably have been acceptable. The Minister has been involved in these issues for a long time and will be aware of two proposals for reform that are strongly supported in all parts of the House. The first is to reduce the size of the House to around 600 Members. The second is to end these ridiculous by-elections for hereditary Peers. Given that these two reforms are simple and popular and would cost nothing and hurt no one, will he tell us whether the Government are prepared to support them and, if not, why not?

Lord True (Con): My Lords, on a cap on the size of the House, which we have frequently discussed, both the previous Prime Minister and the current Prime Minister have made it clear that it would require further consideration and wider engagement and have not accepted that proposal. As for the noble Lord's repeated efforts to put forward his Bill, we look forward to discussing his Bill. I will ask him to explain, when he introduces it at Second Reading, why he supported the House of Lords Reform Act 2014, which reinforced and entrenched the position of hereditary Peer elections in this House.

Lord Blunkett (Lab): My Lords, I think there might be general agreement that the reputation of this House has been enhanced by the way in which we were able to continue our business with the hybrid system over the last 15 months. The reputation of this House would surely further be enhanced if we brought ourselves from the 17th, 18th and 19th centuries by backing my noble friend Lord Grocott's Bill to abolish something that is clearly an anachronism.

Lord True (Con): My Lords, I always pay tribute to the noble Lord opposite, who has been a distinguished servant of this country, this House and the other House. When we are looking at the role, future and reform of your Lordships' House, perhaps we need to look a little wider than the speck of dust to which the noble Lord referred.

Baroness Jones of Moulsecoomb (GP): The Minister has been in his Cabinet Office post since February 2020, so was it he who told the Prime Minister that it was perfectly okay to ignore the Burns committee report on the House of Lords, which was trying to reduce the size of this House? It was a two-out, one-in policy. Did he tell the Prime Minister it was okay to just keep on putting Peers here?

Lord True (Con): My Lords, it is perfectly reasonable, given the House's membership—not least the fact that its average age is 70—for it to be refreshed from time to time. I repeat an answer I gave before: neither the

previous Prime Minister nor this one has accepted that the House of Lords should be able to impose a cap on its own size.

Lord Leigh of Hurley (Con): First, does my noble friend the Minister agree with me that, now that the other place has agreed that it will stay at 650 Members, we can review our aspiration of 600 to 650? Secondly, we should recognise that unlike in the other place we are not salary men. We represent a wide pool of expertise and experience that needs to be deepened and strengthened. By admitting more Members to this House, we will counter the correct allegations of underrepresentation of minorities, women and businesspeople.

Noble Lords: Oh!

Lord True (Con): My Lords, my noble friend's suggestions seem to arouse laughter on the other side. I strongly agree with him and suspect that many of the British people agree that this House needs refreshing from time to time. I will not get hung up on any number between 600 and 650. The membership should be appropriate to enable the House of Lords to carry out its role in a way that reflects that role and the primacy of the House of Commons as the elected Chamber.

Lord Tyler (LD) [V]: My Lords, can the Minister explain why dedicated, public-spirited, widely respected people of high integrity should continue to serve on the House of Lords Appointments Commission, which is independent? The Prime Minister, Mr Johnson, seems determined to treat its recommendations with complete contempt.

Lord True (Con): My Lords, I do not agree with the noble Lord opposite's assertion, which seems one of the most sweeping examples of the generalisation of a particular that I have ever heard. He may have a case in mind. The correspondence on that case has been published with proper transparency, and for my part I welcome the presence of that new Peer in this House.

Lord Strathclyde (Con): My Lords, does my noble friend not realise that the best way of solving the problem presented by the noble Lords, Lord Grocott and Lord Blunkett, is to fulfil the promise—laid out in the Parliament Act 1911 and successive recent manifestos of the Labour Party, the Conservative Party and, indeed, the Liberal Democrats—to select this House on the basis of popular representation?

Lord True (Con): My Lords, as we look forward, clearly that is an option for considering reform. I do not note enormous enthusiasm for that in the many debates in your Lordships' Chamber. My noble friend is absolutely right to say that everybody opposite campaigned in 2019 on the creation of an elected senate.

Baroness Hayman (CB): My Lords, the Minister is scathing about piecemeal reforms, but I would have thought that, this week in particular, the Government would be sensitive to issues of propriety and impartiality in the processes for public appointments. I make it clear that this is not a new or an ad hominem issue but one I have been raising for more than a decade. Will the Minister now accept that we need an independent, statutory House of Lords Appointments Commission to vet all appointments to your Lordships' House on the grounds of both suitability and propriety?

Lord True (Con): My Lords, we have an advisory House of Lords Appointments Commission, whose advice is given careful and full weight. The constitutional position in this country is that the Prime Minister is responsible for advising Her Majesty on appointments to the House of Lords. I do not believe that that responsibility can be passed from a Minister, who is ultimately responsible to Parliament, to an extra-parliamentary statutory body.

Baroness Smith of Basildon (Lab): My Lords, I am not really sure I understood the Minister's answer on that point. The point that the noble Baroness, Lady Hayman, was making was that the commission's advice on membership of your Lordships' House at present is only advisory.

To reach a point of agreement, the Minister is quite right that this House needs to refresh its membership, but on his basis the House would just grow and grow until there were no room at all on the Benches for noble Lords to sit and debate issues. There has to be an optimum size range at which this House is most effective and does its work best. Piecemeal reform is not something to be dismissed and disregarded but a way of getting things done where there is broad consensus. There is broad consensus on the end of hereditary Peer by-elections and overwhelming consensus on a statutory body for appointments—not one the Prime Minister can ignore when it suits him.

Lord True (Con): My Lords, I will not repeat the answer I have just given. The commission is an independent, advisory, non-departmental body. It has an important role, but the sovereign, on the advice of the Prime Minister, formally confers all peerages. It is the Prime Minister who must advise on that. Ultimately, the Prime Minister is responsible for the way in which he conducts that duty.

Lord Rennard (LD): My Lords, further to his reply to the noble Lord, Lord Grocott, the Minister will be aware that the reason the House of Lords Reform Act 2014, put forward by Lord Steel, did not include the abolition of by-elections for hereditary Peers was the threat of filibuster and of the tabling of hundreds of irrelevant and repetitive amendments to avoid this House being able to express its wish on the issue and allow the vote to go to the other place to consider it. Does the Minister consider that a legitimate tactic?

Lord True (Con): The noble Lord writes his own history. I observe that, given your Lordships' interest in the Burns committee recommendations, perhaps the Liberal Democrats should do something about their own numbers.

Baroness D'Souza (CB) [V]: My Lords, reducing the size of the House is clearly the most urgent issue. That said, would the Minister agree that there has been a fall-off in the courtesies normally observed by the House, including in participants' failure to attend the greater part of debates, the conventions of respect towards the Lord Speaker and Deputy Speakers and forgetfulness about registering relevant interests? Furthermore, does he agree that these issues contribute to the public's negative view of the work of this House?

Lord True (Con): I would not agree with those generalised comments. I believe that all of us should be mindful of our manner of behaviour and our manner in referring to and engaging with each other. I do not believe that making comments in general terms about the weakness of this House necessarily improves its reputation. One of the most remarkable things about this House is that last night 467 of your Lordships were following and voting in a debate on the Republic of Cameroon, rather than watching the England and Germany match. Nothing can be wrong with a House with such a deep attachment to its public duty.

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

Unidentified Flying Objects

Question

12.41 pm

Asked by ***Lord Sarfraz***

To ask Her Majesty's Government what assessment they have made of the report by the United States Office of the Director of National Intelligence *Preliminary Assessment: Unidentified Aerial Phenomena*, published on 25 June; and what data they hold on unidentified flying object sightings in the United Kingdom.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, the Ministry of Defence notes the content of the report. The department holds no reports on unidentified aerial phenomena but constantly monitors UK airspace to identify and respond to any credible threat to its integrity, and is confident in the existing measures in place to protect it.

Lord Sarfraz (Con): My Lords, for decades, people who have been concerned with UFOs have been dismissed as fantasists, but now the US Director of National Intelligence, who oversees 17 intelligence agencies, has published a report saying that the data on UFOs is inconclusive. The report offers several possible explanations and does not rule out that these could be military aircraft with very advanced capabilities or even extraterrestrial phenomena. Either way, can the Minister reassure members of the public that the Ministry of Defence takes reports of unidentified flying objects in our airspace very seriously? Will she consider publishing a detailed assessment of the data that we hold?

Baroness Goldie (Con): The MoD deals with actual threats substantiated by evidence. The Government continue to take any potential threat to the UK seriously. The integrated review and the defence Command Paper published in March set out the MoD's assessment of the threats we face and how we will meet them.

Viscount Ridley (Con): My Lords, unidentified does not mean suspicious. Does the Minister recognise that the US report referred to says that there is no clear indication that there is any non-terrestrial explanation for the 144 sightings that it specifies? The idea that, in an era of mobile phone cameras, drones and frequent travel, there could possibly be alien spaceships whizzing about undetected in our atmosphere on a regular basis is not very plausible. It is much more likely that these blurred images have boring explanations, alas. Does my noble friend agree?

Baroness Goldie (Con): The important point, on which I wish to reassure your Lordships, is that the UK air defence community detects and monitors all flying air systems 24 hours a day to provide an identified air picture as part of the UK's national security posture and our commitment to the integrity of NATO airspace. That is supported by Typhoon aircraft at RAF Lossiemouth and RAF Coningsby, which are held at high readiness to intercept any threat to UK airspace.

Lord Browne of Ladyton (Lab) [V]: My Lords, in 2008 the MoD began the process of releasing all its UFO files. In 2009 Sir Bob Ainsworth, the Secretary of State, accepted the advice that:

"In more than 50 years, no UFO sighting … has indicated the existence of any military threat to the UK; there is no defence benefit in … recording, collating, analysing, or investigating UFO sightings"

and

"the level of resources devoted to this task is … diverting staff from more valuable defence-related activities",

and he closed the relevant unit. Does the US report reveal any evidence containing any reason to review that advice?

Baroness Goldie (Con): I simply say to the noble Lord that I seek to reassure him that, as I have indicated, we deal with actual threats substantiated by evidence. He is quite right about the closure of the UFO desk in 2009. I can confirm that the department holds no reports on unidentified aerial phenomena and that all relevant material created and held by the UFO desk has been passed to the National Archives.

Lord Holmes of Richmond (Con): My Lords, turning to identifiable flying objects, does my noble friend agree that the UK has a tremendous opportunity to develop its new space industry, not least in low-earth orbit, in the build, development, launch, operation, recovery and rebuild of small satellites for both positive-purpose defence and civil opportunities?

Baroness Goldie (Con): My noble friend makes an important point with which I entirely agree. That is clearly an area of exciting future development for the UK Government.

Lord Coaker (Lab): Given the subject, it is very reassuring to see the Minister here physically, not beamed in. The Pentagon has said that unidentified aerial phenomena are a serious national security threat. Notwithstanding what she has just said, does the Minister agree with the Pentagon's analysis of the threat from unidentified aerial phenomena? Is the UK therefore suffering from a threat similar to that identified by the US? Given that the MoD abandoned its UFO desk in 2009, where are such sightings to be reported and to whom? The truth is out there and, we hope, in the Minister's answer.

Baroness Goldie (Con): I endeavour to provide veracity to this Chamber on all occasions. Again, the underlying important point is the security of our airspace. I have already indicated how we address that potential threat and how we are well sustained and well provided to deal with any such potential threat. However, we regard threats as having to exist in the first place and to be substantiated by evidence because we need to know what we are addressing and how best we can address it. We are of course aware of the US assessment. The MoD has no plans to conduct its own report into UAP because, in over 50 years, no such reporting indicated the existence of any military threat to the UK.

Baroness Wilcox of Newport (Lab): The recent report from the United States task force dedicated to investigating UFOs has neither confirmed nor rejected the idea that such sightings could indicate alien visits to earth. I believe that Cardiff Bay is the alleged location of the Torchwood Institute, set up to deal with incidents of extraterrestrials. Indeed, the Ianto Jones shrine forms part of the tourist trail at Mermaid Quay. Seven decades after unidentified aerial phenomena first appeared on the radar, defence ministries around the world ought to know what they are. The recent report does not require us to accept the reality of alien visitation, but it does require us to take UFOs seriously. Therefore, how seriously do Her Majesty's Government now take UFOs in the light of this report?

Baroness Goldie (Con): I refer the noble Baroness to my previous answers. The short response is "very seriously"—in relation to addressing threats where those threats are identifiable and can be substantiated.

Baroness Gardner of Parkes (Con) [V]: My Lords, is the Minister aware of the role that one of the largest single-dish telescopes in the southern hemisphere—in Parkes, New South Wales, the place of my birth—played in transmitting the TV footage of the Apollo 11 moon landing? More recently, it tracked NASA's Curiosity rover during its descent over the surface of Mars in 2012. Might it be of assistance to the Government in helping to modify, monitor and assist any unidentified sightings?

Baroness Goldie (Con): I would say to my noble friend that the MoD and particularly our air defence community have the most sophisticated electronic surveillance. I myself witnessed how this operated when I visited RAF Coningsby. There is also the added support of visual identification, if that is thought to be necessary, by alerting a rapid reaction from our Typhoons, which are able to take on a visual inspection if there is any doubt about the nature or character of an alleged threat.

Lord Rogan (UUP) [V]: My Lords, I welcome the opportunity to read the report and the frankness with which it was written. Have the report's contents yet been raised by Her Majesty's Government with representatives of the United States Government? The Minister has said that our Government have no reports on this matter, but given the interest that it has generated around the world—and, indeed, perhaps other worlds—do Her Majesty's Government now have plans to produce a similar document summarising any recent UAP or UFO sightings within UK borders and overseas territories?

Baroness Goldie (Con): As I indicated earlier, we have no opinion on the existence of extraterrestrial life and we no longer investigate reports of sightings of unidentified aerial phenomena. We have no plans to conduct our own report into UAP, because in over 50 years no such reporting has indicated the existence of any military threat to the UK.

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

Marriage Act 1949 (Amendment) Bill [HL]

First Reading

12.51 pm

A Bill to amend the Marriage Act 1949 to create an offence of purporting to solemnize an unregistered marriage.

The Bill was introduced by Baroness Cox [V], read a first time and ordered to be printed.

12.51 pm
Sitting suspended.

Parliamentary Works Estimates Commission

Membership Motion

1 pm

Moved by ***Lord Ashton of Hyde:***

That Lord Gardiner of Kimble be appointed as a member of the Parliamentary Works Estimates Commission in place of Lord McFall of Alcluith.

Lord Ashton of Hyde (Con): My Lords, on behalf of my noble friend the Leader of the House, I beg to move the first Motion standing in her name on the Order Paper.

Motion agreed.

Parliamentary Works Sponsor Body

Membership Motion

1.01 pm

Moved by ***Lord Ashton of Hyde:***

That Marta Phillips, Dr Simon Thurley and Simon Wright be appointed as external members of the Parliamentary Works Sponsor Body.

Lord Ashton of Hyde (Con): My Lords, I beg to move the second Motion standing in the name of my noble friend the Leader of the House.

Motion agreed.

Secret Documents

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Monday 28 June.

"As the House will be aware, a number of Ministry of Defence classified documents were lost by a senior official early last week. Upon realising the loss of documents, the individual self-reported on Tuesday 22 June. The documents lost included a paper that was marked "Secret UK Eyes Only". The documents were found by a member of the public at a bus stop in Kent. The member of the public then handed the papers to the BBC. The Ministry of Defence has launched a full investigation. The papers have now been recovered from the BBC and are being assessed as I speak to check that all documents missing have been recovered and what mitigation actions might be necessary. The investigation will look at the actions of individuals, including the printing of the papers through to the management of the reported incident, and at the underlying processes for printing and carriage of papers in Defence. The investigation is expected to complete shortly. While the investigation is being conducted, the individual's access to sensitive material has been suspended. It would be inappropriate to comment on the findings of the investigation while it is still under way."

1.02 pm

Lord Coaker (Lab): The Minister will know that this is the third known MoD security breach this year including documents marked "UK eyes only", so it is no wonder that an investigation is needed. Can the Minister confirm that all the documents lost have been recovered? How can evidence of preparations for future Armed Forces conduct around the world have been leaked? Can she reassure our excellent Armed Forces personnel that there has been no jeopardy to current or future operations as a result of the breach? Will she also ensure, as was said in the other House, that the investigation is completed by early next week and the results are published as promised at that time? The public and the House need to be reassured that Ministers have taken all the necessary actions to stop this series of breaches.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): I thank the noble Lord for his points. Let me make it clear that this was a most regrettable breach of security and is being taken extremely seriously by the department, hence the investigation to which he refers. I confirm to him that the BBC contacted MoD to say that it had the papers. MoD then worked with the BBC to ensure that nothing was reported which materially affected national security, and the papers have now been safely returned to MoD.

The investigating team will, of course, consider a wide range of circumstances—the breaches of protocol that seemed to surround the loss of the documents—and whether recommendations need to be made to improve procedures. However, I reassure your Lordships that very robust procedures already exist and documents of such a sensitive nature are accompanied by a very strict management regime. The investigatory team will be looking at all these issues. As to the timing of the investigation's report, my understanding is that there is a desire to have some initial comment by next week. However, the noble Lord will understand that I am reluctant to be specific about a date, lest other material emerges which the team requires to investigate. But yes, it would be the intention of the Secretary of State for Defence to ensure that the team's conclusions and findings are made available to Parliament.

Lord Campbell of Pittenweem (LD): Anything other than full disclosure—always taking account, of course, of the national interest—would not be welcome, so I am grateful to hear the noble Baroness give that undertaking. I also understand the constraints she has to operate under at the moment, but noble Lords who have served on the Intelligence and Security Committee will recall that there was an absolute prohibition on any documents of any kind being taken out of the committee office. Can the Minister tell us what the policy was in the Ministry of Defence, and in what circumstances anyone was, by way of policy, entitled to remove documents from the main building?

Baroness Goldie (Con): It is within the rules to remove documents from the building in certain limited circumstances, so long as they are recorded and secured in the appropriate fashion. In short, as I indicated to the noble Lord, Lord Coaker, there are policies and procedures in place that allow for the removal of classified information. It will be for the investigation team to determine whether these procedures were followed correctly.

Lord Lancaster of Kimbolton (Con): This was indeed an important security breach and really quite concerning, but we bandy the word "secret" around without necessarily understanding what it means. There are different levels of classification, of which "secret" is just one. For example, "UK eyes only" is not a classification; it is a national caveat. However, if it genuinely was a secret document, why did it leave the building when it never should have? Does that imply that we should make this inquiry wider, looking at what exactly the procedures are, to ensure that this really does not happen again?

Baroness Goldie (Con): The loss of MoD documents of this classification is extremely rare and I reassure my noble friend that there has not been such a loss within the last 18 months. Despite that, we take the matter very seriously. We have launched a full and thorough investigation and will look at the actions of individuals, as well as the procedures, policies and processes in place. I reassure your Lordships that any recommendations or lessons identified by the investigation will be considered as a matter of urgency.

Lord Truscott (Non-Afl): My Lords, General Sir Nick Carter, Chief of the Defence Staff, has said that incidents such as the recent confrontation with Russia in the Black Sea are "giving him sleepless nights" and could lead to a "miscalculation". Can we assume that yet another MoD whistleblower leaked the documents

because they felt that HMS "Defender" sailing so close to the Russian Black Sea Fleet headquarters was both provocative and dangerous? Can the Minister remind the House how many wars Russia has fought over the centuries to keep Sevastopol Russian, including the Crimean War of 1853?

Baroness Goldie (Con): I am not going to speculate on the circumstances surrounding the discovery of the documents or their ultimate transmission to the BBC; that is for the inquiry team to determine. I am also not going to discuss the content of the documents, for obvious reasons. As the noble Lord raises issues already in the public domain in relation to HMS "Defender", and as he will be aware that there was a Written Ministerial Statement on 24 June, I can confirm that HMS "Defender" was proceeding entirely in accordance with international law, behaving entirely appropriately and conducting innocent passage through a stretch of water open to international navigation.

Lord Mackenzie of Framwellgate (Non-Afl) [V]: My Lords, breaches of security at such a high level are rightly of concern to members of the public and Members of this House. This Question has important implications regarding blackmail and breaches of the Official Secrets Act. Can the Minister clarify the circumstances in which the documents were found? Can she also say whether it is normal practice to hard copy security materials that can be handled digitally and securely? Will the identity of the negligent official eventually be made public?

Baroness Goldie (Con): As far as the noble Lord's question relates to the process of investigation, he will appreciate that I am unable to comment on any details pertaining to that. As I have already indicated to the noble Lord, Lord Campbell of Pittenweem, suitable IT platforms exist across government but it is within the rules to remove documents from the building in certain limited circumstances. However, very strict rules and procedures govern their removal. How the breach occurred is a matter for the investigating team to determine.

Baroness Bennett of Manor Castle (GP): My Lords, in the aftermath of the discovery of the papers, the BBC—as the Minister noted—rightly protected operational matters that might have put servicepeople at risk. Its reporting focused on the debate around the decision to send HMS "Defender" on that route. Does the Minister agree that that is a reflection of public interest—in the most genuine sense of the term—in the route decision, which was apparently a subject of disagreement between the two departments concerned? Is it not the case that, while the right of innocent passage may need to have been asserted, the UK might not have been the right country and this might not have been the right way to do it?

Baroness Goldie (Con): Again, I have said that I am not going to comment on the content of the documents, but in so far as matters relating to HMS "Defender" are in the public domain, I will simply repeat to the noble Baroness that HMS "Defender" was acting in accordance with international law and that it was entirely appropriate and legal for the Royal Navy to sail this route; it is an internationally recognised shipping route. Importantly, it is the most direct route from Odessa to Batumi in Georgia. The United Kingdom does not recognise any Russian claim to these waters. The noble Baroness will be aware that, in the Black Sea at that time, there was not only a UK naval presence; allies were present as well.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, there has been a suggestion that some of the documents were printed on pink paper, indicating the sort of material that should not be removed from the MoD except under exceptional circumstances and according to strict procedures. What were those exceptional circumstances in this case and what are those strict procedures?

Baroness Goldie (Con): The noble Baroness is posing questions about issues that it will be for the investigation team to investigate and determine and, to which it will need to find answers. As I have said, the removal of documents from the building is not unprecedented and, in very strict and regulated circumstances, is permitted. It will be for the investigating team to ascertain in full detail what happened and whether appropriate policies, procedures and processes were duly complied with.

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

1.12 pm

Sitting suspended.

Environment Bill

Committee (4th Day)

1.30 pm

Relevant documents: 3rd Report from the Delegated Powers Committee, 4th Report from the Constitution Committee

The Deputy Chairman of Committees (Baroness Henig) (Lab): I will call Members to speak in the order listed. During the debate on each group, I invite Members, including those in the Chamber, to email the clerk if they wish to speak after the Minister. I will call Members to speak in order of request. The groupings are binding. A participant who might wish to press an amendment other than the lead amendment in a group to a Division must give notice in debate or by emailing the clerk. Leave should be given to withdraw amendments. When putting the Question, I will collect voices in the Chamber only. If a Member taking part remotely wants their voice accounted for if the Question is put, they must make this clear when speaking on the group.

Clause 29: Advising on changes to environmental law etc

Debate on Amendment 103 resumed.

Baroness Jones of Moulsecoomb (GP): My Lords, the noble Baroness, Lady Parminter, explained her Amendment 103 extremely well. I will speak to my Amendment 109. We have Euro 2020, Wimbledon, the

[Baroness Jones of Moulsecoomb]
cricket and the Environment Bill—how much better could it be for all of us? There is so much pleasure in such a short time.

My Amendment 109 would introduce a new clause into the Bill that is intended to address some extensive governance gaps in environmental law that have arisen because of the UK's departure from the EU. Amendment 109 places an obligation on the Secretary of State to report to the office for environmental protection "any information" that was previously required to be reported to the European Commission relating to environmental law and its application. This could include, for example, requirements to report on ambient air quality and pollutant emissions or on the implementation of key fisheries rules, both of which were previously required to be reported to the European Commission but are now no longer required under UK law. These are two helpful examples but reporting requirements were removed through EU exit statutory instruments across the whole spectrum of environmental policy areas. Without such a replacement, there will inevitably be a reduction in transparency and accountability, both of which are crucial to the effective implementation of environmental legislation.

To ensure that the amendment does not place an unnecessary burden on either the Secretary of State or the office for environmental protection, the latter must review these reporting requirements

"no later than two years"

after the Environment Bill has passed into law. If the OEP determines that an existing

"reporting requirement is no longer necessary to contribute to environmental protection or the improvement of the natural environment, it must arrange for a report setting out its reasons to be ... laid before Parliament, and ... published."

The Secretary of State is then obliged to

"lay before Parliament, and publish, a copy of the response"

to the report within three months.

Why is this amendment necessary? The reporting of information relating to environmental law is absolutely vital to ensure transparency and accountability in environmental policy-making and ensure that government and stakeholders can identify and address environmental impacts. Continuity over time in the information being recorded and reported can also help to reveal trends and increase transparency.

However, several requirements for the Secretary of State to report information to the European Commission in relation to environmental law have been lost because of the UK's departure from the EU and the subsequent adoption of new statutory instruments. This poses a serious threat to the effective application of environmental law in the UK—because we all know that there are quite a lot of people who try to evade these particular laws—and the Government's ability to achieve their stated aim and manifesto promise of leaving the environment in a better state than that in which it was found.

Lord Rooker (Lab) [V]: My Lords, I will be brief. I put my name down to speak on this group expressly to support Amendment 103—because, given our earlier debates on the office for environmental protection and its independence, I want to test the extreme limits of Defra's control, if there are any. I would have thought that it is a given that Amendment 103 should be accepted. If it is not, that tells us something about Defra's controlling nature regarding the work of the office for environmental protection. That is the only point that I want to make.

A subsidiary point is that I also support Amendment 114, and, later today, I will also speak to Amendment 114A, which is effectively a fallback position for the amendment in this group.

Baroness Bennett of Manor Castle (GP): My Lords, Amendment 114 operates in close relationship to Amendment 78, which we debated on Monday, to which I had attached my name. Both amendments address the relationship between the Armed Forces and the Treasury in the Bill and certain exemptions provided to them.

Amendment 78 and our debate on it talked about exemptions for action; Amendment 114 talks about removing exemptions for disclosure of or access to information. The arguments for the Government to hold their current position and not include this amendment are even weaker when we talk about information—because we are not talking about actual action.

However, it is worth going back to what the Minister said in the debate on Monday, which can help to inform this amendment. He said that including Amendment 78

"could restrict our response to urgent threats. Policy decisions concerning defence are often made rapidly, or even in real time"—[*Official Report*, 28/6/21; col. 579.]

due to "urgent … operational imperatives". In that debate, we talked about a couple of interesting case studies: a new housing estate and, as the noble Lord, Lord Berkeley, mentioned, a pile being driven into a creek because it might assist in the mooring of submarines. Neither of these in any way fits the definition of urgent defence imperative.

However, I acknowledge that there are occasions on which there may be a need to, perhaps, put in some very urgent flood defences or build a pandemic hospital—the kinds of security threats that we are now facing on a regular basis—so it may be necessary to act urgently. However, I come back to that debate on Amendment 78, in which the noble Lord, Lord Krebs, cited some detailed legal material, saying that the precautionary principle, which those who are seeking to amend the Bill desire, "already includes proportionality". Of course, if something is needed for an urgent matter of national defence, clearly it would be proportionate to act as necessary. It would not be unreasonable to then provide information about what damage had been done in terms of defence. I cannot think what one might conceivably claim regarding why information should not be provided about the damage that the Treasury might have had to do to the environment for whatever reason, if one can possibly imagine such a thing.

We are talking a lot today about openness and informing the public about what is being done to the environment. In that context, Amendment 114—I still stand by Amendment 78 in some combination when we get to Report—is essential.

The Deputy Chairman of Committees (Baroness Henig) (Lab): The noble Baroness, Lady Boycott, has withdrawn from this amendment, so I call the noble Baroness, Lady Young of Old Scone.

Baroness Young of Old Scone (Lab) [V]: My Lords, I support Amendment 103 in the names of the noble Baroness, Lady Parminter, and the noble Lord, Lord Teverson. Clause 27 attempts to delineate the OEP's scrutiny and advice functions, but it is too tightly drawn. It is much to be welcomed that the OEP can monitor and report on environmental improvement plans and targets, and on the implementation of and changes to environmental law, but, for the avoidance of doubt, the amendment is necessary to enable the OEP to give advice on any other matter relating to the natural environment. It is a sweeping-up amendment so that if there is some environmental ghastliness that otherwise would not be within the OEP's ambit, this provision would allow it to take up the issue and give advice. It is a sensible provision which enhances the OEP's independence and flexibility, and I hope that the Minister can simply accept it.

I also support the amendment from the noble Baroness, Lady Jones of Moulsecoomb, requiring the Secretary of State to report to the OEP anything he used to report to the European Commission. I know that the Government do not want to carry on as if Brexit had never happened, and unnecessary reporting could be ceased provided that it was reviewed by the OEP and an adequate reason was given. However, several areas of data and reporting have already been lost as a result of their no longer being reported to the Commission, including issues of ambient air quality, pollutant emissions and the implementation of some key fisheries rules.

The issues lying behind Amendment 114 have already been aired in the debate on Amendment 78, so I shall not labour them. Environmental protection is indeed as vital as defence and security to our well-being and our very existence. The importance of issues of taxation and spending or the allocation of resources for the environment has already been demonstrated. The exclusions listed in Clause 45 cannot go forward without the OEP being debarred from some key areas. Subsection (1) must also be challenged. Environmental law is there defined as

"legislative provision … that … is mainly concerned with environmental protection".

Many laws would be not be considered to be

"mainly concerned with environmental protection",

but they have a big impact on the environment. There is a huge list—I think immediately about planning legislation, transport legislation, energy, agriculture, fisheries, housing and food. I could keep on listing, but your Lordships would be here all day. We need to press the Minister on whether he truly believes that the OEP should be able to consider these issues and not just what is in the tightly prescribed provision in the Bill.

Lord Teverson (LD): My Lords, I was pleased to put my name to the amendments tabled by my noble friend Lady Parminter. It seems obvious, as many noble Lords have said, that for the OEP to have the stature that the Government want it should be able to give advice as it sees fit without constraint. Clearly, it will be constrained anyway in terms of its budget, its resources and its capacity so, like any similar authority, it is going to be careful about what it concentrates its resources and time on. That is quite a sufficient constraint on the OEP's work and what it does. As the legislation says, if the Minister or the Secretary of State want advice in certain areas, it can give it, whatever that area is, yet it is strongly constrained in terms of reports on its own initiative. The noble Baroness, Lady Young of Old Scone, laid out that long list of areas where it would invaluable for the OEP on occasion to give its own opinion unprompted by the Secretary of State. As we have said many times before, the Climate Change Committee, which is respected nationally and internationally, is able to do that, and it uses that power well, responsibly and to effect. I see no reason why the OEP should not be able to do that as well.

1.45 pm

On my noble friend's second amendment, it seems to be one of those cut-and-paste exercises by civil servants and government, where they think, "What clause do we put in to constrain power here?", so the Treasury, the Armed Forces and the other areas are pasted into the legislation. I see no reason for this. If it was a matter of national security, I guess that we would all immediately agree but it is not. These are important areas, not least "allocation of resources"—that is everything in government, for goodness' sake; that is what government is about. For it to be excluded is wrong and, again, it demotes the OEP to something that is not independent. The noble Lord, Lord Rooker, is absolutely right: this is another litmus test of that independence.

I was very interested by the explanation given by the noble Baroness, Lady Jones of Moulsecoomb, of her amendment. I must admit that I had rather lazily assumed that, in terms of rollover of EU legislation, this sort of information still had to be given. I am very pleased that she has put me right on that and I would be keen to hear from the Minister how he sees it. Clearly, such information should be reported into the OEP. It needs to be a body that has the respect not just of Ministers and of this Parliament but of the public and institutions such as the Environment Agency, the police, local authorities, Natural England and the MMO—all those organisations that have to enforce environmental law and need to be checked out by the OEP.

As I said, this is another litmus test for the independence of the OEP, for how it will be perceived internationally and for its stature in how it interacts with government and this Parliament.

Lord Khan of Burnley (Lab): My Lords, it is a pleasure to follow the noble Lord, Lord Teverson. I shall speak to Amendments 103 and 114 in the name of the noble Baroness, Lady Parminter, and Amendment 109 in the name of the noble Baroness, Lady Jones of Moulsecoomb—whose final reply in the earlier debate on Monday was very candid.

In normal times, one would hope that something like Amendment 103 would not be needed. As the noble Lord, Lord Teverson, and my noble friend

[Lord Khan of Burnley]
Lord Rooker said, it should be accepted; it is a given. The ability of experts to advise Ministers should be central to how government functions each and every day. However, it seems that expert advice does not carry the same weight with certain Ministers as it once did. Amendment 103 is therefore most welcome.

While the OEP will have a specific remit given to it by the Bill, it appears entirely reasonable that it should also act as a general champion for the natural environment. Amendment 103 would clarify that the OEP is empowered also to give advice to Ministers on other natural environment matters. The amendment would broaden the reach of Clause 29(3) by increasing the discretion afforded to the OEP on how it exercises its advisory powers and enable it to advise Ministers on a fuller ranger of matters, improving the evidence-gathering and assessment process on important policy decisions. When the body was first announced, we were told that it would be given licence to engage with and freely challenge Ministers. The amendment would be one means of giving statutory backing to that commitment.

Amendment 109 returns to an issue that has been discussed at length. As the noble Baroness, Lady Jones, made clear, it is about accountability and transparency. The issue was discussed at length during debates on EU exit statutory instruments under the European Union (Withdrawal) Act 2018, where references to the European Commission in domestic law and retained EU law were to be replaced by supposedly suitable domestic alternatives. However, in some cases, this has left Secretaries of State reporting to themselves or to bodies over which they have responsibility or, in some cases, not having to report at all. We reluctantly accepted this as a short-term logistical fix, in part because assurances were given that as domestic bodies were established, they would begin to take on some responsibilities previously held by the Commission. Given the challenges to retained EU law, we are not certain that this amendment would function exactly as hoped, although it enables the Minister to clarify how Defra plans to meet its previous commitments and whether it has any plans to allow the OEP to undertake the kind of review envisaged in subsection (2) of the proposed new clause.

Finally, Amendment 114 would remove the "Excluded matters" list in Clause 45 to ensure that the term "environmental law" has the broadest possible application.

We strongly welcome the tabling of this amendment. I am grateful to the noble Baroness, Lady Parminter, whom we wish well, as she has been "pinged" today. We appreciate the case she made at the beginning of this debate.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): I thank noble Lords for their contributions. Before I start, I would like to wish my noble friend a very happy birthday and thank her for spending it with me on these Benches. That is very kind.

I thank the noble Baroness, Lady Parminter, for tabling Amendment 103 and for her compelling speech on Monday. I appreciate the amendment's intention. The concern is that it could be duplicative, and I would like to direct her to Clause 19, which already places requirements on the OEP to give advice, on request, to Ministers on any matter relating to the natural environment and, on request or on its own initiative, on any proposed changes to environmental law. It builds on Clause 28(2), which gives the OEP the power to report on

"any matter concerned with the implementation of environmental law."

It is in these areas that the OEP will have the greatest expertise, and that its advisory and reporting roles should be focused. To be clear, this will include planning legislation where it relates to the environment, including environmental impact assessments, strategic environmental assessments and all the measures in the Bill relating to planning. Other bodies, such as Natural England and others, have functions to advise government on matters concerning the natural environment. Amendment 34 would risk duplicating this and directing the OEP away from its core functions.

Turning to Amendment 114, also tabled by the noble Baroness, Lady Parminter, Clause 45 is vital in defining and establishing the OEP's remit, and each of these exemptions serves important purposes. Clause 45(2)(a) excludes the

"disclosure of or access to information"

from the OEP's remit in order to avoid overlap with the remit of the Information Commissioner's Office. The exclusion of legislative provisions concerning the Armed Forces and national security is important to the protection of the country. Such legislation would concern highly sensitive matters and it is therefore appropriate to restrict the OEP's oversight and access to information in such areas.

However, public authorities such as the MoD would not be exempt from scrutiny by the OEP in respect of their implementation of environmental law, including in respect of SSSIs and the MoD's statutory duties in the Countryside and Rights of Way Act. It is clear to us—this is a point made by a number of noble Lords—that the MoD, as one of the country's biggest landowners, has a direct impact on the natural environment. We will need to be absolutely confident that the exemptions do not in any way loosen the MoD's responsibilities for managing those natural assets.

Turning to Clause 45(2)(c), legislation regarding

"taxation, spending or the allocation of resources"

is developed by HMT and needs to be developed with the flexibility to meet the nation's revenue requirements. However, the spending of government resources may well be a relevant consideration in the OEP's review of the implementation of environmental law, and it may refer to this in its scrutiny and advice reports to government. Additionally, legislation relating to regulatory schemes such as the plastic bag levy is not part of the exclusion and is within the OEP's remit.

Turning to Amendment 109, following EU exit, Defra's secondary legislation programme ensured that reporting requirements in EU legislation were generally converted into a requirement to publish environmental information online, meaning that information about the environment will be publicly available.

Additionally, when we left the EU our domestic legislation was updated to meet domestic rather than EU objectives. For example, where EU law required the UK to report to the European Commission on pesticides residue monitoring, our domestic legislation now provides for an equivalent national report to be published online and, therefore, to be made public.

I should add that if the Government wished to seek the OEP's advice on matters relating to environmental law, including on reporting arrangements, it could do so under provisions made in Clause 29.

I hope that this goes some way to reassuring noble Lords that the amendment is therefore not needed. It could serve to blur the lines or even distract the OEP from the core functions it will be required to undertake. I ask therefore that the amendment be withdrawn.

Baroness Parminter (LD) [V]: My Lords, I thank the Minister for his remarks and all those who have spoken in this short debate for their universal support for my Amendments 103 and 114.

I listened carefully to the Minister but I have to say that I still do not think he has quite answered the question raised by Amendment 103. He said that the OEP can give advice on matters such as planning—if it is asked. The point behind my amendment is that, as it stands, the OEP cannot give advice on those matters if it is not asked.

When we were debating this amendment late on Monday, I did not make the point—I will make it now—that Environmental Standards Scotland can make recommendations to any other body on matters relevant to its function. It can go right across the piece but, importantly, the OEP cannot, so its powers are narrower than those currently given to the parallel Scottish body. I agree with the noble Lord, Lord Rooker, that this is an indication of Defra's controlling nature, and I am afraid that I am not satisfied by what the Minister has said. Nor is he prepared to accept the broad thrust of my argument as set out in Amendment 114: the massive carve-out in terms of disclosure of information on the MoD's spending.

The Minister has not responded satisfactorily to the concerns raised by Members here today or to those raised in the linked amendment, 78, which we also discussed on Monday and to which the noble Baroness, Lady Bennett of Manor Castle, referred. I beg leave to withdraw the amendment, but we will be returning to this issue on Report.

Amendment 103 withdrawn.

Clause 29 agreed.

Clauses 30 to 36 agreed.

The Deputy Chairman of Committees (Baroness Henig) (Lab): We now come to the group beginning with Amendment 104. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Amendment 104

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

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

"Penalty notices

(1) If the OEP is satisfied that a public authority has failed to comply with a decision notice, the OEP may by written notice (a "penalty notice") require the public authority to pay to the OEP an amount in sterling specified in the notice.

(2) A penalty notice may not be issued before the earlier of—

(a) the end of the period within which the authority must respond to the decision notice in accordance with section 35(3), and

(b) the date on which the OEP receives the authority's response to that notice.

(2) When deciding whether to give a penalty notice to a public authority and determining the amount of the penalty, the OEP must have regard to the matters listed in subsection (3).

(3) Those matters are—

(a) the nature, gravity and duration of the failure;

(b) the intentional or negligent character of the failure;

(c) any relevant previous failures by the public authority;

(d) the degree of co-operation with the Commissioner, in order to remedy the failure and mitigate the possible adverse effects of the failure;

(e) the manner in which the infringement became known to the OEP, including whether, and if so to what extent, the public authority notified the OEP of the failure;

(f) the extent to which the public authority has complied with previous enforcement notices or penalty notices;

(g) whether the penalty would be effective, proportionate and dissuasive.

(4) Once collected, penalties must be distributed to the NHS, Mayors for combined authority areas and local authorities for the treatment and research of illnesses related to air pollution.

(5) The Secretary of State must, by regulations, set the minimum and maximum amount of penalty.

(6) Regulations under this section are subject to the affirmative procedure."

Baroness Jones of Moulsecoomb (GP): It is my pleasure to open the debate on this group. It includes some amendments from some very esteemed noble Lords which I will no doubt comment on at the end. While all these amendments take different approaches, what is common is that we all recognise that this Bill will fall far short of what is needed without some significant changes to the enforcement mechanisms. I would not dare to disagree with a group of noble Lords that includes the noble Lords, Lord Anderson of Ipswich, Lord Krebs and Lord Duncan of Springbank, and the noble and learned Lord, Lord Thomas of Cwmgiedd.

These amendments can meld into something extremely positive. For example, the proposals by the noble Lord, Lord Anderson, will significantly improve the judicial process for environmental review. In particular, they remove from the Bill the absurd provision whereby an adverse ruling does not affect the validity of a government decision.

My amendment and Amendment 107A, tabled by the noble Baroness, Lady McIntosh of Pickering, take enforcement one step further. Our amendments recognise that there is a whole realm of conduct that goes further than a judge giving the Government a strong telling off, and which may require actual penalties to

[Baroness Jones of Moulsecoomb]
be issued. Amendment 104 would enable penalties to be issued, taking into account a whole host of factors such as the gravity of the failure, any intention of negligence, and previous failures by the authority. The inclusion of the principles of effectiveness and proportionality makes my amendment wholly reasonable, and is necessary for ensuring that the ambition in this Bill is not trashed by poorly governed public authorities.

2 pm

Finally, my Amendment 104 would use these penalties to fund the NHS. This is an absolutely crucial point and, I have to admit, the issue of air pollution is one of my pet topics. Very few people seem to understand what a public health hazard it is. Here, I am saying we should fund the NHS and local authorities to reduce the harms of air pollution and treat the associated illnesses, which very much affect children as well as adults. I admit this is my pet project, but it is one of the gravest examples of where politicians are failing us. It has become more visible recently that air pollution is a killer and also reduces well-being in many people, particularly children of course. So I believe it is a worthwhile destination for these penalty fines. I beg to move.

Lord Anderson of Ipswich (CB): My Lords, I agree with the noble Baroness, whom it is a pleasure to follow, that the risk of penalty fines concentrates the mind wonderfully. When I used to defend Defra from the attentions of the European Commission in urban waste-water cases, I suspect the prospect was quite useful in concentrating the mind of the Treasury when money was requested for the Thames super-sewer and other mitigations. The Minister will say that no fining mechanism is necessary when the OEP has at its disposal a sufficiently intimidating set of judicially enforceable remedies. In the abstract, he may have a point, but, when looking at the Bill, as the noble Lord, Lord Duncan of Springbank, said at Second Reading, it is important not to confuse a full set of teeth with a flashy set of dentures. My Amendments 105 to 108 seek, in particular, to equip environmental review, the only route generally available to the OEP, not with dentures but with teeth.

The crucial amendment, to which the noble Baroness has already referred, is Amendment 107. In any case likely to prove contentious, it will be worthwhile for the OEP to pursue environmental review only if strong and enforceable remedies—notably, the power to quash unlawful decisions—are available at the end of the road. Clause 37(8), which is without precedent in any Act of Parliament, removes the court's power to grant such remedies, no matter how much or little time may have elapsed, and no matter how serious the damage to the environment or public health, unless the court can satisfy itself that the grant of a remedy would not be likely to cause substantial hardship to, or substantially prejudice the rights of, any person. This is, though disguised in the drafting, a rebuttable presumption against the grant of any remedy at all.

There is a yet further hurdle: the court would have to be satisfied also, before granting a remedy, that a remedy would not be "detrimental to good administration"—although how good administration could be founded on policies and decisions that are unlawful is certainly an interesting conundrum. Take the example of an air quality case: just the sort of systemic issue of national importance that is identified in Clause 22(7) as particularly suitable for the OEP. Let us say that the court hearing an environmental review finds that a public authority has failed to produce legally compliant air quality plans and, to ensure that the law is enforced, wishes to require it to do so. Clause 37(8) would stop it from doing so unless the court was satisfied that no one would be likely to suffer substantial hardship or prejudice as a result. The evidence of one taxi driver who had recently sunk his savings in a non-compliant vehicle would be not only relevant but determinative of the issue, no matter serious the breach of law and no matter how many lives might be saved by a compliant plan. Indeed, even if there were no such evidence, the court could still not grant a remedy without, in effect, proving a negative: that there is nobody out there who could suffer the requisite substantial hardship or prejudice.

Similarly, an unlawful failure to designate a nitrate-vulnerable zone could not be corrected unless the court could be sure that no affected landowner would meet those thresholds. An unlawful permit for an oil refinery would have to stand if the owner had invested on the strength of it, whether in good faith or otherwise. A future judgment that new gas boilers are incompatible with statutory net-zero obligations would be unenforceable too. Irrespective of the benefits, there always would be people with something substantial to lose. In short, the more significant the issue and its environmental impact, and the more it is capable of impacting on private or even administrative interests, the more likely it is that the grant of any remedy will be automatically excluded by this clause.

Of course there will be cases, including some cases decided long after the event, in which a private interest is so strong, and the environmental interest so relatively weak, that a court would be justified in refusing a remedy in respect of unlawful conduct. That is precisely why the grant of remedies by courts of judicial review is, and always has been, discretionary and flexible. Amendment 107 would do no more than replicate that orthodox and unobjectionable position in the context of environmental review. It does not even require the normal remedy of damages to be available. Clause 37(8) places private and bureaucratic interests in the perpetuation of unlawful decisions on one side of the balance, and decrees that even the heaviest public interests will never outweigh them. The twin attributes of justice are her scales and her sword; Clause 37(8) would remove them both. All we ask if that she should be allowed to keep them, so that public authorities can be kept to their legal obligations in this most vital area.

Amendment 108 would give the OEP an alternative to environmental review by opening up a wider range of cases in which the OEP could pursue the established route of judicial review. Clause 38(1) uniquely handicaps the OEP as a claimant in judicial review by requiring it to surmount two extra hurdles of seriousness and urgency—nobody else faces those. By removing at least the second of those hurdles, which was only inserted in the Commons, we would go some way

towards redressing the OEP's disadvantage and putting it on the same footing as any other interested group or individual.

Amendments 105 and 106 address further points on environmental review. The point of 105 is to reduce the scope for procedural game-playing by lawyers. It is the nature of things that unlawful practices may spread, or be repeated, during the course of the OEP investigation that is a precondition for the commencement of environmental review. It is surely sensible that the scope of any environmental review should not be frozen at the time, months or even years earlier, when the investigation began. If later conduct raises the same issues, there should be no obstacle to putting it before the court. I hope the Minister will agree with that, and also that Clause 37(2) is too narrowly drafted for this subject to be adequately dealt with by assurances from the Dispatch Box.

Amendment 106 focuses on the statement of non-compliance, a concept introduced to the law by Clause 37. As the department has accepted in its FAQs, published on Monday, such statements may have reputational or political effects but are not in themselves a legal remedy. So they are not a prize to which the OEP is likely to feel justified in devoting its limited resources. This amendment would remove the most obvious statement of their legal powerlessness—that they do not affect the validity of the conduct in respect of which they are given—but would not, I freely accept, be a substitute for the remedies whose full application would be restored by Amendment 107.

Finally, and in response to a concern I raised at Second Reading and in person, the Minister has been good enough to write in an all-Peers letter that it is the Government's view that OEP complaints and enforcement functions will not affect the rights of other persons to bring legal challenges against public authorities by way of judicial review. It would be the final irony if the imperfect mechanisms of environmental review were to be advanced in the courts by public authorities as a reason for withholding access to what remains, at least for now, the gold standard of judicial review. I accept that such decisions are ultimately for the courts, but the Government's view is significant and I would be grateful if the Minister could repeat his assurance from the Dispatch Box so that it appears in the official record.

Baroness McIntosh of Pickering (Con): I am delighted to follow the noble Lord. I support the amendments in this group. I join my noble friend the Minister in congratulating my noble friend Lady Bloomfield on her birthday; I am sure there is nowhere she would rather be celebrating her birthday than with us this afternoon. Her support on the Bill is greatly appreciated.

My starting point is what my noble friend has said on a number of occasions: that we are seeking to achieve a regime whereby we replicate, as closely and as effectively as possible, the regime to which we signed up with the European Union. I go back to Britain in the 1980s, when I was working as an adviser; an A-grade woman, and a woman administrator in the Conservative group in the European Parliament, was quite a thing in those days. Noble Lords may recall—the noble Duke, the Duke of Wellington, recalls only too well—that the United Kingdom had a terrible reputation as the dirty man of Europe, with the dirtiest waters, some of the dirtiest rivers and some of the dirtiest beaches. Many maintain that change came not just by signing up to high-reaching directives, such as the EU water directive—I pay tribute to the Secretaries of State for the Environment at the time—but also the massive investments that water companies made over successive years and, obviously, the sterling efforts of the noble Lord, Lord Anderson of Ipswich, who made sure that he held the water companies' feet to the fire.

I am concerned that there will be no real teeth. I hate using that word because I went to the dentist recently and it brings back too many memories of that, but I think it is a good word to use. I believe that one reason why the European regime has been so successful in holding water companies, chemical companies and agricultural processes to the fire is because it had very real sanctions. I therefore pay tribute to the noble Baroness, Lady Jones of Moulsecoomb, and the noble Lord, Lord Anderson of Ipswich, for their amendments. Mine, as the noble Baroness said, goes a little further. It says:

> "In the event of a severe breach of environmental law, financial penalties may be imposed."

This echoes a lot of the arguments put forward by the noble Lord, Lord Anderson of Ipswich.

The offending subsections of Clause 37 include subsection (7), which states:

> "A statement of non-compliance does not affect the validity of the conduct in respect of which it is given."

They also include subsection (8) in particular, which goes further:

> "Where the court makes a statement of non-compliance it may grant any remedy that could be granted by it on a judicial review other than damages, but only if satisfied that granting the remedy would not … be likely to cause substantial hardship to, or substantially prejudice the rights of, any person other than the authority, or … be detrimental to good administration."

My noble friend the Minister has to put our minds at rest this afternoon and show that it should not really be just the courts that are left to impose the penalty. If the OEP is to be worth its weight in gold, which I hope it will be, it has to have the power to implement the decisions that have to be taken when holding public bodies to account—it is extending to public authorities for the first time—and would mirror the powers that currently exist under the European Commission, which is the body that we are told the OEP is meant to replicate in fulfilling our environmental sanctions post Brexit.

I am grateful to the Bar Council for its help in preparing my amendment. As I have said before:

> "The requirement that the breach be severe to justify a financial penalty is noted. It is assumed that this is to ensure that a financial penalty be the exception rather than the rule".

So, it should not just be a minor infraction; it should be a major infraction and a severe breach. Also, this is

> "in the context that the OEP's power to apply for an environmental review is already on the condition that it considers the authority's failure to comply to be serious. To that end, it might be less open for debate as to whether it is severe or serious if the court's discretion were wider, and therefore based upon all the circumstances of the case, but to be exercised where those circumstances are exceptional."—[*Official Report*, 28/6/21; cols. 562-63.]

[Baroness McIntosh of Pickering]

In making an argument to reject Amendment 107A, my noble friend has to give us the alternative that there will be very real and immediate powers. As I am sure the noble Lord, Lord Anderson, will say, if the OEP were to impose a penalty, it would be more or less instantaneous. Going to court means that there will inevitably be a delay, so the spillage and the damage could take more effect than if we had the OEP imposing the penalty, which is my preferred route. I hope that I will get the support of the House for Amendment 107A.

2.15 pm

Lord Rooker (Lab) [V]: My Lords, I support Amendments 105, 106, 107 and 108 in this group. Indeed, I raised the issue of Clauses 37(7) and 37(8) at Second Reading and made it clear that I, as a non-lawyer, was relying on the Bingham Centre's rule of law analysis of this part of the Bill. I am going to leave the experts—we have already heard from the noble Lord, Lord Anderson—to deal with the legal flaws. I just want to give a couple of examples that Second Reading did not allow because of the time limits.

The first is the culling of sea-birds in the Ribble estuary. The case of RSPB v Secretary of State in 2015 concerned the decision by the Secretary of State to grant permission for a cull of sea-birds. The Court of Appeal ruled that the direction to cull was not consistent with the objectives of managing their population. Under this Bill, the statement of non-compliance would declare such a cull not in compliance with environmental law but it would not stop the cull. What would be the use of such a declaration? A paper remedy is no remedy at all.

A second, more recent example, concerns Manston Airport. Permission to use Manston Airport was given by way of a particular kind of statutory instrument: a development consent order, or DCO. The DCO was contested and the Secretary of State conceded that it had been made unlawfully. The planning court quashed the DCO, meaning that it had no legal effect. Under Clause 37(7), notwithstanding it was unlawful, the DCO would remain valid.

The third example, which I will not go into in detail, concerns the case of Dover District Council v CPRE Kent. This regarded a proposed development in an area of outstanding natural beauty. The Supreme Court quashed the permission. Under Clause 37(7), there would be nothing to prevent it going ahead.

Clause 37(8) also presents problems with the rule of law, as the noble Lord, Lord Anderson, said. A local authority could give a developer the right to clear woodland to build houses. In so doing, the local authority could be breaching environmental law. The developer will have spent money on paperwork and planning. It may become non-compliant at an environmental review but, because the developer has spent money and expects to profit from the development, the development must go ahead. This is absolutely crazy. According to the Bingham Centre, this introduces

"a new 'polluter doesn't pay' principle into environmental law."

This is a new normal: unlawful actions by a public authority remain valid; it restricts the awards of a remedy by the court; it requires a court to endorse unlawful action if quashing that action would hurt a person who stands to benefit from it. The Minister must have some really good, detailed answers to these points and the others he is going to hear this afternoon—far more satisfactory than what he has managed to conjure up so far on the Bill. He must appreciate that there will be chaos on Report as the Bill gets torn apart.

Lord Thomas of Cwmgiedd (CB): It is a pleasure to follow the noble Lord, Lord Rooker, and speak to the same amendments.

If the Bill is to be effective and to work, there are two main areas that need change. The first is clarity in relation to all the duties imposed because without clear duties, interlocking targets, interim targets and environmental plans, there is no effective concrete law that can be applied.

The second area where it has changed is enforcement. On Monday we had a useful debate on the independence of the OEP. Today, we turn to a second aspect of enforcement: the remedies that must be available if court proceedings are required. I very much hope that the independent strength and force of the OEP, together with clear duties set out in the Bill, will mean that recourse to courts is rarely necessary. However, that may be a pious hope because it is obvious that in this area there are immense conflicts of interest between those looking at the long term and those who seek to protect short-term or other interests. It seems to me, therefore, that an amount of litigation and enforcement action taken through the courts is inevitable.

I believe that view must be shared by the Government because why, otherwise, would they seek to constrain two important aspects of our common-law tradition? The first is to curtail the judicial function and the second is to curtail the discretion of the enforcer. I will deal with each aspect in turn but, unless changes are made to this part of the Bill, I entirely agree with everyone who has spoken about teeth. I will not attempt to describe the kind of teeth required, only to say that they must ensure that the Bill is not a long series of statements but will actually work for future generations.

I will now deal with each amendment in turn. I will deal with them briefly and in the order in which they are set out, not as the noble Lord, Lord Anderson, did, but I entirely agree with him that the critical amendment is Amendment 107. Amendment 105 changes the provision in the Bill that seeks to stop proceedings at a particular point in time being brought together. I find this very difficult to fathom. It is a very inefficient way of dealing with things, apart from being unjust. A court always likes to have all the relevant cases in front of it so that it can do justice. I ask the Minister: why do the Government wish to impede justice in this respect?

Amendments 106 and 107 can be taken together because they deal with the consequences of a decision by the court that what has happened has not been lawful. It seems to me very difficult to understand how a Government who believe in the rule of law—and I believe this Government firmly believe in the rule of law—wish to say that there are to be no consequences of a failure to comply with the law. That is very difficult to understand. However, much more serious, as the noble Lord, Lord Anderson, and others have

pointed out, is the restriction on remedies. I have no doubt that the Department for Environment, Food and Rural Affairs and its very able lawyers are well aware that, from time to time, in several cases, judges have to deal with circumstances where the rights of other people are affected or there is a question about good administration. A judge then takes, for example, the prejudice to the rights of certain people on the one hand and balances it against the considerations on the other. That is an ordinary judicial function.

The Bill seeks to take that function away from a judge by imposing a restriction that requires a judge to be satisfied that if one single person would suffer hardship or prejudice to his rights, that means the court cannot do justice. I ask why. To my mind, it is a very undesirable attack on the way in which traditionally in this country we have approached matters of judicial review of government action. Until now, the judges have been trusted. It is a remarkable fact that, although there are complaints from time to time that far too many decisions are overturned on judicial review, the general effect of judicial review and the knowledge of the consequences of the remedies has been to improve good administration. The Government are successful in the overwhelming number—a percentage in the high 90s—of cases. I therefore wonder: what is driving the Government in this case to curtail the doing of justice by judges? It seems to me that there is no reason whatever for it. Surely, they can trust the judges on this aspect.

The last of these amendments is to the provision that seeks to curtail the right of the OEP to bring judicial review. Why take away its discretion? Do the Government not trust it? Surely, with an agency that is independent and to be chaired by a person of the calibre of the chairman designate, it is very difficult to understand why a Government wish to restrict its discretion for the future in bringing cases. They must also appreciate that if a judicial review has brought late, the judge can refuse a remedy. There is the lock of the discretion of the trusted OEP, with judicial discretion as a backstop. Why do the Government need more? We should trust our common-law traditions and leave matters to the discretion of the judiciary and to the discretion of the enforcer.

Lord Krebs (CB) [V]: My Lords, it is a great please to follow my noble and learned friend Lord Thomas of Cwmgiedd. I have put my name to Amendments 105, 106, 107 and 108, together with my noble friend Lord Anderson of Ipswich, my noble and learned friend Lord Thomas of Cwmgiedd and the noble Lord, Lord Duncan of Springbank. As a mere lay man on legal matters, I have little to add to the points made so beautifully by my noble friend and my noble and learned friend. However, it would be hard to argue against the view that the OEP, if it is to be an effective enforcement body, needs to be able to wield a big stick, even if the stick is rarely used. As it stands, the Bill gives the OEP a stick more akin to a matchstick than a knobkerrie, cudgel or shillelagh.

I am very grateful to the members of the Defra Bill team for having spent two sessions with my noble friend Lord Anderson and me trying to explain why Clause 37(8) biases the scales of justice against protecting the environment and in favour of commercial interests that might harm it. Three arguments were put forward. First, environmental review will take some time to reach the court stage as it passes through the two earlier stages of an information notice and a decision notice. Therefore, a third party may have already committed a great deal of resource to a project before it comes to court and it would be then unfair to stop the project in its tracks. Secondly, it was said that the OEP has wider powers than those covered by the European Commission and court and therefore needs to have its teeth blunted. Thirdly, in some cases, for instance planning approvals, giving environmental protection too much weight might cut across other government priorities.

I do not find these arguments at all persuasive. For instance, the argument that the environmental review process is so slow that a third party could be heavily committed begs the question of whether the design of the whole process needs to be reconsidered, as Amendment 108 proposes, rather than using Clause 37(8) as a sticking plaster to rectify the problem. As it stands, it is a bit like a manufacturer making a chair with legs that are too long and then selling it with a requirement that the customer cuts the legs down before use.

Defra officials have also produced a very helpful note summarising their arguments for this part of the Bill, as the noble Lord, Lord Anderson, referred to a few minutes ago. The note makes it clear that one of the Government's concerns, perhaps even a major concern, is that the OEP might get in the way of the planning system. My noble friend Lady Boycott referred in earlier debates to instances where housing developments could cause serious harm to valuable habitats. Perhaps a powerful OEP would be able to discourage or stop these developments—but if it did, would that be a bad thing? It certainly would not be for the species that depend on those habitats for their survival.

2.30 pm

It is not uncommon for developers or individuals to face financial consequences in the form of fines for environmental harms, such as cutting down trees that have tree preservation orders, or for failing to carry out due diligence, such as proper environmental impact assessments. Clause 37(8) seems to go too far in protecting public authorities from failing to carry out due diligence, with consequent adverse effects on third parties. As it stands, who will bear the burden of bad decisions? The environment that the Bill claims to protect.

As others have explained, Amendments 105, 106 and 108 also seek to strengthen the OEP's hand by increasing the efficiency of process, removing the oddity that non-compliance does not affect the validity of an action, and broadening the conditions under which the OEP can seek judicial review. Amendment 104 in the name of the noble Baroness, Lady Jones of Moulsecoomb, and Amendment 107A in the name of the noble Baroness, Lady McIntosh of Pickering, introduce the option of financial penalties. In Monday's debate, the noble Lord, Lord Rooker, was most eloquent in describing how the threat of fines by the European court galvanised the Government into action. I realise that that may be a step too far, but Amendments 105 to 108 are much more modest and should surely be

[LORD KREBS]
accepted by the Government if they are serious about protecting the environment. If the Bill is not amended, the OEP will be a bit like a contestant entering a marathon with their shoelaces tied together.

The Earl of Caithness (Con): My Lords, before I speak to the amendments, I apologise to my noble friend the Minister for including his name in what I said about the Forestry Commission on Monday. It was quite of wrong of me to do so, and I apologise to him for that. He has confirmed that he does not agree with me, in any case.

As I turn to the amendments, there is now very little for me to say. The Bill has been savaged by the noble Lord, Lord Anderson of Ipswich, and the noble and learned Lord, Lord Thomas, a former Lord Chief Justice. The noble and learned Lord, Lord Hope of Craighead, and my noble and learned friend Lord Mackay of Clashfern will doubtless similarly savage the existing wording.

My concern is that the OEP must be not only independent but seen as such, and it must be authoritative. If it is not, it is not going to work; it will get into disrepute. The Bill as it stands does not help in seeking to achieve the goals that we all want. This takes me, finally, on to the question of financial penalties. I know how effective the threat of financial penalties has been on the Government, but I actually see little point in the OEP being able to fine the Government, because it comes out of one pocket and goes straight back into another pocket to be recycled. It is not the threat that the Europeans had of a financial penalty on the Government. There has to be a better way of making certain that the OEP's decisions have the cudgel that the noble Lord, Lord Krebs, referred to.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, the noble Lord, Lord Blunkett, has withdrawn, so I call the noble and learned Lord, Lord Hope of Craighead.

Lord Hope of Craighead (CB) [V]: My Lords, I wish to speak in support of Amendments 105 to 108 and to endorse all that the noble Lords, Lord Anderson of Ipswich and Lord Krebs, and the noble and learned Lord, Lord Thomas of Cwmgiedd, said about them.

Rolling up multiple instances of misconduct into a single application, as Amendment 105 seeks to permit, makes obvious sense. There are limits to the extent that rules of court may go to promote that objective, although this is certainly something that the courts would like to do. Amending Clause 37 in this way will significantly improve the process, as the noble Baroness, Lady Jones of Moulsecoomb, said in introducing this group, and it will also avoid abuses. Therefore, I warmly endorse this amendment.

Clause 37(8), which seeks to restrict the discretion of the court to grant a remedy, raises the threshold on what the court may do too far. Removing that restriction is what Amendment 107—the crucial amendment, as the noble Lord, Lord Anderson, said—is all about. Along with others who have worked with judicial review in practice, I regret what the Government are proposing. I understand the points made in the Defra note about innocent third parties and the effects of delay in some cases when issues come to court, but the courts themselves have no difficulty in taking points of that kind on board and making allowances for them. The flexibility of judicial review, which is one of its strengths and ought also to be part of environmental review, must be preserved.

Clause 38(3) about the urgency condition, which Amendment 108 seeks to remove, is another fetter on the jurisdiction of the courts which is hard to justify, as others have said.

As the noble and learned Lord, Lord Mackay of Clashfern, said to me one day years ago, I think shortly after he entered this House as Lord Advocate and began to see what Governments can achieve by legislation, "legislation is a blunt instrument". I have never forgotten that remark. All too often legislation has unforeseen consequences. His wise remark serves as a warning to legislators not to trespass too readily into areas of law and practice which depend on the exercise of judicial discretion, and this is such an area. The point is that while legislation lays down rules, only other legislation can change those rules, and they are rules which the court must obey. By contrast, the common law which judges apply can and does adapt itself as case law develops. That is its strength and what judicial review has been doing for decades. That is why it is much more sensitive to the demands of each case and the kinds of problems that the Defra note refers to. It should not be impeded in the way that the Government are seeking to do in these clauses, and that is why I support these amendments.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): Although she is in her place, I understand that the noble Baroness, Lady Boycott, is not participating in this debate, so I call the noble Baroness, Lady Young of Old Scone.

Baroness Young of Old Scone (Lab) [V]: My Lords, when amendments are supported by noble Lords of the calibre of the noble Lord, Lord Anderson, and the noble and learned Lord, Lord Thomas, a renowned scientist and environmentalist in the shape of the noble Lord, Lord Krebs, and a former Minister—the noble Lord, Lord Duncan of Springbank—if I were the Minister, I would roll over and accept them. I hope he will do just that. I cannot add to the lucid case made in support of Amendments 105 to 108 by those noble Lords I have mentioned, other than, in layman's terms, to add my voice of concern about the proposed restrictions on judicial discretion to grant remedies when it is found that there has been a breach of environmental law on an environmental review and the limitations on the OEP's powers to bring judicial review proceedings.

The proposed statement of non-compliance is risible, since the public body can publish a response but carry on regardless, with whatever it has done wrongly remaining valid and in place. This is not a toothless remedy; it is no remedy at all and will bring the OEP immediately into disrepute. To make matters worse, a judge cannot issue a stronger remedy if it would

"be likely to cause substantial hardship to, or substantially prejudice the rights of, any person"

or

"be detrimental to good administration."

We have heard cases from across the environmental spectrum from previous speakers. Can the Minister tell the Committee how this provision can possibly work, as there is bound to be an individual or group who could be shown to have suffered some adverse impact? It is called life, I think.

Environmental review is supposed to complement rather than replace judicial review, but the Bill allows the OEP to use judicial review only where an urgency condition has been met:

"to prevent or mitigate serious damage to the natural environment or to human health."

Other similar bodies have access to judicial review at their discretion, and that cannot be denied to the OEP without it becoming ineffective in its enforcement role.

Amendments 106 to 108 would enable the OEP to exercise at least some effective powers to hold government and public bodies to account for compliance with environmental law. Personally, I would also give the OEP whacking great powers, as outlined in Amendment 105 from the noble Baroness, Lady Jones of Moulsecoomb. There is nothing like an eye-watering fine of the scale that the European Commission used to apply as a last resort to change the mind of a government department or an agency that has gone off-piste.

I have chaired a regulatory body that attempted to regulate government bodies and the Government themselves, and I tell the Committee that it is not easy. If you do it with rigour and toughness, the Government hate you and take revenge. If you do it in a toothless way, the public lose confidence in you and take revenge. It is difficult enough with a full set of tools in the toolkit. Unless these amendments are passed, the OEP's toolkit will be significantly bare.

The Lord Bishop of Gloucester: My Lords, I add my voice in support of Amendments 105 and 107, and I shall speak to those amendments together. My right reverend friend the Lord Bishop of Oxford would have spoken to them, but is unable to be here, so I am glad to be able to speak and endorse what other noble Lords have said.

From this Bench, we welcome much of the content of the Bill, and we believe deeply in the importance of the good stewardship of creation. We recognise the need for global solutions to an international challenge and that any solutions will take leadership and require harmonising regulation on a global scale. As others have said, it is essential that the new OEP be given the appropriate teeth—not dentures, perhaps jaws—to hold business and government at all levels, national, regional and local, to account.

As drafted, the Bill centralises power and control into the Government's hands rather than entrusting the powers to the regulator. If we truly want to be taken seriously as an international trailblazer for environmental legislation, we ought not to be afraid of creating a robust regulator. It would be a signal of confidence by the Government in their own programme to equip the regulator with the powers it needs to be properly effective. Although I recognise and applaud the passion with which the Minister has championed the Bill so far, if the Government are not prepared to support these amendments, I should like to hear more from him about how the OEP will be so equipped. Simply stating that it will be independent does not make it so. Given that the new OEP's resources will be significantly less than its predecessor body, the new regulator will need to be more targeted and strategic about its activities. However, Clause 37 will significantly restrict the power of the courts to grant remedies, and I believe that the powers detailed in Amendment 107 will be essential for the OEP to do its job effectively.

In the year we are hosting COP 26, we should be showing the world that, even if we are to miss our climate goals, as the Committee on Climate Change has suggested we will, we have put in place a body that can genuinely help us to get the rest of the way to the target and beyond—especially when facing the tricky balance between competing commitments made in trade deals, environmental protection and agricultural production.

We know that the window to make a meaningful impact on climate change is closing. We need the Bill to be as fit for purpose as possible from the very beginning. I hope that the Minister will agree that an independent and effective OEP needs to have proper powers to hold to account, and I hope that the Government will support these amendments.

2.45 pm

Lord Mackay of Clashfern (Con): My Lords, I support the amendments and support in detail all that has been said by noble Lords, including the noble and learned Lord, Lord Thomas. I want to ask a rather fundamental question. The environmental review can be taken on only where the OEP considers that, on the balance of probability,

"the authority has failed to comply with environmental law, and … it considers that the failure"

is "serious." That is the start: a failure

"to comply with environmental law."

Subsection (6) states:

"If the court finds that the authority has failed to comply with environmental law, it must make a statement to that effect (a 'statement of non-compliance')."

That is to say that the court has held that the authority in question

"has failed to comply with environmental law".

It goes on to state:

"A statement of non-compliance does not affect the validity of the conduct in respect of which it is given."

What does that mean? That means that the conduct in question cannot be a breach of the law. It is a failure of environmental law, yet it is not a breach of the law. Is that another way of saying that environmental law is not a law at all, and that planning law must prevail? Is that really what this is saying, or can my noble friend explain to me how you can have a law which has been breached yet the conduct is not regarded as improper?

It is a simple question that supports all these amendments, if answered properly. There is an underlying feeling that environmental law is to be a grade below some other laws so that, although you fail to comply with it, you can still be all right. That does not accord with our understanding of law—certainly not mine

[Lord Mackay of Clashfern]
for a considerable period. I do not see how it can work that you can have a piece of legislation that describes something as law—environmental law—yet it is not law that, where you breach it, renders your conduct wrong.

Lord Cormack (Con): My Lords, it is a delight to follow my noble and learned friend Lord Mackay of Clashfern, who is in many ways the embodiment of wisdom in your Lordships' House. How good it is to have him back with us and speaking as vigorously and to the point as he always does.

I cannot begin to rival the expertise or knowledge of the noble and learned Lords who have spoken, but shall give my noble friend the Minister a secular analogy. When we enter this Chamber from the Prince's Chamber, we have in front of us that great classical sculpture by John Gibson of Queen Victoria. It is flanked on either side by the figures of Justice and Mercy. The figure of Justice holds in her hands, as the noble Lord, Lord Anderson, reminded us earlier, the sword and the scales.

Would my noble friend Lord Goldsmith seriously think, as he entered the Chamber, of removing that sword and those scales? Because that, metaphorically, is what he is proposing to do this afternoon if he does not accept the spirit of these amendments. It is palpably absurd—I refer to the interesting contribution of the noble Lord, Lord Rooker—to have an Environment Bill that has as one of its slogans, "The polluter need not pay". It is absurd. Can my noble friend not recognise that absurdity?

I have said before in these debates that it is essential that an environmental Bill should command the support of Members in all parts of your Lordships' House, particularly one that is meant to stand the test of not just some time but generations. We cannot have a Bill enacted that, in effect, does what my noble and learned friend Lord Mackay has just said and contradicts one of the fundamentals of English law.

I hope that my noble friend Lord Goldsmith will do what I urged him to do when speaking to an amendment on Monday. I said that because it was so important that the Bill should command the support of your Lordships in all parts of the House, he should convene some sort of round table and talk to us all. There is an answer to all these conundrums and problems that we are highlighting, because we all support the basic premise of the Bill. However, if we support that premise and intention, we cannot allow the Bill to go on to the statute book so fundamentally flawed as it is at the moment. So I say to him again, "Please talk to those of us who wish you well, who wish the Bill well, but who can never lend support on Report to a Bill that is so riddled with absurdity".

Lord Duncan of Springbank (Con): My Lords, I begin by drawing attention to my interests in the register, notably the chairmanship of the National Forest.

I was pleased to put my name to Amendments 105 to 108, because they are necessary and they make the Bill better. We have heard echoed by a number of noble Lords how that can be achieved and I hope that the Government hear that. In many ways, this clause is like a Monet painting. It looks fine from a distance, but the closer you get the more the detail seems to disappear. What we need now is clarity and for that detail to be recognisable. Non-compliance must affect validity. That is a simple statement of fact. The beneficiary of an environmental deterrent or damage cannot escape sanction because he is materially affected by the sanction. That cannot be a useful way of moving forward. The remedies available must be a deterrent. If they are not, the system will be gamed. Individuals will find ways through, between and under, and they will be able to make a mockery of what should be a very important institution.

The OEP is a successor to a body that was able by its threats to bring about fundamental change in how environmental laws were enforced—and it made the environment better, safer and healthier by doing that. The successor body must be able to do the same and have available to it each of the elements that can allow it to achieve that outcome. That is why I was very pleased to put my name to these amendments.

Baroness Parminter (LD) [V]: My Lords, we on these Benches thank the noble Baronesses, Lady Jones of Moulsecoomb and Lady McIntosh of Pickering, and the noble Lord, Lord Anderson of Ipswich, for these amendments, which expose the fundamental flaws in the proposed enforcement powers of the environmental watchdog. We support all the amendments, particularly Amendment 107. As others have said, lawyers in this Chamber have eloquently made the case, so I will merely reflect on two points.

First, the Government have said that they want the OEP to be world-beating in its role. Yet a cursory review of its remit, as opposed to that of the body in Scotland, Environmental Standards Scotland, suggests that that is absolutely not the case and that the powers of the OEP are far more prescriptive than those of Environmental Standards Scotland, which has the power to take the steps that it considers appropriate—I repeat, the steps that "it" considers appropriate—to secure public authorities' compliance with environmental law and how it is implemented or applied. So, if the Government want the OEP to be a world-beating watchdog, they need to look at the options rather more carefully in order to ensure that that is delivered.

Secondly, on Amendment 107, which seeks to remove the restriction on the ability of the court to grant remedies, such as squashing orders, where that could cause severe hardship, we agree very much with the noble and learned Lord, Lords Thomas of Cwmgiedd, who said that we should trust the judges. As it stands, the Bill fetters the discretion of the judiciary and radically alters the balance of power in favour of the Executive.

The noble Lord, Lord Krebs, asked: who bears the brunt of this weight in the change in the balance of power? He rightly reflected that it is nature—but, equally, it is the people of our country. It has been a fundamental cornerstone of British democracy that people have a right to environmental justice and to hold the Government to account. It is also a right guaranteed to the British public, given that we are signatories to the Aarhus convention. Therefore, as it

stands, unless these amendments are accepted, we the British public will have weaker rights to environmental justice than we had previously under the European Union. We therefore urge the Government to accept these amendments and to ensure that the OEP has the robust powers that it needs in order to be—and, as the noble Earl, Lord Caithness, said, to be seen to be—an effective and robust environmental watchdog.

Baroness Jones of Whitchurch (Lab): My Lords, first, I am grateful to the noble Lady, Baroness Jones of Moulsecoomb, for tabling Amendment 104. It enables us to have a discussion about what penalties are appropriate to ensure compliance with environmental law and to ensure that breaches are dealt with appropriately.

We agree that, as the Bill is currently worded, issuing decision notices has nothing like the impact that we previously enjoyed in the EU, whereby Governments could incur substantial fines. As the Bill stands, decision notices are not binding and it is not clear that these would be an effective way in which to remedy failures to comply with environmental law. We believe that the OEP should have much broader powers to make judgments, case by case, about what an appropriate remedy should be, including making amends and repairs and, in some cases, paying a financial penalty. I rather liked the rather creative proposal of the noble Baroness, Lady Jones, that the revenue from those fines could then go to the NHS.

A more substantial point about financial penalties is made in the amendment of the noble Baroness, Lady McIntosh. She gave an excellent insight into why these are necessary. We also agree with her that these decisions need to be enforceable and to send a clear message that would dissuade other public bodies from similarly breaching the law. The remedy should also require the public body to make a public declaration of the steps that it will take to put the matter right.

I know that the Government have consistently argued that financial penalties are not appropriate within the UK, as that would simply transfer money from one government pot of money to another. But we have to face the fact that it was a considerable deterrent in EU law and that nothing yet proposed in this Bill has anything like the same deterrent effect. As the noble Lord, Lord Anderson, said, penalty fines concentrate minds. Meanwhile, he and other noble Lords have all, in a powerfully co-ordinated way, taken apart the judicial processes in the Bill and exposed their weaknesses. They have made the case much better than I ever could. I am grateful to the Bingham Centre for the Rule of Law and the legal analysis offered from ClientEarth for setting out in some detail the failings in the judicial clauses of the Bill.

3 pm

How can Clauses 37(7) and 37(8) be allowed to remain in the Bill? How can we sign up to the premise that a statement of non-compliance issued by a court does not affect the validity of the conduct in the first place? This is a contradiction of all legal processes, which presume that if the judgment goes against you then you are in the wrong. It introduces an anomaly of the unlawful act now becoming lawful, and as the noble and learned Lord, Lord Mackay, said, it is almost as though environmental law is considered to be a grade below other laws.

As noble Lords have said, the caveats in Clause 37(8), that a remedy cannot be granted if it would cause substantial hardship to any person or would be detrimental to good administration, make a mockery of any judgment. The noble Lord, Lord Anderson, provided some colourful examples illustrating why this provision is a nonsense, and my noble friend Lord Rooker similarly gave vivid examples of the farce in which court decisions could be ignored and any damage to the environment could be allowed to proceed regardless. It takes away the court's discretion in determining what is fair and just in a particular case and renders the environmental review process largely ineffective. As the noble and learned Lord, Lord Thomas, made clear, the Bill as worded impedes justice. Courts and judges are routinely expected to balance interests and exercise discretion. The Bill takes away this discretion—a point also powerfully made by the noble and learned Lord, Lord Hope.

Also, as has been said, this introduces a "polluter doesn't pay" principle into environmental law. The noble Lord, Lord Krebs, demolished the rather unconvincing arguments already put forward by the Government as to why these caveats might be necessary. I am grateful to the ClientEarth legal advice that draws our attention to the impact assessment, which concludes that one of the advantages of these clauses will be:

"a reduction in third-party Judicial Reviews resulting in cost savings on legal proceedings by public authorities".

In other words, this is all about saving money, not about making good law.

We also very much support Amendment 105, tabled by the noble Lord, Lord Anderson, which would allow the OEP to apply for an environmental review in relation to multiple instances of alleged misconduct where the incidences are similar or related. This makes perfect sense and would enable the OEP to be more agile and efficient. It would also ensure that cases could be demonstrated to be serious, so that small but systemic breaches could be bundled up to make the case for an environmental review.

We very much support the amendments tabled by the noble Lord, Lord Anderson, today. I know that the Minister has been in discussion with the noble Lord and with other noble Lords. I hope very much that these discussions will continue and find a way to resolve what is a completely unacceptable wording in its current form. As my noble friend Lady Young of Old Scone said, given the weight of argument against it, if the Minister has any sense, he will roll over now and accept the amendments. If this cannot be resolved at this stage, we give the Minister our absolute assurance that we will follow through with these amendments at the next stage of the Bill.

Lord Goldsmith of Richmond Park (Con): I thank noble Lords for their contributions and assure them that the Government are committed to establishing the OEP to effectively hold public authorities to account, and have provided for an enforcement framework which will allow it to do so in a manner appropriate to our domestic context.

[Lord Goldsmith of Richmond Park]

I shall begin with Amendments 104 and 107A, tabled respectively by the noble Baroness, Lady Jones of Moulsecoomb, and my noble friend Lady McIntosh of Pickering. In our domestic legal system, provision for a system of fines is unnecessary because of the strict requirement for public authorities to comply with court judgments and the stronger legal remedies available. I will come back to this in a moment. Fines play an important role at the EU level, as the noble Lord, Lord Anderson, explained, because the Court of Justice of the European Union has no other tool by which to bring about compliance with its judgments. Unlike our courts, it does not have the ability to impose mandatory court orders directly on public authorities. If a member state does not comply, the Commission can only bring the case back to court some years later and seek a financial penalty against the member state.

Incidentally, financial penalties under the EU framework were pushed as a compliance mechanism by the UK Government when the UK was a member of the EU. Given the nature of the European framework, we felt that it was necessary at the time to ensure that no member state could simply ignore the judgments of the Court of Justice of the European Union.

By contrast, under our proposed framework, if a public authority took the extraordinary step of failing to comply with the stronger remedy of a binding court order, the OEP would be able to bring contempt of court proceedings. Being held in contempt would have serious implications and could not be ignored, as noble Lords know. There are clear requirements in the Ministerial Code for Ministers to comply with the law, including court orders. I emphasise this point. Having heard my noble friend Lord Cormack, I think that this may be an area that he has perhaps not fully understood. The prospect of a fine pales in comparison with the risk of being held in contempt of court.

I also note that the amendments would go further even than allowing the court to impose a fine where an earlier judgment had not been complied with. One amendment would grant a power to the OEP itself to impose fines, and the other would grant the court a power to issue fines, effectively as a punitive step. The Government consider that both of these options would be inappropriate. Amendment 104 would in effect allow the OEP to superimpose its own decisions in place of those made by authorities appointed by Parliament itself. The OEP would be able to prematurely sanction public authorities, without reference to the courts, and with no appeals mechanism through which this decision could then be challenged.

Incidentally, the European Commission cannot directly fine member states, public bodies, or private bodies for environmental infractions, as a number of noble Lords have implied. Only the Court of Justice of the European Union has this power, and only if a member state has failed to comply with an earlier judgment.

Additionally, Amendment 107A would grant the court a power to issue fines, effectively as a punitive step rather than to bring about compliance. This is not the role of environmental review or the OEP.

Turning to the amendments tabled by the noble Lord, Lord Anderson of Ipswich, I thank him for his conversations on this subject with myself and my officials. In answer to the noble Baroness, Lady Jones, I would be very keen to continue those discussions if he is willing, as I hope noble Lords will appreciate I have been throughout this process. Before I go into the specifics of his amendments, I will explain why we have designed the OEP's enforcement framework in the way that we have, and why it is so important.

The OEP's enforcement framework must be considered in the round. It delivers numerous benefits as an additional—not a replacement—route through which alleged instances of non-compliance will be addressed. Our proposals increase access to justice by allowing anyone who has been affected by, or is aware of, an alleged breach of environmental law by a public authority to make a complaint to the OEP free of charge. Notwithstanding the comments by the noble Baroness, Lady Jones, this matters, given the costs of action outside of this proposal and outside of this new system.

By liaising directly with public authorities to investigate and resolve alleged serious breaches of environmental law in a targeted manner, the OEP will be able to drive systemic environmental improvements. Wherever possible, this will be without the need to resort to costly and time-consuming litigation. In many ways, therefore, the OEP will be fulfilling a similar role to that carried out by the European Commission in the EU infractions process, but with a significantly wider remit and the ability to act directly against public authorities.

The vast majority of EU infraction cases are resolved in a similar way to how we expect the OEP's enforcement framework to operate: through dialogue, not in front of the Court of Justice of the European Union. The cases taken by the EU Commission are also intended to drive systemic environmental improvements by clarifying the law and dealing with ongoing failures, and this is the role that we have in mind for the OEP. Our new framework will lead to better outcomes for complainants, the public and the environment. It is right that as many cases as possible are resolved through this route.

There has been a great deal of discussion of Clause 37(8) in this debate, but it must also be right that we have adopted an approach which ensures fairness and certainty in these provisions. This is entirely consistent with other forms of legal challenge in our domestic justice system, where, for instance, provision for strict judicial review time limits demonstrates that relying on judicial discretion alone is not sufficient.

Turning to the detail of Amendment 105, the court should be asked to examine issues only where the OEP has given the public authority adequate opportunity to respond. That is only right and appropriate. Active discussion with a view to resolving the issue would take place in the course of an investigation and through the service of an information notice. Where necessary, this would then be followed by a decision notice. Amendment 105 from the noble Lord, Lord Anderson, would therefore circumvent this process, limiting the benefits that this new system could deliver. Noble Lords will note that it would still be possible for the

OEP to put evidence to the court regarding actions by a public authority related to conduct described in a decision notice. The court would then have the flexibility to consider this in relation to remedies.

Turning to Amendment 106, the OEP's enforcement framework will drive systemic environmental improvements and deliver better outcomes for the public and the environment. It will allow the OEP the time and space to resolve issues directly with public authorities through investigations and its notice processes. Litigation will, of course, sometimes be necessary, but as a last resort rather than as the default or the norm. This is entirely consistent with the approach taken in EU environmental infractions, which is focused on addressing ongoing non-compliance, not trying to overturn decisions years later that have been reasonably relied on by individuals. It is as a direct result of this extended enforcement process that some safeguards are required to avoid the negative effects of decisions being undone potentially many months after they have been taken. Clause 37(7) does this.

However, a statement of non-compliance is none the less an important means by which the court can clarify the law for future cases. Given that the court will have ruled on the correct interpretation of the law, this will ensure that public authorities avoid future breaches and will prevent any ongoing non-compliance, which is ultimately the aim of the OEP. The EU infractions process is also exactly that: it seeks to address ongoing non-compliance, rather than undo specific local decisions made years previously. We want the OEP to be a forward-looking organisation, driving better environmental outcomes for the future.

In response to comments made by the noble Baroness, Lady Jones, and others, I want also to reassure noble Lords that the existence of the statement of non-compliance does not in any way limit the granting of remedies by the court. A statement of non-compliance is not itself considered a remedy. Subject to the important protections in Clause 37(8), the court will have full discretion to grant normal judicial review remedies. This includes quashing orders, prohibiting orders, mandatory orders and declarations.

I hope that the noble Lord, Lord Anderson, is reassured that we have carefully considered how best to balance this provision to ensure that the OEP and environmental review will be able to drive meaningful environmental improvements, while also ensuring that there is not an open-ended ability to overturn decisions potentially years after they are made. As such, we do not believe that this amendment is necessary.

Turning to Amendment 107, environmental review by its nature allows time for information and decision notice stages. This will enable the court to make orders outside of the normal judicial review time limits. Judicial review time limits are to ensure certainty and provide a fair process that protects the rights of third parties who act reasonably on the decisions of public authorities. These very strict time limits are set out in the Civil Procedure Rules at Part 54. Rule 54.5 specifically provides that these time limits may not be extended, even by agreement between the parties. If judicial discretion alone were sufficient to protect fairness and ensure certainty, why, then, would these time limits be necessary?

The Government consider it entirely necessary to recognise the unique context in which environmental reviews will occur and protect third parties in this way, just as others did in the past when establishing the judicial review procedure in law. It is not a novel approach to protect such rights in legislation. Indeed, this provision is an extension of the position for existing challenges: under Section 31(6) of the Senior Courts Act 1981 and Sections 16(4) and (5) of the Tribunals, Courts and Enforcement Act 2007, the court has a discretion to refuse relief in such circumstances.

The protections in Clause 37(8) make it possible for the OEP to have a more collaborative, but potentially extended, process of investigation and notices, which will enable issues to be resolved more effectively in the interests of the public and the environment. But to be clear, it is also not the case that these safeguards will be triggered in all cases. Indeed, the Bill steers the OEP to prioritise cases with national implications, so individual local planning decisions affecting third parties are unlikely to be considered. The safeguards provided by Clause 37(8) will not be relevant to most cases that the OEP will pursue. A requirement to change future policy or how legislation is to be interpreted will not trigger the safeguard. After all, no-one is entitled to demand that government policy be fixed for ever more.

3.15 pm

To take an example, the OEP could bring an environmental review regarding an alleged breach by government of legally binding limit values for a pollutant. That example has already been given today. If the court had issued a statement of non-compliance, it could consider granting a mandatory order requiring the Government to develop a new plan in order to reduce pollutant levels. Although this may have some impact on third parties, such as the example given by the noble Lord, Lord Anderson, of a taxi business, there is no reason why this would amount to substantial hardship or prejudice. An individual or business must reasonably expect some changes in circumstances in an evolving regulatory environment, so such a case is different from the question of the status of an existing planning permission, where there is a greater legitimate expectation of certainty. As such, the court would be able to grant the necessary remedies.

Removing Clause 37(8), as proposed in the noble Lord's amendment, could cause significant uncertainty for third parties. It is an essential component of this bespoke enforcement procedure, which I hope the noble Lord is persuaded will drive significant environmental improvement.

Finally, regarding Amendment 108, the power to apply directly to judicial review is intended to be supplementary to the OEP's core enforcement mechanism. The Government recognise that there will be exceptional cases where it will be necessary for the OEP to seek a more urgent court judgment—for example, if serious damage would have already happened by the time that the normal enforcement procedure reached the court. However, it is important that this is reserved only for such exceptional cases. This amendment would cause uncertainty about the route that the OEP should take

[Lord Goldsmith of Richmond Park]
in any given case and risk diverting cases away from a core framework that has the potential to drive systemic improvements in the longer term.

Before I end, I will directly address the challenge laid down by the noble Lord, Lord Anderson. Although I do not have a copy of the letter in front of me and therefore cannot repeat it word for word, I assure him that it is the Government's view that the OEP's complaints and enforcement functions would not affect the rights of other persons to bring legal challenges against public authorities by way of a judicial review. However, it is within the court's jurisdiction to hear and decide cases as it sees fit. I hope that addresses his final challenge. I hope this reassures all noble Lords, and I therefore beg them not to press their amendments.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): I have received requests to speak after the Minister from the noble Lord, Lord Berkeley, and the noble Baroness, Lady McIntosh.

Lord Berkeley (Lab): My Lords, I have listened very carefully to this debate, particularly to the many noble and learned Lords who gave very powerful arguments in support of the amendments we have been discussing. I certainly believe that they have made some very strong cases. I was particularly interested in the comment from the noble and learned Lord, Lord Mackay, about the two levels of law, environmental and other ones. That is pretty fundamental. We have had a lot of discussion about penalties, enforcement, fines and the relationship with the ECJ, and whether fines are important or whether reputational damage is perhaps worse. There is also judicial review, which I will not go into now.

I am sad that it appears that the Minister has rejected all the arguments in these amendments. If they get through in Report, they will make a much better Bill than we have at the moment. I was really impressed with the suggestion from the noble Lord, Lord Cormack, that there needs to be much more round-table discussion on this before the next phase. If not, I foresee big problems on Report. The most important thing is that the House and Members from all sides achieve something that we can all be proud of. From listening today, I certainly am not proud of it at the moment, but I hope that the Minister will reflect on this and organise something before the next stage.

Lord Goldsmith of Richmond Park (Con): I thank the noble Lord for his comments. It is absolutely not the case that I or the Government have rejected all the arguments put forward today, or indeed in any of the debates we have had. This is a lengthy process of scrutiny, discussion and debate and, as I have said many times, it is unlikely that a Bill that begins this process will end it in exactly the same form. I am as keen as anyone in this Committee—probably keener than most people in this Committee—to ensure that the Bill is as good and strong as it possibly can be. That is why I am very keen to continue discussions with the noble Lord, Lord Anderson, and many other noble Lords on their areas of expertise.

The environmental review is a bespoke and additional jurisdiction, not a replacement vehicle. This is additional—for the court to hear claims outside the usual time limit for judicial review or statutory review. As I said during my speech, the court retains all available remedies where decisions are challenged by way of judicial review within the existing time limits, including, where appropriate, by the OEP. I hope that addresses the noble Lord's concern.

Baroness McIntosh of Pickering (Con): Given the strength of feeling in the Committee this afternoon, I hope my noble friend might agree to meet the authors of the amendments before us. I come back to the point that many have referred to from my noble and learned friend Lord Mackay of Clashfern. We are left with the impression that an environmental law is set out before us in the Bill but that a breach of that environmental law does not amount to a breach of the law. That is unsatisfactory.

I also press my noble friend on his comment that rather than have a fine, which would be punitive, it is better to have a compliance effect such as holding the company—it could be a chemical company or a water company—to be in breach through the OEP applying for contempt of court. I am just trying to think how long those proceedings would take after the horse has bolted and the stable door is left open for the damage to carry on. I would still prefer the options in either Amendment 104 or, ideally, Amendment 107A of leaving financial penalties on the table.

Lord Goldsmith of Richmond Park (Con): I thank my noble friend for her comments. I hope I addressed fines and why the prospect of being held in contempt of court is a far greater concern for a Minister than the prospect of the department that Minister belongs to being fined by a Government and the money being recycled through the same Government.

I reiterate that the system we are replacing is not one that can fine those chemical companies or even local authorities—it can deal only directly with member states—so the remit here is far greater than the remit of the system being replaced. I understand that we may have to agree to disagree, but I refer my noble friend to my argument in relation to fines earlier in the discussion.

On her first point, I am of course very happy to have meetings with any number of noble Lords to discuss these issues, as I have throughout this process.

Baroness Jones of Moulsecoomb (GP): My Lords, I thank the Minister for his comments, especially about continuing dialogue and revisiting this; that is incredibly important. I thank all noble Lords who have contributed. It is obvious that we all think there are problems with the Bill. I hope that not just the Minister is listening but the Government, and that they understand the depth of concern we are expressing here.

The noble Lord, Lord Khan, called my previous summing-up speech "candid". At first I thought that was a compliment, but then I thought that it actually sounds like something out of "Yes Minister", when the civil servant says: "Yes, very brave, Minister—very candid." I hope I am candid, but at the same time I try not to be rude—I do not always succeed.

I welcome the support of the noble Lord, Lord Anderson, however tentative, and thank him for his examples. Quite honestly, I wish I had asked him to present my Amendment 104. I think he would have made a superb job of it, and I look forward to him using his teeth on Report. Quite honestly, if it comes to a challenge between the Government and the noble Lord, Lord Anderson, my money is on him. He has my full backing.

The noble Baroness, Lady McIntosh of Pickering—I sympathise with her visit to the dentist and hope she is feeling better—is right to say that our amendments take things forward. I will be keen to push this on Report.

The noble and learned Lord, Lord Thomas of Cwmgiedd, used an extremely good phrase about working for future generations that I wish I had used. That is absolutely crucial when we are dealing with this Bill. It is not just for now, the next six months or the next few years but for future generations. He was also quite generous when he said that the Government believe in the rule of law. I have huge respect for the noble and learned Lord, but I am not sure that is true. I think the Government talk about the rule of law but do not actually observe it; that is my observation of how they behave. We must trust the judges, as he says.

The noble Lord, Lord Krebs, for whom I have huge respect, said that the office for environmental protection has to wield a big stick. That is absolutely right; it has to have the authority and the power to achieve all sorts of things. He also felt that Amendments 104 and 107A were a step too far, but I do not see why that is a valid argument. Quite honestly, giving up money hurts, and somehow we have to make it punitive.

The noble Earl, Lord Caithness, said that the OEP has to be independent and authoritative; that is absolutely right. He also said that financial penalties can be effective but then suggested that, because the money was recycled, perhaps it was not that effective. Again, I disagree. It is not only the pain of the penalty but a visible example of the fact that the Government are wrong.

I thank the noble and learned Lord, Lord Hope of Craighead, for his support. He emphasised the value of case law—something that was used a lot when we were in the EU—where the Government are really held to account.

The lay woman's view from the noble Baroness, Lady Young, is extremely valid and very cogent. I thank her for her support.

The right reverend Prelate the Bishop of Gloucester talked about leadership and COP 26. The fact is that we need an Environment Bill that will look good on the statute books when we get to COP 26, or our Government will be seriously embarrassed. The fact that the OEP will have fewer resources than the preceding body is a matter of huge concern. She also said that the window for action was closing, which is absolutely true, not just of this Bill but of all our actions on the climate emergency. At the moment we are seeing endless examples of very unusual weather patterns, whether in Canada or over much of Africa. We have to understand that we have to act urgently.

The noble and learned Lord, Lord Mackay of Clashfern, pointed out the illogicality of the Bill—I really enjoyed that—and the fact that environmental law is seen as a grade below other law. That is absolutely true. I think Defra has much lower status than other parts of the Government, and that is a terrible shame. It should be involved in absolutely every part of government.

I was delighted to hear the noble Lord, Lord Cormack, with his customary common sense, support the polluter pays rule. Of course polluters have to pay and the Bill has to stand the test of time. He said that it is "riddled with absurdity". I wish I had said all this; it is much tougher than what I said.

The noble Lord, Lord Duncan of Springbank, freed from the shackles of collective responsibility of his ministerial post, has joined our forces—I welcome him—and spoke strongly about the need to give real teeth to the new system of environmental protection. I thank the noble Baroness, Lady Parminter, for her support of Amendment 104. She made the very valid point that the Scottish body is more powerful. Why would we do less than our Scottish cousins? The idea that the Government are using the term "world-beating" alongside the words "office for environmental protection" here in England is ridiculous.

3.30 pm

The noble Baroness, Lady Jones of Whitchurch, supported Amendment 104 on the grounds that it gives us the opportunity to discuss what penalties are appropriate, and that is a very valid area to discuss. She described the idea of giving the money to the NHS as "creative". We all know that the NHS needs a lot of money—but, certainly, as the noble Baroness said, the OEP needs broad powers.

An interesting point in the Minister's response was when he explained that within the EU the UK had actually argued for financial penalties, but that this was not the case here. So financial penalties are good enough for the EU but not good enough here. I am sure that the Minister will explain that in other ways. As the noble Lord, Lord Berkeley, said, there will be problems on Report if the Government do not give way on some of these issues. I beg leave to withdraw the amendment.

Amendment 104 withdrawn.

Amendments 105 to 107A not moved.

Clause 37 agreed.

Clause 38: Judicial review: powers to apply in urgent cases and to intervene

Amendment 108 not moved.

Clause 38 agreed.

Clauses 39 to 41 agreed.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): We now come to the group beginning with Amendment 108A. Anyone wishing to press this, or anything else in this group, to a Division, must make that clear in debate.

Clause 42: Confidentiality of proceedings

Amendment 108A

Moved by ***Lord Rooker***

108A: Clause 42, page 25, line 23, leave out "26(1) or"

Member's explanatory statement

The amendment would exclude from the prohibition on disclosure in Clause 42(1)(a) information obtained by the Office for Environmental Protection under Clause 26(1).

Lord Rooker (Lab) [V]: In moving Amendment 108A, I will speak also to the other amendments in this group, all originally tabled in the name of my noble friend Lord Wills, who regrets that he is unable to be with us today. The first four refer to Clause 42, and the final one to Clause 45.

My main concern is the effect of Clause 42 on the right of access to environmental information under the Environmental Information Regulations 2004—the EIR. Clause 42(1) prohibits the disclosure of several classes of information by the office for environmental protection. These are: information provided to the OEP to assist it with its functions by a body with public functions under Clause 26(1); and specified information about OEP enforcement action, including any information notice or decision notice it serves, any related correspondence with an authority, and information provided to it by the authority.

Clause 42(2) describes the circumstances in which disclosure to the public will be permitted. These are: if the body supplying the information, the OEP or authority, consents—but this does not apply to an information notice or a decision notice—or if the OEP has concluded that it intends to take no further steps in relation to the matter. That is set out in subsection (2)(h).

Clause 42(3) prohibits disclosure of certain information by public authorities, particularly those which are the subject of OEP enforcement action. Clause 42(4) provides exceptions to the prohibition. None of the exceptions to the prohibitions under Clause 42 permits disclosure for the purpose of complying with the EIR or the Freedom of Information Act.

However, the Explanatory Notes set out an entirely different view. Paragraph 365 says that Clause 42

"does not override the EIR which will still apply to the OEP and other public bodies. The OEP will be required to consider requests for disclosure of information made under the EIR on a case by case basis, including assessing whether any appropriate exception will apply."

Paragraph 366 adds:

"This clause will also not override or disapply other existing legislative provision on public access to information such as the Freedom of Information Act 2000".

This second statement is plainly wrong. Section 44(1)(a) of the Freedom of Information Act exempts from access any information whose disclosure

"is prohibited by or under any enactment".

This is an absolute exemption to which the Freedom of Information Act's public interest test does not apply. Any statutory prohibition which applies to the information overrides the FoI right of access.

The position under the EIR is more complicated. Regulation 5(6) of the EIR states:

"Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply."

Prior to Brexit, that would have guaranteed that a statutory prohibition could not undermine the EIR right of access, as the regulations implement an EU directive. The supremacy of EU law meant that it could not be set aside by domestic law. That principle no longer applies.

The EIR are now retained EU law. As I understand the position, from various briefings and from our own discussions, it is that, following the implementation period—IP—completion day:

"The principle of the supremacy of EU law does not apply to any enactment or rule of law passed or made on or after exit day."

That is in Section 5(1) of the European Union (Withdrawal) Act 2018.

"So domestic law passed after IP completion day will trump provisions in retained EU law that are of EU origin and which would have benefited from the principle of supremacy before IP completion day"—

that is the legal opinion given out by firms such as Gowling WLG.

The Bill's prohibitions on disclosure postdate the implementation period and are clearly incompatible with the EIR rights of access. So long as the prohibitions apply, they appear to override the EIR right of access to the information concerned. Let us take an example. The OEP will be prohibited from disclosing any information supplied to it by a body with public functions under Clause 26(1). This requires such a body to provide information to the OEP if it asks for it in connection with its functions. Substantial classes of information could be affected, given the OEP's broad functions. These, of course, include monitoring progress towards improving the environment, meeting environmental targets and implementing environmental legislation, as well as advising Ministers and investigating failures by public authorities to comply with environmental law.

Let us suppose that the OEP receives a request for the underlying data on which it has based a statement about air or water quality. If that information has come from a body with public functions, it will be subject to the prohibition. The OEP could disclose this after it had decided to take no further steps about the matter—but when would that happen? Monitoring is an ongoing process. The publication of an annual monitoring report under Clause 27(7)—which is unlikely to contain the complete monitoring data—will not mark the end of the OEP's involvement. The problem revealed by the monitoring may persist for years, endangering human health or the environment. The OEP may need to advise the Minister, perhaps repeatedly, to address the matter. It may need to investigate any failure to comply with environmental law. The more serious the problem, the longer the prohibition will continue to prevent disclosure—an absurd situation.

The information, of course, might be disclosed if the body supplying it consents; but it may not do so, particularly if the information shows that the problem is the result of its own failings. The withholding of such information would be a serious blow to the public's right to know, to informed public debate and to public confidence in the OEP. It is almost inconceivable that such data could be withheld under the EIR. To do so, an authority would have to show that disclosure would "adversely affect" a specified interest, consider whether the public interest required disclosure, and apply

"a presumption in favour of disclosure".

If the information concerned emissions, significant EIR exceptions, such as those for commercial confidentiality or the interests of a person supplying information voluntarily, would be disapplied altogether. How does a blanket prohibition on disclosure, which takes no account of the public interest, advance environmental protection? And by the way, I realise that a member of the public could go with an FOI request direct to the body concerned, but how do they know what the body is going to be? That is the point: we will not know unless people are told.

The same obstacle would apply to information which an authority had supplied to the OEP in the course an OEP investigation. It could be disclosed only when the OEP had decided to take no further action or the body supplying the information consented. Again, this contrasts this with the EIR approach. EIR regulation 12(5)(b) allows an authority to withhold information if disclosure would

"adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature".

The Information Commissioner's guidance highlights the "very wide" scope of the "course of justice" limb of this exception, which it says applies to information about law enforcement investigations or proceedings and civil and criminal investigations and proceedings. This is how information the disclosure of which might undermine law enforcement is protected by other regulators, including the Environment Agency, local authorities, the Health and Safety Executive and the police. To withhold information, they must show that disclosure would adversely affect the course of justice and that, on balance, the public interest favours confidentiality.

In 2017, the tribunal that deals with EIR and FOI appeals ruled on a request relating to a factory at which a fatal explosion had occurred. It held that a request for the findings of an earlier investigation into the factory should be denied because the information was likely to form part of the prosecution case, and media coverage of that investigation would have compromised the remaining police interviews and risked jeopardising a fair trial. However, in a 2007 decision involving a fatal outbreak of food poisoning, the tribunal found that disclosure in that case would not affect the trial. It commented:

"A blanket refusal to disclose all potentially relevant information may well not be justified. A public authority … ought to give careful consideration to the potential effect on the criminal proceedings of the particular information being requested ... but if, on a sensible reading of the documentation in question, its disclosure would not adversely affect the prospects of a fair trial, then the fact that the information has some connection with the subject matter of a prosecution will not be sufficient justification for nondisclosure ... on the special facts of this case, the disclosure ... would not have adversely affected the accused's ability to have a fair trial."

Amendment 108A would remove the reference to Clause 26(1) from Clause 42(1)(a). Information provided to the OEP by bodies with public functions could then be disclosed on request, subject to the EIR exceptions. Amendments 108B and 108C would permit disclosure for the purpose of complying with the EIR or FOI Act or subject access under data protection legislation. This is what the Explanatory Notes say is already the position. If so, the Government should have no objection to stating that on the face of the Bill. If the prohibitions in fact override EIR right of access, the UK will be in breach of Article 4 of the Aarhus convention, which requires the UK to provide a statutory right of access to environmental information. It does not permit information to be withheld on a class basis. The public interest in disclosure must be taken into account and exemptions applied in a "restrictive way".

Clause 42(7) addresses a separate issue. It refers to the information to which Clauses 42(1) and 42(3) would apply, disregarding the exceptions to these prohibitions. The clause provides that, where information is "environmental information", it will be considered to be held

"in connection with confidential proceedings".

This would bring it within the range of an exception in EIR Regulation 12(5)(d), which states that

"a public authority may refuse to disclose information to the extent that its disclosure would adversely affect ... the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law".

3.45 pm

Clause 42(7) would establish that whatever was done with the information would be treated as involving confidential proceedings for the purpose of this exception. This would increase the chances of such information being withheld under this exception under the EIR. I assume this could only occur once the prohibition was lifted and the EIR right of access became available. However, paragraph 364 of the Explanatory Notes says that this would occur while

"enforcement proceedings by the OEP are ongoing".

If the EIR right of access in fact continues while enforcement proceedings are under way, perhaps the Minister could explain what other disclosures the prohibition is meant to prevent. The OEP would still have to show that disclosure would "adversely affect" the confidentiality of those proceedings. This might not be difficult, as the disclosure of information in confidential proceedings is very likely to undermine the confidentiality of the proceedings. However, this provision is subject to the EIR public interest test.

The consideration of some of this information—for example, on monitoring—would probably not normally be regarded as a confidential proceeding. However, it would become one as a result of Clause 42(7) making it easier to withhold data, but such information is precisely what should be made public under the EIR. Amendment 108D would omit Clause 42(7).

[Lord Rooker]

In conclusion, Clause 45(1) defines the term "environmental law" but Clause 45(2) excludes matters relating to

"disclosure of or access to information"

from that definition. The Explanatory Notes say that the provision is intended to avoid overlap between the OEP's role in dealing with serious failures to comply with environmental law and Information Commissioner's Office investigations into failure to comply with the EIR. However, the exclusion is much wider than is necessary for that purpose. It would apply to matters for which the Information Commissioner has no responsibility, such as the public registers of information required under the Environmental Protection Act 1990 on air pollution, waste disposal, contaminated land, street litter, genetically modified organisms and waste disposal at sea. The OEP should be able to investigate serious failures relating to these requirements: doing so could not possibly tread on the Information Commissioner's toes. My Amendment 114A would limit this exclusion to the functions of the Information Commissioner under the EIR and apply only to the OEP's law enforcement functions. For everything else, access to information would remain within the definition of environmental law.

I much regret the length of time that I have had to spend on the details of quite a technical part of the Bill. The Bill is 250 pages, and I can assure your Lordships that my first draft of this speech was considerably longer than the one that I have delivered. I am incredibly grateful for the help of the Campaign for Freedom of Information, which has looked forensically at this part of the Bill. Freedom of information is at risk and I hope for a detailed response from the Minister to show why I am wrong. I beg to move.

Lord Lucas (Con) [V]: My Lords, I entirely share the concerns expressed with such clarity by the noble Lord, Lord Rooker. I am a total devotee of freedom of information; indeed, I managed to get a Second Reading of my Freedom of Information Bill in the House of Lords on 10 February 1999, rather in advance of the Government's own. As the Minister knows from our previous discussions, I am also a total devotee of openness. Both those concerns of mine are engaged by the Bill as it is now written.

When it comes to environmental information, we ought to be more open, not less. Environmental information is so much a public matter and of such widespread individual public concern that we should not be looking, simply for the convenience of the system, to hide it away. I very much look forward to the Minister's explanation of why the Bill is written as it is.

Baroness Jones of Whitchurch (Lab): My Lords, I hope to speak quite briefly on this issue. I am grateful to my noble friend Lord Rooker for spelling out the case so thoroughly and for raising the important question of transparency. He has rightly underlined the importance of open government and of the OEP being seen to act in the public interest. That is particularly true on environmental matters, where in the past there has been a tendency to cover up environmental damage and pollution, and those accused have deliberately drawn out proceedings to delay prosecution.

As it stands, the Bill contains two prohibitions on disclosure of information. The first appears to override the existing right of access to information under the environmental information regulations. The second appears to contravene the Aarhus convention, the international treaty that underpins the EIR.

Under the Bill, the OEP has a clear obligation to monitor progress in environmental protection and investigate complaints of serious failure by public bodies, but it seems that the OEP could not disclose information obtained for these purposes unless the supplier of the information consented. Similarly, information obtained during the OEP's enforcement activity would be kept secret until the OEP decided to take no further action. That appears to be much more of a blanket ban than the current provision of the EIR, which limits disclosure only if it would

"adversely affect the course of justice".

The Explanatory Notes take a different view, claiming that Clause 42 is compliant with the Aarhus convention, but it creates a caveat based on a "confidentiality of proceedings" exception. It is not clear how that will be defined.

To avoid any confusion on the important issue of public access to information, and to protect the OEP from accusations of unnecessary secrecy, it makes sense to clarify in the Bill that the Environmental Information Regulations 2004 and connected freedom of information Acts take precedence. We therefore welcome the amendments in the name of my noble friend Lord Wills that have been ably moved by my noble friend Lord Rooker. I hope the Minister will see the sense in these amendments, which would provide useful clarification of our obligations under national and international law.

Lord Goldsmith of Richmond Park (Con): I thank the noble Lord, Lord Rooker, for his introduction. He is right to emphasise the importance of transparency, a point made equally well by my noble friend Lord Lucas and the noble Baroness, Lady Jones.

I reiterate the position on information disclosure for the OEP. The Government have been clear that the environmental information regulations and the Freedom of Information Act will apply to information held by the OEP and public authorities. The Bill does not in any sense override that legislation. The OEP would have to consider any request against the relevant legislation on a case-by-case basis.

The OEP will assess whether any exemption or exception to the relevant regime applies to the information. If so, it will consider whether a public interest weighing exercise is required under that exemption. If a public interest test is required, it will carry out a balancing exercise before deciding whether the public interest requires that the information should be disclosed or withheld.

Turning to Amendments 108A to 108D, tabled by the noble Lord, Lord Wills, although I agree that it is important that the OEP operates transparently, it must be allowed the discretion necessary to operate effectively. The OEP's enforcement framework has been designed to resolve issues as effectively and efficiently as possible. To do so, it is important to have a safe space where public authorities can confidently share

information and allow the OEP to explore potential pragmatic solutions before issuing formal notices. The noble Lord's proposals would effectively remove that forum, meaning that public authorities might prefer to advance to more formal stages where information disclosure exemptions may apply due to confidentiality of proceedings. That would undermine the framework and result in slower resolution and poorer value from public funds.

On Amendment 114A, Clause 45(2)(a) excludes the disclosure of or access to information from the OEP's remit. These matters are explicitly excluded in order to avoid overlap between the remit of the OEP and that of the Information Commissioner's Office. This is further clarified in paragraph 383 of the Bill's Explanatory Notes. The existing drafting of this provision allows greater flexibility to ensure that overlaps are avoided. Not only does it allow the OEP and courts to decide on the meaning of the exemption to the OEP's remit on a case-by-case basis; it accounts for any future changes to relevant legislation that may cause overlap between the two bodies. The Information Commissioner's Office will still have the remit to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

I hope that answers the noble Lord's questions and I ask that he withdraw his amendment.

Lord Rooker (Lab) [V]: My Lords, the Minister has spent just three minutes on this crucial part of the Bill. I will not try to respond now; I will take advice on what he said, but we will no doubt come back to this issue on Report. I beg leave to withdraw the amendment.

Amendment 108A withdrawn.

Amendments 108B to 108D not moved.

Clause 42 agreed.

Amendment 109 not moved.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): We come to the group beginning with Amendment 110. Anyone wishing to press this or anything else in the group to a Division must make that clear in debate.

Clause 43: Meaning of "natural environment"

Amendment 110

Moved by ***The Earl of Caithness***

110: Clause 43, page 26, line 41, after "habitats" insert "(including the soil)"

The Earl of Caithness (Con): My Lords, we change topics. We leave behind the OEP, important though that was, and move on to Chapter 3, "Interpretation of Part 1", which is equally crucial to the success of the Bill. I am extremely grateful for the support for my Amendment 110 from my noble friend Lord Shrewsbury and the noble Baronesses, Lady Jones of Moulsecoomb and Lady Bennett of Manor Castle.

Clause 43 relates to the meaning of "natural environment". It begins by saying:

"In this Part the 'natural environment' means"

and it lists various things, but there is a glaring loophole or error in the Bill because it misses out the soil. My Amendment 110 seeks to insert, after "habitats" in Clause 43(b), the words "including the soil". Habitats depend totally on the soil. It was the 32nd President of the United States of America, Franklin Roosevelt, who wrote to all the state governors, after the terrible Dust Bowl there, that:

"A nation that destroys its soil destroys itself."

The destruction of soil is a worldwide problem but it also affects the UK. Many countries in the world have the same problem. We have not looked after our soil in the way that we should and we are now paying the price for that.

4 pm

The ability of our topsoil to support nature, food production and habitats for biodiversity is now seriously questioned. As my noble friend the Minister will know, there are now a limited number of harvests in East Anglia and the east side of England because of the loss of topsoil. Anybody who has looked at the pictures of the flooding in the West Country in the last few days will have seen how powerful water is when it rushes over the countryside. This was not in a farmer's field, where the topsoil is loose, friable and ready to be washed away; it was in the middle of a town. The water pulled up tarmac and concrete, causing a huge amount of damage.

With our increasingly changing climate and the increasing frequency of heavy and severe downpours, it is therefore imperative that we look after our soil better than we have done. At the moment, we lose about 3 million tonnes of topsoil each year. No country can afford that, least of all a small island such as the United Kingdom. It is not just the loss of that topsoil which matters to the land; the effect of that topsoil is also felt in the riverine and estuarial habitats. There is an enormous loss of organic C—carbon—from the soil bank due to erosion.

Farming practices have not helped in this. This happened under the common agricultural policy, but I firmly believe that the future ELMS structure for farmers will help reduce the staggering loss of topsoil going on at the moment. It is not only in farmers' fields. It happens when one clear fells forestry; there is always run-off from that, which causes huge problems for rivers, particularly on hilly ground, with blocked drains and with washing nutrients away. We start from the premise that a healthy soil is an economic asset. That is what we need to achieve and that is the point of this amendment: it puts it firmly in the Bill.

Before I go on, I would like to ask my noble friend the Minister a question. Could he update us on the research into the feasibility of reconstructed soil? Nature takes hundreds of years to produce topsoil and, even then, it needs to be weathered down to create the topsoil we take for granted now. I know research is going on in this area; could the Minister update us?

The 25-year environment plan aspires to sustainable management by 2030. I therefore wonder why the waste strategy for England ignores soil in its landfill sites. Up to 55% of landfill sites are soil, yet no

[The Earl of Caithness]
account is being taken in the waste strategy of the problems this is causing throughout the country. It is also in contradiction to the environmental plan.

Many of your Lordships will recall that we managed to get soil inserted into the Agriculture Act when it was going through this House. I said at Second Reading that it is hugely important that the Environment Bill and the Agriculture Act tie up and correlate. If we have got soil in the Agriculture Act, we must have soil in this Bill. That is why I am moving Amendment 110.

I also have Amendment 113B in this group. This is a simple amendment and I am grateful to my noble friend the Minister for preparing it for me. That does not mean that he will accept it, but he certainly gave me the wording. It followed a discussion we had on the meaning of biodiversity earlier in Committee. He read out a meaning of biodiversity and it is important that that is in the Bill. I have used his exact words, so I hope he will able to accept it. I beg to move Amendment 110.

Lord Randall of Uxbridge (Con) [V]: It is always a great pleasure to follow my noble friend Lord Caithness. In many ways, my Amendment 112, which I am speaking to, echoes exactly what his is and in some respects may be regarded as superfluous.

My amendment is a simple one that merely adds the word "soil" to what the natural environment means. As we know, the Bill currently states that

"the 'natural environment' means—(a) plants, wild animals and other living organisms, (b) their habitats, (c) land … air and water, and the natural systems, cycles and processes through which they interact".

As we have just heard so eloquently from my noble friend Lord Caithness, however, it misses out what I—and I am sure many other noble Lords—feel is the very core of our natural environment. Too often soil, which is pivotal to biodiversity and a functioning environment, is considered as an afterthought or as an inert substrate. It needs to be specifically referenced to ensure that targets and set policies are developed and funding applied. The lack of such an approach means that we may not deal with issues such as soil health, which is generally acknowledged to be in pretty poor shape, as we have just heard.

Soil health problems in the UK's 700-plus soils vary across types, regions, geography and weather. No clear figure exists for the health of the UK's soils, but a 2020 review estimated that only 30% to 40% of Europe's soils are healthy. We can be confident that soil degradation is a huge problem across the UK and that urgent action is needed. Average organic matter levels are declining, especially in arable soils. As my noble friend Lord Caithness said, soil was inserted into the Agriculture Act and it is very important that we put it in this Bill too, because it is critical for agriculture, biodiversity and other reasons.

Organic matter is critical to soil health, biodiversity, productivity and carbon storage. UK soils store an estimated 10 billion tonnes of carbon, dwarfing the 0.2 billion tonnes stored in UK vegetation. In 2013, soil carbon loss was estimated to amount to 4% of UK greenhouse gas emissions, higher than for many industrial and energy sources combined. Losses appear highest from peat and arable soils.

Soil erosion remains a critical problem. A 2020 review of studies found that 16% of arable farms had soil erosion so high that it was a threat to future food production. Increases in growing maize is a major problem. A survey of over 3,000 maize-growing sites in south-west England found that 75% of fields could not let rainwater in deeper than the upper soil layers, such that a heavy rainfall could wash the soil away. Sedimentation—linked to soil erosion on land—is a major problem in 5% of UK rivers.

We must not forget that peat soils are widely damaged. Around 8% of deep peat soils in the UK are being wasted, eroding or are bare. Upland peat soils are damaged from nitrogen deposition, overgrazing, drainage and, of course, burning. Lowland peat soils suffer rapid erosion from extraction and pump drainage for cultivation. Cultivated deep peat in the lowland fens, where a third of England's fresh vegetables are grown, is also rapidly eroding. As peat soils have dried out, the land has sunk, exposing it to flooding from rising sea levels caused by the climate crisis. Many peat topsoils will disappear within decades unless they are rewetted so that peat formation can rapidly build them up again. Soil life has suffered.

Unlike terrestrial and aquatic wildlife, our soil life has not been well monitored. However, we know that many of the chemical actives applied to farm soils negatively affect soil microbial functions and biochemical processes, altering soil communities and diversity. Combined with ploughing, reducing crop diversity, acidification and losses in organic matter—a key source of food—soil life is being impacted. Research suggests that reduced soil life can affect crop growth, development and disease incidence, potentially resulting in a negative cycle of more agrochemicals being needed.

Only today, in a timely contribution, the House of Commons Environmental Audit Select Committee, under the chairmanship of my right honourable friend Philip Dunne, published its report *Biodiversity in the UK: Bloom or Bust?* The report highlights the importance of soil in its summary, where it states as one of its recommendations:

"We support the recommendations of the Natural Capital Committee that the development of soil indicators should be fast-tracked; that a shadow target for soil health should be established urgently; and that a legally-binding target for soil health ought to be established as soon as monitoring data allows. Healthy soils should be a priority outcome for the Environmental Land Management Schemes, so as to encourage farmers to adopt beneficial agri-environmental practices."

The simple addition of a word would ensure that soil is properly considered as a priority alongside air, water and biodiversity within environmental plans, and of course by the OEP.

The amendment from my noble friend Lord Caithness is probably superior to mine, but I am not fussed about that. I am rather simple; I just like one word here and there. But, whatever it is, the Government have to take serious note and insert "soil" into the Bill.

Finally, before I metaphorically sit down, I also support Amendment 113, which has yet to be spoken to by my noble friend Lady McIntosh of Pickering. It would ensure that the marine environment is included. I have a slight difficulty on whether it is necessary when talking about marine wildlife to particularly

include marine mammals. I think they should be included anyway in the whole general thing, but I will leave that for others to discuss. I hope that we can insert "soil" into this Bill.

Baroness McIntosh of Pickering (Con): I am delighted to follow my noble friend Lord Randall of Uxbridge and I am grateful to him for his support in principle for Amendment 113. I pay huge tribute to his work and his interest in birds—of the feathered variety—whereas I have to confess that water is my element. I thank the noble Lord, Lord Teverson, and the noble Baronesses, Lady Jones of Moulsecoomb and Lady Bennett of Manor Castle, for their support for Amendment 113. I thank the Marine Conservation Society for its support and briefing as well.

Why is Amendment 113 necessary? The Bill at present makes only a passing reference to the marine environment. I wonder why that is the case, particularly as our seas represent over 50% of the environment of England. Anyone who has even a passing interest in the work of David Attenborough on plastics in our seas and oceans will realise how it has captured the public imagination, in this regard.

My noble friend Lord Caithness spoke eloquently on why soil should be included, as did my noble friend Lord Randall of Uxbridge. In his Amendment 113B, my noble friend Lord Caithness goes on to say why

"terrestrial … marine, and … other aquatic ecosystems"

should be included. I believe that Part 1, and indeed the Bill in its entirety, is relevant to the marine environment, and I would welcome the greater clarity of putting "the marine environment" into the Bill, in this regard.

I also acknowledge that, in replying to a Parliamentary Oral Question either a week or 10 days ago, my noble friend Lord Goldsmith acknowledged that there is a "tension", to use his word, between inshore fisheries and offshore wind farms. So my question to him is: how will that tension be eased and resolved if we do not place, as I have chosen to phrase it here,

"the sea, the marine environment and maritime wildlife, sea mammals, flora and fauna"

on the face of the Bill?

4.15 pm

I will address the point made by my noble friend Lord Randall of Uxbridge on whether sea mammals should be included here. Under the very able chairmanship of my friend the noble Lord, Lord Teverson, the EU Environment Sub-committee—within the greater family of European committees under the excellent chairmanship of the noble Earl, Lord Kinnoull, who is in the chair now—did some work on this earlier this year and took evidence. I think it was on 17 March that, under the chairmanship of the noble Lord, Lord Teverson, we took evidence on North Sea ecology.

One of our witnesses was Trudi Wakelin, the director of licensing for marine planning et cetera at the MMO. In response to a question from me she said that there were unaddressed "cumulative impacts" from not just the construction but the operation of wind turbines that may be causing sea mammals such as dolphins, porpoises and whales to bank in increasing numbers on our shores. That is a source of great concern to me and we will go on to look at it in a later amendment on wind farms. It will probably surprise noble Lords to know that no research has been done on this, yet we are going to urbanise our waters even more by rolling out wind farms in future.

Another witness on the same day, Professor Melanie Austen, the professor of ocean and society at the University of Plymouth, told us that

"by urbanising the sea and offshoring our problem of energy generation, there will be casualties".

As others have argued, I argue today that we should exercise here the precautionary principle, at sea and on land, by halting or pausing our offshore wind farms and other activities that may be harming

"the sea, the marine environment and maritime wildlife, sea mammals, flora and fauna".

I will end with a question to my noble friend the Minister. Does he agree that it would be in the interests of greater clarity to put my proposed sub-paragraph (d) into Clause 43? Why has the marine environment been left out from the specific remit of the Bill as it stands?

Lord Berkeley (Lab): My Lords, it gives me great pleasure to follow the noble Earl, Lord Caithness, the noble Lord, Lord Randall, and the noble Baroness, Lady McIntosh, because they have proposed additions to the definition of the natural environment. When I started looking at this, I thought, "Well, everything's covered anyway". In debates on many previous Bills, Ministers have always said that they do not like lists because you always leave something out of lists, and that is serious. But the arguments from the three noble Lords who have spoken indicate an obvious concern that water and soil are not in fact included in this definition. I hope that the Minister, when he responds, will confirm that they are, and maybe even add them in.

My small addition is to suggest that "ecosystem" should be included as well because it covers everything that is in paragraphs (a) to (c) of Clause 43 but also soil and the maritime area—I shall come on to water later—and, I think, it goes wider. On the role of ecosystems, the definition that I found included this:

"A community is created when living and nonliving components in an environment are in conjunction with each other."

The components, including "biotic and abiotic components", "interact as a system" to form an ecosystem. So, the word "ecosystem" covers everything. I am not suggesting that the Minister should leave out anything that is there at the moment or not include soil or water, but I think that there is an argument for having something that talks about the conjunction between them and the way they work together. I am interested in hearing the Minister's comments on that.

I also want to speak briefly to Amendments 194AB and 194AC in this group, which are in my name. They also cover the issue of ecosystems but relate to the condition of planning permissions in Clause 92. I think that "water" should also be included in the amendment proposed by the noble Baroness, Lady McIntosh, and maybe "rivers" as well. That is something we should discuss.

A week or two ago, I came across an example that illustrates why this is quite important. I understood that the Port of London Authority had applied to extend the jurisdiction—that is, ownership of or responsibility for—of its water, as I suppose it is, by

[LORD BERKELEY]
changing the definition from a limit of mean high water to mean high water springs. Many noble Lords may think, "Well, what does that matter?" In terms of the maritime definition, it is actually a height difference of about 50 centimetres. When you have a river wall, like we have out here, 50 centimetres is probably neither here nor there, but I am told that the extent of the River Thames—the tidal part of it—covers 190 miles of riverbank. On the bits that are pretty flat, as opposed to vertical walls, the extension would have allowed the PLA to extend its planning development potential quite dramatically. There was a big campaign against this at the last general meeting of the PLA; in the end, it withdrew it. Obviously, I welcome that, but it does indicate the difference between and the challenge of biodiversity and ecosystems and the planning condition.

I have one more example. The noble Baroness, Lady McIntosh, talked about offshore wind farms and things like that. A similar debate, which occasionally I get involved in, goes on regarding the role of marine conservation zones and what the boating and yachting community think that it wants. One is environment and the other is leisure. I got quite involved in debates about whether it is possible to have a marine conservation zone in the south-west, or even around the Isles of Scilly, to prevent any ships going there unless somebody had changed the route. This was all resolved, but it is an example of the importance of keeping biodiversity and ecosystems in mind when it comes to planning issues.

I am sure that we will talk about that much more, but this has been a very useful little debate. I hope that, when he comes to respond, the Minister will add in some of these extra suggestions to what we have in paragraphs (a) to (c) at the moment. I also hope that, if he says that he cannot do so, he will tell us why.

Lord Framlingham (Con) [V]: My Lords, I would like to say a word or two on behalf of soil and in support of Amendment 110 from the noble Earl, Lord Caithness.

We are often told how much of the earth's surface is covered by water and how we must take care of it—and so we must. However, we are told less often that the remainder of the world is covered largely by soil—or was, until we decided to spread concrete and tarmac over huge sections of it. That includes motorways, airports, houses and factories—even putting slabs over our own front gardens so that we can park our car. This has taken huge quantities of soil out of commission, with deeply damaging effects on the environment. A layer of concrete not only creates drainage problems by removing the soil's ability to absorb water, causing the massive problems of run-off and flooding; it also sterilises the soil, cutting off oxygen from all living organisms beneath it. Nobody has yet tried to measure what the cumulative effect of this is but it will be huge.

Soil that has remained untouched for long periods of time is hugely beneficial to all kinds of flora and fauna. Sadly, it is all too rare. This is why our ancient woodlands are so very precious. Although it may not look it at first glance, soil structure is relatively fragile, ranging as it does from heavy clay through loams to sandy soils, and from acid to alkaline. Its health is valuable not just for growing crops and grass to graze but for supporting countless other organisms, some beneficial and some less so. All were held in a natural balance before man's intervention.

Soil's value to agriculture and the importance of keeping it in good health were first recognised formally by the great agricultural reformers of the 17th and 18th centuries, most notably Turnip Townshend and Coke of Holkham. The Norfolk four-course rotation was introduced; it varied the types of crops grown over a four-year cycle, sometimes allowing land to lie fallow. The practice of nurturing the land persisted until relatively recently when the pressures to produce more and more from the same acreage grew, with spectacular results. Some cereal crops have increased fourfold, but with this intensification has come a change of attitude to the soil. It is simply—and to some extent understandably, with modern technology—seen purely as a medium for growing crops. Systematic rotation has long since gone. The same crop is sometimes taken off the same land year after year. Spraying against pests and diseases has become regular and routine. To turn the clock back would be very difficult, although some organic farmers are now trying.

Food is essential but many would argue that it is much too cheap. A bottle of milk can still cost less than a bottle of fizzy water. Supermarkets, incidentally, have a crucial role to play in this regard. The proportion of our income that we spend on feeding ourselves has dropped hugely. The old links that customers made between production and consumption have long since been broken, although locally grown produce is increasingly popular. New government environmental policies are forecast to take 21% of land out of agriculture. Arable land and grazing, once carefully drained and cultivated, is going to be turned into marsh and swamp. Where the food lost will come from, nobody has yet told us.

These are very difficult issues requiring much thought, but they will have to be faced one day. Otherwise, as the noble Earl, Lord Caithness, said, our soils will simply, through infertility, disease or flooding, no longer be able to provide what we expect and have too long taken for granted. If I may, I, too, wish to quote what President Roosevelt said in 1937 in response to the huge dust-bowls that had been created in America; the noble Earl has already done so, but I think that it sums up the situation. He said:

"A nation that destroys its soil destroys itself."

That says it all.

4.30 pm

Lord Curry of Kirkharle (CB) [V]: My Lords, I once again refer to my interests: I chair the Cawood group, which has laboratories and analyses raw materials, including soil, and I am a trustee of Clinton Devon Estates.

Amendments 110 and 112 propose that "soil" is included in the meaning of the "natural environment" in Clause 43. I fully support the comments of the noble Earl, Lord Caithness, the noble Lord, Lord Randall, and the noble Lord, Lord Framlingham, who has just spoken. I do not mind which amendment is adopted, but, in my view, the positioning in Amendment 112 in

the name of the noble Lord, Lord Randall, flows more naturally in the text, following the listing of "air and water".

The key issue is that "soil" is listed as a key component of the "natural environment", and it is unbelievable that it is not already included in this definition. How can

"plants, wild animals and other living organisms"

be included, when they cannot exist without depending on soil? Soil is as crucial as air and water and fundamental to support life on earth. The natural world depends on it.

When the Minister responded to Amendment 11 in an earlier debate, he rejected its call to have "soil quality" as a priority area within the Bill on the basis that to do so would involve setting a target and that the definition and descriptor of "soil quality" were still not resolved and were a work in progress. It would not be the first time that the definitions underpinning a Bill were incomplete, and that is no reason not to have it included. A definition of satisfactory soil quality that supports sustainable food production, identifies the essential microbial organisms and life within the soil, and determines the level of organic matter to optimise carbon sequestration will be agreed. This will be resolved.

From current analysis by Cawood, I know that the level of sequestered carbon varies enormously from field to field, never mind farm to farm or region to region. It is essential that we address this opportunity and realise the carbon storage potential that the soil offers. Indeed, in the light of climate change, we would be failing in our responsibility if we did not do so. I encourage the Minister to seriously consider introducing an amendment on this topic before Report to save time, in view of the weight of opinion in support of this subject.

The Principal Deputy Chairman of Committees (The Earl of Kinnoull) (CB): The noble Earl, Lord Devon, has withdrawn, so I call the noble Duke, the Duke of Montrose.

The Duke of Montrose (Con) [V]: My Lords, it is a great honour to follow the noble Lord, Lord Curry, with his deep scientific knowledge of agriculture and soils. I declare my interests: my family runs a livestock farm and owns a series of SSSIs in two areas of nature reserves.

In this clause, we get to define the extent and, where necessary, the boundaries of what we want the Bill to influence. On soils, I support my noble friend Lord Caithness's Amendment 110, which is necessary because the government strategy for carbon sequestration is considerably dependent on the soil and peat. I hope that my noble friend the Minister will respond positively to either of these amendments.

I will produce a quote from a rather different angle: 300 years ago, in *Gulliver's Travels*, Jonathan Swift expressed the old saying that

"whoever could make ... two blades of grass … grow upon a spot of ground where only one grew before, would deserve better of mankind, and do more essential service to his country, than the whole race of politicians put together."

That was in his day. This has inspired our farmers for 300 years. To me, it is an environmental principle, but in the Bill the Government have given us as their environmental principles a set of prohibitions, protections and penalties.

The judgment, from the measures contained in the Bill, is that that earlier principle has now gone too far. The protections listed will be necessary, but we need to be sure that our purpose is not simply to put all the processes of the countryside into decline. It would be nice if someone could come up with a phrase that would draw all our aspirations together and point the way forward. The outcome will hang on the wording in these clauses and what we interpret as the meaning of "natural environment".

I support Amendment 113, in the name of my noble friend Lady McIntosh and the others who have signed it. This draws our attention to the whole marine biosphere, an area that is under great threat at the moment. It is essential that this is not overlooked. The various marine organisations are still drawing up their inventories of what is in the natural environment at present, and a great deal of expense and research will have to be dedicated to that area. I too served on the EU Environment Sub-Committee that my noble friend Lady McIntosh mentioned, and I contributed to the work that was put in. There are huge areas where we have hardly any information.

My noble friend Lady McIntosh spoke of the importance of the marine area to the UK. In December, Scotland published its latest marine assessment report, which has to be updated every three years and which, in turn, covers an area six times greater than the Scottish landmass—so biodiversity is a very important field for that Administration.

At the same time, the Bill will incorporate the policies of species abundance and the encouragement of biodiversity. We have spent so much time discussing targets. Given the role that mankind has taken upon itself over the centuries, targets are necessary. The Secretary of State can introduce almost unlimited targets under the Bill, but Clause 3 has a number of subsections that must be observed if the Secretary of State wishes to reduce them.

However, there is no requirement for the Secretary of State to pay any attention to taking actions if a crisis develops when one element becomes prolific or threatening and the need to cull numbers requires some urgency. The nearest experience that I have had did not have the urgency in question: it was decided that the deer population in the huge Queen Elizabeth Forest Park, which is next door to me, was well above what was good for forestry purposes and that it should be reduced to four deer per square kilometre. They then set about culling 4,000 deer out of this area, which is not something that I would readily support, but it was a necessary management action and is an indication of what might be required if proliferation becomes extreme. In the spirit of the Bill, it will always be preferable to employ nature-based solutions, but, if diseases or threats to biodiversity occur, we must be prepared to act in whatever way will be effective.

[The Duke of Montrose]

My noble friend Lord Caithness's second amendment raises the important question of defining biodiversity. "Biodiversity" in the Bill seems limited to the abundance of species, particularly in Amendment 22, moved by my noble friend the Minister on day 2 of our deliberations. Amendment 113B would mean that attention could be given to how far biodiversity should be supported.

Baroness Bennett of Manor Castle (GP): My Lords, I rise to offer the Green group's support for all the amendments in this group, which have given us the opportunity of an important debate about what we are trying to save, what we are trying to protect and what we are trying to improve.

Amendment 110, in the names of the noble Earls, Lord Caithness and Lord Shrewsbury, and my noble friend Lady Jones and myself, proposes that soil be regarded as a habitat. I will address it with Amendment 112 in the name of the noble Lord, Lord Randall of Uxbridge. I agree with the noble Lord, Lord Curry of Kirkharle, that it perhaps does not matter so much where "soil" appears; it needs to appear somewhere. I would suggest that a very simple solution which the department could implement easily would be to go through the Bill and look everywhere where "water" and "air" appear and add "soil". I doubt that there would be many problems when one looked at the result. We are of course revisiting our debate on day 1 of this Committee—which now feels like quite a long time ago—about Clause 1 and an amendment in my name which would have added soil as an important target. It needs to be in all these places.

I hope that the noble Baroness, Lady Boycott, will forgive me if I pre-empt a little what she is perhaps going to say, but it is so important that it needs to be highlighted. I saw that she was speaking to the Secretary of State at Groundswell. During that discussion, it was said that soil health was perhaps the most important thing and would be the focus of the sustainable farming initiative. Perhaps the noble Baroness can tell us more about that; it would be very interesting. The Government themselves identify soil as a huge priority. As the noble Earl, Lord Caithness, and many others have said, we are talking about how the Agriculture Act and the Environment Bill fit together. The Agriculture Act provides directions on the methods of action; this Bill judges how successful it has been.

I have circulated to a number of noble Lords—I realise that I neglected to circulate it to the Minister, for which I apologise and I will fix it shortly—a briefing paper that I received from a number of farmers, academics and farm advisers on the difficulty of being paid for results in managing soil health. It makes an argument for payment for practice instead, with the three key things identified as minimising soil disturbance, maximising soil cover and maximising diversity of cover. All are clearly good things to work towards, but we need to measure how the results come out, and that has to be in the Bill.

Following the coverage from Groundswell, there was a lot of discussion and excitement about work done on worms. There is perhaps an argument for the number of worms per square metre being a very good measure. I am not putting that forward entirely as a serious proposal although it is certainly something to look at, but I would point the Minister to the publication last week of a volume entitled *Advances in Measuring Soil Health*, edited by Professor Wilfred Otten from Cranfield University. It is a real sign of how much this field is moving forward. That brings me back to our discussion on Clause 1, when the Minister, in arguing why soil should not be included in the clause, said that

"the Government are working collaboratively with technical experts to identify appropriate soil health metrics … it is a complicated business"—[*Official Report*, 21/6/21; cols. 94-95.]

and that they were looking to develop a healthy soils indicator as part of the 25-year environment plan. This is a matter of extreme urgency and focus, as identified by the Secretary of State; it cannot wait for something off into the far distance. A great deal of new work is available now; a great deal of ideas are available now. The first metric that we end up with may not be perfect, but we need a metric, and if that needs to be improved in future, so be it. It could be dealt with by regulation, as the Government so like to tell us.

4.45 pm

Amendment 113 in the name of the noble Baroness, Lady McIntosh of Pickering, and signed by the noble Lord, Lord Teverson, my noble friend and me, again takes us back to some of our debates on Clause 1. We are talking about including the marine environment. I want to cite just one, apparently small but very illustrative case study. I thank Dr Alexander Lees at Manchester Metropolitan University for drawing it to my attention. It is simply a photo—a very sad photo of a bundle of sodden feathers. This was a black-browed albatross. We can see coming from its mouth a ribbon that indicates that it almost certainly died from ingesting a balloon. It is a magnificent creature that could have lived for seven decades—seven decades of a life of freedom—and it was cut short for a balloon. The noble Lord and I have engaged in debate, and I am sure we will do so in the coming groups, about extended producer responsibility and plastics. I would question how any form of extended producer responsibility would cover the cost of that albatross and its loss of life.

It is important to include marine because we need to stress that there is no such thing as "away"—we cannot throw things away. Very often, we have regarded the marine environment as the space where we throw away. If we do not include that, we shall not be taking proper account of the impacts of our actions.

I commend the noble Earl, Lord Caithness, on some very nimble drafting for Amendment 113B—this, again, goes back to our debates on Clause 1 and an amendment I put down then about the state of nature. I made a rough first attempt at defining biodiversity. The noble Earl has struck on something by working on the Minister's response and coming up with this amendment. I look forward to hearing the Minister's response to his own words.

The amendments in the name of the noble Lord, Lord Berkeley, would add "ecosystems" in a number of places. Again, we come back to the definition of biodiversity. We can protect plants, animals and fungi—the three kingdoms—and look at them in isolation, but it is the relationship between them that makes up the natural world and the natural environment. It is terribly

important that the Bill recognises that. The noble Lord, Lord Framlingham, talked about how rare the wonderful, irreplaceable soils underneath ancient forests are, and how little of that we have left. Adding "ecosystems" would help draw attention to the utter fallacy of biodiversity offsetting and the idea of something that I have seen first-hand: that we can just transplant the bits of an ancient forest, shove them into an arable field and assume that they are going to get back together somehow or other. Adding "ecosystems" here would be very useful.

Baroness Boycott (CB): I support the amendments in the name of the noble Earl, Lord Caithness, as well as that in the name of the noble Lord, Lord Randall, about soil, that in the name of the noble Lord, Lord Berkeley, about ecosystems, and that in the name of the noble Baroness, Lady McIntosh of Pickering, about the oceans.

The noble Baroness, Lady Bennett, is absolutely right: I did interview the Secretary of State last week, who talked extensively about how the Government saw soil as a key part of future strategy and as being at the heart of both the Agriculture Act and the Environment Bill.

The thing about soil is that it is very small in our eyes, but in the soil's eyes it is of course a factory and it has been described as a factory. In a tea-spoon of soil, you will probably get some thousands of species, some millions of individuals and about 100 metres of fungal thread. This is a world of major complexity and, every second that we are alive, this factory is performing a function that none of us could do. No scientist could take sunlight, air and all the nutrients in the soil and produce leaves, which produce trees. Look around this Chamber: everything in here, apart from the quarried stone, has come from a plant, has come from the soil. This leather has come from an animal that has fed on a plant; the carpet, probably from Axminster, and some sheep; my clothes; everything. Yet we call it "the dirt beneath our feet" and we stomp on it.

Once I got the image of a factory into my head, and the notion that there are all these people pulling levers and rushing up and down hills, it struck me that it was like being in a city, but a city on a completely different scale to how we live, so of course we ignore it. What has gone so tragically wrong with the soil in recent years is not so much the tinkering around but the deep ploughing and then the addition of heavy chemicals. It strikes me that you could think about it as like living in Homs or somewhere like that. Your buildings get bombed every other day or, in the case of the soil, two or three times a year. We have decided, since the green revolution of the 1950s, that deep ploughing was a really good idea because it let in the air. It was extremely fallacious science that is now completely accepted not to be right.

Look at agroecology. Where I was with the Secretary of State last week, we saw new devices that slice through the soil like pizza cutters, dropping in individual seeds, making minimal disruption and, as a consequence, needing minimal fertilisers and producing strong, healthy plants that also support biodiversity. We have done so many things wrong it is quite impossible to start to count them: the monocrops that kill the culture; the deep ploughing; the addition of chemicals—it is really astonishing—but the soil is truly phenomenal. It is the most amazing stuff. Give it a break, and it will come charging back with great health. I have to say to whichever noble Lord it was who said how long it takes to regrow, it really does not; it is really amazing. It will knit itself together, start co-operating and start not only giving us back the goods and services we want, but at the same time taking down the carbon.

As the noble Lord, Lord Curry, said, it seems quite astonishing that soil is not in the Bill, along with air and water; it should be. History is littered with examples. I do not know whether any noble Lord has been to Leptis Magna. It is a desert, but it is not that long ago, in the big history of things, that the Romans used to get three harvests a year from Leptis Magna. That is why they wanted north Africa. They had the most sophisticated systems for bringing water from the mountains; they had an amazing market with marble and they kept the water in tanks underneath to keep the vegetables cool and then they overfarmed it. But it was fine then, because they just packed their trunks—I do not know whether they had trunks then—and got on their oxen and went somewhere else, because there was always somewhere else. There is not anywhere else now. It is the same as when the noble Baroness, Lady Bennett, says, "There is no such place as away." You throw it away: where is that away? As Greenpeace says, we throw away our plastic and it ends up in Turkey. We throw away something and it ends up in that awful albatross. That makes my heart break too. We have to respect and adore these particular things.

The thing about the soil is that there are a lot of "don'ts". As the noble Baroness, Lady Bennett, says, "Don't deep plough", "Don't put fertiliser on it", "Keep cover crops on it." Soil wants that; soil wants to work. We have to find intelligent ways to pay for this; we cannot just expect people to do it and not get anything back. They will get it back in advanced crops without having to pay for chemicals, but that will take a bit of time. Yes, indeed, people are using earthworms as a measure, but it is still a bit clumsy and a bit inexact. It is kind of fun, but there are some more sophisticated things that we can do.

I want to quickly address the necessity of understanding things as ecosystems. I do not know how many noble Lords know of Dr Suzanne Simard, but she is a Canadian forestry professor at British Columbia University. She grew up in the forest, became a logger and a forestry expert and at the age of 20 she was put to work by a forestry company in the north-west and her job was to clear-fell and then plant pine. After a bit, she looked at it and thought, "Why are these things dying over huge acres?" That was when we thought, "Survival of the fittest: get rid of everything else and everything will grow", but in fact they died. They did not do well, they sort of struggled and some of them just fell apart. What she realised, and what she has now written about and become the world expert on, is that there is an extraordinary interconnection that goes on underground. We are only just beginning to learn about it. A tree will help out another tree if it is in trouble. It will send extra nutrients. It is quite magical. In the same way that the noble Baroness, Lady Bennett, was moved

[Baroness Boycott]
about the albatross, I am extremely moved about the power of the soil. I feel very strongly that it has to be at the heart of the Bill.

Finally, on the question of the oceans, not only did I see the Secretary of State last week, but the week before I saw the Minister for Food and Farming. We were in the West Country at an event and she was on her way to Brixham. She said to me, "This is going to be tricky, but 80% of the fish that comes in comes from bottom trawling." Bottom trawling is just like ploughing: it is smashing through someone else's home with absolutely no regard for those who live there. We would not smash through a field of cattle, just wipe them out and throw them all over the place; that is what we do every day. Some in this Chamber will have seen "Seaspiracy". It is not a pleasant watch. You get the sense of how many fish get sacrificed in the by-catch. Please, Minister, find a way to put the sense of ecosystems and soil absolutely at the heart of how we assess our environment and take care of it, because we will fail otherwise.

Lord Cormack (Con): It is a very real privilege, and I mean it, to follow the noble Baroness, Lady Boycott. Hers was a splendid speech—one of many we have heard this afternoon—and she was so right in her references to bottom trawling. I may be the only Member of your Lordships' House who sailed, in the old days, in a deep-sea trawler. I was the candidate for Grimsby at the time, in 1965, and I went up to the north coast of Norway in a trawler. That was proper fishing. It was fascinating, and the men who were there were among the bravest I have ever known. I represented a mining constituency later. That is another tough and appalling job, but at least the miner went home to his bed each night. The trawler-man was out for 18, 21 or 24 days, and it was extraordinary. That was what convinced me, and I have always been convinced, that we must look after our marine environment.

The noble Lord, Lord Teverson, who has put his name to my noble friend's amendment and who will be winding up on it for his party, is bound to be sympathetic and enthusiastic. Of course, he chaired that session of the EU Environment Sub-Committee to which my noble friend Lady McIntosh referred in her speech. We heard some fairly disturbing things that day. Anybody who has watched "Blue Planet" knows that the isolated, moving incident of the albatross, to which the noble Baroness, Lady Bennett of Manor Castle, referred, is just one of a million examples. It was a very graphic and good example, but there are so many—all of them caused by the careless distribution of our detritus across the world.

I am sure many noble Lords will know about Operation Neptune, where the National Trust sought to buy many miles of our coastline. It has been an operation that has lasted for some half a century now and has been extraordinarily successful. It has succeeded in preserving some of the most beautiful of our coastal areas—many of which, incidentally, were rather badly despoiled during the pandemic by careless visitors and worse than careless visitors. If we want to preserve our coastline, we must also preserve our marine environment, so I very much hope that my noble friend Lord Goldsmith will accept this amendment with enthusiastic alacrity or, if not, call a meeting to devise an amendment that he can accept with enthusiastic alacrity, because this, again, will come back on Report and we need to get it right.

5 pm

I turn to my noble friend Lord Caithness, who moved his amendment about soil very splendidly; I completely agree, of course. I was interested in my noble friend Lord Framlingham's speech, in which he quoted Jonathan Swift and the two blades of grass. As he was referring to that, I could not help but think of TS Eliot who, towards the end of the last century, wrote that if we are not careful our legacy will be

"the asphalt road
And a thousand lost golf balls."

It is very important indeed that soil—the good earth, as I would prefer to call it, although obviously, soil is a better word for our Bill—be included in the Bill. The noble Baroness, Lady Boycott, in her splendid speech referred to deep ploughing and made the analogy with deep trawling. Much damage has been done and nobody can look back on the 1960s and 1970s, when so many hedgerows were ripped up across our country, and not feel that that was an era of desecration. I referred to it in a book I wrote at the time, and lamented it. I am glad to say that hedgerows are, to a small degree, coming back; but we will never have the hedgerows and wildflower meadows we had. We must, at the very least, keep what we have got and add to it.

I hope that my noble friend, who has not been terribly good at accepting amendments, will turn over a new leaf this afternoon and show that he really, desperately cares about what we care about and accept at least the spirit of these amendments.

Baroness Young of Old Scone (Lab) [V]: My Lords, I declare two interests—one as a member of the Commission on Food, Farming and the Countryside, and the other in the mental well-being of the Minister. We are picking on him and I feel deeply sorry for him, because he is between a rock and a hard place. This is another example of an amendment that, in a normal world, he would simply accept and we could all go home happy.

I support Amendments 110 and 112, which rightly specifically include "soil" in the definition of the natural environment. As other noble Lords have said, we have already touched on the importance of soils during our debate on a previous amendment. Indeed, many of our older Members of the House will remember Kenneth Williams who, in character, used to say in response to any question at all, "Arr, the answer lies in the soil." He was right. However, for a period, with the exception of the organic movement, soil came to be regarded as nothing more than a handy medium for holding plants up, especially crops. It was nothing more complex. Of course, the pendulum has now swung and it is generally acknowledged that soils are complex ecosystems with huge importance for a whole range of things such as carbon storage, flood alleviation, crop health, biodiversity and water quality. Other noble Lords have gone through these.

It is true to say—the Commission on Food, Farming and the Countryside very much supports this—that agroecology and restorative agriculture, which focus

on the importance of soils, are going to be vital components of the future of farming and food production. Of course, the mycorrhizal elements of soils are the telegraph systems for trees and plants and are capable of warning colleague trees and plants many metres away of attack by something nasty, so that they can prepare to repel boarders. Basically, soil is pretty cunning stuff. However, it has been the poor relation in terms of environmental action and safeguarding in the past, and more than one-third of the world's soils are degraded. That is no less the case in this country, with factors such as erosion, sealing, compaction and contamination causing this deterioration.

I very much welcome the 25-year environment plan highlighting the need to manage all the UK's soils sustainably by 2030. Signalling the importance of soils in environmental protection ought to be the purpose of including soil in the definition of the natural environment in this Bill. It is not just a practical step; it is a signalling step of the fundamental importance of soil.

The noble Lord, Lord Curry, reminded us that one of the reasons given by the Minister for not including soil was that to include it would require a target and the science was not there yet to do that. The noble Baroness, Lady Bennett of Manor Castle, said that we need a soil metric now and it does not need to be perfect. I very much agree with that. Indeed, that has been endorsed today by the report from the Environmental Audit Committee in the Commons, which stressed the need for the rapid development of soil indicators and for a shadow target to be established urgently in the meantime.

We are going to need soil metrics for a whole variety of purposes, not least because soil is going to be fundamental to the environmental land management schemes. Let us get on with it and establish a metric. It will not be right but it will be something, and it will be a huge signal of the importance of soils in this section of the Bill.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): The noble Lord, Lord Whitty, is not taking part in the debate so I call the noble Duke, Lord Wellington.

The Duke of Wellington (CB): My Lords, I wish to speak briefly to Amendment 112, tabled by the noble Lord, Lord Randall of Uxbridge. As other noble Lords have said, Amendment 110 has very much the same purpose.

In Clause 43, in defining what is meant by "natural environment", mention is made of "land", "air" and "water", but I really do think that the Bill would be much improved by including "soil". All scientists tell us how much the quality of soil has been degraded in this country in recent years. There is an increasing risk of erosion from flooding. There is an increasing occurrence of compaction caused by the regular passing of heavy agricultural machinery. There is a decline in organic matter in the soil, brought about by modern farming methods and the use of chemical fertilisers, insecticides and herbicides. I am sure that the new environmental land management schemes will indeed encourage farming methods that will avoid this steady and continuous degradation. Let us hope they will go further and encourage and support farming systems that restore soil quality. However, in the meantime, I encourage the Minister to accept either Amendment 112 or Amendment 110, which would demonstrate that the Government intend to take very seriously the question of soil quality and to include it in the various proposals to improve the natural environment.

I turn briefly to Amendment 194AC in this same group, which deals with biodiversity gain in planning. Of course, I would be minded to support any improvement in biodiversity in rivers and lakes as a result of any new planning application. I must say that I am doubtful whether it can really be practical to place on all developers an obligation to demonstrate on each occasion a biodiversity gain in water. Surely, connection to a wastewater system that will not create any increased risk of sewage discharges in the adjacent river system should be a condition for all developers. The most important point for improving aquatic biodiversity is to reduce in the short term and eventually eliminate discharges that pollute our rivers. Therefore, although I know it is well intentioned, I personally could not support Amendment 194AC.

Lord Teverson (LD): My Lords, we have had some really good literary contributions. My favourite was probably about Kenneth Williams from the noble Baroness, Lady Young of Old Scone; we also had a number of others. When the noble Earl, Lord Caithness, talked about the dust-bowl, I thought of when I was quite young—an A-level student, I think—and I read John Steinbeck's *Grapes of Wrath*. Even today, that brings back an image. I could see that novel as a movie in my mind about that dust-bowl during the depression of the 1930s in middle America where, because of soil erosion and degradation caused by wind, there was a huge exodus in the United States to urban areas and a failure of the farming system and those ecosystems. That is a lesson for us.

One of the things that struck me when the 25-year environment plan came out—that was what, five years ago?—was that, at that moment, it seemed the Government had suddenly discovered soil for the first time. The great advocate at that time, who particularly seemed to have discovered soil, was Michael Gove, the then Environment Secretary. I ask my Liberal Democrat colleagues to put their ear muffs on for a moment: I thought that Michael Gove was an absolutely excellent Secretary of State for the Environment because he brought all these issues to the fore. He had guts, he was bold and I am sure that, if he were still in the position, we would have rather a bolder Bill than we have before us at the moment. Needless to say, I was less keen on the rest of his career, so I will stop there.

The noble Lord, Lord Randall, was absolutely right about the breadth of what we mean by soil. Piedmont soils are something we have to be incredibly careful about in this country. I was privileged, two or three weeks ago, to see peat restoration on Bodmin Moor, which was brought about by a consortium of organisations—public and private sector and water companies—as part of bringing back a huge area of peatland to hydrate that whole area. I always thought we had enough rain in Cornwall to keep the whole of the ecosystem going, but you could see the degradation there. That team

[Lord Teverson]
had worked in Dartmoor and further north and west as well. This is really important. Whether the Minister says soil is somehow included in these definitions, it is absolutely clear that it is right to give it the emphasis by including it within these definitions. I was thinking of the noble Duke, the Duke of Montrose, and *Gulliver's Travels*, which I had not noticed, I must admit.

The noble Baroness, Lady Bennett of Manor Castle, used the word "urgent". The 25-year environment plan is brilliant in terms of laying out the issues and what we need to do but the implementation of so many of these things has not been good, as the Audit Commission pointed out strongly. Urgency is something that we can maybe put back into this Bill now. Many Members—including the noble Lord, Lord Curry, who is well known for his agricultural knowledge and experience—have come out strongly on the need to do that.

5.15 pm

I was pleased to put my name to the amendment of the noble Baroness, Lady McIntosh. A number of my amendments will come in Committee about the marine. I believe that, despite the Minister trying to persuade me that the definition of "England" includes the marine area, this Bill sees marine as an appendix or an afterthought—and a small addition at that. It is covered but never focused on. That is why it is so important we include, as the noble Baroness's amendment says,

"the sea, the marine environment and maritime wildlife, sea mammals, flora and fauna."

That needs to be stated in this Bill, because, as I was reminded by the noble and learned Lord, Lord Hope, in an earlier amendment, land and marine are interconnected; they are dependent on each other but different, and that difference needs to be mentioned strongly.

I agree particularly with the comments of the noble Baroness, Lady Boycott, and the noble Lord, Lord Cormack, about the way in which we fish the seas. I have an amendment later on, which I am trying to bring forward urgently, on the higher level of marine conservation areas. At the moment, our marine conservation areas do not do the job they need to, and we need to find a way forward with the fishing industry to protect the bottom of our territorial seas and the seas of the EEZ.

I have also put my name to Amendment 113B in the name of the noble Earl, Lord Caithness—although I did not get it down in time for it to be on the latest list of amendments—because defining biodiversity is important. I was very pleased that there was an emphasis on marine and other aquatic ecosystems.

How can one disagree with the noble Lord, Lord Berkeley, on "ecosystems" being in there? Whenever I mention ecosystems in another context, I am always told off because I do not include "ecosystem services" as well, but I know exactly what the noble Lord means.

It seems that there is unanimity that soil is fundamental to ecosystems. It is an ecosystem service in itself. It is usually described that way; for example, the noble Baroness, Lady Boycott, described it as a "factory". Because of that importance, looking at the history of the United States and our own soils—this is where we need naturally based solutions to stop fast water run-off—we need to make sure that we retain soil quality. These Benches are fully behind that proposition.

Baroness Hayman of Ullock (Lab): I thank noble Lords for their contributions to the debate. It has clearly demonstrated the strength of feeling about the need to improve Clause 43 to resolve the omissions in the definition of the natural environment, which we have all been looking at. In many ways, the noble Baroness, Lady Bennett of Manor Castle, summed it up when she said that we need to decide what we are trying to save, what we are trying to protect and what we are trying to improve. She gave a very moving example of why this really matters.

When the noble Earl, Lord Caithness, introduced his amendment he talked about the glaring hole in the Bill. I think everyone would agree with him, and with the amendment from the noble Lord, Lord Randall of Uxbridge. Both amendments talk about the need to include soil in the definition of "natural environment". Headlines have warned us that the state of our soil is now a serious threat to the environment and to our ability to grow crops, but we also know that good-quality soil can help to save the planet. The noble Lord, Lord Teverson, just mentioned Michael Gove, who, when he was Defra Secretary of State back in 2017, said that

"no country can withstand the loss of its soil and fertility."

He was correct.

The noble Lord, Lord Randall of Uxbridge, talked about the huge importance of the health of our soil, and how it is critical for our biodiversity and the future of our agriculture, because we fundamentally rely on it. Soil produces 95% of our food, be it the crops we eat or the grasses and other plants that feed our animals. It also stores an extraordinary amount of carbon—three times the amount in the atmosphere and twice the amount in trees and forests. Although soil can store—or sequester—carbon, we also know that it can lose it when it is degraded. The loss of carbon in poor soils contributes to the rise of carbon dioxide in the atmosphere, which we know is one of the main causes of climate change.

It has been estimated that there could be 50,000 species of microorganism in just 1 gram of soil. Crucially, this rich "soil web" of underground life creates an open structure. It allows rainwater to seep into the ground, storing moisture for plants and crops to grow well, even in times of drought. It also prevents flooding, which is an important function of global warming. Further extreme and uncertain rainfall is becoming more prevalent in the UK. As someone who lives in Cumbria, I am all too well aware of this.

The noble Earl, Lord Caithness, talked about the amount of topsoil we lose every year—3 million tonnes. He rightly said that we simply cannot afford to continue in the way we are. He also made the important point, as did other noble Lords, that the Environment Bill and the Agriculture Act need to work together to get the outcomes we need.

As we have heard, the Environment Bill currently lists land, air and water, and the natural systems, cycles and processes through which they interact, but there is no specific mention of soil. We on this side of the

Committee believe that this is an important omission, so we support the amendments in the names of the noble Earl, Lord Caithness, and the noble Lord, Lord Randall of Uxbridge, to specifically include soil in the Bill.

We have also been debating the extent to which the marine environment is provided for in the Bill and how it is not clear enough. The marine environment must be seen as an integral part of the process of environmental conservation. Our legislation includes substantial activity to enable environmental protection and conservation to take place in these zones, but, as other noble Lords have said, this is not always effective enough. So, in addition to the need for the marine environment to be included in the Bill's scope, Clause 43 needs to be amended to make it explicit that the "natural environment" includes the marine environment.

Amendment 113 in the name of the noble Baroness, Lady McIntosh of Pickering, would expand this definition. I thank the noble Baroness for her clear explanation of why the amendment is needed. The contribution from the noble Baroness, Lady Boycott, was also very powerful as to why we need to look after our marine environment. The Explanatory Notes indicate that the definition extends to the marine environment, as well as to terrestrial and water environments, but although Explanatory Notes are often helpful for providing information as to intention, they add nothing whatever to, or take nothing away from, the actual legislation in front of us. For legal clarity, we believe that this should be stated in the Bill. For this reason, we support Amendment 113.

My noble friend Lord Berkeley talked about why biodiversity gains should also include water. The links between the water sector and biodiversity involve the impacts of the sector on biodiversity and the benefits the sector can receive from the ecosystem services—I say to the noble Lord, Lord Teverson, that I have now said "ecosystem services"—provided by biodiversity. The water sector really should have a direct interest in safeguarding biodiversity both for its own use and for that of others. Well-functioning ecosystems—forests, grasslands, soils, rivers, lakes, streams, wetlands, aquifers; I could go on—all influence the availability of water and its quality. They are also vital to meet water management goals such as water storage and flow regulation, filtering, and flood and drought protection, among others.

I am sure that the Minister has heard the strong support for the amendments, particularly for the inclusion of soil, although the marine environment is just as important. I look forward to hearing from him.

Lord Goldsmith of Richmond Park (Con): I thank all noble Lords for their contributions to this important debate. This first definition of the natural environment is deliberately broad, and includes both the living, such as plants and wild animals, and non-living, such as land, air and water, elements of the environment. To be comprehensive, it also includes the natural systems, cycles and processes through which the elements of the natural environment interact. The difficulty is that if we were to add to the Bill matters already covered by the definition it would cast into doubt anything not specifically included. However, I hope that I can provide reassurance on all the points raised by noble Lords.

I agree with the intent behind Amendments 113A, 113C to 113E, 194AB and 194AC from the noble Lord, Lord Berkeley. Clearly, our environmental governance framework must protect the ecosystems that make up our natural environment. Clause 43 makes it clear that the systems, cycles and processes through which the elements listed in paragraphs (a) to (c) interact are a fundamental part of the natural environment. This definition therefore already includes ecosystems, as referenced in the Explanatory Notes at paragraph 371, page 59. Regarding Amendments 113C to 113E, as the Bill's definition of environmental protection refers back to the definition of the natural environment, it is also not necessary to specifically mention ecosystems in Clause 44.

Regarding Amendments 110 and 112 from my noble friends Lord Caithness and Lord Randall respectively, the Government of course recognise the fundamental importance of healthy soils to a thriving natural environment. Both my noble friends made powerful cases. It may not be the most glamorous of environmental subjects, but it is impossible to exaggerate the importance of soil. I was struck by the teaspoon factory analogy from the noble Baroness, Lady Boycott, which I have no doubt will stick with me.

I will make a couple of points. Outside of the Bill, a number of big levers are being introduced that will have a direct bearing on the health of our soil. A number of noble Lords mentioned the environmental land management system—a shift away from, in effect, subsidising the conversion of land to farmable land, no matter the value of that land beforehand, to a system where all payments are conditional on the delivery of public goods, such as restoration of the soil and good management generally of ecosystems.

In addition, our tree action plan is backed up by the £640 million Nature for Climate fund, a major part of which will be encouraging landowners, through very generous incentives, to either plant up or naturally regenerate land either side of England's waterways, with a view to boosting the biodiversity value of these already biodiverse and valuable places, but also to slowing water and cleaning the water that eventually makes it into our waterways in numerous different magical ways. In addition, we have our peatland plan, which we will debate at another point.

My noble friend Lord Caithness asked me to answer his question about the research being conducted by Defra into soil reconstruction. Although I cannot give him a detailed answer now—I will ask my colleague, Rebecca Pow, to write to him with a proper answer—I can say that today we are publishing details of the first options under the sustainable farming incentive, which will be open to farmers eligible for the basic payment scheme. We have decided to start with soil health since, as so many noble Lords said, that is where everything connected with successful farming begins.

Regarding the Environmental Audit Committee report—I apologise, I cannot remember which noble Lord mentioned it—we are developing a healthy soils indicator, a soil structure monitoring method and a soil health monitoring scheme to help land managers and farmers track the health of our soils over time and the impact of some of the policies I just mentioned.

5.30 pm

The definition of "natural environment" in Clause 43 already includes soil; Clause 43(c) includes "land". As is clarified in paragraph 370 of the Bill's Explanatory Notes, I can confirm that this already includes soils, as well as geological strata and other features. In any event, soils would also already be captured to the extent that they formed a habitat for plants, wild animals and other living organisms, as habitats are included regardless of their location.

I turn to Amendment 113, tabled by my noble friend Lady McIntosh. I completely agree that it is essential that the marine environment is included in the environmental governance provisions of the Bill. I was also struck by the palpable anger and sadness expressed by the noble Baroness, Lady Bennett, in her very powerful speech as she described the effects of plastic pollution on the noble albatross. The noble Baroness, Lady Boycott, also expressed concerns—shared by most of the Committee, I suspect—about the devastating impacts of mindless bottom trawling. As she says, it is a bit like clear-felling rainforests; it is just not visible to most of us.

The noble Lord, Lord Cormack, has been around long enough to know that it is not Committee but rather Report that is the business end of legislation. I have said many times that I consider all input and all amendments to be fair game and valid, and I will be looking through them in great detail over the coming weeks. He asked that I demonstrate my seriousness on this issue, which is slightly annoying, I have to say. I have committed and devoted every day of my life as far back as I remember—since I was a five year-old—to the environment, and I will continue to do so. Being a Minister for the Environment is a mere step in that process. I might ask him to square his own suspiciously hollow laments about the stupidity of plastic waste with his daily insistence on wearing these absurd throwaway masks, which really are unforgivable, as far as I can see.

I reassure the Committee that the marine environment is already included in these provisions, as we have noted on pages 23 and 59 of the Explanatory Notes. The definition of the natural environment explicitly covers "water", which includes seawater. It also covers "land", which includes the seabed, intertidal zones and coastal floodplains. Any plant, wild animal, living organism or habitat is also included in the definition, irrespective of where it is located. The Bill therefore includes the marine environment within the definition.

My noble friend Lady McIntosh asked about the tensions between wind farms and the marine environment, which I think we discussed in a previous debate. She is right: there is undoubtedly a tension there. It is a concern that is very much shared by my colleague in the other place, Rebecca Pow, who is looking into this and talking to stakeholders, with a view to developing an answer. I am afraid I am not able to give an answer; I do not think there is one at this point, but I absolutely recognise the need for the Government to deliver one.

In Amendment 113B my noble friend Lord Caithness proposes a globally recognised definition of biodiversity from the Convention on Biological Diversity. Because the definition is necessarily broad, the risk is that it could be unhelpful to some of the specific measures in the Bill. For example, under the broad definition of the CBD, the exotic fauna of a new safari park could be argued to contribute to biodiversity net gain, despite doing very little to support local wildlife or ecology. So, where necessary, setting out definitions which are context-specific will help users fulfil their duties without ambiguity. That is why we have, for example, defined the actions which may be taken to further the biodiversity duty in Clause 95 without defining biodiversity itself.

On Amendments 194AB and 194AC, while I agree that we cannot enhance biodiversity without also enhancing the terrestrial and aquatic ecosystems in which it exists, I assure the noble Lord, Lord Berkeley, that the biodiversity net gain approach does already take these into account. The biodiversity metric used for biodiversity net gain takes account of habitat quality by looking at a range of properties, such as plant communities and geology. The biodiversity gains resulting from these clauses will therefore be broad gains in ecosystems, not just gains in or for the charismatic and rare species which can dominate biodiversity discourse.

I hope I have answered the questions put to me today and provided some reassurance. I ask my noble friend to withdraw his amendment.

The Earl of Caithness (Con): My Lords, I am grateful to all noble Lords who have taken part in this very interesting debate of just over an hour and a half. I have to say that I was saddened by my noble friend Lord Framlingham: when he started talking about how much soil had been lost to development, he did not mention HS2. We know my noble friend's thoughts on HS2, and I thought that might well be top of his list—but it is in there too, I am sure. I have received a lot of support for my amendment. I agree with my noble friend Lord Randall of Uxbridge; I do not really mind whose amendment wins at the end of the day. The important thing is that we get it in the Bill.

I am very grateful for my noble friend the Minister's reply to me. There were some very good things in what he said, and we seem to have hit a good day to discuss soil, with the announcements that are going to be made by his fellow Minister. As for his final remark to me, that soil is already covered in the Bill as it stands, that is the same reply we had during the passage of the Agriculture Bill. We put soil on the face of that Bill and this Bill must tie up with it.

The brief from the department has a strangely familiar ring, even though it was 25 years ago. I seem to recognise quite a lot of the wording my noble friend used.

The noble Lord, Lord Teverson, mentioned the good work done on soil by my right honourable friend Michael Gove, who was Secretary of State. I think it would be wrong not to mention the noble Lord, Lord Krebs, in this debate. I remember that when my noble friend Lord Gardiner of Kimble was taking the Agriculture Bill through, he referred to the "Krebs amendment" when it came to soil. It is a pity that the noble Lord, Lord Krebs, is not with us.

This leads me to a general point. My noble friend the Minister said that the "business end" of a Bill is done on Report. That never used to be the case in this

House. We used to divide a lot in Committee, and we got rid of a lot of amendments that way. I am really very worried about this Bill now. There has been no ground given by my noble friend, and we are not even halfway through the Bill. I have no doubt that we are going to be under very severe time constraints on Report and at Third Reading because of the urgency to get this Bill on to the statute book before 1 November and the COP in Glasgow. We are, in effect, going to have a guillotine put over our heads, and there is an awful lot of stuff coming back. I tell my noble friend that this amendment is coming back too. I say to him and my noble friend the Whip: there must be some way we can progress this slightly better than by leaving everything to Report. I want a good Bill and I want the House to work well. I am not trying to be obstructive, but the way it is going will cause a lot of problems in September and October. I think there is a better way for us to get the Bill going at the moment.

With that, I thank everybody who took part. I thank my noble friend but, again, warn him that I will be back with this amendment. In the meantime, I will discuss it with my noble friend Lord Randall to see in which of the two places in the Bill it ought to go. I beg leave to withdraw the amendment.

Amendment 110 withdrawn.

Amendments 111 to 113A not moved.

Clause 43 agreed.

Amendment 113B not moved.

Clause 44: Meaning of "environmental protection"

Amendments 113C to 113E not moved.

Clause 44 agreed.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): We now come to the group consisting of Amendment 113F. Anyone wishing to press this amendment to a Division must make that clear in the debate.

Clause 45: Meaning of "environmental law"

Amendment 113F

Moved by ***Baroness McIntosh of Pickering***

113F: Clause 45, page 27, line 14, at end insert—

"(c) has regard to the provisions of the Aarhus Convention (UNECE Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters which entered into force on 30 0ctober 2001)."

Baroness McIntosh of Pickering (Con): I am grateful, my Lords, and I will not test the patience of the House to any great extent.

I have taken the precaution of sharing the briefing I have received from the Bar Council, which has helped me in preparing this amendment, so I hope my noble friend may be able to consider many of the technical details at more leisure than we have this evening. This debate, although not dissimilar, is different from our earlier debate on the group of amendments starting with Amendment 108A. It is really to ask a very simple question of my noble friend as to why previous incarnations of the papers preceding the draft of the Bill indicated that we might be incorporating the Aarhus convention into the Bill. There is disappointment, particularly among legal practitioners, that it is not now included.

I should declare an interest that I studied at the University of Aarhus in Denmark, although not environmental law. I embarked on a thesis looking at anti-trust and competition law in the European Union, particularly joint ventures. That is my unfinished masterpiece, to which I shall no doubt return.

Clause 45(1) limits the definition to "any legislative provision" which

"is mainly concerned with environmental protection, and … is not concerned with an excluded matter."

The Aarhus convention, despite being concerned with environmental issues, justice and information, obviously does not fall within the term

"mainly concerned with environmental protection".

So the amendment I have put before the Committee this evening might make better sense if it read as I have set out on the Order Paper, but with allowance at the end for

"any subsequent legislation that supersedes it or incorporates its provisions."

I will not rehearse all the benefits of the Aarhus Convention, but highlight just one or two. As I mentioned, the Government seemed to indicate that it would be incorporated. There are many reasons to do so. The convention adopts a rights-based approach in its Article 1. It sets out minimum standards to be achieved and prohibits discrimination against persons seeking to exercise their rights under the convention. The main thrust of the obligations contained in the convention is towards public authorities, which strikes a chord, as the Environment Bill is for the first time extending responsibilities to public bodies.

The convention includes institutions of the European Union including, inter alia, the European Commission, the Council and the European Environment Agency, and it sets out access to environmental information, which the noble Lord, Lord Rooker, set out in some detail, so I shall not rehearse that. Finally, in addition to access to justice in environmental matters, I am very taken by the fact that, under the Aarhus convention, the UK is required to complete a national implementation report every three years.

I thank the Bar Council for setting out what is important to sign up to the Aarhus convention. Can I tacitly assume that we are applying the Aarhus convention, otherwise known as the UNECE Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, which entered into force on 30 October 2001, or can I draw the conclusion that the Government have turned their back and do not intend to apply that convention for the purposes of the Bill? This is intended as a probing amendment to find out the legal status of the Aarhus convention—I am using the Danish pronunciation, obviously—for the purposes of the Bill. When those few words, I look forward to hearing my noble friend's response.

5.45 pm

Baroness Bennett of Manor Castle (GP): My Lords, briefly, I offer my support to the amendment of the noble Baroness, Lady McIntosh of Pickering, and thank her for tabling it and for sharing the very useful Bar Council briefing. I shall just draw a couple of points from that and make an additional point of my own.

One point to draw from that briefing is that there is a broad definition of environmental information within the Aarhus convention. The briefing rather weighs on some of our earlier debates, noting that it includes a non-exhaustive list of elements of the environment: air, water and soil. It also includes cultural sites and built structures, which very much weighed on a debate on day three perhaps—it all blurs—but one that we had earlier on the inclusion of culture within the frame of the Bill, for which noble Lords on all sides of the Committee strongly argued.

I also wanted to draw attention to the other point of the Aarhus convention, which says that

"public authorities may not withhold information, except for"—

and then follows what one would think of as a fairly standard list of exemptions. There is a very important restriction on those exemptions, which is that

"commercial confidentiality may not be invoked to withhold information that is relevant to the protection of the environment".

Given the level of privatisation of so many aspects of our management of our environment—water companies come to mind most clearly, but there are many others—that may be a very important protection to ensure that this is fully included and complied with. It is worth noting that we are talking about an international convention to which we signed up, but we have recently had a lot of encounters in which the Government do not seem to regard themselves as being bound by international law and matters to which they have signed up.

My final point is the real, life-and-death seriousness of this. I shall refer to a case to which many people, including my noble friend, have referred to previously, which is the tragic death of nine-year-old Ella Adoo-Kissi-Debrah. I want to quote just one sentence from the coroner's conclusion, which said:

"There was a lack of information given to Ella's mother that possibly contributed to her death."

Very often, when people are thinking about information about the environment being available, they are thinking in broad public health terms—they are thinking of campaigners, whom the Green Party is often supporting, fighting big issues. We are also talking about matters of life and death, and people being able to protect themselves and their children if information is available to them.

Baroness Jones of Whitchurch (Lab): My Lords, I am grateful to the noble Baroness, Lady McIntosh, for allowing us to have this brief debate. She has rightly raised the fact that the OEP should have some continuing role in monitoring and factoring in our obligations under international environmental law. These obligations, including Aarhus, still exist despite us leaving the EU—and these are not technical questions, as the noble Baroness, Lady Bennett, as just illustrated so vividly. If the Government are not minded to accept this amendment, it would be helpful if they could spell out how the role of the OEP and its enforcement functions with regard to our international obligations will appear in the Bill. I therefore look forward to the Minister's response.

However, since I have the floor, I briefly echo the concerns of the noble Earl, Lord Caithness, about all the business on the Bill ending up at Report. I just say very kindly to the Minister that, in the past, it has been a much more iterative process. It is really not very helpful that the Minister seems to be giving us a blanket no to all the amendments we are debating. Normally, there is a little more give and take. Everyone has their own way of doing things, and he must develop his own style, but I fear that he is storing up more problems than is necessary at Report if he does not take the Chamber with him. This might just be a matter of tone, but I give him just a little helpful advice about how we might proceed.

Lord Goldsmith of Richmond Park (Con): I thank my noble friend Lady McIntosh of Pickering for Amendment 113F and reassure noble Lords that the Government are fully committed to the important aims of the Aarhus convention and fulfilling our obligations under this agreement.

The definition of environmental law in the Environment Bill has been designed with the primary purpose of defining the scope of the OEP. The OEP's remit is to oversee the implementation of domestic legislation, rather than international law. Separate mechanisms exist to regulate compliance with international agreements.

Where the OEP determines a complaint to be outside its scope and considers that the complaint is regarding a failure to comply with the convention, the OEP would be expected to advise the complainant to approach the Aarhus convention compliance committee. This committee considers complaints related to obligations under the Aarhus convention, which is international law, and submits recommendations to the full meeting of the parties.

I assure my noble friend that where the provisions of the Aarhus convention have been given effect in UK law and meet the definition of environmental law, they will fall within the remit of the OEP. The OEP will consider which legislation falls within the definition on a case-by-case basis.

There are, of course, areas in which, appropriately, provisions implementing the convention may not be included in the OEP's remit. For example, under Clause 45(2)(a) provisions on the

"disclosure of or access to information"

are specifically excluded from the definition of environmental law and therefore from the OEP's remit. This is to avoid overlap with the role of the Information Commissioner's Office, as we discussed in one of our earlier debates. Amending the definition as proposed would therefore result in confusion, including over the functions of the OEP and the Information Commissioner's Office.

In response to the comments of the noble Baroness, Lady Bennett, on air pollution, Defra makes air pollution information available through a range of channels. It also informs a network of charities, including the Asthma UK and British Lung Foundation partnership,

the British Heart Foundation, the Cystic Fibrosis Trust and the British Thoracic Society, when elevated air pollution levels are forecast to ensure that information reaches the most vulnerable. It will not be bullet-proof or foolproof, but the attempt is there and the mechanism is there to provide that information to those who need it. More broadly, there are several ways in which the public can access air quality information, including through mainstream media, air quality alert systems and dedicated websites, such as those of the UK air and health charities and numerous campaigns. There are a number of alert systems, including in Manchester and London, that people can sign up to, often funded by local authorities. As I say, this is not a bullet-proof or foolproof process. Like everyone in the Committee's, my heart goes out to Ella's family. What happened to her absolutely needs to be the basis for all kinds of lessons learned and adds another layer of urgency to the work we are doing through this Bill in relation to air quality.

This group concludes the governance part of the Bill. I have appreciated the interest of all parties in the Committee in this important part of the Bill. I conclude by reaffirming that my door is open to continued discussions on these and other essential issues.

Before I ask my noble friend to withdraw her amendment, I note the comments of the noble Baroness, Lady Jones. There are plenty of areas in which I expect the Bill will improve, but it is not within the gift of a Minister unilaterally to decide which amendments should be accepted. I do not think there is any doubt in the department I work for that there are areas in which the Bill can and should be improved. Plenty of very helpful amendments and suggestions have been put forward by the Committee. With that, I ask my noble friend to withdraw her amendment.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): I have received no requests to speak after the Minister, so I move to the mover, the noble Baroness, Lady McIntosh of Pickering.

Baroness McIntosh of Pickering (Con): My Lords, I am extremely grateful to all those who have spoken in the debate, so movingly in the case of the noble Baroness, Lady Bennett of Manor Castle. I welcome the opportunity to have pressed my noble friend in this regard.

I will revert back to practitioners at the Bar Council to ask whether they are completely satisfied with this. From their briefing, my understanding is that there are already similar exclusions in the Aarhus convention. I congratulate my noble friend on his pronunciation. I am extremely impressed and I think we will be speaking Danish together before we even know it. There are similar exclusions to our own freedom of information as exist under the Aarhus convention.

The subsection (2)(a) to which my noble friend referred is a blanket exclusion about which I have some fear. The noble Baroness, Lady Bennett, highlighted that we need to be very clear about what is being excluded. If it is information that could make a life or death change to someone like the parent of Ella, it is very important that we are cognisant of that and try to work within the law as much as possible.

I support both my noble friend Lord Caithness and the noble Baroness, Lady Jones of Whitchurch. I am grateful for her support for the sentiments behind this amendment. When my noble friend Lady Bloomfield and I joined, which was the same year, it was around the time that the procedures here changed. I welcome the fact that in Committee we can have much more probing and lengthier debates, but there was possibly some merit, on a case-by-case basis, to disposing of some of those amendments that could possibly be accepted by the Government or easily disposed of either way, rather than storing up problems when the Government have given us such a tight deadline, as they have. If we can work together and find a middle way on this, that would be very helpful indeed.

With those remarks and the fact that I will go back and take further advice from the Bar Council, I am delighted to have had the debate but beg leave to withdraw the amendment at this stage.

Amendment 113F withdrawn.

Amendments 114 and 114A not moved.

Clause 45 agreed.

Clause 46: Interpretation of Part 1: general

Amendments 115 and 116

Moved by ***Lord Goldsmith of Richmond Park***

115: Clause 46, page 28, line 41, leave out "section 1 or 2" and insert "sections 1 to (Environmental targets: species abundance)"

Member's explanatory statement

See the explanatory statement for new Clause (Environmental targets: species abundance).

116: Clause 46, page 29, line 7, leave out "section 1 or 2" and insert "sections 1 to (Environmental targets: species abundance)"

Member's explanatory statement

See the explanatory statement for new Clause (Environmental targets: species abundance).

Amendments 115 and 116 agreed.

Clause 46, as amended, agreed.

Clause 47 agreed.

Schedule 2 agreed.

Clause 48 agreed.

Schedule 3: The Office for Environmental Protection: Northern Ireland

Amendments 117 and 118 not moved.

Schedule 3 agreed.

Clause 49 agreed.

Schedule 4: Producer responsibility obligations

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): We now come to the group beginning with Amendment 119. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Amendment 119

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

119: Schedule 4, page 160, line 8, at end insert—

"(1A) When making regulations imposing producer responsibility obligations, the relevant national authority must have regard to the public interest in such obligations being operational by 1 January 2024."

Member's explanatory statement

This amendment aims to ensure that the new packaging producer responsibility system is in place for the beginning of 2024, given that the final compliance year of the current package will end on 31 December 2023.

Baroness Jones of Whitchurch (Lab): My Lords, we now move on to the next part of the Bill, dealing with resource efficiency. I very much look forward not only to the coming debate on my amendments but to the debates on a number of groups in the days to come. For now, in moving Amendment 119 in my name, I add my support to the other amendments in this group.

Amendment 119 is simple but important. It adds to Schedule 4 the requirement that a new extended producer responsibility scheme should be introduced by 1 January 2024. It sounds technical, but it is a fundamental part of delivering a circular economy.

This new charging system will place a powerful onus on manufacturers to ensure that they design their products so that they can be re-used, dismantled or recycled at the end of life. It will move waste up the hierarchy and cut down on the unnecessary use of resources. It will ensure that they pay the full cost of disposal of their packaging, which will encourage them to cut down on unnecessary packaging, and it will provide additional charges for materials which cannot be recycled. It will include requirements on labelling to ensure consumers are clearly directed as to how to dispose of the item. It would also, potentially, provide additional charges on producers of materials which are routinely littered. It would indeed ensure that the polluter pays. I know these issues are very dear to the hearts of your Lordships. Incidentally, I tabled a number of Written Questions last week about the absolute scandal of Amazon destroying millions of items of unused stock simply because they did not want to pay to store them. I hope a scheme such as this would catch Amazon in its net as well.

6 pm

This could be a really exciting initiative if we get it right and introduce it in a timely way—but herein lies the problem. As it stands, Schedule 4 simply says:

"The relevant national authority may, by regulations, make provision for imposing producer responsibility obligations on specified persons in respect of specified products or materials."

It does not say when this might happen, and we have been waiting for an initiative of this kind for far too long. I spent the weekend chasing through government documents to see what they said on a possible implementation date. A lot of fine words have been written about the Government's ambition on extended producer responsibility, going back to the publication of the 25-year environment plan back in January 2018. Since then we have had the *Resources and Waste Strategy for England*, published in December 2018, and the *Waste Prevention Programme for England 2021*, published earlier this year. There have also been two consultations on extended producer responsibility, one in 2019 and one earlier this year.

All this time the clock has been ticking, but no scheme has materialised. So far, nearly four years have passed. We already have a scheme for producer responsibility for packaging, which has been in place since 1997, but it is seriously out of date and, by most measures, ineffective. As I understand it, it is due to come to a natural break at the end of 2023. This is why we fixed January 2024 as the date for the new scheme to start.

I did finally find a reference to an implementation date in the latest government consultation on packaging. It says that

"we remain committed to the implementation of packaging extended producer responsibility as soon as possible and propose implementing EPR through a phased approach commencing from 2023".

If this is the case, there should be no problem with the Government agreeing to our amendment. However, I should add that we have not yet seen the outcome of that consultation, which finishes this month—and other consultations on electronic goods, batteries and end-of-life vehicles have not even started yet. I should also acknowledge that the Minister has tabled several amendments allowing consultations that have already taken place to meet the requirement to consult in the Bill. Of course, that is a relief, but it does not give us any more guarantee that a new scheme will be operative by 1 January 2024. I should also add that, once again, we seem to be behind on these issues, with the EU's ambitious circular economy package due to be operational by January 2023.

In conclusion, I hope that noble Lords and the Minister will understand our frustration with the ongoing delays in implementation. Our amendment is an essential precondition to cutting back packaging, reducing plastic waste, cutting back on single-use items and rationalising all the use of scarce resources that will make up a proper resource-efficient scheme. It goes hand in hand with all the other issues that have been tabled in other amendments in this group. These schemes could make a real difference to our resource-efficiency strategy and the management of waste. I hope that noble Lords will support our amendment and I beg to move.

Lord Bradshaw (LD) [V]: My Lords, there can be few more unpleasant jobs than clearing fatballs and wet wipes out of congested sewers. It is done underground, often in sweltering conditions. It is a terribly hard job, and in many ways it should be quite unnecessary.

In my amendment—which the Minister and the noble Baronesses, Lady Jones and Lady Bennett of Manor Castle, might agree could be a point at which the Minister will actually say, "I agree and I will do something"—I have simply written that people who sell wet wipes and other non-flushable items should, as was done with tobacco advertising in the early stages, be obliged to print on their packaging the words "Do not flush". This is not a revolutionary amendment. It is one that I know the water companies would greatly welcome. I am a great critic of the water companies in many respects, but it would help them in their task.

It does not seem to me that the amendment would move any great laws. It would just mean that the Government has to tell people who sell non-flushable items such as baby wipes that on each package there should be the words "Do not flush". I myself have looked at several packages. On some you can find the words printed very small while on others you cannot find them at all. I think the Minister might welcome this opportunity to get up and say, "Yes, that's a good idea. I will take it away and look at it."

Lord Chidgey (LD): My Lords, I am delighted to follow my noble friend Lord Bradshaw. We have a history of working together that goes back many years. I think the last time was to do with Railtrack, which is a million miles away from Amendment 120A, which I shall speak to today, concerning septic tanks and their management.

I have some experience of this, going back a while to when I was a much younger married man with a small family who had moved into a rather old but pleasant Edwardian house on the edge of the country. When there is a sewer in the main road outside, naturally one assumes that one's house is connected to it, but I discovered one morning, when an unexpected hole appeared in the back lawn, that there was no mains drainage at all, but a septic tank. As I say, I was a young man with a family and not a lot of money, and I had to get a second mortgage in order to pay for the drainage works to connect up to the sewer in the road and explain to my friends and neighbours that it was I who had caused traffic lights to be put up to cope with the construction works.

That is not to say that I have a particular bias against septic tanks—an issue that we will return to later in the Bill—but this amendment is to do with something very similar to my noble friend Lord Bradshaw's point, which is that caustic household cleansers, when used too liberally, or even at all, you might argue, to cope with the cleansing of waste into septic tanks in domestic homes, can cause damage. What can happen so easily is that chlorine-based or similar bleach-based domestic cleaners prevent the tanks from functioning at all, and the result can be that you end up with little better than open defecation. So the purpose of the amendment is to try to reduce, and in due course eliminate, the discharge of untreated or poorly treated sewage into our rivers, watercourses and aquifers.

This occurs mainly in rural communities that remain—as I found out to my cost—unconnected to mains sewers, and are reliant on septic tanks and cesspits. Those are often inefficient and poorly maintained. Not only can septic tanks poison our rivers, streams and other watercourses as a result, but in areas with chalk aquifers they can poison the groundwater as well, often causing irreversible long-term harm.

Elsewhere in our European continent, several countries have not only banned this form of drainage but replaced it with more sensible and rational mains drainage systems. I would like to think that we would be trying to catch up with them. I therefore support the amendment.

Baroness Scott of Needham Market (LD) [V]: My Lords, this is an important group of amendments, ably introduced by the noble Baroness, Lady Jones of Whitchurch. I completely share her frustration, and agree with pretty much every word that she said. All the amendments in the group are concerned with the application of extended producer responsibility for single-use plastics, particularly those that are highly polluting in our sewers, such as wet wipes and—as we will hear later from the noble Baroness, Lady Bennett—nappy liners. I support all the amendments in the group.

There cannot be a better example of "out of sight, out of mind" than sewers. People simply flush all sorts of things away and give no thought as to the consequences. The water industry tells us that wet wipes make up 90% of the material in fatbergs, and because they do not break down, they cause 300,000 blockages every year, at a cost of around £100 million. That is money that the water industry could spend in far more productive ways—dealing with leaks, for example, or investing in water-saving schemes. Fatbergs also cause flooding in people's homes, and pollute our rivers. As well as wet wipes, other products are routinely flushed, despite not being suitable, including nappy liners, sanitary products and condoms, which also lead to clean-up costs and add to both micro and macro-pollution.

There is an urgent need to develop a strategy and a legislative framework for dealing with this, and we must start immediately, with more public education and awareness campaigns. This can start the business of behavioural change and, crucially, it will start to help people understand why the more drastic measures that are needed will have to be taken. It is amazing that volunteers give up their time to clean beaches and rivers—and when they do that, it helps to raise awareness, as well as removing the pollution. But volunteers are no substitute for the serious measures that are needed.

There are many consumers who want to do the right thing, but the problem is that they do not always know what the right thing is. I agree with my noble friend Lord Bradshaw that we need clear labelling on product packaging to help improve the level of appropriate disposal of those products. At the point of sale, including online, packaging and advertising should identify products that contain plastic and do not comply with the water industry's standard for flushability, Fine to Flush. Clear instructions are needed—"Do not flush"—with appropriate advice on waste disposal options.

Finally, clean-ups of blockages should be funded through graded financial penalties commensurate with the damage caused by the product. Products containing plastic should incur the highest penalty, followed by products that do not, but which also fail to meet the Fine to Flush standard.

The Government urgently need to provide clarification and detail about the schemes they will introduce under extended producer responsibility and the powers in the Bill. Their coverage, their delivery, the methods of consultation and the anticipated financial flows all need to be developed quickly. Action should be targeted on those areas where the most environmental damage is caused. The objective of my Amendment 124 is to provide some urgency, and to ensure that the Government have to bring such a scheme forward. That would give the industry, and to some extent consumers, a very clear direction of travel, and it sits very well with Amendment 119, which would introduce the statutory start date.

6.15 pm

Lord Lucas (Con) [V]: My Lords, it is not only producers who have to have regard to resource efficiency; it is also the Government. It is really important in devising regulations in this sort of area that we look at the overall effect of what we are asking people to do and, in particular, what we are asking companies to do to make sure that the end effect of what we are regulating is an improvement and not a disimprovement.

We have seen, for instance, in the case of washing machines and dishwashers, regulations regarding their use of energy, but we have done nothing to regulate how long these machines last. If you are replacing a machine every five years because it has fallen to bits, that surely is part of the resources being consumed by the process. It ought to have been part of the regulations and something that we should look at. We will come to this question when we look at deposit return schemes.

If we are instituting a deposit return scheme on something where we already collect 85% efficiently, and it is only the remaining 15% that are causing problems, then by creating a system that puts a lot of extra costs on society in recycling the existing 85% in a different, less efficient manner, we are not achieving an overall benefit. What is sauce for the goose is very much sauce for the gander.

Looking at the other amendments in this group, I think that the suggestion of the noble Lord, Lord Bradshaw, would result in regulation that was extremely resource efficient. The small one-off costs for producers after that would lead to a very substantial reduction in costs for the sewerage undertakings. That is what we ought to be aiming for: a good, big overall benefit. We should not be looking at little bits of the process; we have to look at the benefits and the costs that will be imposed by the regulation as a whole.

Lord Teverson (LD): My Lords, I want to speak to my own Amendment 128, which goes back even further into the depths of this Bill to Schedule 6. It is a probing amendment in many ways, and very mild, just to tease out where the Government stand on this. Although, as the noble Baroness, Lady Jones of Whitchurch, said so well, this seems to be a very technical area, these issues are absolutely essential in making the future circular economy, and everything we want in terms of resource efficiency, actually to work and become public friendly—and the way that it faces the public becoming friendly as well.

It comes down to labels. We have had some mention of labels already, particularly from my noble friends Lady Scott and Lord Bradshaw. What I am trying to get at here is that there are provisions, rightly, for the Secretary of State to be able to make regulations about such things as labels on products, but what it does not do is suggest that there should be some consistency about that labelling so that we all find that interface useful, friendly and usable.

I am thinking of two other areas in particular. When I put the laundry into the washing machine at home, there is the occasional garment that I do not have a clue how it should be washed. So what do I do? I look at the label on the garment that has all those little symbols that tell me how I should wash this—at what temperature and all that sort of information. It might tell me not to wash it at all, but to dry-clean it instead. Over the years, I have got to know those symbols. Everybody else has: they are actually fairly international rather than national; I am not even asking for them to be international. Through that, we get to know what we should do.

I think it was the noble Lord, Lord Lucas, who mentioned electrical appliances. Whether it be a dishwasher or a dryer, they also have labels that give an energy efficiency rating. That has been so successful that we have had to reinvent or restate what the most efficient levels are, because people have got to know them and simply go for green rather than red.

This amendment is merely offering a suggestion to the Government. It would give the Secretary of State the power to ensure that labelling on goods in the system that will become part of the circular economy is consistent, so that everybody gets to understand the symbols and they are therefore effective. We should not have a wide range of different labels from different manufacturers, or different systems, which would confuse consumers. In labelling, we need consistency, good design and systems that have been tried and tested, and last. As, I think, my noble friend Lady Scott said, this will make sure that people who want to do right can achieve that.

Baroness Bennett of Manor Castle (GP): My Lords, it is a great pleasure to follow the noble Lord, Lord Teverson. I rise chiefly to speak to Amendment 292, which appears in my name and has the backing of the noble Baronesses, Lady Boycott and Lady Meacher, and the noble Lord, Lord Hunt of Kings Heath. I thank them all for their support and note that a number of other noble Lords would have signed this amendment had there been space.

I was simply going to speak to my amendment, but I must briefly and strongly commend Amendment 119, which was so ably moved by the noble Baroness, Lady Jones of Whitchurch. The noble Lord, Lord Teverson, highlighted in a previous group that I had focused on the word "urgent" a lot. With this amendment the noble Baroness has really driven home the need for urgent action. We have a plastic and waste-choked planet and nation that cannot take any more: it cannot take the volumes we are imposing on it every day.

Amendment 292 is about nappies. That might sound like a minor issue but I hope that by the time I have finished, noble Lords will understand that it is not. Before I begin, I declare my position as vice-president of the Local Government Association, since that will become relevant. For full transparency, I declare that I have worked on this amendment with, and many noble Lords will have received briefings from, the Nappy Alliance, which represents makers of reusable nappies. Supporting a green industry and working with it is not something I am going to make any apologies for, but I think it is important we acknowledge such ties and where the resources come from.

On average, each single-use or disposable nappy generates 550 kilos of carbon dioxide throughout its whole lifecycle, from production to disposal. From birth to stopping using nappies, an average child will use the equivalent of 15,000 plastic bags and half a

tree in fluff. This is why the Local Government Association is relevant: at a local level, single-use nappies account for some 4% of residual waste in England. That is 3 billion nappies each year, and it costs local authorities £600 million a year to dispose of them. When such nappies are sent to landfill it takes 300 years—roughly 12 generations—for them to break down. Incinerating them gives rise to significant carbon emissions and local air pollution levels, an issue we keep coming back to. This is where my amendment links to that tabled by the noble Lord, Lord Bradshaw: single-use nappies often end up contaminating waste for recycling because of misleading labels and consumer confusion. Many people do not realise they contain plastic, and think they are a kind of paper.

By way of contrast, reusable nappies use 98% fewer raw materials and generate 99% less waste. They save the equivalent of 17 plastic bags per day. Here, I think I need to dispel some misunderstandings. As we have seen in many other areas of health and environment where there are powerful industry interests, there has been a lot of confusion and misunderstanding about environmental impacts and comparative environmental impacts. In March 2021, in a report I would be happy to share with any noble Lord who is interested, the United Nations Environment Programme published a comparison between single-use nappies and reusables. It concluded that reusable nappies had a lower environmental impact across all trial scenarios when compared to single-use nappies.

Michael Gove seems to be coming up a lot this evening. Back in 2018, he did actually suggest that disposable nappies might be banned. In a very rare occurrence, I am not going to go as far as Michael Gove did in 2018. When people are travelling or when there is a new babysitter, for example, there may be an argument for the occasional use of single-use nappies, but it should not be the norm.

This brings me to some other aspects of the amendment that really start to address how we change the situation. There are some really good local authority small-scale practical schemes that are helping people change to using reusable nappies and get away from single-use nappies. Often, they are based on nappy libraries—frequently run by volunteers, most usually women—which have a range of nappies that families can try out. People can see which ones are suitable before they spend money. Many local authorities—by no means all and by no means extensively—offer schemes that can help families to purchase reusable nappies. The problem is, of course, that when you have a new and growing baby, you need a set of nappies, which is a big initial outlay beyond the reach of many people. Subsection (8) of my amendment would allow the Secretary of State to make regulations for a levy to be paid by nappy manufacturers to fund a scheme to help people use reusable nappies. We are talking about ensuring that people can afford to buy them and that they have access to understanding and knowledge—nappy libraries also share information about how to use nappies and what the best ones are.

There is a comparison here. The noble Lord, Lord Teverson, talked about energy labels on packaging, and that is partly what this amendment calls for. But in fact, it is a bit like cigarette packets, for which we have labelling and pricing that acknowledges the cost of the product that applies to all of us.

So, I strongly commend this amendment to the Minister. I point out that I have probably been approached by more noble Lords on this amendment than on any other I have tabled—and I have tabled some with very wide-reaching effects. This issue is of great interest to people for many reasons. One, of course, is something I am sure we will be referring to a lot in the next few hours: litter. There is a big problem with litter from single-use nappies. It is a deeply unpleasant thing. I am sure most noble Lords have been volunteer litter pickers in some form or another, and it is not a pleasant thing to encounter when doing that.

What we are talking about here is changing things to make life better. It is about the kind of systems thinking that I very often refer to. This is the Environment Bill, and when we talk about the environment people ask if we can we afford the cost of this or that measure. If we can help most families to use single-use nappies, that would save them, on average, £11 a week. That is a lot of money to many families—money that could be spent on healthier food or on taking off some of the stress and pressure. This amendment has environmental and social benefits: it is a win-win. If the Minister is being pressured to offer some yeses, here is an easy win.

6.30 pm

Baroness McIntosh of Pickering (Con): I am delighted to speak briefly on this group and to follow the noble Baroness, Lady Bennett of Manor Castle, who spoke eloquently and forcefully on single-use nappies. Of course, it is not just at the beginning of life that people use nappies; there is the similar and even greater problem of incontinence pads, if we dare call them that, for the third age, so I can see where the noble Baroness is coming from.

If he will permit me, I will congratulate my noble friend Lord Goldsmith and the Government on drafting and including Clause 49 and Schedule 4 in the Bill. I press him on the sentiments behind a number of the amendments, particularly Amendment 119, which was moved by the noble Baroness, Lady Jones of Whitchurch, and which presses for the introduction of a timetable. The explanatory statement says:

> "This amendment aims to ensure that the new packaging producer responsibility system is in place for the beginning of 2024, given that the final compliance year of the current package will end on 31 December 2023."

All who have spoken and will speak in this debate are very concerned about our inability to address producer responsibility. I worked very hard for this during my 10 years as a Member of the European Parliament.

We all seem to pick up on the end of use, and we have all these recycling issues. If you buy perfume or aftershave for a present, you think you are gifting someone what looks like a really nice present, but, when you watch them open it, the contents are of course absolutely tiny, and you think it must be something to do with the marketing of it. Is there some way that we can use the provisions that are set out in the Bill?

What is the government position on labelling? The noble Lord, Lord Teverson, gave a very good example about garments, and I know that there are others that

[Baroness McIntosh of Pickering]
we could use. Has the department done any work on this? I accept the concerns addressed by many, including my noble friend Lord Lucas, who spoke about resource efficiency. Has the department done any costings on this?

In speaking to his Amendment 120 this evening, the noble Lord, Lord Bradshaw, mentioned a concern, which I share and support him on, about wet wipes being put down the toilet, which causes so much cost further down the chain, as we know. We do not need regulations to ask manufacturers to do this; it is a case of education and asking them why they are not doing this in letters that we can all read. So I press my noble friend to say what work has been done on labelling and the education of consumers. We should not let producers slip away from their responsibilities in this regard. I wonder what the cost of such labelling would be—or would we micromanaging and micro-legislating if we were to ask my noble friend to address this?

Lord Cameron of Dillington (CB) [V]: My Lords, I support Amendment 120, in the name of the noble Lord, Lord Bradshaw. No one who saw last April's "Panorama" programme on the state of our rivers could possibly not support this amendment. That picture of what initially looked like a sandbank in the River Thames but was in fact a huge pile of wet wipes and other plastic-fibre sanitary items was simply disgusting to me. I do not think that that is an overreaction on my part.

In evidence given to the Commons' Environmental Audit Committee, one witness—one assumes that he was an expert and knew what he was talking about—addressed plastic-fibre wet wipes, stating:

"every day 7 million wet wipes ... are flushed ... down the toilet".

There were also

"2.5 million tampons, 1.5 million sanitary pads and 700,000 panty liners",

all currently with a varying degree of plastic content. They do not dissolve or break down but, as the noble Lord, Lord Bradshaw, said, have to be raked out of the sewage treatment works and sent to landfill.

The flushing of these products is already illegal. I believe that they can now all be produced without plastic content; in other words, to a "fine to flush" standard. They can now be produced in materials which are equally effective, but which can and do break down within the sewage system, like paper. So I make a plea: the Government should look into this issue and then, I hope, announce a legal end date for the production of all sanitary goods that are not produced to a flushable standard. In the meantime, as Amendment 120 proposes, we should ensure that all the current products are clearly marked as non-flushable.

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, the next three speakers on the list—the noble Lord, Lord Berkeley, the noble Earl, Lord Caithness, and the noble Baroness, Lady Boycott—have withdrawn from the debate, so I call the noble Baroness, Lady Humphreys.

Baroness Humphreys (LD) [V]: My Lords, I apologise for the fact that I was not able to speak at Second Reading on the Bill. I wish to speak to Amendment 124 in the name of my noble friend Lady Scott of Needham Market. I hope the House will allow me to use this amendment to probe with the Minister not the disposal of single-use plastics but the banning of them, and the aspirations of the Welsh Government to do just that.

To understand the drive towards such a ban in Wales one has to understand that the pursuit of sustainable development is central to the Senedd's devolved powers. It is expressly mandated as a core aspiration of the Welsh Ministers under Section 79 of the Government of Wales Act.

Like most countries throughout the world, Wales has its concerns about the prevalence of single-use plastics and the pollution they cause in our cities and towns, on our beaches and in our seas. In 2019, the Great British Beach Clean weekend organised by the Marine Conservation Society found an average of 322 plastic items per 100 metres of beach it surveyed, while in its 2018-19 street cleanliness survey, Keep Wales Tidy found fast-food litter on 20% of the streets that it surveyed across Wales.

The Welsh Government want to use their powers to ban 19 types of plastic items. As well as hoping to ban plastic-stemmed cotton buds, the Senedd wants to ban plastic cutlery, plastic plates, plastic beverage stirrers and plastic straws, as well as food containers and beverage cups made from expanded polystyrene. This is all very sensible—so sensible that our wonderful catering facilities in the House of Lords had already achieved all this before the pandemic struck. Obviously, where the House of Lords leads, Wales is keen to follow.

The problem is, of course, the impact of the United Kingdom Internal Market Act, which would mean that any single-use plastics permitted or imported into the rest of the UK could still be sold in Wales, in effect negating the Senedd's aim. In January of this year, the Counsel General for Wales sought permission for a judicial review of the position but the application was denied on the basis of prematurity. I believe, however, that the Court of Appeal has granted permission to appeal the Divisional Court's decision and that a hearing will be listed in due course. I do not expect the Minister to pre-empt any decision that the Court of Appeal may come to. Can he say, however, whether he or his civil servants have had any discussions with their opposite numbers in Wales on single-use plastics, especially following the election of the new Welsh Government in May, and whether we are any closer to clarity on the situation?

Finally, I want to refer to an excellent article by Dr Richard Caddell, a member of the Wales Governance Centre in Cardiff and a senior lecturer in law. Writing in FTB's Environmental Law Blog and highlighting the problem Wales faces, he concludes:

"The widespread concern over marine plastics … may potentially persuade some UK regulators to upscale their environmental ambitions to meet those of other devolved actors, in order to stave off this particular constitutional conundrum."

These are wise words. I find the phrase "the upscaling of environmental ambitions" particularly elegant, providing, as it does, a rather elegant way forward. Rather than insisting on asserting the letter of the law

or resorting to the courts, employing a strategy of wholesale upscaling of environmental ambitions could, perhaps be more effective.

Baroness Neville-Rolfe (Con): My Lords, I have campaigned long and hard on the horrors of plastic waste, the need for biodegradable alternatives and the deficiencies of the UK local authority recycling system and its inconsistencies. It was a pleasure to follow the noble Baroness, Lady Humphreys. Of course, the Welsh Government did some pioneering work on plastic bags, although I think we need to maintain a single market across the UK.

I am delighted that my noble friend the Minister is making progress in these areas, as we can see from several provisions in the Bill. I also agree with concerns expressed today about wet wipes, nappy liners and discarded masks. However, I am disturbed by the wide-ranging powers we are now discussing. Since there is so little specification in the Bill of what they will be used for, and barely a glimpse of the cost-benefit of individual measures, we are essentially being asked to put our faith in Ministers, subject to the odd debate on affirmative instruments. Against that background, I make three points, the first two of which apply to several of the schedules.

First, has the Minister considered a much simpler and economically more robust alternative approach, which is a simple resource tax? Why cannot plastic and waste be taxed in a simple, linear way, like petrol and landfill, discouraging use rather than creating a common agricultural policy-like array of schemes and exemptions? Even someone relatively well informed, such as myself, cannot find their way around all the different proposals. What study of such levies has there been, including the effect on business and consumers, to pick up what my noble friend Lord Lucas was saying?

Secondly, what is the plan to publicise these various schemes as they are adopted? Is there already a consumer website where they can be studied and one's obligations and risk of penalties understood? If they were taxes, one could just go to HMRC. There is nothing practical and up to date on the Defra website that I could find: everything is very legalistic and bureaucratic. Is such a user-friendly website planned for such measures? Perhaps I can offer help.

Thirdly, on Amendment 292 on reusable nappies, I have to say that I was one of the last mothers in this country to use terry nappies for my four children, as I dislike the waste represented by disposable ones, and my views go back a long way. But I know that, like one-stop shopping, disposable nappies have been a godsend to working mothers and fathers. I am not against some simple standards so that people know what they are buying, and allowing the promotion of washable nappies processed at home or through house-to-house services of the kind I encountered in Vermont. However, I fear I cannot support this highly regulatory and restrictive amendment. I encourage the proposers to think again and come back with something much simpler and easier to justify on Report.

6.45 pm

The Earl of Lytton (CB) [V]: My Lords, I welcome the opportunity to add my voice in general support of these amendments. It is always a privilege to follow the noble Baroness, Lady Neville-Rolfe, with her rapier-like perception of how we might do things better and differently. I commend the usual channels on what is probably a very appropriate grouping, but it does cover a huge area of concern.

On Amendment 119, moved so ably by the noble Baroness, Lady Jones of Whitchurch, I certainly agree that setting a deadline for producer responsibility is necessary and that we need to force the pace. We have been waiting too long and, without the pace being forced, I fear that, quite literally, the can will get kicked further down the road.

On Amendment 120, from the noble Lord, Lord Bradshaw, I have a sense of déjà vu here. I share with the noble Lord, Lord Cameron of Dillington, a revulsion at things such as the Whitechapel fatberg. I also declare a proprietorial interest as an owner of private drainage systems. I have long prevailed upon tenants, holiday visitors, ordinary visitors and my own offspring not to put unsuitable things in drains, not least that product that noble Lords will recall claims to kill all known germs, including, I should say, the useful flora of any septic tank. These are among the things that we have to tell people not to use in private drainage systems.

In fact, many of these items, whether solids or fluids, should not go into foul drains of any sort, whether municipal or private. I agree that clear instructions on things such as nappy liners and wet wipes merely confirm to me that the information needs to be simpler, waste disposal more intuitive and the general public better informed. However, in moving to make this more rigorous, we can help by forcing the process of substitution with flushable alternatives, as advocated by the noble Lord, Lord Cameron.

I noted the laudable campaign of the Nappy Alliance in Amendment 292, tabled by the noble Baroness, Lady Bennett of Manor Castle. Of course, as we have heard, nappies are only part of the problem and many other sanitary products are involved, but I would say that I tread carefully here. However, as an experienced user of drain rods and high-pressure drain flushing systems, I support the general thrust of these things with considerable fervour.

Earlier in Committee we had a discussion on single-use plastics. Again, I agree with the noble Baroness, Lady Scott of Needham Market, and her Amendment 124, that we need to force the pace on publishing a scheme for dealing with this. It is very much down to the Government to produce that.

The noble Lord, Lord Lucas, reminded us in a very timely manner that resource efficiency must be one of our overarching touchstones in considering this. There has to be a degree of proportionality. We have to know what strategically we are getting at so that we can look at the thing in microcosm. I very much support that.

The noble Lord, Lord Teverson, on labelling, brings in a vital part of providing better information on products of all sorts and—this is perhaps where one of the low-cost things might come in—generating cultural change. I think there are many willing members of the public up and down the country who, with better information and knowledge about the adverse effects of these things, would willingly and voluntarily move

[The Earl of Lytton]
in the right direction. We need to try to tap into that. Personally, I am tired of searching for information on contents and potential hazards and for container recycling codes which are often badly printed or covered up by something else and so on. It would be very easy to do a great deal better.

The noble Baroness, Lady Scott of Needham Market, referred to out of sight, out of mind. There is one thing that has always worried me. Certainly, in my youth it used to be the standard advice that if you found a bottle in your late Uncle Fred's garden shed, but the contents were not clear because the label had fallen off, you put it down the loo. That should not happen because there are some quite dangerous chemicals floating around. There needs to be better information about what to do with that.

When we talk about householders taking things to recycling places where they can be disposed of, please let us make sure that there is enough capacity and that they do not have to do what happens in one household recycling depot near me, which is that you have to go on the web and make an appointment to go there, otherwise you will not get in.

There are many things that we can do. On plastics, I am a great believer that the throwaway society is wrong. I am a great user of previously used plastic containers for all sorts of things. I obviously recycle the ones that I do not use, but some of them have been perfectly good substitutes for things that I would otherwise have gone out and purchased, and they last for many years—as containers for garden purposes, for property maintenance and so on. If some plastic items had a second or even a third life available to them, we would go some way to not requiring so many to be purchased in the first place. However, in general, I very much support the thrust of these amendments.

Baroness Altmann (Con) [V]: My Lords, I too support Amendment 124, so ably explained by the noble Baroness, Lady Scott, and agree on how urgent it is for the Secretary of State to publish a scheme for disposal of single-use plastics, and to have that done within a time limit that reflects the sense of urgency that we have heard from so many noble Lords today. I also support many of the aims of the other amendments in this group.

These amendments touch on everyday family life. As the noble Lord, Lord Cameron, explained, anyone who saw the "Panorama" programme a few weeks ago would surely wish to support policies that can help to stop the build-up of fatbergs and pollutants which are already so damaging to our sewers and rivers. The figure of 7 million wet wipes being flushed down our toilets each day, without people generally even realising the damage they are causing to the environment and our sewers—they do not even give it a second thought—is something that this Bill may have the opportunity to address. Making sure that there are clear warnings on such products and that these parts of a household's normal weekly shopping are both identified as being as damaging as they are and, ultimately, as my noble friend Lady Neville-Rolfe said, replaced by biodegradable alternatives which do not cause that same damage are issues which I believe have not yet filtered through into the public consciousness. Given the work that we have done, we understand them—I declare an interest in that my son works in a company involved in replacements for plastics—but extending responsibility for this issue so that everybody becomes aware of it rather than just those in the know could help significantly to produce a step change in consumer behaviour and stop plastics clogging up so many riverbanks, sewers, landfill sites and other areas.

Taxation is clearly an option. Through the price mechanism, it would make sense—I believe that we are coming to this in a later group—to ensure that the most damaging plastics, which have caused significant damage already, are more punitively taxed so that consumers are less keen to use them. In that regard, I add my support to Amendment 128 in the name of the noble Lord, Lord Teverson, on consistency in any framework of public warning messages that potentially will be introduced to help public awareness. However, ideally, as I said, in the not-too-distant future the best option would be for those products that contain plastics that last for potentially thousands of years and do so much damage to be replaced with options that do not hang around and pollute our environment in the way people are currently doing without quite realising the extent of the damage.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, this group concerns packaging and single-use items. I shall speak in support of Amendment 292 in the name of the noble Baroness, Lady Bennett of Manor Castle. All the amendments in this group have a degree of urgency.

The noble Baroness, Lady Jones of Whitchurch, spoke passionately to Amendment 119, which would ensure that producer responsibility for new packaging is in place for January 2024. I have spoken before about the need for producer responsibility on plastics and I fully support the amendment. The noble Baroness is quite right to emphasise the need for producer responsibility to be implemented without delay. After all, there has been extensive consultation. I am obviously more impatient than the noble Baroness, since I would have chosen an earlier date. However, I accept that manufacturers should be allowed time to change their practices and that this cannot be achieved overnight.

My noble friend Lord Chidgey quite rightly raised the issue of those households with septic tanks, a large percentage of which will be in rural areas. For the septic tanks to function as designed, chemical cleaning products and wipes should not be used and should be phased out nationally. I agree with the noble Earl, Lord Lytton, on this point.

My noble friends Lord Bradshaw and Lady Scott of Needham Market, and the noble Lord, Lord Cameron of Dillington, would require the Secretary of State to publish a scheme by December 2021 on the disposal of single-use plastics. This urgent timeframe meets with my approval. Wet wipes are causing tremendous problems and should not be left to volunteers to clear up.

My noble friend Lord Teverson's Amendment 129 provides part of the answer for the Government. If all products were adequately and clearly labelled using a consistent format that the public could easily recognise, they would be more likely to read the information and

take notice. This commonly approved and consistent design cannot be in 6 point font on the very bottom of the package. It will need to be of sufficient size for the purchaser to easily read on the front of the package, rather than having to hold it up over their heads to read what is on the bottom, which often happens when the package contains wet food.

The noble Lord, Lord Lucas, raised built-in obsolescence in household goods such as washing machines. Redundant white goods are extremely difficult to get rid of.

My noble friend Lady Humphreys spoke about the use of single-use plastics and the role of the Welsh Senedd, which wants to ban 19 types of single-use items, including plastic cutlery. The Senedd is concerned about the impact of single-use plastics coming over from the rest of the UK into Wales.

Amendment 292 is definitely not on a glamorous subject. There is no doubt that disposable nappies are extremely convenient. I wonder whether there is a Peer in the Chamber, including the Minister, who has not changed the nappy of a baby at some stage. My mother bought me two dozen terry nappies when I was expecting my first baby. They lasted until my second child no longer needed them and they still had a life in the garage as cleaning cloths. There were disposable nappies around, but they were costly and so were used only when we went on holiday. My granddaughter was kitted out with reusable nappies—a very different kettle of fish from the terrys of my day. They had a set of poppers, which meant they could fit a range of sizes, and were extremely colourful.

7 pm

Disposable nappies are costly, but the cost is spread over the infancy of the baby or toddler, whereas reusable nappies require an initial outlay, but they last and can be passed on. Despite the initial outlay, reusables could save parents £1,000 and possibly more if used on more than one child.

For there to be a modal shift from disposable to reusable nappies, several things need to happen. Single-use nappies need to be disposed of safely and hygienically, not mixed with ordinary household waste. Local authorities and health centres need to promote reusable nappies, especially at postnatal and baby clinics. Fully flushable liners need to be labelled as such in large letters on the front of the packet, not in microscopic writing on the back. This is essential for households not on mains drains. A publicity campaign to encourage parents to switch from disposable to reusable nappies should be given high priority.

A quick search on Google shows a number of supermarkets stocking reusable nappies and online companies selling them. This is not, as they say, rocket science. I fully support this amendment.

Lord Goldsmith of Richmond Park (Con): My Lords, I thank all noble Lords for taking part in this debate. It is a rare area of almost complete consensus—the shared horror at the horrific legacy our throwaway culture has left us and every society on earth. I think the World Economic Forum said that by 2030, if trends continue, there will be more plastic in the world's oceans, as measured by weight, than fish, which really is almost unimaginably horrible to think about.

The resources and waste provisions in the Bill introduce much-needed reforms to tackle waste of all kinds and increase our resource efficiency. The measures look across the product life cycle, from design to use to end of life, ensuring that we are maximising our resources and adhering to the waste hierarchy.

I thank noble Lords for their amendments. I will begin with Amendment 119, for which I thank the noble Baroness, Lady Jones of Whitchurch. Our recent consultation on extended producer responsibility for packaging committed to the implementation as soon as possible and proposed a phased approach commencing in 2023. These are, rightly, major reforms—almost revolutionary, as the noble Lord, Lord Teverson, suggested—and we need to listen to those who are going to be impacted by them and ensure that they are able to adapt.

I am pleased that stakeholders have welcomed the measure, such as the Food and Drink Federation, which said:

> "Food and drink manufacturers want to be accountable for the packaging they place on the market and an effective and cost-efficient system has the potential to be an enabler for increased investment in recycling infrastructure."

We are currently analysing responses to the consultation and will publish our response as soon as we possibly can. We also remain committed to introducing these reforms as quickly as we can. But, unfortunately for those, like me, who are impatient for this change, the system is such that, because we are introducing individual schemes, and because those schemes have a significant impact on products and the producers of those products, each one of those schemes needs consultation and will require an SI. There will be process, and that process is largely unavoidable.

All I can tell the noble Baroness and others who support the amendment is that I and my colleagues in Defra are committed to doing this as quickly as possible. We want to go as quickly as we can, but we also want extended producer responsibility to be extended as far as it possibly can. We want an extensive programme, because we recognise that extended producer responsibility, taken to its logical conclusion, is a really significant part of the solution if we want to get to a zero-waste or circular economy.

On Amendments 120 and 120A, tabled by the noble Lords, Lord Bradshaw and Lord Chidgey, respectively, the Government echo the concern around the Committee surrounding the damage caused to sewerage systems and the wider environment by the incorrect disposal and abundance of wet wipes and the use of inappropriate cleaning products, a point also made by the noble Baroness, Lady Scott of Needham Market. Small sewage discharges from septic tanks and small sewage treatment plants in England are already regulated under the general binding rules, which specifically state that the discharge from septic tanks must not cause pollution of surface water or groundwater.

Nevertheless, I assure the Committee that we have a number of additional possible routes to tackling this issue through the Bill. Powers in Schedule 5 to the Bill could require wet-wipe producers to pay for the disposal costs of discarded and used wet wipes. Schedule 6 allows us to mandate for wet-wipe producers to put information

[Lord Goldsmith of Richmond Park]
on packaging regarding their correct disposal, including "do not flush" directions or clearer alternative text on products not suitable for those with a septic system, to answer the noble Lord, Lord Chidgey. I would like to advance progress in this area as well, as quickly as possible. That ambition is shared by all my colleagues in the department.

Closely related is Amendment 292 on nappies, tabled by the noble Baroness, Lady Bennett of Manor Castle. The powers that we seek in this Bill will enable us to act, if necessary. We explicitly outlined this on page 161 of the Bill's Explanatory Notes to make it clearer in response to discussion on this important issue in the other place. We have also commissioned an environmental assessment looking at the waste and energy impacts of washable and disposable products. This will bring our evidence base up to date, putting us in the best possible position to decide what action to take. That report will be published within a matter of months and certainly this year.

The noble Baroness is right to highlight this. She almost apologised at the beginning on the basis of it sounding marginal, but, as she pointed out, it is not. The amount of residual waste that is made up of used nappies is staggering. Clearly, we must move to a situation where the incentives are such that people by default use genuinely biodegradable alternatives, if they have to use disposables, or even better, washables, although they come with inconvenience that not everyone can accommodate. To answer the noble Baroness, Lady Bakewell, I believe that I was dressed in throwaway nappies as a child. It was a long time ago—it feels even longer after a few weeks trying to get this Bill through the House—but we were all guilty, without a doubt, and we need to see a shift in the right direction. We have in this Bill the tools that we need to foster that shift.

I thank the noble Baroness, Lady Scott of Needham Market, for Amendment 124, which calls for a scheme in relation to disposal costs of single-use plastics. Clause 50 enables regulations to require those who place specified products on the UK market to pay disposal costs. While the clause could technically be used for a scheme on single-use plastics, the Government are already undertaking a lot of work to reduce the prevalence of single-use plastics and, therefore, do not think that a specific scheme under Clause 50 is necessarily the right course of action. Instead, Clause 54 provides powers for charges to be applied to any single-use item containing plastic. We also have powers under the Environmental Protection Act 1990 to prohibit or restrict the use of certain substances. Noble Lords will know that last year, we used these powers to restrict the supply of single-use plastic straws, stirrers, cotton buds, et cetera. In May, the single-use carrier bag charge was doubled to 10p.

In answer to questions put to me by a number of noble Lords, including the noble Baronesses, Lady Humphreys and Lady Scott, and the noble Lord, Lord Cameron, we have the tools to extend that ban, and very much hope that we will extend it, because clearly straws, stirrers and cotton buds need to be a start, not an end, if we are to phase out the use of unnecessary single-use items. The consultation that I mentioned earlier covers proposals to ensure that businesses pay the full net disposal costs of all packaging, including single-use plastics.

My noble friend Lady Neville-Rolfe raised a number of issues and appealed for a cleaner and simpler system. I sympathise with her. We are bringing in a tax system so that products which are made without a threshold of recycled plastic will be taxed a virgin plastic tax, which, I hope, will stimulate the market for recycled plastic.

However, in addition to that, I do not think it is possible through taxation to get to where we need to get to. That is why extended producer responsibility is such an important part of this, as it requires producers to shoulder the full lifetime cost of a product. Equally, no matter how sophisticated extended producer responsibility, or the virgin plastic tax that I mentioned, and some of the other measures that we have talked about today, may be, there is no escaping the need for bans in certain circumstances. That is why we have introduced some bans, and we will certainly be introducing more.

On Amendment 127, tabled by the noble Lord, Lord Lucas, before making regulations under the powers in Clauses 51 and 52 and Schedules 6 and 7, the Government will consult stakeholders as appropriate. As part of this, the Government will carry out and publish impact assessments in accordance with standard practice and the requirements of the specific provision. I hope that the noble Lord is somewhat reassured by that. I note his return to the theme of transparency, and bringing the public with us, and he is right. That is a challenge that we need to bear in mind every step of the way. The impact assessments that I just mentioned will cover the resource efficiency benefits of the proposed regulations, having regard to the underlying environmental goals of these provisions.

Finally, on Amendment 128, tabled by the noble Lord, Lord Teverson, the existing provisions in Schedule 6 already allow us to include requirements about the design of labels, and in exercising these powers the Government will encourage the use of clear and consistent labels that consumers will be able to recognise and act on. That, of course, will include information on whether a product is recyclable. The precise design of future labels or other means of communicating product information will be subject to further policy development, including evidence gathering, analysis and consultation with all the obvious stakeholders. So I hope I have been able to provide clarity and some reassurance to noble Lords, and I ask them to withdraw or not move their amendments.

The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB): I have had one request to speak after the Minister, from the noble Baroness, Lady Meacher, so I call the noble Baroness.

Baroness Meacher (CB): My Lords, I must be the most unpopular person in this House today, and I must apologise. I failed to tell the Whips which amendments I wished to speak to, so I was left off the list. However, I did add my name to Amendments 119 and 292, and I am speaking only because the noble Baroness,

Lady Boycott, in particular, asked me to, as she is unable to be in the Chamber. The noble Lord, Lord Hunt, whose name is also on Amendment 119, also cannot speak . I want to make the point that it is not only the noble Baroness, Lady Bennett, who very much wants these amendments to be taken seriously. So forgive me, and I shall speak as briefly as I can; I have crossed out all sorts of bits.

Amendment 119 refers to paragraph 1 of Schedule 4. I have a significant concern about the wording of sub-paragraph (1), which is not dealt with directly in the amendment. It says:

"The relevant national authority may"—

not "shall"—

"make provision for imposing producer … obligations".

As the Minister made very clear in his response, this leaves Ministers with lots of tools, but there is absolutely no assurance that they will use them.

We know that our Minister—indeed, our Ministers—need important issues to be on the face of the Bill. Otherwise, they will be steamrollered by other Ministers elsewhere, and prevented from doing really important work. This is not trivial; it is important.

Having raised that issue, I want to speak in support of Amendment 119. I think that it was the Minister, on day 1, who made the point that responsibility for superfluous plastic packaging or other waste generally lies squarely on the shoulders of producers—and I think we all know that. I realise that packaging is only one form of environmentally damaging plastic product, but many producers bury their products in a sea of plastic. The great benefit of Amendment 119 is that it focuses on the regulations, which would affect a lot of producers—but, even more importantly, it gives us a target date by which the regulations should be in place: 2024.

As others have explained, Amendment 292 is all about dealing with the appalling consequences of single-use nappies on the environment. Having had four children, and used terry nappies for all four of them, I was a bit shocked—believe me—at the idea of moving away from single-use nappies. But the noble Baroness, Lady Bennett, has set out very clearly the damaging effect of those nappies on the environment.

While understanding the concern of the noble Baroness, Lady Neville-Rolfe—from my perspective as a user of these other things—I have been introduced by the Nappy Alliance to the features of modern-style reusable nappies. I am assured that they really do not commit mothers, or indeed fathers, to the sort of work that those of us back in the day had to put up with. It really was quite appalling: you had buckets and buckets of them. They are apparently perfectly usable with washing machines and with very little parental input. That is very important to me, so I wanted to make that point.

7.15 pm

I think those who tabled the amendment are absolutely right that the issue needs to be dealt with through the promotion of environmentally friendly products, rather than prohibition, and through the provision of accurate information to families about the savings they can make. No, they are not more expensive, as I think the noble Baroness, Lady Bakewell, indicated. Families save money if they move to reusable nappies, which is very important.

Also, the amendment makes clear that there should be controls over trading and advertising to ensure that the public are properly informed about the environmental credentials of nappy products—all really important stuff. Already some local authorities have schemes to promote reusable nappies, offering vouchers, discounts, trial kits and other financial incentives to families thinking of switching from single-use to reusable products. This is all very good stuff. I could say more, but maybe I have said enough to make the point that this really is important. Nappies are doing the most enormous damage to the environment. It could sound trivial, but it most certainly is not.

This is a very helpful Bill, but it could be substantially more helpful if it included some of these sensible, down-to-earth amendments which, in my view, really do not present problems for Ministers. Indeed, they would give our Ministers some strength when arguing their case with others elsewhere.

Lord Goldsmith of Richmond Park (Con): I thank the noble Baroness for her helpful comments. I hope that in the course of my speech I addressed many of them, on issues such as labelling and so on. I say only that the word "may" is standard drafting practice. I would love to see every "may" become "shall", but that tends to be the way that things are written. As she noted, we have all the tools we need to deliver very radical change. Combined with the targets we are setting elsewhere in the Bill on biodiversity, waste and a whole range of issues, I do not believe that even a reluctant Government would be able to escape the need to use those tools to their maximum. So I am much more optimistic than she is that Governments, whether they like it or not, are going to have to take advantage and make use of those tools. I hope that that addresses the main thrust of her argument.

The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB): I have received another request to speak from the noble Baroness, Lady Neville-Rolfe.

Baroness Neville-Rolfe (Con): Sadly, I think the plastic tax that is coming is too complex, but maybe we will learn from that. I rise again because I wondered whether the Minister could now—or indeed by letter, if it is easier—answer my question about communicating these new schemes to consumers. To my mind, discussions of this Bill are too focused on producers and not enough on consumers. You see that in labelling; some labels are great for consumers, as the noble Lord, Lord Teverson, said—for example, washing labels. The labels from my old company, Tesco, show whether or not you can recycle specific packages. These things are actually quite helpful to consumers. I am afraid that a lot of statutory labelling, in my experience—both in the UK and right round the world—is decided by politicians and producers, without thinking about the consumers, who often just ignore the message but have to pay the cost of the extra labels. So this is a really important area.

Lord Goldsmith of Richmond Park (Con): I apologise for not addressing that point earlier. I think my noble friend has almost answered her own question: the key for most of these products will be in the labelling. As she said, we need clear labelling. That is where most consumers will get the information they need about a specific product. She disagrees—but if labelling is clear, I think consumers will be much more likely to treat products in the way that they are supposed to be treated. However, that is clearly not the extent of the consultation or outreach that we will do. If she wants details about the plans coming up, I will write to her; I hope that is okay.

Baroness Jones of Whitchurch (Lab): My Lords, I thank everyone who has contributed to this debate. We have heard some excellent proposals about how we can, for example, improve the labelling of items to make sure that we recycle and reuse efficiently. The noble Lords, Lord Bradshaw and Lord Chidgey, and others are rightly concerned about what is being flushed down our drains—the noble Lord, Lord Bradshaw, gave us some vivid examples of the consequences of non-flushable items clogging up our sewers. We clearly need action on wet wipes. The statistic that we are flushing 7 million wet wipes a day down the drains is truly shocking. How can so many consumers not know the damage that is being done by these actions? It is a matter of communication as much as anything. I did not see the "Panorama" programme, but I saw the chunk of fatberg that was on show at the Museum of London a couple of years ago and I can verify that it was truly horrific.

The noble Lord, Lord Teverson, raised an important point about the proper labelling of products with an agreed improved design—he is quite right about that. He points to the success of energy-efficiency labelling and we can all identify with the urgent need for consistency and clarity of labelling. The amendment of the noble Lord, Lord Lucas, echoes this need for clarity and for the detail of the resource efficiency of products so that people can make informed choices. He is right that we should ensure that products such as domestic equipment should be designed for long life. We should know what we are buying and what the ultimate lifespan of these materials is.

As the noble Earl, Lord Lytton, said, it should be easy to do a great deal better on this issue. The noble Baroness, Lady McIntosh, asked what the Government are doing on labelling. I understand that there is already considerable work going on to agree a consistent labelling regime, but maybe the Government should make it more of a priority to choose a system and sign off the design so that we can all see it in practice.

The noble Baroness, Lady Scott, is pursuing the same approach as I have taken in my amendment, which is to try to pin down the Minister and the Government on dates—in this case, on the use of single-use plastics. I agree absolutely that it should be possible for the Government to publish such a scheme by the end of the year. The issue of single use is going to be a running theme through a number of groups as we debate them in the coming hours and days.

I was quite taken by what the noble Baroness, Lady Humphreys, said about the perverse application of the internal market, which was surely never intended for the use that it is now being put to, which is stopping the Welsh Senedd taking more immediate action on single use. I am not sure whether the Minister addressed that issue, but it was never intended, I am sure, that the internal market should have that effect.

Finally, the noble Baroness, Lady Bennett, raised the huge issue of disposable nappies and the environmental damage that they create by being dumped in huge quantities in landfill or misplaced in other recyclable waste streams. She gave us some shocking examples about their impact on the environment. I pay tribute to the work of the Nappy Alliance and all others who have campaigned tirelessly on this issue. We urgently need a cultural shift to using reusable nappies, as well as better information about the materials and packaging used in disposable nappies. As the noble Lord, Lord Cameron, said, many people think they are made from paper and do not realise that they have a plastic content. I thank the Minister for updating us on the work that the department is doing on this problem, but clearly there is far more to be done.

Finally, I welcome the many comments from around the Chamber in support of my amendment, but the Minister will not be surprised to hear that I am a little disappointed in his response. I do not doubt his personal commitment, but the truth is that the introduction of extended producer responsibility has already been delayed. It has been three years since it was first proposed, and our deadline will take another three years, so it is absolutely reasonable. As the noble Baroness, Lady Bakewell, said, she would have introduced a much more immediate deadline. I understand that we have to allow time for producers to adjust, but if we do not set a deadline there is a real danger that they will simply drag their feet in the consultations and we will find that we are consulting more and more without an immediate deadline to focus individual minds. I have to say that we feel that there should be more ambition and that our date and deadline is a reasonable deadline for producers to deliver.

As a final point on that, noble Lords just said that the use of "may" was standard phraseology, but there are some "musts" in the Bill, so we could have had a "must" on this occasion. Perhaps that is something we can look at when we return, as we inevitably will, to this issue on Report. In the meantime, I beg leave to withdraw the amendment.

Amendment 119 withdrawn.

Amendments 120 and 120A not moved.

7.25 pm

Sitting suspended.

7.55 pm

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): My Lords, we now come to the group beginning with Amendment 121. Anyone wishing to press this or anything else in the group to a Division must make that clear in the debate.

Amendment 121

Moved by ***Lord Goldsmith of Richmond Park***

121: Schedule 4, page 162, line 34, at end insert—

"(2) The requirement in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force."

Member's explanatory statement

This amendment provides that the consultation requirement in paragraph 8 of Schedule 4 may be met by pre-commencement consultation.

Lord Goldsmith of Richmond Park (Con): My Lords, in moving technical government Amendment 121, I will also speak to similar government Amendments 122, 125, 126, 129, 132, 146, 147 and 151 in my name, which would allow for public consultations undertaken during this Bill's passage to count towards the corresponding statutory duty to consult. These minor and technical amendments reflect the work that has continued while the Bill has been paused, including the launch of consultations that were recently undertaken—for example, on deposit return schemes, extended producer responsibility and consistent recycling collections.

Also in this group is government Amendment 278. The Bill establishes a number of functions that are to be exercised concurrently by Ministers of the Crown and the devolved Administrations. These enable us to provide for common UK-wide approaches in future, with agreement from the devolved Administrations. However, restrictions in Schedule 7B to the Government of Wales Act 2006 prevent the Senedd removing such a function of a Minister of the Crown without the consent of the UK Government.

The Welsh Government have raised concerns over the Senedd's ability to end the concurrent arrangements in future in the light of those restrictions. The UK Government agree that the restrictions are not appropriate in these circumstances. Amendment 278 would therefore carve out the concurrent powers in the Bill from the consent requirements. This is in line with the approach taken to carve out concurrent functions in other enactments through the Government of Wales Act 2006 (Amendment) Order 2021.

I beg to move.

Lord Blencathra (Con): My Lords, I declare my environmental interests as in the register. However, today, I speak in my capacity as chair of the Delegated Powers Committee. I will speak to Amendments 148, 150, 160, 190, 191, 231, 243 and 250, which flow from the recommendations in our report on the delegated powers in the Bill. The changes that I am proposing are incredibly modest; the reason for that is that the Bill has satisfied my committee on the vast majority of delegated powers in it.

To set my proposed amendments in context, we said in our report that Defra's delegated powers memorandum was "thorough and exceedingly helpful" and

"a model of its kind".

This is a massive landmark Bill of 141 clauses, 20 schedules and eight different parts. It has 110 regulation-making powers but 44% of them are affirmative, which must be a record. We recommend that only one of those powers be upgraded from negative to affirmative. It has 17 Henry VIII powers but 15 are affirmative. One of my amendments seeks not even to delete one of the Henry VIII powers but merely to limit it.

I contrast what Defra is doing with the delegated powers in this Bill with one from BEIS that we reported on last Friday: the Advanced Research and Invention Agency Bill. It has a mere 15 clauses and deals with a single issue yet, as we have seen many departments do ever since they learned this ploy from the European Union (Withdrawal) Act, BEIS has tacked on a completely unnecessary Henry VIII power to amend any Act of Parliament since 1066.

So the Environment Bill is very good in delegated powers terms but my amendments seek to make it an absolute exemplar across the whole of government. Let us take the easy ones, which I am sure my noble friend can assent to just like that. Amendments 148, 150, 195, 231, 243 and 250 simply ask him to adopt exactly the same procedure that is already in Clause 24(4), which is to lay the published guidance before Parliament. Where guidance is statutory and has to be followed, we in the Delegated Powers Committee say that it should be approved by Parliament, but guidance that is merely intended just to guide does not need parliamentary scrutiny. The Bill therefore has a provision in Clause 24 that the Secretary of State can issue guidance to the OEP while subsection (4) says that the guidance must be laid before Parliament and published.

8 pm

All that my amendments in this selection are doing is applying the same requirement to other guidance in the Bill, which is simply replicating what is already in Clause 24(4). We are not asking for it to be approved by negative or affirmative procedure, nor that it be debated or prayed against. All we seek is that it be laid, which means that it appears in our appendix to proceedings; Peers and MPs then know of its existence and can go and read about it if they wish. It is a courtesy to Parliament and, since my noble friend the Minister is a courteous man—as well as, if I may say so, an exceptionally knowledgeable environmental champion for all biodiversity in the UK—I am sure that he will be able to accept this group of amendments. That polishes off six of my nine amendments.

Amendment 160 suggests that the regulation permitting the recall of motor vehicles or parts of vehicles for environmental reasons should be upgraded from negative to affirmative. This power will be used against not individuals but manufacturers or distributers. It is the sort of power I wish we had had years ago so that we could take those millions of poisonous Volkswagens off the road. If this power is used, we are talking about thousands of vehicles and millions of pounds—possibly approaching billions if it were used in circumstances similar to those cheating diesel vehicles.

In those circumstances, I suggest that a negative procedure is just not good enough. Something this big and controversial needs the affirmative procedure. I can imagine MPs demanding debates and Urgent Questions on Statements, and the Government will be severely criticised if something of this magnitude is done with a negative procedure. Nor can it be argued

[LORD BLENCATHRA]
that the power has to be used urgently and therefore the negative is needed. If it was an urgent safety matter, the "made affirmative" procedure could be used. There is nothing to be lost here by my noble friend the Minister agreeing to this.

Finally, we come to dear old Henry VIII. In many Bills, we have been scathing about the abuse of Henry VIII powers. Of course, they are necessary in many Bills, but they should be tightly circumscribed and, ideally, sunsetted. My committee was content with every Henry VIII power in this Bill except for one. This relates to Clauses 88 and 90, on the valuation of land drainage.

Noble Lords will know that the whole of the law relating to valuations and land drainage is contained in the Land Drainage Act 1991—not the most exciting of reads. There is no other law remotely involved. The Bill makes amendments to the 1991 Act and understandably has powers to make regulations to make "incidental, supplementary, consequential" provisions et cetera. Indeed, the Defra delegated powers memorandum justifies this by saying that this is

"in case the application of the new calculation requires incidental or consequential provision to be made to the LDA 1991, or to repeal specific provisions of the LDA 1991 which are made redundant as a result of the regulations applying in relation to all IDBs."

What completely mystified my committee was that we accept the need for powers to amend the 1991 Act—the only Act mentioned and in contention—but the drafters here have widened the Henry VIII power to include every other Act of Parliament. We think that that is quite unnecessary and it blots the copybook of what are otherwise acceptable Henry VII powers—and there are not many times we say that.

My noble friend, I am sure, will want to accept the tweak to the Henry VIII power and the other amendments, but all I am asking him to do tonight is to take these away and consider them. I accept that he may have to consult other departments on this, but I hope that he will be as successful there as he was in getting biodiversity net gain extended to national infrastructure projects. That was an incredible success of the Minister and Defra. Getting others to sign up to that was an incredible achievement; I am sure that he will manage the same with these amendments if he requires other departments' approval.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): The noble Baroness, Lady McIntosh of Pickering, has withdrawn so I call the noble Baroness, Lady Humphreys.

Baroness Humphreys (LD) [V]: My Lords, I wish to speak to Amendment 278 in the name of the Minister. My contribution here will be a short one. I begin by thanking the Minister for the co-operation between his department and the Welsh Government in drawing up this Environment Bill. The Welsh Government recognised, long before the Senedd elections in May this year, that there would be no time in the Senedd's timetable for them to introduce their own Environment Bill and they have been content for aspects of future Welsh policy to be delivered through this Bill. They believe that this allows for quicker delivery of Welsh policy and enables continued accessibility for users by continuing an English-Welsh legislative approach.

The more contentious aspects of the Bill have been those relating to air quality and environmental governance. These are both areas where the Senedd will legislate for Wales in their own Bills this term. The Bill contains powers for Welsh Ministers in relation to regulation of waste and recycling, and I believe there has already been some joint consultation on the use of those powers but, again, Welsh Ministers will be drawing their own conclusions.

The issue that had raised the concern of Senedd Members was that of the use of concurrent plus powers, where the Senedd would consent to the Secretary of State legislating for Wales in certain areas of devolved competence, but without being subject to the scrutiny of the Senedd. There were also concerns, I believe, that the transference of these powers would be irreversible. Amendment 278 addresses these concerns by the inclusion of a new clause which enables the Senedd to alter or remove the Secretary of State's function relating to Welsh devolved matters, and to do so without the Secretary of State's consent. I welcome this amendment and, again, I thank the Minister for the willingness to work together that has been evident in the relationship between the two departments.

Baroness Neville-Rolfe (Con): My Lords, it is a pleasure to follow the noble Baroness, Lady Humphreys, again and to note a satisfied customer. I am afraid I rise to oppose Amendment 121 in the name of my noble friend the Minister. I have already explained that these provisions are wide-ranging, giving the Government powers to do goodness knows what, without making their intentions clear in this Bill. I worry about the precedent set in this sector and indeed for other sectors and for other Bills.

Even before the government amendments, the consultation provisions are rather weak. For example, paragraph 8 of Schedule 4 says:

"Before making regulations under this Part of this Schedule the relevant national authority must consult persons appearing to it to represent the interests of those likely to be affected."

So, that is a lot of discretion. Will any proposals made under the powers in this Schedule also be published for public perusal and to ensure that any bugs are noticed before regulations are made? Consultation on regulations is vital and there always has to be a public as well as parliamentary stage to this. The department may well be unaware of wider impacts that public consultations and cost benefit can expose. I think of the damage done to the tourist industry when Defra closed down the countryside during the foot and mouth crisis. Sadly, it does not stop there. The Minister is now, in a string of amendments in this group, proposing that the consultation requirement may be met by precommencement consultation. I would like to understand this better. Which forthcoming regulations will be affected by this waiver and how can each be justified? My noble friend mentioned the deposit return scheme and some devolved matters. Is that the limit? Could this list be published and could the power be limited in time?

The Minister will have got used to the idea that I am concerned that his legacy regulations should be fit for purpose. I look forward to hearing from him on the justification for this change of approach on consultation. I am afraid that my initial view is that it cannot be justified and that it creates a deplorable precedent.

Baroness Hayman of Ullock (Lab): I am very pleased that we are discussing consultation today, even if it is in a very small way. It was good to hear the speech of the noble Baroness, Lady Neville-Rolfe, and her request for more information on exactly what the proposals for precommencement consultation mean and what areas they will affect—because this is clearly an important issue.

Noble Lords may not be aware that I was an associate of the Consultation Institute, and it was my job to go out and consult local communities when major infrastructure projects were coming their way—so I have for many years taken a close interest in the Government's consultation exercises. Some of them have been very good, and some of them have not. Consultation is now a fact of modern public life, yet it has all too often been mistakenly characterised as the art of listening. So, if noble Lords will indulge me, I shall share the definition used by the Consultation Institute, which may be something the Minister can pass on to his colleagues. It says:

"The dynamic process of dialogue between individuals or groups, based upon a genuine exchange of views, with the objective of influencing decisions, policies or programmes of action".

I hope that the consultation and precommencement consultation proposed in the Bill mean not only that the Government will listen but that those who take the trouble to take part will genuinely be heard and will influence the outcome of this legislation in a positive way.

The noble Baroness, Lady Humphreys, talked about her and others' concerns regarding how the legislation would affect Wales and the Senedd's powers of scrutiny. As the Minister said in his introduction, Amendment 278 addresses these concerns, so I hope that the Government will continue to work with the Senedd in a positive way on these important environmental issues.

I thank the noble Lord, Lord Blencathra, for his introduction to his many amendments. It is important to look at his proposal to publish guidance, because it is important that we have transparency around that. It should be published or laid before Parliament when the issues are of importance. So I support him in that, because I believe that it is good practice, and his committee has clearly recognised that. I was also interested to hear that the noble Lord's committee had suggested moving certain procedures from negative to affirmative. Having read his amendments, I note that these are clearly in very important areas concerning this part of the Bill, so we believe that the Minister should take a close look and listen to the committee. I thank the noble Lord for drawing my attention and that of this side of the House to those matters, and I look forward to the Minister's response.

Lord Goldsmith of Richmond Park (Con): I start by thanking my noble friend Lord Blencathra for his contribution to this debate and particularly for his committee's hard work on the Bill. The Government very gratefully received the recommendations of the Delegated Powers and Regulatory Reform Committee report, and I assure the noble Lord that we are very actively considering them and will bring forward a response imminently. I thank him very much for his thoughtful comments and work on this. I also thank the noble Baroness, Lady Humphreys, for her kind words.

I turn to the questions put to me by my noble friend Lady Neville-Rolfe. We are bringing forward these amendments principally so that we can deliver some of the measures that we were talking about in the last debates—extended producer responsibility, the deposit return system, and so on—as quickly as possible. There is a demand for us to do so, and that is the purpose of the amendments.

The areas within scope are all parts of Clause 54. In particular, we are considering whether guidance should cover the circumstances where it may not be technically or economically practical or where there may be no significant environmental benefit to separately collect recyclable waste streams. In addition, we are considering whether it should cover the frequency with which household waste other than food waste should be collected and the kinds of waste that are relevant for the purposes of commercial or industrial premises. The guidance may make different provisions in relation to household waste, non-domestic premises and commercial and industrial premises. That is broadly the scope, but I am happy to follow up with more detail. I think that the reason—which is to accelerate some of these important initiatives—will be broadly supported by the House, so I would be grateful if my noble friend Lord Blencathra would not press his amendments.

8.15 pm

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): I have received a request to speak after the Minister from the noble Lord, Lord Framlingham.

Lord Framlingham (Con) [V]: My Lords, I am grateful to have the opportunity to say a few words after the Minister. I am also pleased not to disappoint my noble friend Lord Caithness, because I plan to say a word or two about that major infrastructure project HS2. It is fascinating that HS2 gets only passing references in a Bill on the environment. Perhaps this is because no one really wants to study the matter in detail and be forced to admit what a dreadful effect it is having, and will continue to have, on our environment and what a huge mistake it will turn out to be.

It is a tragedy that when the Government are doing so well on environmental issues—with this Bill, for example—and there is a huge increase in tree planting, a matter close to my heart, they should give their blessing to this unnecessary and destructive scheme. It is what is called a vanity project, serving little useful purpose, and will turn out to be the greatest manmade environmental catastrophe of our time. It will, without a shadow of a doubt, do far more damage to our countryside and people, and people's lives, than it can possibly compensate for.

The scale of the damage is unbelievable and will include irreparable damage to many of our ancient woodlands. The very suggestion, which has been made, that they could be moved or replicated is, to anybody with the slightest understanding of these matters, quite ludicrous. It is hard to grasp the enormity of the operation. Its biggest site to date, at the southern end, covers 136 acres. It has just started boring a 170-metre long tunnel under the Chilterns that will take its massive boring machines, working 24 hours a day and

[Lord Framlingham]
seven days a week, three and a half years to complete. Already, there are problems with the local water supply, caused by the extent of the drilling through the chalk. I suspect that there will be many more unforeseen difficulties ahead.

I could go on to list all the environmental damage and despair that this project has caused, and will continue to cause, along its route. But I will not, partly because it is too depressing and partly because it will soon be obvious to everybody. I do not expect the Minister to accept, as I do, that HS2 should be stopped even at this late stage. But will he, at least, promise to watch the operation like a hawk and do all he possibly can to compel HS2 to minimise the damage it does?

Lord Goldsmith of Richmond Park (Con): I thank the noble Lord for that final comment. I am very happy to give him my absolute assurance that I will do whatever is in the power of Defra to ensure that, whatever the outcome of HS2's construction, nature is left in at least as good a position as it currently is. I believe that is the commitment it has made: no net loss, even though they are not in scope of biodiversity net gain.

Amendment 121 agreed.

Amendment 122

Moved by ***Lord Goldsmith of Richmond Park***

122: Schedule 4, page 165, line 38, at end insert—

"(2) The requirement in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force."

Member's explanatory statement

This amendment provides that the consultation requirement in paragraph 20 of Schedule 4 may be met by pre-commencement consultation.

Amendment 122 agreed.

Schedule 4, as amended, agreed.

Clause 50: Producer responsibility for disposal costs

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): We come now to the group beginning with Amendment 123. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Amendment 123

Moved by ***Baroness Bakewell of Hardington Mandeville***

123: Clause 50, page 30, line 13, at end insert "including fly-tipped items."

Member's explanatory statement

Farmers and landowners currently have to pay for the removal of all fly-tipping. This amendment is intended to extend the 'polluter pays' principle to fly-tipping.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I rise to speak to this group of amendments in my name and thank the noble Lord, Lord Randall of Uxbridge, for adding his name to Amendments 123 and 136.

Fly-tipping is a blight on the countryside. Sometimes it is individuals not bothering to dispose of their larger redundant items of furniture properly. Sometimes it is criminal activity on the part of opportunists who offer to dispose of awkward items for households for a fee, then take them away and dump them in the countryside—mostly in some quiet rural lane, in a field gate or on a farmer's lane.

Evidence suggests that fly-tipping affects 67% of farmers and that it costs them upwards of £47 million a year to clear up fly-tipped waste. In 2019-20, there were just under 1 million incidents of fly-tipping in England—the equivalent of nearly 114 every hour—at a cost to local authorities of millions. It is having a significant impact on our rural areas and wildlife. These miscreants do not have to pay for their actions; it is the landowner who has to pay to clear up the resultant mess, and there is little redress through the courts.

How often do we see the countryside littered with cartons from takeaway food? It really is time that the manufacturers and producers of this type of waste picked up the cost of clearing it up—McDonald's and Kentucky Fried Chicken spring to mind, and I am sure your Lordships can think of others. It is often very difficult to trace the person who has done the fly-tipping but much easier to see who has manufactured the waste. The "polluter pays" principle is key in helping to solve the problem. This issue cannot be sidestepped.

The Bill makes provision to reduce the occurrence of fly-tipping and littering by the introduction of deposit schemes and powers for secondary legislation to tackle waste crime and the scourge of littering, but this will not help with the larger items that are often left in quantity on farmland. The Bill will introduce new measures for regulators, including local authorities, to tackle waste crime and illegal activity. It would be helpful to know what these measures are likely to be but, as they are expected to be determined in secondary legislation, perhaps the detail has yet to be written. The Bill also enables the Secretary of State to make regulations to amend the primitive range of penalties for existing fixed penalty notices. This is critical in attempting to dissuade people from fly-tipping. Can the Minister say why this power is not being extended to local authorities and the police? They are much closer to the problem on the ground and may well know who the likely culprits are.

Private landowners are liable for any waste dumped on their land and responsible for clearing it away and paying the cost. If they do not act or inform the local authorities about the fly-tipped waste, they risk prosecution for illegal storage of waste. This is a nonsense. Now is the time to think about how landowners and farmers can be recompensed for the amount of money spent on clearing up other people's waste. There needs to be greater support for the protection of landowners coupled with tougher penalties on perpetrators, such as seizing the vehicles used to fly-tip.

Having been a councillor for many years, I understand the role of local authorities and that some are more diligent than others in tackling the problem. Local authorities should make it easier for people to dispose of their waste legally at recycling centres. Sometimes their rules are inconsistent and unclear. Now is the time for these rules to be replaced with common sense and practical measures that enable people to recycle or dispose of their waste legally. This is a very serious issue and needs to be addressed urgently before the countryside becomes an unsightly dumping ground. I beg to move.

Viscount Ridley (Con): My Lords, I congratulate the noble Baroness, Lady Bakewell of Hardington Mandeville, on this amendment and thank her very much for her contribution. I also declare my interest as a landowner in Northumberland. I am not here to carp about the cost to me of doing this, more to carp about the inconvenience of finding your gateways blocked again and again, as well as the unpleasantness of this problem. It is often a really unpleasant thing to have to deal with.

Fly-tipping is a huge problem. It has got worse during the pandemic because a lot of local authorities closed their tips when there was social distancing of various kinds. The fly-tipping industry—if we can call it that—seems to have a sort of momentum behind it now, so even though those tips are open, it continues. On my farm, we experience this problem about once a week, to give you an idea of how bad it is. There is usually a chunk of leylandii hedge, a fridge, a cooker, some flooring, bits of clothing, toys, random chunks of concrete, lots of plastic, plenty of polystyrene packaging and some really unmentionable things as well.

If you are lucky, there is also a bank statement or a utility bill and this can be very helpful. However, when you go round and knock on the door of the person whose bank statement it is, they apologise profusely and, as the noble Baroness said, say, "I'm terribly sorry, we thought they were a legitimate waste disposal outfit". That is, again and again, the problem that one encounters. There are plenty of rogues masquerading as legitimate waste disposal people. Surely it is possible to tackle that problem.

In our case, many of the tips are—because we keep our gates firmly locked—on the public highway side of the gate and they end up being the local authority's problem to get rid of, not ours. All it takes is a couple of calls and a lot of inconvenience and it happens. As I said, I am not here to complain about the cost to me. It is £250 a time to hire a skip and it is a lot of work.

What would work extremely well, because this happens again and again in certain locations, is CCTV. But if you put up CCTV you have to put up a sign saying that you have put up CCTV, otherwise you cannot bring a prosecution based on it. Now, if you put up a sign saying that there is CCTV in a gateway, you are simply shifting the problem to somebody else's gateway.

I worry that the cost of legitimately disposing of waste is too high and the inconvenience too great. The noble Baroness, Lady Bakewell, touched on this as well. More effort needs to go into making it easier for households to find somewhere to dispose of their waste cheaply and easily. That would help a lot.

I think this amendment would help and it is right that landowners should not have to bear the cost of removing this stuff from their land, but further changes are necessary to alter the incentives and stop the dreadful nuisance created. I join the noble Baroness, Lady Bakewell, in asking for further detail on what the Bill is likely to be able to enable, in terms of secondary legislation, to try to tackle this problem.

While I am on my feet, may I touch on one other issue? If you go for a walk on remote moorland in the Pennines, you encounter zero litter except one thing that you encounter on every walk and that is birthday balloons. They just appear all the time, but not in very large numbers. They are not terribly inconvenient and not so difficult to get rid of—you stuff them in your pocket—but it is upsetting in a beautiful landscape suddenly to find something shiny and bright purple. Well, purple is all right on a moorland—bright yellow, shall we say? It would be quite easy to ask the birthday balloon industry always to put an address on birthday balloons, so that I could send them back in a package.

Lord Blencathra (Con): My Lords, it is a pleasure to listen to the noble Baroness, Lady Bakewell of Hardington Mandeville, and my noble friend Lord Ridley, who set out the case for this amendment so convincingly and cogently. I can be very brief by comparison. I strongly support these amendments. It is simply a matter of natural justice and fairness. If someone dumps their old sofa or mattress in the street or a council car park, the council will initially bear the cost of removing them and then, of course, the council tax payers will share that cost. Of course, in an ideal world, people would not do that, like the people who left a bathtub, a commode and a pile of polystyrene beside some official recycling bins I was using recently. I would love it if we could catch in every case the despicable people who dump their garbage like that, but catching them, as my noble friend said, is very difficult.

The police and councils need to put more effort into tracking down the organised criminals who dump commercial and building rubbish in the countryside on a vast scale. What is worse, when these same vile individuals dump their rubbish in a farmer's field or lane, there is no council or council tax payer to share the cost. The farmer has to bear the complete cost of removal. Of course, some of that waste may have poisoned his land and his animals. That is simply wrong and unfair. The cost burden has to be shared among society, as these amendments would provide for, and be passed on to producers.

I perfectly well accept that Mercers, Sealy beds and Argos did not dump the mattress or the sofa and that their hands are clean in that regard, but they profited from the original sale of the items. The farmer got no financial benefit from the sale, but has to pay the cost of their disposal. That is not right, and it is why I support the amendments.

8.30 pm

Lord Randall of Uxbridge (Con) [V]: My Lords, it is a pleasure to follow not just my noble friend Lord Blencathra but my noble friend Lord Ridley and the noble Baroness, Lady Bakewell of Hardington Mandeville.

[Lord Randall of Uxbridge]

Like my noble friend Lord Blencathra, I do not have much to add. I think we know about the blight of fly-tipping. I would just say that it is not restricted to the countryside. There are also private areas even within the suburbs. I take the point that, very often, it is the local authority that picks up the bill, but there are areas where that does not happen—for example, on sports grounds and so on.

We have to tackle this issue. I put my name to Amendments 123 and 136, alongside that of the noble Baroness, Lady Bakewell of Hardington Mandeville. I know that the fines, which were increased a year or two ago, can be substantial, but they are not always put in place by magistrates. What my noble friend Lord Ridley said about CCTV is another very good point—it just moves it on—but people always ask, "Why can't we have more CCTV out?" Perhaps some of the fines could go towards putting CCTV out, or even to a fund that could help those landowners and farmers who have substantial costs to meet.

As has been said, a lot of rogue builders or cowboys will often go around and say to somebody, "We'll dispose of it; we've got the proper licence" and then just dump it. It is then traced back. Albeit that the people who have had the work done should have looked for the licence, it is not something that some of the more elderly think of doing. It is a real problem.

Finally, I thoroughly endorse what my noble friend Lord Ridley said about balloons. I wanted to try to ban some of those, because they are a danger not just to the countryside and what it looks like but to wildlife and so forth, including domestic livestock. If I was in that mood to ban things, I would also look at Chinese lanterns, which are even more of a danger.

Lord Carrington (CB) [V]: My Lords, I declare my interests as set out in the register. I thoroughly support the amendments tabled by the noble Baroness, Lady Bakewell of Hardington Mandeville, and the noble Lord, Lord Randall of Uxbridge, together with everything said by the noble Viscount, Lord Ridley, and the noble Lord, Lord Blencathra. They correctly identify the largely ignored victims of fly-tipping, in the shape of farmer and landowner. A recent survey by the Environment Agency shows that farmers as a group are the most affected by large-scale, illegally dumped rubbish. The NFU rural crime survey revealed fly-tipping as the most prolific crime reported by members, with 48% of those surveyed experiencing it in 2020.

Farmers will often break the law by moving fly-tipped rubbish from private land to the public highway and thereby avoid the need to pay for the disposal. This is very unsatisfactory but understandable in the circumstances.

Many suffer appalling mental anguish as they see the countryside they love spoiled and degraded. One can argue that they should have fenced the land or secured the gate, but this is often not a practical solution, depending on the nature and topography of their land. In any event, fly-tipping should not happen and the only person to shoulder the blame should be the perpetrator. You only have to pick up a copy of the farming press to understand the grief and cost involved.

I have had asbestos dumped in woodland; others have had quantities of car tyres chucked over steep banks. Fridges, mattresses, deep freezers, gas bottles, sanitaryware—one could go on. This can be an expensive cleaning and disposal exercise. The asbestos cost me a four-figure sum, with the need to bring in specialists and a licensed skip. Education and financial sanctions are the answer, and the latter is covered perfectly by these amendments. Education is separate, but might eventually change behaviour for the better and more lastingly.

The Earl of Caithness (Con): My Lords, I have spoken on fly-tipping many times before in your Lordships' House, so I will not repeat that. Given what other noble Lords have said, there is little left to say. I also congratulate the noble Baroness, Lady Bakewell of Hardington Mandeville, for introducing these amendments. She has my total support.

My noble friend Lord Ridley is absolutely right: the problem has got worse in the last 15 months. It was bad when I talked about it on the Agriculture Bill, but it is considerably worse now. I can only add to what the noble Lord, Lord Carrington, just said, and that, if a farmer finds somebody dumping stuff in their field, they are often threatened. I know of a farmer who accosted somebody who was dumping rubbish in their field. The person turned on him and said, "Don't do anything. We know your children. We know your children's names and where they go to school". These amendments are very necessary.

Baroness Bennett of Manor Castle (GP): My Lords, it is a pleasure to follow the noble Earl, Lord Caithness. I join every speaker in thanking the noble Baroness, Lady Bakewell of Hardington Mandeville, for tabling these amendments and offer my support. Rather than repeating what has been said, I will make a few extra points.

The noble Lord, Lord Carrington, referred to fridges. There is a term I am not sure I have heard mentioned in this debate and an issue that needs to come up the agenda, which is planned obsolescence. We have seen many products last less and less time. I had a fridge that died after seven years, and I went on social media to have a big grumble about it. Lots of people told me I was lucky it had lasted that long. We are seeing lots of fridges being dumped, but for how long were they made to last? If we go back to the manufacturer or maker of the product, we are heading in the right direction.

How much farmers are suffering from this problem has been stressed already. According to a 2020 NFU survey, nearly 50% of farmer respondents had suffered from fly-tipping. So it is a huge issue for farmers, but also for many other people responsible for land. Since the noble Baroness, Lady Young of Old Scone, is not speaking on this group, I will refer to the Woodland Trust which, in the seven years to June 2020, had spent more than £1 million cleaning up fly-tipping. We are looking at organisations like that.

We also have not mentioned manufacturers and commercial companies—not just fake disposal companies but companies not disposing of industrial waste appropriately. I refer to a case that just came up in the

last few days. For the third time, in a similar location, Colchester council found a leaking drum containing what was clearly a noxious substance. It cost £2,000 each time to dispose of that drum properly—I should declare my vice-presidency of the LGA here—costs that the council has to bear. We have a widespread problem. We tend to say that it is individual householders but, as this debate has brought out, it is important to say that this problem is much broader.

The Earl of Lytton (CB) [V]: My Lords, as a rural resident and minor landowner, I very much welcome the opportunity to debate this issue. I thank the noble Baroness, Lady Bakewell of Hardington Mandeville, for raising it. Fly-tipping is by any standards a national scourge, and in places it occurs on what might be called an industrial scale. It really is a problem that we have to address.

My noble kinsman, the noble Viscount, Lord Ridley, made all the points I would have made, except that I will reiterate something I mentioned at Second Reading. This business of landowner responsibility comes about by virtue of the environment Act of I think 1990. It was not just a question of polluter pays; if the polluter could not be found then the owner of the land was responsible. This always seemed manifestly unjust. It really does need to be dealt with.

I very much appreciate the notion that there should be some sort of co-responsibility, perhaps by putting sums into a fund that would enable this to be funded and operated by an NGO or by local government—I am not sure which; I do not wish to impose burdens on anybody. That seems to be one of the principles.

Some fly-tipping does not involve grab lorries that disgorge 20-tonne loads at a time, which is clearly an industrial-type process. People must have HGV licences and there are operators in places where these vehicles are legally stationed and parked up. There is quite a lot at stake for them if they are caught out. CCTV footage having to be disclosed should be unnecessary for this sort of thing. After all, one is dealing with the apprehension of a criminal act. It should be exposed as that.

The noble Baroness, Lady Bennett of Manor Castle, referred to obsolescence. I quite agree with that point. Having nursed a domestic appliance to its 27th year before it finally had to be taken away when its replacement arrived, I know exactly what she means. One of the ways that we need to deal with waste in particular, and plastic especially, is to lengthen the life of the product or make it multiuse or dual purpose. I am not saying that is the case for a washing machine or a household white good, but it can be for many other things.

I admit that I am a beneficiary of some of this perhaps less criminal but less well-informed fly-tipping. One of my gateways greatly benefited from a pile of clean rubble dumped in my woodland. I scooped it up and stuck it where it was actually useful. On another occasion not so very many months ago, I gained a clean and unruptured bag of cement, which, in this time of cement shortages and shortages of many other building materials, I was quite glad of.

However, this rather suggests that there is a huge amount of ignorance. If we had better sorting and recycling of some of this material, we would all be better off, but many household and other recycling facilities do not allow commercial vehicles in. As I said, if you are a householder you might have to book a slot to deposit your waste. This seems a significant indicator of a lack of capacity, but there is also a lack of imagination in how we deal with these things.

Ultimately, it has to become socially unacceptable to do this, so that the only socially acceptable thing is to ring up or look through *Yellow Pages*, for example, to get somebody to remove your household waste. There has be a certification process, rather like Checkatrade, that tells you that these people are certified, have the proper credentials and will dispose of your stuff safely and not just dump it somewhere between here and the municipal disposal facility, because they can save themselves £100 or £200 in so doing. We need to be a bit more alert when setting about dealing with this issue.

8.45 pm

Lord Khan of Burnley (Lab): My Lords, I shall speak to all the amendments in the name of the noble Baroness, Lady Bakewell of Hardington Mandeville, which we support. I thank all noble Lords for their contributions. There were some very interesting reflections and some very disturbing realities that people have been reflecting on. Those who produce pollution should bear the cost of managing it to prevent damage to human health or the environment. The polluter pays principle is part of a set of broad principles to guide sustainable development worldwide. This principle should extend to farmers and landowners.

I want to talk about some statistics now. The noble Baroness, Lady Bakewell of Hardington Mandeville, said it costs farmers £47 million a year to clear fly-tipping. I have some more data. As the noble Lord, Lord Carrington, mentioned, more than half of the 800-plus respondents to that Environment Agency survey, the national waste crime survey, suggested that large-scale fly-tipping had increased over the last 12 months, with 15% of landowners making an insurance claim to clear dumped waste. Nearly 50,000 people have signed an open letter demanding immediate action to tackle fly-tipping in the countryside, following the surge in waste crime during the Covid-19 lockdown—a point that the noble Viscount, Lord Ridley, made in relation to the increase in fly-tipping.

Following the theme of easy wins for the Government, this, as the noble Earl, Lord Caithness, said, is an easy win. I hope the Government will hear what everyone has said today, support the amendment, go back, and improve their track record on this issue. It is a really important point: landowners and farmers need that support and tougher penalties for fly-tipping. That is the request being heard from the Committee today, and also across the country from the wider public. We have had a theme of dentists, teeth and dentures today: the Government need to show some teeth and bite back at fly-tipping. In wishing the Minister a happy birthday, I just hope I can politely request that she does not let off any balloons tonight.

Baroness Bloomfield of Hinton Waldrist (Con): It is quite rare that we have virtual unanimity around the Committee on something being a major problem, so I thank noble Lords for taking part in the debate.

[Baroness Bloomfield of Hinton Waldrist]

On Amendments 123, 136, 137 and 138, tabled by the noble Baroness, Lady Bakewell of Harlington Mandeville, fly-tipping is a crime that affects all of society, including rural communities—perhaps mostly rural communities—and private landowners. We are committed to tackling this unacceptable behaviour. We appreciate the difficulties and costs that fly-tipping poses to landowners, as outlined by the noble Baroness and by my noble friend Lord Ridley. We are working with a wide range of interested parties, through the national fly-tipping prevention group, including with the NFU, to promote and disseminate good practice, including how to prevent fly-tipping on private land. I do appreciate the noble Lord's suggestion on birthday balloons. I can assure him that I have not received any today—but my noble friend Lord Randall is absolutely right to mention the serious harm that Chinese lanterns can do to livestock.

In essence, we expect all local authorities to exercise their power to investigate fly-tipping incidents on private land, prosecuting the fly-tippers and recovering clearance costs where possible. As a number of noble Lords mentioned, with more people enjoying the outdoors than ever before with Covid, we have recently published an updated version of the *Countryside Code* in order to educate and help people enjoy the countryside in a safe and respectful way. I know how difficult it was, during Covid, when a number of local authority tips were closed, and I am sure that this increased the incidence of fly-tipping, particularly of large items.

In the Budget of 2020, we allocated up to £2 million to support innovative solutions to tackle fly-tipping. In April 2021, we commissioned a research project considering the drivers, the deterrents and the impacts of fly-tipping. This research project is due to be completed before the end of this year and will support informed policy-making. We are exploring additional funding opportunities and priorities, including considering the role of digital solutions, obviously including CCTV.

The measures in the Bill will grant greater enforcement powers and the ability to increase penalties in the future, which should help to reduce the incidence of both urban and rural fly-tipping. I should say here that Defra chairs the national fly-tipping prevention group, working with the NFU and others to share advice, and this group met in the spring.

My noble friend Lord Randall asked about fines. Local authorities have legal powers to take enforcement action against offenders. Anyone caught fly-tipping may be prosecuted, which can lead to a fine, up to 12 months' imprisonment, or both, if convicted in a magistrates' court. The offence can attract a fine, up to five years' imprisonment, or both, if convicted in a Crown Court. I appreciate the difficulties of identifying some of the perpetrators of this crime. Instead of prosecuting, councils may choose to issue a fixed-penalty notice, an on-the-spot fine. Local authorities can issue fixed penalties of up to £400 to both fly-tippers and householders who pass their waste to an unlicensed waste carrier. Vehicles of those who are suspected of committing a waste crime, including fly-tipping, can be searched and seized.

As the noble Earl, Lord Lytton, suggested, waste transportation is in urgent need of an update. Waste tracking is still largely carried out using paper-based record-keeping. This makes it really difficult to track waste effectively, as it provides organised criminals with the opportunity to hide evidence of the systematic mishandling of waste, leading to fly-tipping. The Bill will tackle this by introducing a new electronic system for tracking waste movements through Clauses 57 and 58 and will provide enforcing authorities, including the regulator, with enhanced powers to enter premises. We will be consulting on the detail this summer.

In addition, powers in the Bill also allow for the "polluter pays" principle to cover costs associated with the unlawful disposal of products or materials, as set out in Schedule 5, Part 2. This includes the cost of removing littered or fly-tipped items, including from private land.

Measures in the Bill on deposit return schemes will also allow the deposit management organisation to use moneys received under a scheme for the protection of the environment, including to cover costs associated with the removal of littered or fly-tipped items currently borne by farmers or private landowners. The noble Baroness, Lady Bennett, mentioned the dreaded term "planned obsolescence" and made a very good point. Notable initiatives have recently got into the public vernacular, such as "The Repair Shop" and other ways of recycling, reusing and restoring materials. The "polluter pays" principle in Schedule 5 includes powers to make producers pay for managing products at the very end of their life, and the disposal vernacular should become "recycle and reuse".

The noble Earl, Lord Lytton, also asked about costs of disposal. Waste disposal authorities may make only reasonable charges for waste disposal. We will review HWRC services and the Controlled Waste Regulations and, subject to consultation, we will amend them to ensure that they remain fit for purpose and that charges are fairly applied.

In conclusion, I thank the noble Baroness for bringing forward these amendments. I am afraid that I am unable to answer her point on illegal storage, but I will write to her on that specific issue. In the meantime, I hope I have reassured noble Lords that these amendments are not needed, and I ask the noble Baroness to withdraw her amendment.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I am grateful to all noble Lords who have taken part in this debate, and I thank the Minister for her response. I am encouraged that the Government are working with the NFU and other bodies to find solutions. Fly-tipping, as we have heard, is on the increase, and we have heard some very graphic descriptions of how this has affected landowners and farmers. It is, as the noble Viscount, Lord Ridley, has said, a great inconvenience as well as very costly.

During the pandemic, the household waste recycling centres were indeed closed. When they reopened, there were huge queues around the corner. Unlike the noble Earl, Lord Lytton, householders in our area do not have to book a slot, and you can see what the queue is like on the website so that you can choose your time:

usually a good time is about half an hour before it closes at 5 pm. So it is possible to access the HWRCs, but it is not easy.

The situation with CCTV signage is exceedingly unhelpful, and I ask the Government to look into this. It is a bit like having a sign for a speed limit: we get the sign saying that there is a speed camera, and by the time traffic reaches the camera, everybody has slowed down. If we are to have CCTV to prevent fly-tipping, I do not think we need signage to alert the perpetrators that it is on the way. As the noble Lord, Lord Blencathra, said, there is an issue of natural justice here, and the need to crack down on criminals, especially organised criminals.

I was very concerned when the noble Lord, Lord Carrington, said that he had had asbestos dumped on his land. That is an extremely toxic substance, and if householders find that they have some asbestos, perhaps on their roof, or in an extension, it costs them quite a lot to get rid of it at the household waste recycling centre. I wonder whether local authorities could think about reducing some of those costs, so that asbestos is not dumped but disposed of safely. It is outrageous that it should be dumped in the countryside, where it is a threat to animals and humans.

We have all made the point that there must be a shift from the landowner paying to the polluter paying. That has to happen as a matter of urgency. I welcome the Minister's reassurance that there will be publicity around the Countryside Code. It could do with a bit of a relaunch, because I am sure people are not aware of how to behave in the countryside. More needs to be done to encourage local authorities to go for the maximum fixed penalty notice, instead of some derisory sum. I am grateful for all the contributions, and I beg leave to withdraw my amendment.

Amendment 123 withdrawn.

Amendment 124 not moved.

Clause 50 agreed.

Schedule 5: Producer responsibility for disposal costs

Amendments 125 and 126

Moved by ***Lord Goldsmith of Richmond Park***

125: Schedule 5, page 168, line 8, at end insert—

"(2) The requirement in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force."

Member's explanatory statement

This amendment provides that the consultation requirement in paragraph 10 of Schedule 5 may be met by pre-commencement consultation.

126: Schedule 5, page 170, line 11, at end insert—

"(2) The requirement in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force."

Member's explanatory statement

This amendment provides that the consultation requirement in paragraph 18 of Schedule 5 may be met by pre-commencement consultation.

Amendments 125 and 126 agreed.

Schedule 5, as amended, agreed.

Clause 51 agreed.

Schedule 6: Resource efficiency information

Amendments 127 and 128 not moved.

Amendments 129 and 130

Moved by ***Lord Goldsmith***

129: Schedule 6, page 172, line 7, at end insert—

"(3) The requirement in sub-paragraph (1)(a) may be met by consultation carried out before this paragraph comes into force."

Member's explanatory statement

This amendment provides that the consultation requirement in paragraph 5 of Schedule 6 may be met by pre-commencement consultation.

130: Schedule 6, page 174, line 16, at end insert—

"(2) The requirement in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force."

Member's explanatory statement

This amendment provides that the consultation requirement in paragraph 14 of Schedule 6 may be met by pre-commencement consultation.

Amendments 129 and 130 agreed.

Schedule 6, as amended, agreed.

Clause 52 agreed.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): We now come to the group beginning with Amendment 130A. Anyone wishing to press this, or anything else in this group, to a Division must make that clear in debate.

Schedule 7: Resource efficiency requirements

Amendment 130A

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

130A: Schedule 7, page 175, line 30, leave out "or supply" and insert ", supply or use in the supply chain"

Member's explanatory statement

These amendment seeks greater transparency on the part of supermarkets in terms of plastic packaging.

Baroness Jones of Whitchurch (Lab): In moving Amendment 130A, I shall speak also to Amendments 130B and 141A in the name of the noble Baroness, Lady Ritchie of Downpatrick, and Amendment 139, in the name of the noble Viscount, Lord Colville. As with the various other amendments in this group, they seek concrete, practical steps to reduce plastic pollution, primarily by reducing plastic production. What is not produced in the first place cannot later pollute.

[Baroness Jones of Whitchurch]

Amendments 130A and 130B seek to strengthen the Bill to enforce full transparency from businesses with more than 250 employees about the plastic they use at every point in the supply chain. We are not wedded to that threshold, but it is the same one used by the Government; for example, as a threshold for making declarations on the gender pay gap. A threshold of that order means that we are not imposing huge burdens on tiny companies but just asking a small thing of the large companies which are the primary plastic polluters.

UK supermarkets use some 114 billion pieces of throwaway plastic packaging each year. Anti-plastic campaigners A Plastic Planet have worked out that this equates to 653,000 tonnes of plastic waste—the equivalent of almost 3,000 747 jumbo jets.

This avalanche of plastic is not just in the packaging we take home with us from the supermarket. It wraps pallets of food in transit, and it sits on shelves, wrapping pretty much everything we buy, pushing sales while creating a toxic legacy for our planet. That is why Amendment 130B refers to

"primary, secondary and tertiary plastic packaging",

which is the jargon, respectively, for packaging we take home, packaging used to promote sales and packaging used to transport goods before products make it to the shelves.

9 pm

There is a market leader in this connection. The Minister referred to it on our first day in Committee. Back in September 2020, Iceland called on the retail sector to join it in improving transparency on plastic use. Working with campaign groups, including Friends of the Earth, Greenpeace, A Plastic Planet and Surfers Against Sewage, the chain has also called on the Government to use the Bill to enforce mandatory reporting on plastic packaging, and plastic pollution reduction targets.

The supermarket argued that, without transparent reporting and government-enforced reduction targets, we will not be able to judge whether business actions are delivering real progress in tackling plastic pollution. Iceland went on to call for retailers and other businesses to commit to publishing their total plastic packaging transparently, including both own-label and branded products. Although many supermarkets have signed pacts and pledges, they have so far failed to make a significant impact on the amount of plastic polluting the environment.

The amendments recognise that voluntary reporting in itself is insufficient. According to the Pew Charitable Trusts and SYSTEMIQ report, *Breaking the Plastic Wave*, released this year, voluntary agreements will see at most a 7% reduction in the forecast growth in ocean pollution by 2040. This is clearly inadequate, so reporting requirements with legal force are needed.

Consumers are consistently behind us in wanting a reduction in the use of plastic. They are inclined to buy plastic-free products and reward companies that seek alternatives. We simply need to give them more choice. These transparency amendments are therefore about empowering consumers to see who are the plastic heroes and villains. We can then trust that consumers will vote with their feet, support the market leaders and, in doing so, encouraging the laggards to catch up. It is a neat solution, and I hope the Government will respond constructively to it.

Amendment 141A is more straightforward still. It deals with the scourge of plastic sachets. These little single-use, single-dose sachets have somehow slipped beneath all the single-use plastic radars and policies. The most recent global audit of branded plastic waste revealed that sachets were the most commonly found item, ahead of cigarette butts and plastic bottles. The UK has rightly banned plastic straws, stirrers and cotton buds. Sachets must be next.

In the long run, the campaigners in this space want an end to all conventional plastic sachets, including for such foodstuffs as ketchup. However, the amendment is more modest, recognising that while we emerge from Covid, there are still sensitivities in catering environments about people touching the same ketchup bottle, and so forth.

A ban on cosmetic and household sachets is where we should start. Polling commissioned by A Plastic Planet revealed overwhelming support for such a move. Almost eight in 10 Britons say that plastic sample sachets should be banned in the UK, and more than four in five say that the Government should not ignore their impact on plastic pollution. There is political support for this too. In November 2020, some 40 politicians, business leaders and campaigners signed an open letter which urged the UK and EU to include sample sachets in their single-use plastic bans. Signatories of the letter included Princess Esméralda of Belgium, the UN Secretary-General's Special Envoy for the Ocean, Peter Thomson, Iceland Foods managing director Richard Walker and Time Out Group CEO Julio Bruno, as well as 27 parliamentarians across party lines.

It is clear that this is an area where the UK, outside the EU, could lead Europe rather than lag behind. Industry knows that we should moving toward more and more refillable solutions, with consumers taking their bottles back to the shop rather than buying more packaging that is then thrown in the bin.

I also add my support to Amendment 139 in the name of the noble Viscount, Lord Colville, to which I have added my name. It amends the provision in Schedule 9 to ensure that charges can be imposed not just on single-use plastic items but on all single-use items; otherwise, there is a danger of shifting the environmental burden from one polluting material to another. The problem lies with the single-use throwaway culture, not just plastic per se. In fact, a recent Green Alliance report set out that switching all plastic packaging on a like-for-like basis could almost triple associated carbon emissions. So an inability to charge for alternatives to plastic might see the market switch to other unnecessary single-use items rather than driving down consumption.

I turn finally to Amendments 141 and 142 to 145 in the name of the noble Baroness, Lady Bakewell of Hardington Mandeville. Again, these press the Government to make a distinction in their handling of plastics between compostable materials on the one hand and conventional polluting plastic on the other. This seems to us a pragmatic way to proceed, recognising that only by promoting a range of solutions—including

reducing plastic production, reusing plastics that can be reused, recycling plastics that can be recycled and composting—will we meet the demands of the plastic crisis.

Transparency from the supermarkets about their own footprint and a ban on the scourge of sachets could be two major contributors alongside the other amendments in this group. I therefore beg to move.

Viscount Colville of Culross (CB): My Lords, I applaud the Government's determination to drive down the single use of plastics. Clause 54 and its associated Schedule 9 will do a useful job in reducing plastic pollution by introducing a charge on the use of single-use plastics, but Amendment 139 aims to push the Government to be braver and go further with the Bill. I also support the wish to make the use of plastics more transparent in Amendments 130A and 130B.

The lockdown and its subsequent easing have shown us all the dangers of allowing the single-use culture to flourish. I, like many other noble Lords, was appalled when we ordered online delivery shopping during lockdown to find so many of our purchases wrapped in sheaths and sheaths of paper inside a huge cardboard box—all of which had to be thrown away. Many noble Lords have expressed their horror at the litter left behind in our parks and streets as lockdown eased. That litter is not just plastic. It is also wooden cutlery, aluminium cans and paper bags, all of which are used just once and then discarded and all of which despoils our countryside and urban spaces.

On day two of Committee, the Minister said:

"For the long-term legally binding target on waste reduction and resource efficiency, we want to take a more holistic approach to reduce consumption, not just of plastic, but of all materials. This would increase resource productivity and reduce the volume of waste we generate overall".—[*Official Report*, 23/6/21; col. 255.]

Does the Minister stand by that statement? If so, will he support the holistic approach demanded by this amendment? That holistic approach means that, although the campaign to reduce plastics must be supported, it cannot be carried out at the expense of driving manufacturers and consumers into substituting them with other single-use materials, as the noble Baroness, Lady Jones, just warned us.

As it stands, Schedule 9 risks creating a situation where single-use plastic will be replaced by other environmentally damaging materials. I have already mentioned that paper is being used extensively for packaging, bags and cups, and wood is being used for cutlery. It is not always possible to determine the provenance of all paper and wood. Not all our pulp for imported paper comes from the EU and the USA. Annually, more than 750,000 hectares of timber—equivalent to nearly half the size of Wales—is imported into the UK from China, Russia and Brazil, where there is a high risk of deforestation and a threat to biodiversity. The paper manufacturing process increases the use of chemical waste, creating water pollution and pouring carbon into the atmosphere. A recent study by the Danish environment agency found that a paper bag must be reused 43 times if it is to have a lower environmental impact than the average plastic bag.

Increasingly, coffee shops and cafés are stocking disposable paper cups that do not contain plastic. As the Bill stands, they will not be included in the new charges. There were 5 billion disposable coffee cups used in the UK last year. Noble Lords only have to look at the aftermath of any big event to see the plethora of paper cups left littering the venue and its surrounding areas. A charge on all single-use items would go a long way to decreasing the number of disposable cups being used. Studies show that a charge of just 25p could reduce that use by more than 30%.

There were similar fears of plastic being substituted by aluminium cans, which can have a similar devastating effect on the environment. Aluminium production is energy intensive and accounts for 1% of global greenhouse gas emissions. Studies show that UK aluminium has one of the highest greenhouse gas impacts per kilogram of any packaging in the UK.

PwC examined the greenhouse gas impacts of packaging types currently used in the UK of the behalf of the Circular Economy Task Force. It found that all materials used for packaging consumed annually in the UK account for 13.4 megatonnes of carbon, or 2% of this country's carbon emissions. The scale of emissions created by packaging, revealed by this study, makes it clear that the Government's resources strategy should prioritise the reduction of all virgin materials. In a recent survey of stakeholders, one supermarket said about the drive to reduce plastics:

"The whole agenda needs to be more aligned and more encompassing with carbon. We're so focused on the plastics that we seem to have lost sight of the impacts around climate."

This amendment will go far to remedy these threats by bearing down on single-use materials consumption and shifting this country's focus to a culture of reuse and refill, which must be a priority in developing the circular economy promoted by this Bill. Driving down material consumption and shifting to the reuse of materials must remain the Government's highest priority.

When a similar amendment to this one was tabled in the other place, the Minister, Rebecca Pow, said that, when looking at this Bill, it bears down on this country's disposable culture. She said that it needs to be taken into account

"how much of the Bill is aimed at tackling"—[*Official Report*, Commons, 12/11/20; col. 439.]

single-use plastic. Is this answer sufficient to win the war on single-use culture? Can the Minister explain to the Committee why the Government should not introduce these wider charges? Surely they should be encouraging manufacturers and consumers to reuse as many products as possible; it is a vital part of the circular economy.

Lord Blencathra (Con): My Lords, the noble Viscount, Lord Colville of Culross, has made a very powerful speech on cracking down not just on single-use plastics but on every single-use product. It merits deep consideration.

I was also fascinated by what the noble Baroness, Lady Jones of Whitchurch, said on Amendment 141 about those horrible little plastic sachets. I agree entirely with her that they should be banned, not just because they are dangerous for the environment but because they are fiendish little things. On the few occasions I have had them, I could not get them open, but once you stick them in your wash-bag, they burst spontaneously. There is not much point in them.

[Lord Blencathra]

Before speaking to Amendment 140, I want to comment on something that the noble Baroness, Lady Bennett of Manor Castle, said in the last debate: that her fridge lasted only 27 years. She should have bought the same model that I believe our late Majesty Queen Elizabeth the Queen Mother bought for Mey Castle, which was still going after 60 years. That is a good use of material.

Amendment 140 seeks to introduce a new clause to ban the use of polystyrene as used for food containers or packaging material by 1 January 2023, and ban its use in construction by 31 December 2026, in five years' time. Why do I want to do that? Polystyrene is lightweight and has superb insulation properties for keeping items cold or hot. It is widely used for a whole range of functions but where safer alternatives could be used instead; because it is widely used, it is one of the most dangerous and polluting plastics damaging our environment today.

Of course, the manufacturers say than it can be recycled. No doubt it can—that is, if you can get enough of it to a sophisticated facility, it could be done, but does any noble Lord know of any council that actually collects polystyrene, either in food containers or the big chunks of it you get protecting televisions and other electronic items? I have not seen a big bin for polystyrene at any recycling centre, and all the council advice I have seen says to put it in the waste garbage bin.

9.15 pm

Recycle Now, the national recycling campaign for England, supported and funded by the Government, managed by WRAP and used locally by over 90% of English authorities, says:

> "Polystyrene is a type of plastic which is not commonly recycled … Expanded polystyrene should be placed in the waste bin … Some local authorities accept it in recycling collections although it is unlikely to actually be recycled."

The official expert body says that it is not recycled, and we all know how dangerous it is. Therefore, if we cannot recycle it, we should ban it.

Subsection (1) of the new clause introduced by my Amendment 140 deals with the easy one to ban, which is polystyrene used as takeaway food containers or as padding to protect electrical and electronic items. It also states that these polystyrene items should not be allowed to be purchased by consumers for their own use as, for example, food containers. I submit that we could easily ban these, since there are readily available alternatives that do the job just as well. We do not need to use them for takeaway curries or fish and chips; we can use cardboard in the meantime—although the noble Viscount, Lord Colville, will understandably not want that either. Do your Lordships remember when takeaway coffees were sold in polystyrene cups to keep them hot and to protect the drinker's hands? We never see them used now because everyone uses insulated paper cups instead. If thicker cardboard can do the job for hot coffee, then it can do it for fish and chips as well.

Recently, I received some fragile electronic items and the padding around them was shaped cardboard, moulded in exactly the same way that polystyrene is shaped when it is wrapped around the corners of televisions, washing machines et cetera. This cardboard was about three inches thick and cross-corrugated, so it was exceptionally strong—so strong that I could not bend it for the recycling box but had to cut it up into bits with my trusty Stanley knife. We can also get crinkly brown paper padding. In short, there is no longer any need for polystyrene to be used for the protective padding of any items, and it should be banned, The one exception that I would make in the short term is its use for big polystyrene trays in commercial transport and in the freezing and chilling of fish, as long as there are very firm controls on it being recycling or melted down when it has passed its use.

Subsection (2) of the new clause introduced by my Amendment 140 deals with the use of polystyrene in construction. I accept that this is a trickier problem, requiring a longer term to eradicate it. It is a superb insulator and does a great job, so long as it does not catch fire. The construction industry might say that all the sheets of polystyrene do not end up scattered on the pavements outside the takeaway shops and you do not find them lying in canals or rivers, but they still end up in landfill. Does anyone seriously think that all the polystyrene cladding which will be ripped out of buildings in the next few years will be recycled? Of course, it will not; it will be dumped, as will the polystyrene cement render mix which is also used to insulate buildings. There are alternatives to polystyrene in the construction industry, but they are more expensive. However, as we have discovered, the cheapest solution is not often the safest or the best.

I will not labour the point about polystyrene in construction, but I hope that my noble friend the Minister acknowledges that this is an area which needs urgent attention. I ask him to engage with BEIS and the housing department to seek solutions that get rid of all polystyrene in construction as soon as is practically possible. However, dealing with its use in food and packaging is an easy win, and I urge him to act on that and ban it before 1 January 2023. If he needs another year, I can live with that—I am a reasonable person after all.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I speak to Amendments 141 and 142 to 145, which are in my name. Amendment 141 relates to the plastic packaging tax, which was placed in law by this year's Finance Bill and will come into effect next year. The tax is welcome in principle, but my amendment seeks to probe the Government on the detail. Manufacturers of innovative compostable packaging solutions are aghast that the tax makes no distinction between their products and old-fashioned polluting plastic. Members of the Bio-based and Biodegradable Industries Association have attempted to engage Ministers in Defra and the Treasury on this point but are hitting a brick wall, since the Government are interested only in a single threshold —namely, the amount of a given product that is recycled.

It is of course a fine public policy objective to encourage the use of recycled rather than virgin plastics, as the tax attempts to do, but that single criterion fails to recognise a few facts of life. First, packaging that is to come into contact with food cannot be recycled, for food hygiene reasons. Secondly, plastic films are extremely hard to recycle and, even if they are recycled, are seldom if ever recycled into new films. The idea of a circular economy on such packaging is just an illusion.

By contrast, compostable films can be an appropriate substitute and are more sustainable than conventional films from recycled sources. Compostable packaging can never contain 30% recycled content because its destined end of life is to disappear completely in the soil, leaving no microplastics behind. The unintended consequence of the tax as it stands is that these innovative solutions are perversely penalised.

The amendment asks the Government to recognise that treating independently certified compostable films as separate and distinct from conventional plastics would not create a free-for-all or a loophole. The compost quality protocol sets out clear safeguards for waste-derived compost, including by specifying that any compostable packaging and plastic wastes accepted must be independently certified to meet composting standards. Among these is BS EN 13432, referenced in the amendment, which is a strong, internationally accepted British and European standard for determining which bioplastics are industrially compostable or biodegradable when processed through anaerobic digestion or in-vessel composting. As I said in the debate on the first day in Committee, these materials are not a silver bullet but they are rightly recognised by the recent report *Breaking the Plastic Wave* as part of the picture when it comes to tackling plastic pollution.

Amendments 142 to 145 are related to Amendment 141. If we believe that compostable alternatives to conventional plastic have a place, particularly in food-contact packaging, it follows that we should make provision for those compostable materials to be collected so that the end-user knows that they are indeed composted. Alternatively, householders can mix them with their garden and kitchen compostable waste. As a consumer, it is baffling to pick up something that is labelled "compostable" if you have no obvious means of composting it.

The Bill rightly places in law the necessity for separate food waste collections, and my Amendments 142 to 145 simply seek to establish that independently certified compostable materials should be collected alongside this waste stream. The films that we are talking about here are of low density and can easily fit in a food-waste caddy. Indeed, in certain applications, such as the compostable bags containing bananas in Waitrose, the packaging can be used as a liner for a food caddy.

The present custom and practice of local authorities and their waste management firms is rather variable when it comes to these compostable items. Some faithfully ensure that compostable films are properly processed. Others actually strip out compostable items, treating them as contaminants. It cannot be right for consumers to be sold products that are compostable but for the waste management system to let them down at the end of the process by incinerating or landfilling these items. I shall refer to this issue in later amendments.

Approximately 45 composting plants in the UK are approved for composting inputs that include food waste at present, but the current network processes only 20% of what will be necessary from 2023 onwards. In consequence, much of the 80% extra capacity that must be built will be entirely new or revamped plants. Waste managers need a clear steer now that anaerobic digestion plants must have a composting phase in which compostable materials, such as BS EN 13432-certified packaging, are properly processed. Handling this issue properly has the potential to reduce the contamination of soil from normally polluting plastics, which is why it has the support of the National Farmers' Union. With these amendments added to the Bill, it would be clear that as composting infrastructure is expanded across the UK, all composting plants must make provision for ensuring the proper processing of compostable packaging materials.

Finally, I turn to Amendments 130A, 130B and 141A, also in this group and capably moved and spoken to by the noble Baroness, Lady Jones of Whitchurch. I fully support her in these amendments. As the adage goes, sunlight is the best disinfectant. Transparency about the sheer amount of plastic used by supermarkets would catalyse consumer pressure on the big players to kick their plastic habit. I commend the work that Iceland has done, which the Minister mentioned on our first day. The transparency clause in Amendments 130A and 130B would push other firms in a similar direction. The Minister will by now have received the message that I am not going away on this issue, and I look forward to his response.

Baroness Jones of Moulsecoomb (GP): My Lords, yet again, the noble Baroness, Lady Bakewell of Hardington Mandeville, makes a soft threat to the Minister about not going away, and I support her completely. This is a really interesting group of amendments, all incredibly sensible. I have signed, with delight and surprise, Amendment 140 in the name of the noble Lord, Lord Blencathra, but my noble friend Lady Bennett will speak to that and I will speak to the others.

We all know that banning the use of single-use plastic has been far too slow. Many Members of your Lordships' House have mentioned this many times and urged the Government to do something about it. The Chief Whip is waving at me; he is probably telling me, "Go on! Go on!" We have to reduce the absurd amount of plastic we are still churning out every single day when we know the danger that promises. The Government keep on publishing plans and strategies and promises and consultations and all sorts of things, but nothing actually happens. We just have to do it.

I spoke previously about how plastics, and microplastics in particular, will in future be seen in a similar light to asbestos—a substance with miraculous properties but such a huge danger to health that it is phased out almost totally from general use. That is how I would like to see the future of plastic.

The Government and Parliament have vital roles in the transition away from mass plastic. Industry, PR and lobbyists will bleat on about industry-led transition, but this is just greenwashing most of the time. For as long as you can buy bananas wrapped in plastic, you can know that the industry claims are nonsense. I realise that Iceland has taken some huge steps and is an example to other similar supermarkets. I do not eat much from Iceland, but I do support its initiatives. Parliament has to legislate, and the Government have to lead.

The noble Baroness, Lady Bakewell of Hardington Mandeville, also raised compostable plastics. It is an important issue, not least because of the confusion they cause. Some are home compostable in a regular

[Baroness Jones of Moulsecoomb]
back garden compost heap and will completely break down into safe, organic matter. Others will not break down except in special conditions in an industrial compost facility. There is a whole public education issue there, and not even the waste authorities seem to have worked it out yet. There is no common ruling or understanding. It seems a real shame that compostable plastics are not being collected by council waste services and are, instead, wrongly going to landfill or contaminating the plastic recycling stream.

I hope the Government have a plan for this; it is one of many issues where central government absolutely must get a grip on local authority recycling services and set basic minimum standards across the country. This is something many of us have been asking for for a long time, and it is time the Government listened.

Lastly, the noble Earl, Lord Caithness, said at one point that the cheapest is not the best. Of course, the cheapest immediate option is often one of the most expensive if you look over its lifetime. He is absolutely right: the cheapest is not the best. We have to look at and understand the future repercussions of everything we do.

9.30 pm

The Deputy Chairman of Committees (Baroness Fookes) (Con): I understand that the noble Earl, Lord Lytton, and the noble Baroness, Lady McIntosh of Pickering, have withdrawn, which brings us to our next speaker, the noble Baroness, Lady Boycott.

Baroness Boycott (CB): I will be brief. I just want to point out that we have apparently thrown away—I have checked this in lots of sources—3 million face masks every minute across the world. It means, in a way, that we cannot trust ourselves in what we think about plastic. We have to get firm and do something very serious about this, which is why I have put my name to Amendment 139.

I also support Amendment 141A about getting rid of sachets. If we do not legislate, we do not innovate. Unilever, for instance, has come up with a new seaweed-based thing to make sachets out of, which genuinely completely composts or fades away in water without any damage. Right now, the supermarkets have a free rein. Iceland has done its best but voluntary contributions never work. I have spoken about this before, but the relationship of single-use plastic to food waste is massive, because vegetables are wrapped up and you get too many—for example, you get five courgettes in a packet when you wanted one. This is a great way to get you to spend more money and creates waste all the way down the line.

I shall not go on with the statistics; everyone has come up with so many of them. All I want to say is that I once sat next to Liam Donaldson and he said that he did not sleep the night before he announced the smoking ban in Great Britain. He thought he would be the most unpopular man in Britain, but by lunchtime the next day he was the most popular man in Britain because it was what everyone wanted. The truth is, people hate plastic. Everybody moans about it; it does not matter whether you are talking to a reader of the *Sun* or the *Daily Mail*. This is a universal dislike and we want the Government to do something serious.

It needs a combination of taxes and a complete ban on single-use plastic. Around the world, 69 countries have done just that: they have banned it. If you ban it, you get innovation. Just before the pandemic, I was in India. The amount of plastic plus waste in India, which is introducing a ban from next year, is quite astonishing. One of the disastrous reasons is that there are no vultures left; they have all died because they have eaten plastic as well as the various antibiotics that were fed into cattle. One of the bizarre consequences is that at the Tower of Silence in Mumbai, a Parsi temple, there are no longer any vultures to eat the dead, so they have to be fried by solar panels. This is a really weird consequence and we are doing this with masks at the moment. Three million a minute are going into our system.

This is why you cannot trust voluntary regulations of any nature and why the Government have to seize this year of COP and the biodiversity conference and do something. We know what plastic does to our nature. We will all be proud—noble Lords will be proud and will all wake up as the most popular men in Britain.

Baroness Bennett of Manor Castle (GP): My Lords, it is a very great pleasure to follow the noble Baroness, Lady Boycott. Since she started on international issues, in speaking to Amendment 140 in the name of the noble Lord, Lord Blencathra, also signed by my noble friend, I will point out that in April Washington state became the seventh US state to ban takeaway polystyrene containers. Australia is planning to be rid of them by mid-2022 and Costa Rica has a ban coming in this year, so I will have to come back to that much loved government phrase "world-leading" as there is some catching up to do here on polystyrene takeaway containers in particular. I will also point out that the National Research Council in the US has found these containers can

"reasonably be anticipated to be a human carcinogen".

This is a real no-brainer.

In 2016 a group of chefs, including some of the usual celebrity names you might expect, were calling on the London mayor to ban polystyrene as the scourge of Soho. This problem is urban, rural, marine and general—it is truly a problem everywhere. All of plastic is a problem but polystyrene is a particularly pernicious problem and this would be an easy win, as we now all keep offering the Minister.

Finally, to pick up the point of the noble Viscount, Lord Colville, he perhaps underestimates the degree to which plastic really is a much-hated material. None the less, I entirely agree with him that when it comes to the waste pyramid, "reduce" is by far the best option. I hope that when we get to Report, he might think about backing my amendment, which I will be revisiting in some form. Rather than talking about resource efficiency, we should be talking about a reduction of resources.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I understand that the noble Baroness, Lady Neville-Rolfe, has withdrawn, so the next speaker will be the noble Baroness, Lady Altmann.

Baroness Altmann (Con) [V]: My Lords, I congratulate my noble friend the Minister and the Government on the work they have already done in attempting to ensure that we reduce the amount of plastic, particularly single-use plastics, and on the measures already in the Bill, such as Clause 54 and some of the schedules. The Government and my noble friend are absolutely determined to make sure that the Bill significantly addresses the dangers and the damage done to the environment by the use of plastics, which so many of us have grown up without thinking about the consequences of using. I hope that my noble friend can engage with some of the intentions and specifics of some of the amendments in this group.

I particularly support Amendment 140, which was so clearly explained by my noble friend Lord Blencathra. Banning polystyrene use in food packaging, for example, could make a significant difference in the short term. I also agree with his aim of eventually banning it in construction.

I also add my support for the aims of the amendments in the name of the noble Baroness, Lady Bakewell of Hardington Mandeville, which concern plastics which are not polluting but have been developed to be fully biodegradable. I agree with the noble Baroness, Lady Bennett, that some plastics are not planet-friendly, while others completely biodegrade naturally. If we are to impose a plastic tax, which I would support fully, there may be a need, through independent standards, to differentiate those that biodegrade properly from those which clearly will continue to damage the environment.

I look forward to hearing the thoughts of my noble friend about some of the amendments in this group, which are well worth considering adding to this excellent Bill.

Baroness Parminter (LD) [V]: My Lords, this is a powerful suite of amendments to tackle waste and our throw-away culture. As the noble Baroness, Lady Jones of Whitchurch, said, the Government have had some success in tackling the low-hanging fruit—issues such as cotton buds containing plastics—but, somehow, sachets did not quite get included in the early initiatives. Clearly, with Covid, some uses of single-use sachets are helpful, but, in other instances, such as beauty products, it is really time for them to be banned.

The noble Baroness, Lady Jones of Whitchurch, made a very compelling case for more duties on companies to ensure that there is mandatory reporting of plastic packaging. In the past, this Government have trusted too much in companies and gone down the route of voluntary schemes. Now is the time to encourage more mandatory reporting of companies in this critical area.

Of course, we are not just talking about plastics here. I was pleased to co-sign Amendment 139, in the name of the noble Viscount, Lord Colville, which will encourage charges for all single-use items. He very powerfully made the case that a number of these alternatives are equally environmentally reckless and certainly will not cut our global greenhouse gas emissions, so we have to not only tackle single-use plastics but look at the alternatives that might be proposed.

My noble friend Lady Bakewell of Hardington Mandeville has done an absolutely sterling job tonight of raising a number of key issues and, in this group, lucidly reflecting on the issues around the importance of compostables, which can make a real contribution to moving towards more sustainable packaging alternatives. As the noble Baroness, Lady Jones of Moulsecoomb, rightly said, the public need more education about compostables, and we need more local authorities to be collecting compostable films, because not all of them can be composted in back gardens—and indeed many households do not have back gardens, so they could not use compost bins even if they wanted to.

On behalf of the Lib Dems, I say that we absolutely support the Government's plastic tax initiative, which is very welcome, although it clearly needs to avoid perverse penalties that would curtail the options for compostable films and incentivise their development for the future.

It was interesting to hear what the noble Lord, Lord Blencathra, said about polystyrenes, which is clearly an area that needs a lot of attention. Like the noble Baroness, Lady Altmann, I think that this is a complex issue, and, in the long term, we need to look at how they can be used less in construction. However, now we absolutely need to support alternatives, because these exist for food packaging. The noble Baroness, Lady Bennett, clearly made the case that this has been happening in a number of places around the world already. We need to get on to this and address the issue of stopping polystyrene being used in food packaging.

Like other Members, I attest to the fact that there is support on all Benches for more support and action by the Government to tackle waste. As we move towards the end of the evening, I hope that the Minister might be able to respond positively at last to some of these amendments.

Lord Goldsmith of Richmond Park (Con): Before I address the individual amendments in the group, I reiterate that the Government absolutely share the concerns associated with the proliferation of plastics. I assure Members across the House that measures in the Bill will vastly improve the tools that we have at our disposal to tackle plastics pollution and the damage that they cause.

I thank the noble Viscount, Lord Colville of Culross, for Amendment 139. Noble Lords have spoken extensively and unanimously about the need to combat plastics and the damage that they do to the environment. I know that litter picks on the beaches near Culross find a significant amount of single-use plastic, as they do on all beaches, sadly, even those around the Pitcairn Islands, which are the most remote on the planet.

The Bill provides a robust approach to help to move towards a more circular economy in all sectors. Items that are not captured by Clause 54 could be captured by other measures, such as EPR or resource efficiency. In response to the noble Viscount, Lord Colville of Culross, I say that I stand by my earlier comments about resource use more broadly and the need to reduce waste and our impact on the planet generally. I do not think that we disagree—we know that, in the

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open environment, plastics endanger wildlife in a particular way. As has been said, unlike other materials, they will persist for hundreds of years—we do not actually know how long, because none has fully decomposed—which is why we believe that they require particular, special forensic attention through these measures. Through the Bill, powers to place charges on single-use plastic items will be a powerful tool in helping us to reduce unnecessary single-use plastics.

The noble Viscount also mentioned cups. To reassure him: I recently learned that disposable cups filled with liquid drinks are classified as packaging and therefore obligated under the packaging producer responsibility regulations.

9.45 pm

On Amendments 130A and 130B in the name of the noble Baroness, Lady Ritchie, the Government recognise that retailers such as supermarkets have a key role to play in helping improve resource efficiency, including through the packaging they use. We are already seeking to place new requirements on producers in relation to packaging, including plastic packaging, through packaging extended producer responsibility, which we will introduce through regulations using powers in Schedules 4 and 5 to the Bill.

This will see many retailers, including supermarkets and other businesses, subject to obligations that will include, for example, reporting the amount of packaging they have placed on the market; paying the full net costs of the management of this packaging, including disposal; and paying higher fees if the packaging is tough to recycle. This will incentivise supermarkets to choose more environmentally friendly packaging.

I have done it before, but like others I pay tribute to Iceland for the leadership it is showing. I agree with the noble Baroness, Lady Parminter, that this cannot be about voluntary measures. Yes, Iceland has volunteered to do some great things, but that is not true of all supermarkets. As a Government we need to make what it has created—its best practice—the norm as soon as possible. That is the purpose of the regulations we are introducing.

The packaging extended producer responsibility powers to make regulations will also set definitions for different types of packaging, including primary packaging—the packaging that contains and protects a product—as well as packaging used in the transport and distribution of products. I know this is of particular interest to the noble Baroness.

The new regulations will require companies to report on packaging they have placed on the market, including the materials used and how much is recycled. That will ensure transparency, help with tracking our delivery against ambitious plastic packaging recycling targets, and show us where further action, such as introducing a ban or a charge, is needed.

With regard to the noble Baroness's Amendment 141A and Amendment 140, tabled by the noble Lord, Lord Blencathra, I reassure noble Lords that the proposal for extended producer responsibility for packaging will require producers who use harder-to-recycle packaging, such as sachets or polystyrene, to pay higher fees for the management of this packaging, disincentivising its use. The test of such a policy will ultimately be the elimination of those harder-to-recycle materials altogether.

Under Section 140 of the Environmental Protection Act 1990, the Government already have the power to prohibit or restrict the use of various substances. This could be used to restrict or end the use of certain types of polystyrene in certain uses where it leads to environmental harm. I very much agreed with the frustrated description by the noble Lord, Lord Blencathra, of the difficulties of sachets and the case for eliminating their use—and we have the tools to do so. The Government will continue to monitor and review the latest evidence and introduce further bans where viable.

I turn to Amendment 141. As the noble Baroness, Lady Bakewell, said at Second Reading:

"We are subsumed by plastic."—[*Official Report*, 7/6/21; col. 1297.]

She is right. The Government will implement a new plastic packaging tax from April next year, which a number of noble Lords have mentioned, to encourage greater use of recycled plastic and reduce the use of virgin plastic. It will incentivise more sustainable, reusable plastic packaging and stimulate demand for recycled materials. In addition, we already have a power in the Bill that will enable us to set charges for any single-use plastic. This includes those made from bio-based sources or designed to be biodegradable.

I will address the points made by the noble Baroness about compostable plastics. They usually require a specific set of circumstances to break down as intended, and under current practices we cannot yet guarantee that those plastics will be appropriately and properly treated. They are not always as they are described or as they seem. You could even say there is quite a lot of—I am not sure I would use the term—"fraud" in the sector; there is a lot of very misleading advertising. When processed incorrectly they can be—they are not always—a source of microplastics and can contaminate recycling streams. For that reason, we are working with the industry and the research community to better understand the impacts of using bio-based, biodegradable and compostable plastics, including their impact on existing waste treatment infrastructure and their actual, real-world degradation timeframes.

The Government will keep the treatment of these new products in the tax regime under review. We would of course consult before a charge is implemented and explore that with industry, as further developments in these materials are made and the availability of the infrastructure to treat them catches up.

Regarding the noble Baroness's Amendments 142 to 145, compostable packaging is not generally collected for recycling at present. In fact, it is frequently stripped out from food waste before processing to avoid cross-contamination or machine damage. As a result, it is not one of the recyclable waste streams named specifically in the Bill. On the back of the research that I mentioned earlier and standardisation of what genuinely is compostable or biodegradable plastic—and as the science, technology and our understanding improve—the amendment that she has put forward would make a great deal of sense. If a plastic is genuinely compostable and not going to break down into small particles of plastic that will do even more harm, including it in

food waste to compost would make perfect sense. However, we are not there yet from a technological point of view. We certainly do not have the confidence to do that.

However, provisions in Clause 56 enable the Secretary of State to make regulations to add further recyclable waste streams for collection in the future. If compostable packaging was suitable for collection and recycling, if recycling it could have an environmental benefit and, crucially, if there was infrastructure for its collection, it could, as I said, be added to the list in future—but we have work to do.

I hope that I have addressed the concerns raised so far today on this issue. I thank noble Lords for their contributions and hope that the noble Baroness will be willing to withdraw her amendment.

The Deputy Chairman of Committees (Baroness Fookes) (Con): I understand that the noble Baroness, Lady Bennett, wishes to speak after the Minister, so I call her now.

Baroness Bennett of Manor Castle (GP): My Lords, I have a very simple question. The Minister referred to the Government already having power to ban materials such as certain sorts of polystyrene containers. Do they have any plans to take such action?

Lord Goldsmith of Richmond Park (Con): Do we have plans? We are committed to extending our bans on unnecessary single-use packaging and have a 25-year environment plan to phase out all unnecessary use of plastic, not just single-use plastic, so in that sense, yes, we do have a plan. The noble Baroness is right that there will need to be continuous pressure. I think that pressure will continue to grow from consumers, voters and from parliamentarians of all parties to accelerate those bans and expand their remit. From my point of view, I have ambition and hope that we will expand that approach as far and wide as we possibly can and as quickly as we can.

Baroness Jones of Whitchurch (Lab): My Lords, I thank all noble Lords for the support for my noble friend Lady Ritchie's amendments, particularly on action for transparency and for tackling the use of sachets.

The noble Viscount, Lord Colville, made a very important point: we need a holistic approach to the banning of all single-use products. That point was very well made. He also quite rightly made the point that it is often hard to know the composition of the materials you are dealing with, particularly single-use materials. Some of them conspire to look like wood but they are not always wood, for example.

The noble Viscount also decried the huge amount of packaging that comes with online purchases. I could see loads of heads nodding when he mentioned that. The noble Lord, Lord Blencathra, rightly pointed out that polystyrene is also massively overused in packaging when other materials that can be more easily recycled are available. We very much support his plea for a ban in that regard.

The noble Baroness, Lady Jones, quite rightly reminded us that history will judge us badly if we do not tackle plastic and that we may well find out that, historically, it is seen as damaging as asbestos. She is quite right about that. As the Minister said, we do not quite know the full effects of plastic in the environment yet. We are yet to find out some of those horrors.

The noble Baroness also quite rightly pointed out some of the difficulties with biodegradable and compostable plastics, which break down differently in the waste stream. There is a lack of guidance for waste managers and a lack of information for consumers at the present time. It is important to tackle that issue if we are to encourage the use of compostable plastic in the future; I was interested to hear what the Minister had to say on that.

I am so glad that the noble Baroness, Lady Boycott, raised the issue of plastic face masks. It was shocking to hear that we are throwing away 3 million face masks a minute. I know that the Minister is passionate about this, as he demonstrated earlier in the debate. I do not know whether we could get away with announcing a complete ban on plastic face masks but perhaps we could have a quick win—maybe a world first—if we required all workplaces to provide all of their staff with reusable masks. That would be a fairly easy way to intervene in the current obsession with people using disposable masks.

The Minister said that there were already some requirements on supermarket reporting and he detailed some of them, but our amendment would go further, to all large employers. I hope he would agree that there is a real need to tackle the greenwash claims that abound among some employers and supermarkets. We need to have the facts out in the open to shine some light. What was the comment from the noble Baroness, Lady Bakewell: sunshine is the best disinfectant? That is what we need: some more light shone on these claims.

Did the Minister mention our sachets campaign? That is the thing that got the most support from around the Chamber. Maybe that could be another quick win, if the Minister was so inclined to have a sachet ban. Quite honestly, I do not think that most people would miss them if they were not there.

I will report back to the noble Baroness, Lady Ritchie, on the nature of the comments made today, but in the meantime, I beg leave to withdraw the amendment.

Amendment 130A withdrawn.

Amendment 130B not moved.

Amendments 131 and 132

Moved by ***Lord Goldsmith of Richmond Park***

131: Schedule 7, page 176, line 9, at end insert—

"(1A) The requirements in sub-paragraph (1) may be met by consultation carried out, and assessments and draft regulations published, before this paragraph comes into force."

Member's explanatory statement

This amendment provides that the consultation requirement in paragraph 5 of Schedule 7 may be met by pre-commencement consultation.

132: Schedule 7, page 179, line 3, at end insert—

"(2) The requirement in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force."

Member's explanatory statement

This amendment provides that the consultation requirement in paragraph 14 of Schedule 7 may be met by pre-commencement consultation.

Amendments 131 and 132 agreed.

Schedule 7, as amended, agreed.

Clause 53 agreed.

The Deputy Chairman of Committees (Baroness Fookes) (Con): We now come to the group beginning with Amendment 133. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Schedule 8: Deposit schemes

Amendment 133

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

133: Schedule 8, page 179, line 11, at end insert—

"(1A) When making regulations establishing a deposit scheme, the relevant national authority must have regard to the public interest in such a scheme being operational by 1 January 2023."

Member's explanatory statement

This amendment aims to accelerate the establishment of deposit return schemes, which a recent government consultation suggests will not be operational until late 2024 at the earliest.

Baroness Jones of Whitchurch (Lab): My Lords, in moving Amendment 133 I will also speak to Amendment 133A in my name. I am grateful to the noble Viscount, Lord Colville, the noble Baroness, Lady Boycott, and the noble Earl, Lord Caithness, for adding their names.

These amendments would accelerate to 1 January 2023 the introduction of deposit return schemes and set minimum criteria for the composition and size of the containers to be included in such schemes. These criteria are the equivalent of those already being introduced in Scotland and supported by the Welsh Government. This would make it easier for businesses, retailers and consumers to access consistent and compatible schemes, which would result in improved take-up. It would incentivise consumers to take their empty drinks containers to return points hosted by retailers. The technology already exists for reverse vending machines that can collect empty bottles and return deposits, as well as sell the original filled bottles. Trials are already running of refill schemes to ensure the same bottles can be reused.

Schedule 8 already includes outline proposals for a deposit return scheme. As ever, the weasel word "may" is in the provision, as in:

"The relevant national authority may by regulations establish deposit schemes".

We know that the Government's resource and waste strategy supports the idea of deposit return schemes. As the Minister said in his letter of 10 June, such a scheme will

"help reduce the amount of littering in England, Wales and Northern Ireland, boost recycling levels, and allow high quality materials to be collected in greater quantities."

We agree with this analysis, but once again we are concerned that the Government's timetable for action will slip. Already, by their own admission, the scheme has been delayed. They are now saying that the scheme will not be introduced until late 2024 at the earliest—in other words, in the next Parliament. This means that they will break their pledge in the 2019 Conservative manifesto to introduce a deposit return scheme. It also means that six and a half years will have passed since it first became policy.

Meanwhile, Scotland is pushing ahead and, once again, England is being left behind. This is why Amendment 133 proposes an introduction date of January 2023, to avoid further delay, and why Amendment 133A would introduce consistency across the four nations. There has never been a greater need for such a scheme. The Government's own figures show that every year across the UK, consumers use an estimated 14 billion plastic drinks bottles, 9 billion drinks cans and 5 billion glass bottles. Meanwhile, fewer than half of plastic bottles in the UK are recycled, and we know that much of the remainder end up as litter or landfill. In contrast, as the Government concede in their fact sheet, Germany, Norway and the Netherlands have achieved collection rates, including recycling rates, of 98%, 92% and 95% respectively for plastic bottles through the introduction of deposit return schemes.

We also know that the most effective bottle return schemes include all the major sizes and material types, not just plastic. This was confirmed by the Government's own impact assessment in 2019, which found that the most comprehensive schemes offered the biggest financial benefits. But we also have to ensure that the introduction of such schemes does not have perverse consequences. For example, deposit schemes should complement existing collection schemes and build on the success of the glass and aluminium recycling schemes already in existence. This is why we welcome the amendment in the name of the noble Baroness, Lady Bennett, which would vary the deposit fee depending on the size of the container. We also want to ensure that there is not a switch from glass to plastic bottles, given the efficient closed-loop systems already in place for recycled glass, which is collected separately from kerbsides and bottle banks. Our aim in all this should be to cut down on single-use plastic and develop closed-loop recycling for all materials captured through a deposit scheme. I hope noble Lords will see the sense in these proposals and I beg to move.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I beg to move that the debate on this amendment be adjourned.

Debate on Amendment 133 adjourned.

House resumed.

House adjourned at 10.02 pm.

Grand Committee

Wednesday 30 June 2021

The Grand Committee met in a hybrid proceeding.

Arrangement of Business

Announcement

2.30 pm

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): My Lords, the hybrid Grand Committee will now begin. Some Members are here in person, others are participating remotely, but all Members will be treated equally. I ask Members in the Room to respect social distancing. 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.

Birmingham Commonwealth Games (Compensation for Enforcement Action) Regulations 2021

Considered in Grand Committee

2.30 pm

Moved by ***Baroness Barran***

That the Grand Committee do consider the Birmingham Commonwealth Games (Compensation for Enforcement Action) Regulations 2021.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): I beg to move that the Committee approves the Birmingham Commonwealth Games (Compensation for Enforcement Action) Regulations 2021, which were laid in draft before the House on 17 May. With less than 13 months to go until Games time, preparations are ramping up to deliver the Birmingham 2022 Commonwealth Games—the biggest sporting and cultural event ever staged in the West Midlands.

Before turning to the regulations that we are here to debate today, I remind the Committee of the context in which this instrument has been brought forward. Measures in the Birmingham Commonwealth Games Act, which many in this House scrutinised and shaped, include those which restrict the resale of Games tickets and prevent unauthorised advertising and trading in and around specified Games locations. We are working closely with the organising committee and enforcement authorities to ensure a consistent, co-ordinated and proportionate approach to enforcing these elements of the Act.

None the less, as a safeguard in the enforcement framework, the Act provides a person with a right to compensation in the event of property damage arising from unlawful enforcement or the use of unreasonable force in enforcement action. The draft regulations before us today set out the administrative process by which a claim for compensation can be made, considered and appealed. This ensures the process is clear, consistent and proportionate for both potential claimants and the enforcement authorities involved. I will now set out in a little more detail what the regulations contain.

I am sure I do not need to remind noble Lords that the Delegated Powers and Regulatory Reform Committee raised two particular points in its report. I am pleased to be able to provide clarity on these matters today. The first was in relation to the person or body responsible for determining claims for compensation. Where someone believes they have experienced damage to their property as a result of enforcement action being unlawful or unreasonable, they will be able to submit a claim to the local trading standards authority where the damage occurred, or to the Department for the Economy in Northern Ireland. This is known as the relevant authority.

Claimants should submit a claim, in writing, with the necessary information, within 90 days of the end of the Games; this should include the date and location that the enforcement action took place, the nature of any damage and any supporting evidence. Within 14 days of a claim being received, the relevant authority should determine whether it has sufficient information and evidence to make a decision on the claim. If so, it will have 28 days to decide whether the claimant is entitled to compensation and the amount due, and to communicate this outcome, alongside information about how to seek a review.

It is important to note that, under the Games Act, local trading standards authorities are responsible for authorising officers to undertake enforcement in relation to Games offences. This is consistent with the Consumer Rights Act 2015. In the past, such as for London 2012, there was a role for the organising committee in designating enforcement officers, and therefore in considering claims for compensation. However, in tandem with arrangements in the Consumer Rights Act, these regulations provide for claims to be considered by the authority which authorises an enforcement officer—in this instance, a local trading standards authority or the Department for the Economy in Northern Ireland.

It is worth noting that the Act provides that a person is entitled to compensation for the cost of repairing the property that was damaged during the enforcement action, or, if it is not possible to repair it, the cost of replacing it and the amount of any other loss that is the direct result of the damage to the property.

The second point raised by the DPRRC was whether there is to be a right of review or appeal and, if so, to whom the review or appeal may be made and what grounds for appeal would be available. As set out in Regulations 6 and 7, if a claimant is unhappy with a relevant authority's decision, such as the amount of compensation offered, they will have 14 days to request a review of the decision. The relevant authority will then have a further 14 days to consider this and provide a response. If the claimant remains unsatisfied with the outcome of the review, they will be able to submit an appeal within 21 days to the county court or, in Scotland, to the sheriff. The regulations do not specify or limit the grounds for appeal. The court, or the sheriff in Scotland, will be able to rehear the case and examine both the facts of the case and the law.

[Baroness Barran]

As restrictions on advertising and trading can be in place only for a maximum of 38 days, and in most instances a much shorter period, we expect any compensation claims arising from enforcement to be minimal. Indeed, we are not aware of any arising from similar regulations that supported the London 2012 Olympic and Paralympic Games or the Glasgow 2014 Commonwealth Games.

To summarise, these regulations plug a gap in the enforcement framework and provide the necessary clarity around the procedure for compensation claims, including the right to appeal any decision made by an enforcement authority. They are a small but nevertheless important part of the ongoing preparations to deliver a fantastic Games next year—a Games that will showcase Birmingham, the West Midlands and the entire country to the rest of the world as a place to live, work, study and do business. I look forward to continuing to update the House on this. I commend the regulations to the Grand Committee.

2.37 pm

Lord Hunt of Kings Heath (Lab): My Lords, I welcome the Minister's statement and these regulations. Let us hope they do not have to be used, but certainly they are useful as a backstop.

In supporting the regulations, I say again how much I welcome the decision of the Commonwealth Games Federation to select Birmingham as the host city for the 2022 Commonwealth Games. I applaud the city's ambitious and innovative vision. The Games will open up a whole host of opportunities, including cultural engagement, business, trade, volunteering, physical activity, jobs, skills, education and tourism. Of course, it is the sports programme that is at the heart of Games, which will feature many thrilling sports, with wheelchair basketball making its first appearance at the Commonwealth Games. For me, the inclusion of women's cricket is a great joy. It will be the first ever fully integrated parasport competition, with the potential for more medals for women than men—a first for any major multisports event.

I am grateful to the Minister for updating us in a recent letter on the sustainability pledge made by the Games organising committee to deliver the first carbon-neutral Games, and which also covers environmental, social and economic outcomes aligned with the UN sustainable development goals.

Of course, there are challenges, the first of which is finance. The funding of the Games is complex and includes a substantial contribution from commercial revenues. The budget is split, 75% and 25%, between central government and Birmingham City Council and several key partners. Additional commercial revenue will be raised by the organising committee and the Commonwealth Games Federation partnership through ticket sales, sponsorship, merchandising and the sale of broadcast rights. None the less, this is a major challenge, particularly because the finances of Birmingham City Council are themselves under huge pressure. Can the Minister update me on any budgetary issues, including whether there are any financial overruns and the projected commercial income? Can the Minister also confirm that the venues being built or adapted for the Games will all be ready on time?

It is important that the legacy includes a commitment to encourage sport and physical activity among young people. I am particularly interested in what contribution the Games legacy can make to the future health and well-being of people in Birmingham and the West Midlands—we certainly need to. The improvement in life expectancy in Birmingham has levelled off in recent years. It has one of the highest levels of obesity among year 6 pupils in England. Indeed, NHS Digital figures show that more than one in four children who finished primary school in Birmingham in 2017-18 were obese, of whom 6.5% were severely obese. Additionally, 15% of year 6 children were overweight. That means that 41% of Birmingham's youngsters are unhealthily overweight when they finish primary school, so the opportunity a legacy offers in helping to change this is too good to miss.

Going back to the London Olympics Games, we know that hopes were raised that they would increase sports participation. Jeremy Hunt, then Secretary of State, said that the Games were an extraordinary chance to re-invigorate the country's sporting habits. Despite an extraordinary Games, the evidence is that there has been virtually no change in participation rates in the 16 to 25 year-old group. I hope that Birmingham can learn and do better. Will the Minister say something about that?

2.41 pm

Lord Bilimoria (CB) [V]: My Lords, the Birmingham Commonwealth Games (Compensation for Enforcement Action) Regulations 2021 set out the details of the process for claiming compensation for damage that occurs as a result of enforcement action, the timescales for each party at each stage and the appeals mechanism, as the Minister has outlined. I am proud to be chancellor of the University of Birmingham, one of the top 100 universities in the world and a Russell group university. It will play a key role in the Commonwealth Games.

Birmingham 2022 will be the biggest multisport event to be held in the UK for a decade. There will be 11 days of sport, with 286 sessions, 283 medal events and 19 sports, including eight parasports and the largest ever integrated para programme, and, we hope, more than 1.5 billion global television viewers. The Birmingham Games are going to have many firsts. They will be the first carbon-neutral Games, and it will be the first time a social value requirement has been embedded in every tender for goods and services. Birmingham will have the largest business and tourism programme of any Games and the first comprehensive and ambitious community engagement programme. They will be the first Games fully to integrate volunteers from all delivery partners into a united volunteering programme, and the first major multisport event to award more medals to women than to men. They will be the first Games to include women's cricket—the noble Lord, Lord Hunt, mentioned this—3x3 basketball and wheelchair basketball.

The Games will be a wealth of opportunities for people and will deliver significant economic benefits to Birmingham, the West Midlands and the wider UK, through job creation, business and trade opportunities, and tourism. I speak on that as president of the CBI. The West Midlands region will benefit from £778 million of sport investment, the largest since London 2012. Glasgow 2014 contributed £740 million to the Scottish economy, and it is expected that, when the figures come through, the Gold Coast Games in 2018 will be shown to have delivered 1.3 billion Australian dollars to boost the economy in Queensland. Millions of extra pounds of extra tourism, trade and investment can be secured from the Birmingham 2022 Commonwealth Games under plans that will bolster the region's post-Covid-19 economic recovery via the West Midlands Growth Company's business, trade, tourism and investment programme.

A lot of employment will be created through the Games. Approximately 35,000 Games-time roles will provide important employment and economic benefits to the city and the region, and a once-in-a-lifetime opportunity for jobseekers and professionals at all levels. Right now, there are 13,000 trained volunteers, known as the Commonwealth Collective, coming together to help organise, run and manage the Games.

The Games authority has worked with the West Midlands Combined Authority and partners to launch a Commonwealth jobs and skills academy to accelerate and amplify plans to improve regional skills and employment opportunities through the Games. Very importantly, there will be a focus on supporting young people and unemployed adults. These Games are titled the "Games for Everyone", with tickets starting from just under £8 for under-16s and from £15 for adults.

From a business point of view, there are procurement opportunities, which will also support and promote the Greater Birmingham and Solihull LEP's Inclusive Commonwealth Legacy Programme. This supports BAME-owned businesses in particular, and provides training and support to bid for Birmingham 2022 contracts. This is particularly important for me as the first Chancellor of the University of Birmingham of Indian origin and the first ethnic-minority president of the CBI, which has launched an initiative called Change the Race Ratio to promote and champion ethnic-minority participation across all business, including championing the Parker review.

From a culture point of view, the Games will have a comprehensive culture programme, with the Queen's baton relay. From a human rights point of view, the UN guiding principles of human rights will be delivered—the respect, support and promotion of these rights and freedoms is guaranteed to all individuals under law and the Games are committed to protecting human rights.

They will also be the first carbon-neutral Games. The stand-out initiatives include the creation of 22 acres of forest and 72 tennis court-size mini forests to be built in urban areas across the West Midlands. Each mini forest will be linked to one of the nations and territories competing in 2022. This is a fantastic initiative, utilising sustainable practices and subscribing to the UN Sports for Climate Action Framework—again, a first for the Commonwealth Games. To summarise, the commitment to sustainability will be based on four Cs: certification, carbon, the circular economy and conservation.

The West Midlands is one of the largest networks of urban communities outside the capital and home to over 4 million people. Its central location places it at the heart of the UK's transport network and firmly positions the region as a dynamic and ambitious place to live and work. But the region is not without challenges. It has a higher than average unemployment rate, and overall deprivation is high, with 34.5% of local areas among the most deprived in the country.

The Covid-19 pandemic has exposed pre-existing disparities in the local economy, highlighted the growing challenges that the region faces and exacerbated the inequalities in health, education attainment, innovation and economic development. But as we emerge from the pandemic, there are now opportunities to do things differently—to champion the region on the world stage, transform local infrastructure and stimulate job creation, securing an inclusive workforce that is fit for the future.

Following his re-election in May 2021, the mayor, Andy Street, must continue to champion a strong economic vision for the region, working collaboratively with both the private and public sectors to capitalise on future opportunities, such as the UK City of Culture coming to Coventry and, of course, the Birmingham Commonwealth Games, which will bring new investment opportunities, showcasing the region's dynamism on the international stage.

The CBI, of which I am president, has created a business manifesto for the West Midlands, developed in partnership with our members, setting out three guiding principles for the mayor. The first is to champion regional dynamism and global competitiveness to raise living standards—the Commonwealth Games will do that. The second is to transform digital and physical infrastructure in the race to net zero—the Games will help to do that. The third is to stimulate job creation and secure an inclusive workforce for the future—and the Games will do that too.

The challenges faced by the region are by no means insurmountable, and this manifesto sets out a way in which business and local government can work together, in collaboration, to ensure that the West Midlands achieves its full potential during the economic recovery and beyond. We stand ready to support the West Midlands and help the Games to succeed.

The Games present an opportunity and a challenge. The region is gearing up for a once-in-a-generation platform which will make a real difference, far beyond the 11 days of the Games. Regional and national stakeholders must come together, ahead of the Games, seize the moment and put in place meaningful commitments that will create meaningful benefits and a positive legacy for local communities. Does the Minister agree?

While 2022 might seem a very different world, given the struggles of the past 15 months with the Covid pandemic, we must all recognise and embrace this. Businesses have struggled during these turbulent times; for a city which prides itself on being a visitor destination,

[Lord Bilimoria]
this year has been devastating. The need for the Games to deliver tangible benefits is more important than ever. The region must seize the moment and capitalise on this, while fostering local economic recovery, and remain a vital visitor attraction. To realise its full potential, more must be done to engage and inspire the local business community. Again, the CBI stands ready to help.

To conclude, 2021 has been and is a watershed year for the UK, post Brexit and post pandemic. We have just successfully chaired and hosted the G7, and there is COP 26 to come. Looking ahead, we have the Queen's Platinum Jubilee and the Commonwealth Games 2022. *Seize the Moment*, our economy strategy for the UK, identifies £700 billion of opportunity and six pillars, including clusters. The West Midlands is a model cluster, and the Commonwealth Games will highlight its power through the power of sport.

2.51 pm

Lord Moynihan (Con) [V]: My Lords, if there were gold medals for ingenuity, breadth, scope and extent, and enthusiasm about these Games, the two speeches we have just witnessed would win them. It is a privilege to follow the noble Lord, Lord Bilimoria, having won his gold medal for covering virtually every aspect of what will, undoubtedly, be a great Games, and the noble Lord, Lord Hunt of Kings Heath. I echo everything he said in emphasising that a sport, recreation and active lifestyle legacy for all ages and people, not just in Birmingham and its surrounding area but in the United Kingdom as a whole—indeed, in the Commonwealth—is vital. He was completely right to remind us that that was the one element we did not deliver post London 2012. We had an extraordinary Games and wonderful urban regeneration in the East End of London, but we missed out on a sports legacy. We must not do so in Birmingham 2022.

My comments will be a little briefer, less extensive and not of such gold medal-winning proportions as the previous two speeches. I thank my noble friend the Minister for plugging an important gap and for the clarity that these new regulations provide. As she knows, I am co-chair of the All-Party Parliamentary Group on Ticket Abuse, which works hard in this area. My only concern about what she has announced in this context is that, just as the Delegated Powers Committee highlighted—and I declare an interest, having sat on that committee for a number of years—putting a lot of emphasis on the work of the local trading standards authorities has one problem: they are poorly resourced. They must be better resourced to take on their many responsibilities, not least their enforcement powers under Schedule 5 to the Consumer Rights Act 2015, which she referred to, for the purpose of enforcing an offence under Section 10 of that Act, on ticket touting, which is relevant to what we are discussing today.

With that minor but important point, I urge her to continue the good work she has done, not just on this Bill but in general, in making sure that we criminalise modern-day touting and that we have appropriate legislation in place for not just the Commonwealth Games, football and the Olympic Games but many other sporting events. When we get the opportunity to look at improving the legislation on this in due course, I hope she will stand shoulder to shoulder with many noble Lords in making sure that the lessons we are learning from the Commonwealth Games are put in place.

Finally, I thank my noble friend the Minister for her letter, which the noble Lords, Lord Hunt and Lord Bilimoria, mentioned. The pledge, which is now public, that has been made by the organising committee in the context of sustainability is exceptionally welcome. It is a first. I only wish that the Olympic Games in Paris, after Tokyo, had such a robust sustainability pledge, because it will deliver the most sustainable Games ever—by that I mean not just among the Commonwealth Games but when compared to Olympic Games, both present, in Paris, and in the past. It will deliver the first ever carbon-neutral Games, do so in a socially responsible and inclusive way, support region-wide economic recovery and ensure equal access to opportunities and participation for all.

I hope we can add a fifth to that list, which was rightly highlighted by the noble Lord, Lord Hunt of Kings Heath. He made an important point about how the level of participation has not in fact improved since London 2012; as a percentage of the increased population over that time it has, in fact, decreased. I hope that government will grasp the opportunity to make sure that one of the great legacies from what I am sure will be an outstanding Games will be a focus on developing opportunities for sport, recreation and an active lifestyle among all population groups, post Birmingham 2022.

With those closing words, I thank my noble friend the Minister, not only for her presentation of the regulations today but for the consistent hard work and enthusiasm she has shown to support the Commonwealth Games in their preparation and, I am sure, in their execution as well.

2.56 pm

Lord Bhatia (Non-Afl) [V]: My Lords, I thank the Minister for her introduction of this regulation and the noble Lord, Lord Bilimoria, for what he said—I believe he should get not only a gold medal but a diamond one, if that were possible. We should all support the Birmingham authorities and wish them well, but they must ensure a speedy resolution of the claims made by the citizens of Birmingham. Has the Minister made any calculations of how many millions will be spent by tourists during the Games?

2.57 pm

Lord McNally (LD): My Lords, like the noble Lord, Lord Moynihan, I feel slightly intimidated in trying to match the noble Lords, Lord Hunt and Lord Bilimoria, in both their knowledge of Birmingham and their enthusiasm for the Commonwealth Games next year. As I explained before we began this debate, I am a late replacement for the noble Lord, Lord Addington, who is doing good elsewhere in the Palace of Westminster at this moment. I asked the noble Lord, Lord Hunt, to consider me as a kind of Jack Grealish—a late replacement, or what I think they call in the sport an "impact player".

Outside Birmingham, I have found almost entirely enthusiasm for the Birmingham Games. The only small thing I should report is that one colleague said, rather crustily, "Well, I hope they give a special medal for finding your way out of New Street station". It may be a cruel joke but there is an important lesson there, as one of the factors in the Commonwealth Games, and indeed the Manchester Games, is the great signage and the ever-present, helpful guides who help people; it makes a heck of a lot of difference to the success of an event if you have that kind of back-up.

The first real impact of athletics on me was the 1954 Vancouver Games, which featured the great competition between Roger Bannister and John Landy in the "miracle mile". It certainly gave me an interest and an enthusiasm for athletics—which carried on until politics took over, I am afraid.

The fact is that the Commonwealth Games have always been a kind of family affair. They have a softer edge than the Olympics and are the better for it. Certainly, the host regions have benefited. I was an MP for the Greater Manchester area and still have strong links in the north-west, and so can say that the Manchester Games were a success; the new stadium, which is being put to quite good use by Manchester City, and the velodrome are just two examples of legacy benefits.

I have looked at the website and seen how much the organisers are making an effort to make this a real community effort. So I have every support for the SI. The right to protect, as it does, the organisers from fake products and ticket touting is very important because, as the noble Lord, Lord Hunt, said, a good proportion of the budget will come from sponsorship. Are there any limits to sponsors? For example, are gambling or alcohol organisations allowed to be sponsors?

On one final point, I have long believed that sport can offer young people a diversion from gangs and crime—I was chairman of the Youth Justice Board. I know the statistics show that participation has not increased since the 2012 Olympics, but I still believe that sport can play a big part. As a kind of quid pro quo from sponsors for the protection that these SIs give, can they be encouraged to help with bringing hard-to-reach individuals and communities into the excitement of these Games, in preparation and while they are on? My successor as chair of the Youth Justice Board is Keith Fraser, who has strong roots in the West Midlands. I am sure he would be willing to give advice—as would, I am sure, James Mapstone from Alliance of Sport, which relates to the criminal justice system—on just the things that the YJB and the alliance are doing to attract youngsters into sporting participation and away from the kind of things that gangs provide them with.

I end with sending my best wishes to Birmingham. We will all be in whatever is the new normal of 2022, but in that new normal I hope that Birmingham has a Games that will be remembered as vividly by this generation of 11 year-olds as I remember the Landy-Bannister mile of 1954.

3.03 pm

Lord Bassam of Brighton (Lab) [V]: My Lords, it is always a bit of a nightmare coming just before the Minister, when everybody is waiting to get their questions answered, but even more so today following the gold medal performance of the noble Lord, Lord Bilimoria, the keen advocate in my noble friend Lord Hunt, and the impact player who is undoubtedly the noble Lord, Lord McNally.

With so many sports fans focused on the current Euro 2020 championships, Wimbledon and the upcoming Olympic Games, it is easy to forget that the Birmingham Commonwealth Games will take place next year. We have recently seen the full competition schedule, which will help to build that sense of anticipation to which the noble Lord, Lord Bilimoria, referred. The Bill to enable these Games did not of course have the easiest of journeys through Parliament, having to be reintroduced after it lapsed on the first occasion. However, it was rightly a piece of legislation for which there was cross-party support and enthusiasm, even if matters such as those before us today had to be left to regulations.

As with any sporting competition, there are rules on ticket touting, and in his contribution the noble Lord, Lord Moynihan, made a valiant plea to keep this at the forefront of our thinking. Regulations such as these deal with some of the supplementary issues arising from it, including the risk, cited in paragraph 6.8 of the Explanatory Memorandum, that damage may be caused to people's property in the course of enforcement action being taken. It is right that the Government make this provision and our Benches welcome it being done well ahead of time. However, can the Minister outline whether an assessment has been carried out of the likely or probable costs that may arise? If so, can the Minister provide us with some details of this today?

Paragraph 11 of the Explanatory Memorandum notes that no guidance has been published alongside this instrument, although the Government will continue to engage with local authorities and answer any questions on implementation. Can the Minister say a little more about their engagement with relevant authorities to date, both on this specific issue and more widely?

The issue being debated today is part of the wider discussion on the Bill, relating to how the Games and local communities can work in tandem to make the competition a success. We have heard from the noble Lord, Lord Bilimoria, and my noble friend Lord Hunt about how that is working. During the passage of the Bill, some of my former Front-Bench colleagues and my noble friend Lord Hunt—[*Inaudible*]—relating to community benefit, and we are pleased that progress has been made on that. I noted that it included access to housing once athletes had left the city, which is a major issue in the West Midlands. I hope that issue does not fade away.

I ask the Minister if she can also assure us, and the Committee as a whole, that the Government are fully behind the cultural programme of engagement that runs alongside the Games and seeks to widen the economic, social and health benefits that the Games bring to the region as a whole. Today, we heard some pretty shocking figures on engagement after events such as the Commonwealth and Olympic Games, and

[Lord Bassam of Brighton]
we must ensure that we get full benefit from elite sporting events such as this to inspire the next generation. While I am broadening the scope of the discussion, can the Minister say a little more about what progress is being made on these areas, particularly in the light of the earlier decision not to proceed with the dedicated athletes' village in the Perry Barr area?

During the passage of the Bill, we also raised concerns regarding the likely financial pressures on Birmingham City Council and the other local authorities. As this is our first opportunity to debate the Games in quite some time, can the Minister provide an update on these discussions, because there will undoubtedly be some quite severe or adverse impacts on the Games, which may not have been thought through or immediately apparent at the time?

With that said, I thank the Minister for her open approach, her recent communications and the active support role she has played on this. As other colleagues have said, this is a wonderful opportunity not just for the region but for the nation, and I am sure that Birmingham will do us proud.

3.08 pm

Baroness Barran (Con): My Lords, I thank all members of the Committee for their consideration of the regulations today and their incredibly warm and enthusiastic welcome—I am not sure whether it was a gold or diamond medal performance, or many medals—for the Games in general and the regulations in particular. I will try to address the many points raised by your Lordships and, if I run out of time, I will of course write.

The noble Lords, Lord Hunt and Lord Bassam, both asked about progress on the implementation of the Games and funding, particularly in relation to Birmingham City Council. I am pleased to confirm that, despite an extraordinarily difficult period with the impact of the Covid-19 pandemic, the Games remain on time and on budget. There has been a constant dialogue between the Government and the city council on all aspects of the Games, including the budget, and the Government have full visibility of all the financial plans.

I must apologise to the noble Lord, Lord Bassam; the connection was slightly coming in and out, so I did not catch exactly his question on the athletes' village in Perry Barr. The decision to move away from a single athletes' village was obviously made as a result of the impact of the pandemic. The Perry Barr regeneration scheme is bringing more than 1,400 new homes to this part of the city and will still be delivered as planned by Birmingham City Council. We believe we have an excellent solution which will provide the 6,500 athletes and team officials coming to the Games with best-in-class facilities at three sites: the University of Birmingham, the NEC and the University of Warwick.

The noble Lord, Lord Hunt, and my noble friend Lord Moynihan talked about the importance of there being an ongoing legacy of physical activity and well-being. That portion of the legacy programme rests with my department, the DCMS, and is a real priority. Our focus is to use the momentum of the Games to tackle some of the stubborn inequalities which noble Lords referred to, and which the noble Lord, Lord McNally, linked to levels of crime. We will tackle those inequalities, focus on underrepresented groups and promote wider well-being across the region. As the noble Lord, Lord Hunt, set out so clearly, inactivity is a particularly acute problem in the West Midlands, which is classified by Sport England as the least active region in England. We have been working very closely with Sport England and it is bringing to the table £4 million to address this legacy.

The noble Lords, Lord Hunt and Lord McNally—I gather that Jack Grealish is known as the "McNally" of the English team, so the feeling is mutual—raised issues of accessibility, including the signage at Birmingham New Street. I remember sending the noble Lord, Lord Hunt, a photograph of the signage when I was in Birmingham New Street station during the passage of the Bill, having been to visit the works at Sandwell to build the aquatics centre, so I share his pain about the signage. More seriously, the organising committee is committed to delivering a highly accessible and inclusive Games. Your Lordships may be aware that there is an accessibility advisory forum, which includes representatives from the disabled community across the region, to make sure that we can deliver on this commitment.

The noble Lord, Lord Bilimoria, spoke about the opportunity and the challenge presented by the Games. I think the Government would absolutely agree with him about the importance of a positive legacy for local communities. He listed some of the major economic benefits, both for Birmingham and the West Midlands and the wider UK. We also see this as a huge opportunity for local and regional suppliers to makes sure that they can really benefit from some of the expenditure that is going into the Games.

The noble Lord, Lord Bhatia, asked about tourism. An investment of £21.3 million for a business and tourism programme has been secured, which will help to ensure that the city, the region and the nation can take advantage of the economic opportunities that hosting the Games will provide. An additional £2.6 million of funding has been provided from the West Midlands Combined Authority.

The noble Lord, Lord Bassam, and my noble friend Lord Moynihan raised concerns about the impact on local authorities' resources and their capacity to fulfil the role given to them in these regulations. Local authorities are working very closely with the organising committee to make sure they have the necessary plans and resources in place so that they can enforce these measures if needed. We are working with all partners within my department on the development of the advertising and trading provisions and the approach to enforcement to take resource pressures into consideration but, as I mentioned in my opening remarks, we expect claims for compensation to be minimal.

On the wider issues of ticket touting, raised by the noble Lord, Lord Bassam, and my noble friend Lord Moynihan, we are absolutely committed to cracking down on unacceptable behaviour in the ticketing market and making sure that people can buy a ticket at a reasonable price. We have strengthened the law on ticketing information requirements and introduced a criminal offence of using automated software to buy more tickets online than is allowed.

We are also working with the enforcement agencies in this area to make sure that these measures are effective.

I thank my noble friend Lord Moynihan for his very generous comments about the sustainability plans for the Games. We debated them at length, rightly, during the passage of the Bill and I am delighted that he, the noble Lord, Lord Bilimoria, and others recognise the work that has gone into this.

The noble Lord, Lord McNally, asked about sponsorship. The Government have made it clear that sporting bodies and events organisers must consider their wider responsibilities to fans and the wider community when entering into commercial arrangements. In the case of Birmingham 2022, any such arrangements should support the vision and mission of the Games. We will continue to work closely with the organising committee and the Commonwealth Games Federation to support that.

The noble Lord, Lord Bassam, asked me to confirm that the Government support the cultural events that accompany the Games and see their value. I have great pleasure in absolutely confirming that.

To close, I reiterate the procedural but important nature of these regulations, which are yet another milestone in the preparation for delivery of the Games next year. If your Lordships have any further questions about the progress being made to deliver the Games, I know that the officials in my department and the Games organising committee would be very happy to discuss them. With that, I commend these regulations to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): The Grand Committee stands adjourned until 3.23 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

3.18 pm

Sitting suspended.

Arrangement of Business

Announcement

3.23 pm

The Deputy Chairman of Committees (Baroness Healy of Primrose Hill) (Lab): My Lords, the Hybrid Grand Committee will now resume. Some Members are here in person, others are participating remotely, but all Members will be treated equally. I ask Members in the Room to respect social distancing. If the capacity of the Committee Room is exceed 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.

Introduction and the Import of Cultural Goods (Revocation) Regulations 2021

Considered in Grand Committee

3.23 pm

Moved by ***Lord Parkinson of Whitley Bay***

That the Grand Committee do consider the Introduction and the Import of Cultural Goods (Revocation) Regulations 2021.

Lord Parkinson of Whitley Bay (Con): My Lords, this draft statutory instrument was laid before the House on 19 May 2021. This is a short but important instrument that will bring clarity and certainty for the UK's museums and art market. Its effect is to remove from the statute book those provisions of the EU regulation on the introduction and the import of cultural goods which became UK law as retained EU law at the end of the transition period, but which are now redundant or legally deficient. It will not affect the provisions which already exist in UK law to protect cultural goods or our ability to tackle the illicit trade in cultural goods.

It may be helpful if I begin by setting out some context. EU regulation 2019/880 on the introduction and the import of cultural goods aims to tackle the illicit trade in cultural goods and to prevent the proceeds of that trade being used to fund terrorism. The regulation came into force on 28 June 2019. However, not all its provisions became applicable on that date. In particular, a provision known as the "general prohibition", which prohibits entry into the EU customs territory for cultural goods which were unlawfully removed from the country in which they were created or discovered, only began to apply on 28 December 2020. Provisions which require importers of certain cultural goods to present an import licence or an importer statement, to guarantee the legal provenance of the goods, will become applicable only when an EU-wide IT system is in place, or from 28 June 2025 at the latest.

At the end of the transition period, on 31 December 2020, all those provisions of the regulation which had become applicable by that date became UK law as retained EU law—that is, those provisions which became applicable when the regulation came into force together with the general prohibition provision. The provisions requiring import licences and importer statements did not become UK law, and there is therefore no legal obligation for us to implement them. We have always made it clear that we would not implement these provisions if there was no legal obligation to do so.

Many of the provisions which have become UK law are redundant, because they create obligations in relation to the EU or relate to measures to prepare for the introduction of import licences and importer statements. The general prohibition provision has become legally deficient and cannot be enforced in UK law. It relates to the "introduction of cultural goods", which is defined in the regulation as,

"entry into the customs territory of the Union".

Great Britain is no longer part of the EU customs union, so the provision cannot be applied to Great Britain. We have therefore decided to address this legal deficiency, and at the same time remove the redundant provisions from the statute book, by revoking the regulation.

I make it clear that the regulation will continue to apply directly to Northern Ireland by virtue of having been added to annexe 2 of the Ireland/Northern Ireland protocol. Revocation of the regulation from UK law does not affect this.

There are two important reasons why we have decided to revoke the general prohibition provision. First, even if this provision were not legally deficient in the way

[Lord Parkinson of Whitley Bay]
that I have described, it would still raise issues of concern and create complexity and confusion for importers and for our customs and border authorities. These arise because the provision applies to almost all cultural goods created or discovered in non-EU countries, regardless of their age, value or date of export, and because there is no requirement in the regulation for any person to provide evidence to demonstrate either lawful export or unlawful removal from the country of creation or discovery. In the event of a claim of unlawful export, it is not clear where the burden of proof would lie or what evidence would be required. These issues could result in cultural goods being delayed or detained at the border, and might deter people from importing cultural goods to sell in the UK art market or museums from lending objects for exhibitions in this country. It would be possible to address these issues, but we consider that this is not necessary. This brings me to our second reason for revoking the regulation.

We consider that we already have sufficient legal powers to tackle the illicit trade in cultural goods and the import of cultural goods which have been unlawfully removed from another country. These powers are set out in existing domestic law, and in some cases also derive from our obligations in international law—to name but a few, the Customs and Excise Management Act 1979, the Dealing in Cultural Objects (Offences) Act 2003, and the Cultural Property (Armed Conflicts) Act 2017, as well as the Theft Act 1968 and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

The effectiveness of our existing legislation was demonstrated very recently, when we returned to Libya a statue which had been unlawfully removed from that country and which was found and detained by HMRC at Heathrow Airport. This is only the most recent example. In the last few years, thanks to the diligent efforts of our police, customs and border authorities, we have been able to return other important cultural objects to the countries from which they had been unlawfully removed. In view of the existing, effective provisions in our law, we consider that the general prohibition in the EU regulation is unnecessary.

In summary, therefore, this instrument will revoke those provisions of the regulation which have become UK law. It will provide clarity and certainty, and ensure that there is no confusion as to the rules and requirements for the import of cultural goods, but it will not mean that we are any less able to prevent the import of unlawfully removed cultural goods. I beg to move.

3.29 pm

Lord Stevenson of Balmacara (Lab): My Lords, I am grateful to the Minister for his very good introduction to this SI. He covered all the ground and his commitment shone through in what he said, but I have one or two questions, some of which he may not be able to answer directly, as I am sure this is not his main centre of interest. I am happy for him to write to me with the answers, if necessary.

We have a short corporate memory in your Lordships' House sometimes, despite our existence for so many thousands of years—as it sometimes seems. I will come back to the deficiencies the Minister raised on the existing legal framework, but will start with why the Government are seeking to revise this particular general prohibition by removing it entirely, rather than amending it. The main problem words in the regulation, which seem to offend, are

"entry into the customs territory of the Union",

which the Explanatory Memorandum says,

"cannot be interpreted to mean the customs territory of the United Kingdom."

It may not be interpreted as such, but I am sure it would be pretty easy to amend it. I therefore wonder why the trouble the Government have gone to to revoke the original regulation is necessary.

I say that in particular because of the reference to Northern Ireland, which the Minister, with his ease of manner and delivery, glossed over quickly. How have we got to a situation where one of the most complicated issues about the pursuit of cultural goods is different in one territory of the United Kingdom from the rest? GB will have a set of rules, which are set out in the Explanatory Memorandum, which I will come to in a minute. Northern Ireland will have those, as well as remaining in the EU, with its new, very important and rather clever IT-based, modern set of rules and regulations, by which information will swiftly move across the whole continent. Potential defaults and problems will therefore be picked up. I ask the noble Lord to comment further on that.

My second point relates to paragraph 7.5 and the succeeding paragraphs of the Explanatory Memorandum. Paragraph 7.5.2 states that

"The United Kingdom has been a state party to the 1954 Hague Convention"—

1954 is a long time ago—

"for the Protection of Cultural Property in the Event of Armed Conflict".

My first point is that that is limited to armed conflict. Secondly, the corporate memory to which I referred should be invoked at this stage because during the debate on the Cultural Property (Armed Conflicts) Bill that legitimated the 1954 Hague convention as far as the UK is concerned—we are a dualist state that cannot just accept agreements with foreign powers; they have to be brought into UK law—that was heavily criticised. The convention dates to 1954, and cultural goods had a different meaning then.

This morning, I looked up my rather excellent speeches —I can say that because I am sure nobody else has read them—about the need to update the cultural definitions portrayed in that convention and used in that debate. They entirely exclude media, cinema, digital art and related issues. In other words, we have a convention on which the Government are relying to get them out of an EU proposition they do not like, which does not, in the case of armed conflict, satisfactorily deal with the art that I care about. I was promised by the Ministers at the time that this would be looked at, so perhaps the Minister could remind me of what progress has been made to update the 1954 Hague convention. There was a proposal to update it in the wings. Have the Government looked at that and, if so, when will the House have a chance to debate and discuss it?

There is a minor point in relation to the risk of trade in cultural goods being used to finance terrorism, which the noble Lord, Lord Parkinson, mentioned. There is a rather odd phrase in paragraph 7.5.9 of the Explanatory Memorandum which I wonder whether he could unpick for me. It is normal for explanatory memoranda to have more descriptive comments, and I wonder whether there needs to be a bit more around the fourth line than currently. It says that the regulations—SI 2017/692—

"require art dealers and others even tangentially involved in a transaction of €10,000 or more to collect and report information about their customers."

I think I get the message, but "tangentially" is not a word that really satisfies certainty about who is caught by that. Can the noble Lord respond, perhaps in writing, about the intention behind that phrase? As I say, this is a pretty minor point.

My third point relates to the assertion in paragraph 7.6. I return to the original point that the regulation is being brought forward in this form at the moment because of the uncertainty and complexity that might be caused if we had to rewrite it for the UK customs area with all the problems with Northern Ireland. I look forward to the noble Lord's response, but the argument here is a little unconvincing. The main point seems to be that

"the Regulation is silent on who bears the burden of proof of the breach of the laws and regulations of that country, as well as on the evidence which would be required to demonstrate … the cultural goods concerned."

It sounds a bit like a straw person being set up in order to be knocked down. I thought that was what lawyers were all about. I am sure that the noble Lord, Lord Clement-Jones, when he comes to speak, will be able to justify in every sense the ability of lawyers to get to the bottom of who is responsible and what the necessary evidence would be and that he would enjoy the process of so doing.

Finally, the Minister's argument ended with the point that this was a good SI and something that we can support—and I think that inevitably we will—because it brings clarity. I have already talked about the Northern Ireland situation, and I do not think he can defend that, but we are relying on a very disparate set of rules and regulations, set up over a long period of time, dating back to 1954, including regulations as recent as 2017 and later. Will the Minister consider a serious point from me, which is that if this is the route that we are going down—and I am sure we will—will he consider suggesting to the Government that there is a good case for the Law Commission to take away all these issues and come up with a consolidated set of rules and regulations for the transfer of cultural goods? It would mean updating the terms of culture, looking at where the actual powers and responsibilities are, assessing as necessary where the evidence needs to be sought and who should be responsible, should any cases be made, and generating a Bill that we could perhaps look at in a few years' time that draws all this together. I would be very happy with that. Although I will not be opposing what is before us today, I hope that I have made the case that this is a bit flimsy and needs a bit more attention.

3.38 pm

Lord German (LD): My Lords, the objective of this legislation is to replace the EU regulations in so far as they have been operated by the UK prior to us leaving the EU with the existing laws that are already in place. They will, as the Explanatory Memorandum says, be primarily aimed at the 2003 legislation, as it states in paragraph 7.5.3:

"The principal domestic legislation relating to the illicit trade … is the Dealing in Cultural Objects (Offences) Act 2003".

Like the noble Lord, Lord Stevenson, I believe that deficiencies are left by the process that we currently see. They fall into three areas: the geographical scope, which I will come to in a moment; weakened regulation over the requirement to be vigilant; and the loss of potential international reputation and data sharing.

The Secondary Legislation Scrutiny Committee, in looking at this matter, raised three issues on which it seemed to have got agreement from the department that there are problems with this legislation. The first is that the revocation of the EU regulation by this instrument could potentially weaken the legal prohibition currently provided by Article 3.1. The second is that the UK needs to do more to prevent the import into the UK of cultural goods that have been stolen, looted and/or unlawfully exported from other countries. The third is that there could be a perception that we are watering down our commitment to protect cultural property from illicit trade, which we will need to counter robustly. Those, roughly, are the three areas that I will cover and question the Minister on.

On the geographic scope, given that the primary piece of legislation is that 2003 legislation—not a weighty document; it takes up only a small number of pages—the last paragraph of that Act of Parliament, Section 6(3), says:

"This Act does not extend to Scotland."

My first question is therefore: if these are devolved powers to Scotland—I suspect they are not—what legislation is in place from the Scottish Parliament to cover that gap? If this legislation, which is the primary legislation that the Government are falling back on, does not apply in Scotland, what is there to replace it? Clearly, I do not suggest this will happen, but these goods could be imported through Scotland and then even passed on to Northern Ireland or to other parts of the United Kingdom.

The second issue is Northern Ireland itself. The UK Government declared on 8 December 2020 that the regulation would be fully implemented in Northern Ireland, as I believe the Minister said in his opening. However, the government website currently states that Article 3.1 applies in Northern Ireland but that the Government do not intend to change the way they handle the import of cultural goods. There is a direct contradiction between what the Minister has explained to us today and what the Government have on their website. Northern Ireland cannot comply with its obligations and fail to change the way it handles the import of cultural objects. We need an explanation of that if we are to follow through and understand what the resultant revocation of these regulations means.

[Lord German]

The second area of concern is weakened legislation. Article 3.1 of the European legislation significantly widened the scope of applicable cultural property and would apply in the UK today if we had kept it and moved forward with it. The scope of the objects concerned is wider, which reflects the points made by the noble Lord, Lord Stevenson. However, the date threshold at which an object is considered illicit is longer and varies according to the country of origin of the object. The regulation itself places obligations on authorities to put measures in place to restrict import rather than creating a criminal offence for the individual knowingly dealing in tainted objects, which of course is in the 2003 legislation.

I will give an example of that, which I am grateful to Blue Shield United Kingdom for giving to us. Prior to Article 3.1 coming into force, it would not have been illegal to import into the UK an Egyptian cultural object simply because it had been illegally exported—but not necessarily stolen—from Egypt in 2000, despite Egypt having enacted national legislation. Article 3.1 has an impact. It requires that customs authorities permit the import of this Egyptian object only if it was legally exported from Egypt post 1983, which of course is 20 years in advance of the 2003 legislation, or if the importer can demonstrate that it was exported prior to the Egyptian law banning export. There is a danger and a perception that the legislation will be weaker than what we would have had before the revocation of the EU law.

The third area, of course, is that of potential loss of international reputation. This is significant, because there will be inevitable criticism for the way in which the UK Government have gone about this. We will have been clearly put in a position where there are deficiencies in our current legislation, and where the European legislation is providing a better and broader understanding of what needs to be done and is more up to date. There is no change proposed to the UK legislation—and, if any is proposed, surely it would have been better to consider these matters together rather than separately.

The third point is what the EU legislation proposed—the use of an electronic system for a centralised database to be shared between EU member states so that people can easily track and follow goods that are particularly concerning or worrying. Will we have the opportunity to be part of that electronic database, or at least have access to it? Clearly, it will provide a safeguard that would be helpful going forward and it would protect us a little bit from having our international reputation chipped away at.

The way the Government have done this has left us with a shoddy mess of inadequate and conflicting law that will damage our reputation worldwide. There is a need for extra actions to be taken. It may have been better to try to amend the legislation; revoking it without looking at the consequent legislation that we are left with seems inappropriate and certainly not helpful to our reputation. It will give the impression of a reduction in the scale of protection in the objectives that we have set out ourselves and which are in the EU legislation, as well as those that lie behind it. Overall, it is not a helpful position for us; it would have been far better to have done this in a more comprehensive manner.

3.47 pm

Lord Clement-Jones (LD): My Lords, I also thank the Minister for his introduction today. It is a pleasure to follow the noble Lord, Lord Stevenson, and my noble friend Lord German.

The Government have adopted what can be described only as a cavalier approach to the repeal of an important regulation designed to prevent illicit trade in cultural goods in the EU. I am glad that the advice of the Secondary Legislation Scrutiny Committee has been heeded, and that we have the opportunity for this debate today. I understand that new provisions are needed on our exit from the EU, but a complete repeal without any replacement mirroring the provisions for the UK by itself raises serious questions of the kind that both the noble Lord, Lord Stevenson, and my noble friend have raised. On these Benches, we do not support this SI, for the reasons set out by my noble friend, the noble Lord and, shortly, by myself.

There are real issues here about what consultation was carried out, what the result of the consultation was, who was in support of this solution and who wanted to see a different solution. Were the requirements on provenance the key objection to the current regulation? If so, in what respect? Does not the sum total of what the Government are proposing mean that illicit and looted artefacts will now enter the UK more freely?

The timing of the tabling of the SI was a surprise to expert organisations such as UK Blue Shield, the organisation so instrumental in campaigning for the Cultural Property (Armed Conflicts) Act 2017. Indeed, we had little notice in Parliament that this was coming before us. UK Blue Shield rightly raised the question of whether the decision to revoke the regulation intended to prevent the funding of terrorism, as one of the UK Government's first post-Brexit repeals, may well cause international controversy and criticism. It calls into question the UK Government's recent declaration in the integrated review, *Global Britain in a Competitive Age*, that culture is key to their soft power agenda.

The Explanatory Memorandum and the de minimis assessment are highly misleading. They suggest that existing domestic laws are sufficient to prevent illicit trafficking, but they say little about the practice of those laws. As Blue Shield says, referring to the 2003 Act and the Hague convention mentioned by the noble Lord, Lord Stevenson,

"in reality, they are not actively enforced in the UK and do not require active checks of imported cultural goods. Furthermore, not all legislation applies equally across the UK, a fact which is notably absent from the Memorandum."

This was expertly brought out by my noble friend Lord German, who is a great deal more expert in the vagaries of devolution than I am. It goes on:

"As a result, by trying to reduce the requirements imposed by the Regulation, UK customs authorities will have to understand and operate three different sets of rules and laws to ensure no illicit cultural objects enter UK borders, depending on the point of entry."

My noble friend shared with us the very graphic example of an Egyptian artefact.

Blue Shield sets out three major risks with which I entirely agree: that Northern Ireland may be used as a gateway to move illicit cultural property into Europe, that there would be reputational damage to the UK and that the UK would be a target for illicit cultural objects. It quotes Alexander Herman, assistant director of the Institute of Art and Law, who comments:

"The EU Regulation's Article 3(1) prohibition on introducing cultural goods presents a significant expansion of the usual import restrictions for this sort of material. By repealing it, the UK may be seen to be facilitating the illicit trade, even if that is not its intention. Rather than a 'quiet repeal'"—

more like "virtually invisible"—

"the UK should instead come out and demonstrate its commitment to fighting illicit trade by ensuring that its existing national legislation is properly implemented and enforced at the border. Only through such actions will the UK be able to ensure that its art and antiquities market remains legitimate going forward."

Why is the UK repealing this regulation with a whimper and not this kind of commitment?

I assume that the current GOV.UK link is to out-of-date guidance on licences by the Arts Council England—at least, I hope it is out of date—which was last updated in December. The GOV.UK site says:

"You need a UK licence to export cultural objects from the UK to any destination outside the UK. You do not need a licence to move objects of cultural interest from Great Britain to Northern Ireland."

That, I assume, will have to change. Can the Minister confirm that checks will be required by the regulations on cultural goods going into Northern Ireland, or are the Government planning to break the terms of annexe 2 of the Northern Ireland protocol EU agreement?

It is clear that the Government risk getting us into a muddle and allowing confusion on the rules, which will give a real opportunity for those dealing with illicit works. I hope that is not the Government's intention, but they seem to have listened to the wrong advice on this. Will they rethink their approach or are they in the pockets of the art dealers—the "art market stakeholders" so frequently mentioned in the assessment—who want to continue with the practices of the past?

The SLSC pointed to fears in the de minimis assessment, and I think it is worth quoting from that. It says that:

"It is likely to be criticised by those who consider that the UK needs to do more to prevent the import into the UK of cultural goods which have been stolen, looted and/or unlawfully exported from other countries. They are likely to argue that we should have fixed the provision to make it operate correctly in UK law. They may also argue that we should retain the other provisions to facilitate the eventual implementation of the whole of the Regulation, including the import licence and importer statement requirements."

Bullseye—that is exactly the criticism being made of these regulations.

I thought the constructive suggestion from the noble Lord, Lord Stevenson—that the Law Commission could get involved—was very good. Others have been put forward around co-operation with UNESCO that Blue Shield would be keen to see. I think there are a number of ways forward, but they all involve putting something in place which brings us closer to the original impact of the regulation and does not simply repeal the EU regulation in the way that the Government have suggested.

3.55 pm

Baroness Merron (Lab): My Lords, I thank the Minister for his introduction to this SI. I have taken careful note, as I am sure he has, of the contributions from my noble friend Lord Stevenson and the noble Lords, Lord German and Lord Clement-Jones, who brought their collective attention to this matter. I have a sense of foreboding that the Minister may regret introducing this short statutory instrument by suggesting that it is simply a matter for clarification, as it seems to have required yet further clarification in the course of this debate.

This is a short statutory instrument—the main provision is one sentence long—but it sends a worrying signal to those who are concerned about the protection of items of cultural significance. We are grateful to the Secondary Legislation Scrutiny Committee for recommending that this SI was upgraded from the negative procedure to the affirmative, and for the additional information provided in its fourth report of the Session.

DCMS insists that this instrument is merely an exercise in tidying up the statute book, but, as the SLSC noted, the department's decision will give many a perception that the UK is watering down its protections for cultural goods that have been stolen, looted and/or unlawfully exported from other countries. That is not the message that this Government should be sending.

This is undoubtedly a highly emotive subject. It is also a live one. In recent weeks, we have seen the case of a British auction house removing two looted Ethiopian objects from sale, following an intervention by that country's embassy. Elsewhere, in Italy, authorities recently recovered what has been described as an "archaeological treasure trove" of almost 800 stolen artefacts from Belgium. I am sure we all agree that it is a tragedy that criminals commit these acts, but for as long as that occurs, we have to ensure we have the appropriate protections in place.

The Explanatory Memorandum helpfully lists a number of the statutory provisions and international conventions that the UK has or is party to, but can the Minister outline what steps are being taken to keep them under review? As with other areas of crime, there is a worry that the trade of stolen cultural items is increasingly taking place online, and potentially through platforms on the dark web. Is the Minister able to comment on this trend and the steps that his department is taking in response to it? Can the Minister comment on how he feels the current system is working and how well our domestic rules are doing?

Finally, in response to the disruption of trade flows following the end of the transition period, HMRC waived administrative requirements on certain imports and exports. In doing so, it conceded the risk of security issues at the border. Last week, the noble Lord, Lord Agnew, committed to write to my noble friend Lord Tunnicliffe on this issue. However, until then, is the Minister able to say whether these temporary waivers could have inadvertently aided those seeking to get cultural items into or out of the country? I look forward to the Minister's response on these points and the other points that were raised during the course of the debate.

3.59 pm

Lord Parkinson of Whitley Bay (Con): I am grateful to noble Lords for their comments and questions on these regulations. I will do my best to cover the range of questions raised but, as ever, will make sure I consult the exchanges and write with further detail, where I am not able to do so.

The noble Lord, Lord Stevenson of Balmacara, asked why we have chosen to revoke rather than amend the regulations. As I tried to set out in opening, even if these regulations were not legally deficient, the general prohibition would raise other issues of concern for us. It applies to a wide range of cultural goods, regardless of their age or value, who is importing them, for what purpose or when they were exported from their country of creation or discovery. That gives it a very broad scope. Any cultural goods within its scope could be prohibited from entering the United Kingdom if they were believed to have been unlawfully exported from their country of creation or discovery, even if they have been, to all intents and purposes, lawfully owned for years, decades or, in some cases, even centuries by private owners or museums, without their legal provenance being questioned. We think that it could prevent cultural goods created or discovered within Great Britain from being returned, if they had previously been unlawfully exported from this country.

Moreover, there is no requirement for anyone to provide evidence of either lawful export or unlawful removal from the country of creation or discovery. In the event of a claim that cultural goods were unlawfully removed, it is not clear where the burden of proof should lie. I hope that sets out some of the concerns we had with the regulations and the thinking that underpinned our decision to revoke. As we already have existing legislation that has proved to be effective in tackling the illicit trade in cultural goods, we think it better to revoke the general prohibition to clarify the position and avoid confusion.

The noble Lord, Lord Stevenson, also referred to the Hague convention of 1954 which, he rightly points out, is some time ago. The UK is also party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The requirements and obligations of both those conventions are reflected in our domestic law, most notably in the Dealing in Cultural Objects (Offences) Act 2003 and the Cultural Property (Armed Conflicts) Act 2017, both of which are more recent pieces of legislation. The UK and its authorities are members of international organisations, such as Interpol and the World Customs Organization, which enable them to co-operate and share information and intelligence with their counterparts in other countries, as well as make sure that our response is fully up to date in the ways the noble Lord raised. I should point out that the other types of culture that he mentioned in his question are not reflected in the EU regulation either.

I will take the noble Lord, Lord Stevenson, up on his offer to write, after I have checked with lawyers why they chose the word "tangentially" in paragraph 7.5.9 of the Explanatory Memorandum. I would be happy to write when I have that explanation, and I shall take back the suggestion that he made about the Law Commission to the department.

The noble Lord politely suggested that I had glossed over the impacts on Northern Ireland. That was not my intention, although I do not think that is what he was suggesting either. The Northern Ireland protocol has been and continues to be well debated in your Lordships' House. We do not expect the general prohibition to have a significant impact on the import of cultural goods into Northern Ireland, including from Great Britain. At this stage, it is not possible to say how significant that impact might be.

The noble Lord, Lord German, asked about the application of the law to Scotland. The 2003 Act does not apply to Scotland, but other legislation and relevant international law does. I mentioned a couple of Acts in opening—the Customs and Excise Management Act 1979 and the Cultural Property (Armed Conflicts) Act 2017—both of which apply to Scotland. Retained EU law is, of course, a matter for the UK Government.

The noble Lord, Lord German, and others suggested that revoking these regulations might risk sending the wrong message about the UK's commitment to tackling the illicit trade in cultural goods. We do not believe that is the case and are determined to tackle that illicit trade. The UK has a strong record of finding and returning unlawfully removed cultural goods. In opening, I mentioned the example of a statue that was recently returned to Libya. To give another example, in 2019, a Mesopotamian kudurru or boundary stone, which was probably stolen in 2003, was seized by HMRC at Heathrow Airport and subsequently forfeited to the Crown. It was formally returned to Iraq in March 2019. Over 150 Mesopotamian cuneiform tablets, seized by HMRC in 2011, were also returned to Iraq in August 2019. So I hope there is no doubt about our commitment, determination or track record in tackling the illicit trade in cultural goods.

We will explore the issue which the noble Lord, Lord German, raised about a database, but it is worth saying that we already share intelligence via our role in Interpol, where we are a key player, and through the World Customs Organization.

The noble Lord, Lord Clement-Jones, suggested that Northern Ireland risks becoming a gateway for unlawfully removed cultural goods to enter the EU from the UK. We do not believe that will be the case. Importing unlawfully removed cultural goods into the EU via Northern Ireland would be a lengthy and costly route for anyone who chose to do so, and there would be many opportunities along the way for unlawfully removed cultural goods to be detected and seized. Our customs and border authorities will continue to do their utmost to prevent unlawfully removed cultural goods entering the UK and ensure that such goods are not transferred to Northern Ireland with the intention of moving them on from there to the EU.

To address the point made by the noble Lord, Lord Clement-Jones, no export licence will be required for movement from Great Britain to Northern Ireland. Other checks are a matter from HMRC but will not include any new measures for the general prohibition. The noble Lord also referred to our art market, which

is the second-largest in the world and has a notable and deserved worldwide reputation. There is no evidence that it is underhand or acts outside the law. I am sure that is not what he was suggesting.

To respond to the point made by the noble Baroness, Lady Merron, I do not regret the way I set out these regulations. I hope that the consideration that your Lordships have given them in Grand Committee today has afforded the proper opportunity for scrutiny and, through my answers, some clarification. I will follow up in writing with further points where that is needed.

We believe that this statutory instrument will provide clarity and certainty for the UK's museums and art market, allowing them, and their partners and clients, to bring cultural objects into the UK without fear that they will be delayed or detained at the border because of any unsupported claim of unlawful removal from another country at some point in the distant past. Our existing legislation was robust in protecting cultural goods before the general prohibition came into effect, and it will continue to provide protection against the illicit trade in cultural goods. In cases where there is evidence or information that an object was unlawfully removed from another country, our customs and border authorities will still be able to detain it and deal with it accordingly, using their existing powers and procedures. I end by re-emphasising that this statutory instrument will not change that.

Motion agreed.

The Deputy Chairman of Committees (Baroness Barker) (LD): The Grand Committee stands adjourned until 4.10 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

4.08 pm

Sitting suspended.

Arrangement of Business

Announcement

4.13 pm

The Deputy Chairman of Committees (Baroness Barker) (LD): My Lords, the hybrid Grand Committee will now resume. Some Members are here in person, others are participating remotely, but all Members will be treated equally. I ask Members in the Room to respect social distancing. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I shall immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

Criminal Justice (Electronic Commerce) (Amendment) (EU Exit) Regulations 2021

Considered in Grand Committee

4.13 pm

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

That the Grand Committee do consider the Criminal Justice (Electronic Commerce) (Amendment) (EU Exit) Regulations 2021.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, this is a technical instrument concerning EU jurisdictional rules. I make it clear at the outset that these regulations do not create new policy nor change the nature of the related offences; they are merely measures to fix failures of retained EU law arising from the withdrawal of the UK from the European Union. If time had allowed, the Government would have brought forward this regulation before the end of the transition period. However, as we are not aware that the rules in question have ever been relevant to a prosecution for the offences that this instrument relates to, we prioritised other, more urgent, legislation. Now that such other more important legislation is in force, it is necessary that we address any remaining deficiencies in retained EU law.

This instrument concerns an internal market measure contained in article 3 of the EU's e-commerce directive. Although that directive is largely being retained in UK law, a key aspect of the directive is the country of origin principle, which establishes jurisdictional rules that operate across the EEA. Following the end of the transition period, these rules, which rely on reciprocal application between the EEA states, no longer operate as intended. The removal of the country of origin principle from legislation under the responsibility of my department is, therefore, the objective of this draft instrument.

The rules contained in the country of origin principle here apply to online activities which meet the definition of information society services, known as ISS, which can be understood as a service offered for payment, at a distance, by electronic means, and at the request of the recipient of that service. ISS could provide services such as online retailers, video sharing sites, search tools, social media platforms and internet service providers. Because of their reciprocal nature, these rules aimed to make it easier for organisations to operate online across borders. They did this by making ISS operating in more than one European Economic Area state subject only to the law of their home country unless certain conditions were met. This meant that, for relevant offences, ISS needed to comply with only one set of laws, those of the home state, rather than those of each state they operate in, thereby reducing the regulatory burden.

The implementation of these rules in connection with this statutory instrument has two strands. First, it creates a procedural bar, restricting prosecutions of ISS based in the EEA for their conduct in another EEA country; the procedural bar is based on the proposition that the ISS could have been prosecuted by the state in which they were established—that is, the home state. Secondly, it makes ISS based in one EEA state subject to the law of that state for their conduct across the EEA. This instrument fully removes the UK's implementation of both aspects of the retained rules from legislation for which the Ministry of Justice has responsibility. As a consequence, UK ISS operating in the EEA will be subject to UK law only to the same extent as they would be when operating in other foreign countries. There will be no distinction between operating in an EEA state and operating in any other foreign state. It also means there will no longer be a procedural bar restricting prosecutions of EEA-based

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ISS operating in the UK, meaning that proceedings against an ISS based in an EEA state would operate in the same way as proceedings against an ISS based in any other foreign state or a domestic ISS.

The key points here are three, and those I made when I first rose—using that term somewhat loosely in this Room. First, we are unaware of any prosecutions of ISS for the offences this instrument amends, let alone any cases to which these jurisdictional rules have applied, so the direct impact of this instrument is low. Secondly, these exit-related deficiencies need to be resolved, because the rules were based on reciprocity which no longer exists and, if left unresolved they could, in future, place UK businesses at a disadvantage. Thirdly, the approach taken in this instrument is not only a suitable method of dealing with this issue but, I suggest, the only method of addressing these deficiencies. For those reasons, I urge the Committee to join me in supporting this instrument and beg to move.

4.19 pm

Lord Mackay of Clashfern (Con): My Lords, I heartily support the Motion. Information society services that operated from within the EEA were subject only to the law in their place of origin, as the Minister has explained. When we left the EEA, this could no longer apply, and the provisions for implementation of this system inserted into our law could no longer apply. This seems simple to deal with, and this statutory instrument just deletes them from our law. If a society has its origin in a devolved Administration, it is the law there that requires the deletion.

This was originally put forward as a statutory instrument with no need for approval, but the committee raised some questions that seemed to suggest it should be altered. Therefore, we have this before us today with rather a short consideration, I believe.

It has been suggested that a new provision is required to make services established here subject to remote control here, but I cannot see that that is appropriate. While the previous system operated, it did not affect non-EEA countries. This instrument leaves that as it was and puts EEA countries in the same position as those leaving the EEA, which makes our relationship with EEA countries the same as with others. Therefore, all we have to do is leave it alone. I can see there is room to consider harmonising policies on these matters across the world, but this statutory instrument—or statutory instruments generally under this power—are not appropriate for that.

4.21 pm

Lord Thomas of Gresford (LD) [V]: My Lords, I thank the noble Lord, Lord Wolfson of Tredegar, for his introduction. The Explanatory Memorandum could have done with illustrative examples to clarify the new position following the implementation of these regulations. I support the committee in insisting that this instrument had a hearing.

As I understand it, the e-commerce directive applied to companies engaged in internet trading, search tools, social media platforms and the like. A trader based in this country trading online in the EEA could be criminally liable under the laws of this country only, and would not have to comply with the criminal law of any EEA state in which he was trading. The strength of the country of origin principle, "the CoOP", was that it was reciprocal; other countries dealt with traders operating within their jurisdiction similarly.

However, since the end of the transition, UK internet traders or social media platforms have had to adhere to the laws of each EEA country in which they operate. Equally, EEA traders can be prosecuted if they do not comply, when operating in the UK, with our criminal law. Perhaps the Minister can confirm that a UK trader now must have regard to the criminal law in each EEA country in which he operates, but will not be liable in this country for offences committed abroad, because the courts of this country will have no extraterritorial jurisdiction to prosecute here for such offences. If, therefore, a trader wishes to advertise his wares on the internet in, say, Belgium, Denmark or Germany, he will have to ensure that his advertisements or the products he is selling comply with the criminal laws of each country.

Take pornographic material, for example. If a trader in London publishes obscene material in EEA countries, he can be prosecuted there but no longer in the UK. He can be prosecuted by the appropriate prosecuting authorities in those countries but, unless the material is published in the UK as well, no prosecution is possible here.

Does it then follow that such a trader can sit in London and purvey his material in EU or EEA countries, safe in the knowledge that, in the absence of the European arrest warrant, it would be extremely difficult to extradite him to Belgium, Denmark or Germany, where the offence is committed? The converse is that, if a European trader publishes obscene material in this country, he can be prosecuted in UK courts if we can get hold of him. Absent the European arrest warrant, that is likely to be difficult.

The Explanatory Memorandum says:

"Removal of the CoOp"—

the reciprocal arrangements—

"will only bring regulation of UK ISS operating in the EEA in line with their operation in other foreign countries, and does not affect our ability to prosecute UK nationals or residents who commit offences outside the UK"—

this final section is underlined—

"where our courts have jurisdiction to do so."

The Minister will know how limited extraterritorial jurisdiction is in this country: for murder, manslaughter in certain circumstances, sexual offences against persons under the age of 18, forced marriage and female genital mutilation—a short list. We are about to consider legislation which implements the Istanbul convention—ironically, the convention promoted by more Europeans than the Council of Europe—on preventing and combating violence against women and domestic violence. The fact sheet published by the Home Office last month indicates the extent of the proposed extension of extraterritorial jurisdiction. It does not include publicly publishing obscene materials or fraud.

Personally, I am sick to death of scams from abroad, sometimes from west African countries, which force every one of us to set up barriers on the internet, email

and telephones. I hate the idea that persons could set up in this country to defraud people on the continent or flood their markets with pornography. Would it not be simpler if, rather than drawing up our skirts to avoid contamination by the EU or the EEA on every occasion, we now negotiated to enter into a new reciprocal agreement? As I see it, these regulations are a necessary consequence of Brexit, but creating a platform for criminals to defraud European citizens is in no way desirable. I await to see whether I have misunderstood the whole purpose of these regulations.

4.26 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, we in the Labour Party accept that this instrument is necessary to address the current lopsided arrangements following the end of the transition period of the UK leaving the EU. The Explanatory Memorandum states:

"Its purpose is to address failures in retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU by amending the domestic legislation which implements a reciprocal arrangement known as the 'Country of Origin principle'".

The instrument amends primary legislation, and the changes made to each Act have substantially the same effect. In respect of domestic information society service providers, they remove liability under UK law for offences committed in EEA states, as well as the ability to prosecute those offences in the UK. In respect of EEA-based information society service providers, they remove the restriction on bringing prosecutions in the UK for offences committed in the UK.

The European Statutory Instruments Committee has expressed concern that

"the effect of this instrument could be to dilute regulation of the international effect of publication of certain kinds of material (particularly online material with global reach) as it is not clear whether equivalent offences exist across the EEA. We therefore requested further information from the Department on this question. The Department's response … states that it has not carried out a thorough review and is therefore not in a position to explain the extent of any dilution of international regulation. Given the serious nature of the offences covered by the instrument, and the ambiguity surrounding parallel offences in other EEA countries, the Committee believes that this issue is of sufficient political importance to justify the scrutiny and debate afforded by affirmative resolution."

I have read the response to the points raised by the committee in certain paragraphs of the Government's Explanatory Memorandum and listened to Minister Chalk's response to my honourable friend Alex Cunningham when he raised these points in yesterday's debate in the House of Commons, so I will not ask the Minister to repeat the points made yesterday.

However, given the sensitivity of the various acts to which this instrument applies and the wider context of the substantial legislation we are expecting, in the form of the online harms Bill, for example, can the Minister say something about how he sees international legislative co-operation developing to combat international crime and exploitation? I note that the noble Lord, Lord Thomas, essentially asked the same question about future reciprocal agreements, and I also note that the noble and learned Lord, Lord Mackay of Clashfern, asked about harmonisation of policies. It is a much wider question than the narrow but important remit of this SI, but I think that all Members participating in this debate would be interested in the answer to it.

4.30 pm

Lord Wolfson of Tredegar (Con): My Lords, sometimes a debate is short but it sets up some interesting points, and this is one of them.

First, I thank my noble and learned friend Lord Mackay of Clashfern for his comments. He makes an important point that this instrument essentially means that an ISS will be treated the same way under our law, irrespective of where they are based, for their conduct here. Now that we have left the EU, maintaining different and indeed preferential treatment for EEA-based ISS would be inappropriate. That theme runs through a number of the points which we have debated this afternoon.

Given the time limits I have, I will not say anything more about the sifting committee recommending that we have an affirmative procedure this afternoon; we have set that position out in writing.

I can confirm that the noble Lord, Lord Thomas of Gresford, has not, as he put it, misunderstood the whole purpose of the SI. I take his point that an Explanatory Note might sometimes be more useful if it has worked examples. However, the problem with a worked example is that, if you do not cover every example, the danger is that the Explanatory Note could prove to be more misleading. The noble Lord highlighted that, since the end of the transition period, ISS have been liable to the laws of each country in which they operate. These changes mean that they will no longer also be liable in the UK, thus removing dual liability.

The noble Lord described a theoretical scenario, but I have to say that his concerns about bringing foreign offenders to justice in the context of cross-border offences was really the focus of his comment. This instrument specifically addresses reciprocal jurisdictional rules. On the wider point he makes, it is fair to say that those rules were never intended to contribute to the wider regulation of the publication of illicit materials internationally. They apply only to organisations meeting the definition of ISS, which is a limited definition, and only to activity in the EEA. The purpose was a much narrower one, simply to make it easier for such organisations to operate in multiple countries by simplifying the legal and regulatory framework which applied to them. Therefore, while in theory the co-operation agreement made it possible to prosecute UK-based ISS, and in some cases individuals, for conduct that occurs in EEA states, in practice, as I said in opening, we are not aware of any such prosecutions.

Generally, to meet the noble Lord's point head on, the Government's view is that criminal offending is best dealt with by the criminal justice system of the state where the offence took place. In any event, leaving in place rules that flow from EU reciprocal arrangements that no longer apply to the UK, and which are limited to UK ISS operating in EEA states, would not be an effective approach to address the concerns the noble Lord identified. Where we have extraterritorial jurisdiction, that is always on the basis that we look at all countries in the world on the same basis, and we do not distinguish between EEA states and other foreign states. Ultimately, therefore, this

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instrument means that we will treat EEA countries in the same way as any other foreign country. Now that we have left the EU, I suggest that that is entirely appropriate.

Towards the end of his comments, the noble Lord, Lord Thomas, said that he was

"sick to death of scams from abroad".

For the briefest of moments, I thought the noble Lord had converted to the hardest of hard Brexiteers, but then he referred to west Africa and I realised he was making a different point. But that point underlines the philosophy that underpins this statutory instrument. Whether the scam comes—so to speak—from west Africa, from an ISS in the EEA or from anywhere else, we have left the EU and will therefore treat all foreign countries in the same way. That is generally consistent with the way we approach extraterritorial criminal jurisdiction in this country.

I turn last to the noble Lord, Lord Ponsonby of Shulbrede, who referred to the "current lopsided arrangements". If I may say, with respect, that is absolutely right. That is why we need this statutory instrument, as we have a lopsided position without it now that we have left the EU. I am grateful that he did not ask me to repeat the answers given in another place yesterday, but I will turn to the particular question he asked me on how I see international legislative co-operation developing to combat international crime and exploitation.

The noble Lord raised the important issue of protecting the vulnerable from exploitation online, which is something that the Government fully agree and sympathise with. This is a challenging problem, not least because the underlying technology is constantly changing. It therefore needs to be tackled both by working with our international partners and through updating our domestic legislation. We have previously indicated that we intend to bring forward a draft Bill to address online harms and make the UK the safest place in the world to be online, setting the global standard for safety online, with the most comprehensive approach yet to online regulation.

I said a few words about this when I opened the relevant day of the debate on the humble Address to Her Majesty the Queen. The draft Bill will include placing a duty of care on companies to improve the safety of their users online. It will require major platforms to set out clearly, in their terms and conditions, what legal content is unacceptable on their platform and to enforce those conditions, consistently and transparently. It will require platforms to have effective and accessible user-reporting and redress mechanisms. I know that people often complain about that: when you see something online that you want to complain about or refer to the online platform, it is often very difficult to do so. It will designate Ofcom as the independent online safety regulator and give it the power to levy very large fines indeed. It will also boost public resilience to disinformation through media literacy and supporting research on misinformation and disinformation. The last is something that, in our modern society, is becoming increasingly important.

I hope the Committee will forgive me if I do not say too much more about that prospective legislation, because I would be straying a little too far from the direct subject of the SI. Coming back to that, it is of limited but focused application, as I have said, and I commend it to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Baroness Barker) (LD): That completes the business of the Grand Committee this afternoon. I remind Members to sanitise their desks and chairs before leaving the Room.

Committee adjourned at 4.39 pm.

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