Vol. 814
No. 40

Wednesday
21 July 2021

PARLIAMENTARY DEBATES
(HANSARD)

# HOUSE OF LORDS
## OFFICIAL REPORT

*ORDER OF BUSINESS*

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

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

| Abbreviation | Party/Group |
|---|---|
| CB | Cross Bench |
| Con | Conservative |
| DUP | Democratic Unionist Party |
| GP | Green Party |
| Ind Lab | Independent Labour |
| Ind 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 21 July 2021*

*The House met in a hybrid proceeding.*

*Noon*

*Prayers—read by the Lord Bishop of Southwark.*

## Arrangement of Business

*Announcement*

*12.06 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 while others are participating remotely, but all Members will be treated equally.

The social distancing requirements in the Chamber have been removed, but I strongly encourage Members to continue to wear face coverings while in the Chamber, except when speaking, and to respect social distancing in relation to staff in the Chamber.

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

## Ecocide

*Question*

*12.06 pm*

*Asked by* ***Baroness Boycott***

To ask Her Majesty's Government what assessment they have made of the case for establishing a crime of ecocide.

**Baroness Bloomfield of Hinton Waldrist (Con):** My Lords, I am grateful to the noble Baroness, Lady Boycott, for her long-standing commitment to safeguarding the environment, but she will know that the ICC is far from functioning effectively in relation to the jurisdiction it already has. Our priority is to improve its ability to prosecute existing crimes against humanity before we create new ones.

**Baroness Boycott (CB):** I thank the Minister for her reply, but many noble Lords and many people around the world would now consider that crimes are being perpetuated against the environment, whether deforestation in Asia or South America, what is happening in the seas on an international level or the known culpability of many of the producers of fossil fuels to not just confuse the issue but downright lie. I would call that crimes against humanity. At the moment, we have limited ability to prosecute. The G20 meeting for Environment and Climate Ministers starts tomorrow in Naples. Could the Minister talk to our representative and ask whether they will raise this issue? This is gaining traction around the world. When we look at the fires in California and the floods in Germany, I do not think we can sit back and say that, as a world, we can continue to do nothing about this.

**Baroness Bloomfield of Hinton Waldrist (Con):** I know that the noble Baroness has a lot of support on this issue around the House, but the UK will use its COP 26 presidency and all the leadership positions it holds to continue to demonstrate global leadership on climate and nature. Of course I will relay her comments to the Italian conference tomorrow. It is not possible to limit global temperature rises to 1.5 degrees without radical action on nature; I think we all agree on that. Our presidency will seek to drive action to protect and restore ecosystems, and to invest in sustainable agriculture throughout the world.

**Baroness Chakrabarti (Lab) [V]:** The Minister replies in her characteristically generous tone, but although I share her concerns about the functionality of the International Criminal Court, does she agree that it is worth exploring this new offence domestically and internationally? Grave offences are about not just enforcement but setting the tone for the kind of society we want to live in and operating as a deterrent. In this context, they could be a significant deterrent against corporates that ignore the grave catastrophe facing all of us for the reasons agreed.

**Baroness Bloomfield of Hinton Waldrist (Con):** I agree with the noble Baroness that we have to drive this forward. I know that an international group has recently defined ecocide, but I say again that the UK is a key player in all the multilateral forums focusing on tackling climate change. The significant amendment that would be required to establish a crime of ecocide is not only likely to distract from reform of the international court. It would also be extremely difficult to secure the agreement of all state parties and could occupy international negotiators for many years, which is why the UK is concentrating on what we can do domestically and to influence international parties.

**Lord Jones of Cheltenham (LD) [V]:** The new legal definition of ecocide builds on many aspects of established international criminal law and environmental law, as well as existing text in the Rome statute. Will the Government be a world leader on this? If so, how will they explain it to the oil and plastics industries?

**Baroness Bloomfield of Hinton Waldrist (Con):** That is an interesting question. The UK's priority, as I said, is to reform the court so that it functions more effectively and to take a leadership role in persuading international parties of the importance of the environment. On the oil and gas industries, the noble Lord will be aware of a number of initiatives, such as the 10-point plan, the White Paper and the North Sea transition deal, which seeks to show the oil and gas industries a pathway to decarbonising and to reskilling many of their workforce towards more environmentally friendly things, such as carbon capture and storage and hydrogen technologies.

**Viscount Trenchard (Con):** My Lords, the emotive term "ecocide" conjures up horrific images of serious and deliberate crimes against humanity, such as genocide. I understand that an application was made to the United Nations International Law Commission in 2010 that a crime of ecocide be added to the Rome statute, defined as

"the extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been … severely diminished."

[Viscount Trenchard]
Does my noble friend not agree that it is hard to consider ecocide as so defined as a crime at all, let alone one equivalent to such serious war crimes, if it does not even need a person or a—

**The Lord Privy Seal (Baroness Evans of Bowes Park) (Con):** My Lords, I am afraid we need to move on. We will hear from the Minister.

**Baroness Bloomfield of Hinton Waldrist (Con):** My noble friend is right that ecocide was removed from the drafting process of the Rome statute and that that was significant in gaining agreement on the crimes eventually included in the ICC's jurisdiction. A norm of customary international law is that no one may be convicted of an offence except on the basis of individual criminal responsibility. This is reflected in the crimes listed under the Rome statute. Any future agreed definition of the crime of ecocide would need to reflect a similar set of norms.

**Lord Bird (CB):** I think it is time to end the appeasement. It is very interesting that in the past 50 years we have done more damage than it took us 2,000 to do. In the past 50 years, when we had more and more knowledge about the damage we were doing to the environment, we have had this pootling around, this lack of leadership. Great Britain could be the great leader here, as it was in the 1930s, and it could say no to the death of the planet.

**Baroness Bloomfield of Hinton Waldrist (Con):** I think the noble Lord underestimates the leadership role that we are playing this year in tackling international action to bend the curve of biodiversity loss. At the summit in Carbis Bay, the G7 leaders agreed a 2030 nature compact, committing for the first time to the global mission to halt and reverse biodiversity loss. We also have the upcoming COP 26 in November. All the actions we are taking through the Environment Bill and other legislative means will provide a leadership role in trying to get these messages across to the rest of the world.

**Baroness Hayman of Ullock (Lab):** Does the Minister agree that mining and deforestation activities that plague the Amazon are cases of ecocide? Does she also agree that an international law against these activities could become a catalyst for finding new and sustainable ways of operating?

**Baroness Bloomfield of Hinton Waldrist (Con):** I agree but, as I said, it is very difficult to take the international law path for the reasons I outlined. What we are doing in the UK to stop people using illegally logged wood in furniture imported into the UK is probably a more effective way for us to prevent these sorts of crimes being imported. However, I agree that more needs to be done internationally, but perhaps not through the International Criminal Court.

**Lord Robathan (Con):** My noble friend is doing extremely well on this. As a conservationist and environmentalist, I am deeply concerned about the destruction of the rainforest in South America and south-east Asia, the increased use of coal in China and, indeed, the consequences of climate change. Nevertheless, I do not quite understand—perhaps she can enlighten me—what exactly making this a crime would do that would impact on, for instance, the Chinese Government or the Brazilian Government.

**Baroness Bloomfield of Hinton Waldrist (Con):** My noble friend raises an interesting point because a lot of communist countries, including China, Russia and many of the former eastern bloc, have the crime of ecocide. The issue really is therefore about enforcement. We are trying to drive forward ambitious global action to address these issues as probably the best way forward, combined with strict enforcement measures which the Environment Bill has set out in full.

**Baroness Goudie (Lab) [V]:** My Lords, ecocide is a crime against human rights. The Minister, the noble Lord, Lord Callanan, yesterday promised that human rights would be taken into consideration in all companies working in these areas. Can the Minister confirm that this is so and that, at the same time, the human rights of families who then have to move because of ecocide crimes have been affected, and that we will take that into consideration?

**Baroness Bloomfield of Hinton Waldrist (Con):** I am not sure that I can go any further than my noble friend Lord Callanan did yesterday, but I take the noble Baroness's points on board and will make sure that they are relayed to BEIS.

**Baroness Altmann (Con):** My Lords, I congratulate the Government on all the excellent work they are doing in preparation for COP 29 and in the Environment Bill. Will my noble friend tell the House what the Government are doing to increase funding for nature-based solutions to address climate impact, especially as I understand investing in nature could provide at least one-third of the cost-effective climate mitigation solutions?

**Baroness Bloomfield of Hinton Waldrist (Con):** My noble friend is entirely right: investing in nature-based solutions for adaptation will also help build resilience, support jobs, support livelihoods and help tackle biodiversity loss, but finance is lacking. Only 3% of global public climate finance flows was spent on nature. Noble Lords will recall that at the One Planet Summit in January 2021 the UK committed to spend at least £3 billion of our international climate finance on climate change solutions that protect and restore nature and biodiversity over the next five years.

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

## Animal Diseases: Future Pandemics

*Question*

*12.18 pm*

*Asked by* ***Lord Trees***

To ask Her Majesty's Government what assessment they have made of the proportion of infectious diseases in people that originate in animals; and what plans they have to adopt a "One Health" approach to prepare for future pandemics.

**The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con) [V]:** My Lords, zoonotic diseases comprise approximately 75% of all newly identified infectious diseases and 60% of existing ones. The UK has world-leading "one health" expertise already enhancing the detection, investigation and management of zoonotic diseases. We must continue to weave this approach into the fabric of domestic and global architecture. Through our G7 presidency and ambitious initiatives, such as the centre for pandemic preparedness, we will further strengthen our "one health" capability.

**Lord Trees (CB):** I thank the Minister for his Answer. I shall press him for more specifics. Given the huge cost of zoonotic pandemics—Covid-19 has been estimated to cost the UK £340 billion—what plans have Her Majesty's Government been considering to improve animal health, public health and environmental health systems which are critical in the prevention of spillover infections from animals to humans in the UK and abroad?

**Lord Bethell (Con) [V]:** My Lords, there is a very large number of initiatives. I emphasise our international efforts to reverse the underlying causes of spillover infections from animals to humans, including biodiversity loss and the risk from the illegal wildlife trade. Using the UK's G7 presidency, we have committed to doing more by establishing the International Zoonoses Community of Experts, by creating the centre for pandemic preparedness and conducting a one health intelligence scoping study to ensure that the systems work better together to identify future threats.

**Baroness Blackwood of North Oxford (Con):** My Lords, in 2016 a woman in rural Thailand spotted a cow frothing at the mouth. She snapped a few photos, reported it on the "one health" disease detection app and local authorities stepped in. They limited the spread of foot and mouth to just three cows, averting millions in potential losses. This app is now expanding across Asia and Africa, supported by Dame Sally Davies's Trinity Challenge. This demonstrates that ever more global health data by itself is just not enough; it is deriving actionable insights from that data that matters, and that needs dedicated analytics tech at scale. What steps is the Minister taking to find and scale the "one health" surveillance tech that we need to prevent future pathogenic risk?

**Lord Bethell (Con) [V]:** My Lords, my noble friend puts it extremely well. It is exactly that kind of intervention at the front line that can nip infections in the bud, but it is only through international collaboration that we can really tackle the threat of zoonotic infection. The concept of zoonotic tech is not one that I had previously come across, but I will take it away from this debate and have a good look at what more we could do to support it.

**Lord Patel (CB) [V]:** My Lords, one of the key "one health" projects initiated by government has been the target of reducing the prophylactic use of antibiotics in farm animals to help reduce the incidence of antibiotic resistance, thereby helping to treat zoonotic diseases in humans. The Government set targets in 2017 on the use of antibiotics in animals over the next three years. What progress has there been? What other plans are going forward, as the 2017 project has now ended?

**Lord Bethell (Con) [V]:** The noble Lord identifies the threat extremely well indeed. The Department of Health works extremely closely with Defra on this exact point. I pay tribute to both the farming community here in the UK and officials at Defra for their work to encourage farmers to stand back from prophylactic use of antibiotics.

**Baroness Bryan of Partick (Lab) [V]:** My Lords, one of the most important lessons about "one health" from Covid-19 is that we must share more than just surplus vaccines; we must share the capacity to make vaccine. Can the Minister explain why the Government are resisting even a temporary TRIPS waiver when so many world leaders support it?

**Lord Bethell (Con) [V]:** My Lords, the noble Baroness is right that we need to massively increase international capacity for vaccine production. The Government are working on a vaccine strategy that will include ideas for doing that. A TRIPS waiver is something we have looked carefully at. It is our strong view that this Government support intellectual property, because it is only through our commitment to intellectual property that we can encourage the kind of massive investment by the private sector necessary to develop vaccines in the first place. For that reason, we remain hesitant about supporting a TRIPS waiver policy.

**Baroness Brinton (LD) [V]:** My Lords, Professor Sir Jeremy Farrar says in his new book that viruses do not change how they transmit between humans and animals, but humanity has become much more mobile. He deplores the pandemic nationalism evident over the last year, saying:

> "Only the virus benefits from a pivot towards myopic nationalism because that will keep it circulating for longer. A divided world is a diseased world."

I thank the Minister for saying what the Government plan to do through their chairmanship of the G7, but can he please confirm the timetable for the delivery of the "one health" approach, including its funding?

**Lord Bethell (Con) [V]:** My Lords, the "one health" approach is moving through the G7 process at the moment. I am not sure whether a precise timetable exists. I am happy to check to see whether dates are available, and I will write to the noble Baroness accordingly.

**Baroness Thornton (Lab):** My Lords, it is quite clear that the health and scientific world has, not surprisingly, been focused on the pandemic. The FAIRR report published today and previous reports in this area show what a threat to world health there is from antimicrobial resistance. The question is: how much of a priority is this in the Government's work? I think that is what most speakers have asked. How much money is the department investing in this area this year and in the next five years?

**Lord Bethell (Con) [V]:** I assure the noble Baroness that it is a massive priority. The threats from both zoonotic transmission and antimicrobial resistance are areas in which Britain has previously shown great international leadership. Through our G7 chairmanship we will continue to take up that mantle. I pay particular tribute to the work of Dame Sally Davies on antimicrobial resistance. She has done an enormous amount, particularly through the Trinity Challenge, to raise awareness and bring together Governments, industry and academia on this matter. I do not have the precise budget to hand, but I will be glad to write to the noble Baroness with any details that are available.

**Lord Flight (Con):** What proportion of infectious diseases in people do the Government estimate to originate in animals? What should be the result of doctors and vets adopting a "one health" approach?

**Lord Bethell (Con) [V]:** It is the case that 75% of all newly infectious diseases come from animals. Diseases such as HIV began when transmitted from an animal to a person. The Ebola, Zika, SARS, MERS and SARS-CoV-2 viruses are all examples of recent zoonoses. As the noble Baroness, Lady Brinton, pointed out, the changes in human behaviour are only going to accelerate this. That is why we are so committed to the zoonotic agenda and why vets and those who work with farm animals need to have raised awareness of this threat.

**Baroness Young of Old Scone (Lab) [V]:** My Lords, I declare my interest as chair of the Royal Veterinary College. The Minister has stated the Government's commitment to "one health", but ODA cuts have slashed by two-thirds the funding of the UK's single biggest "one health" programme, the One Health Poultry Hub led by the RVC, which tracks and fights disease emergence from poultry in Asia to combat this vector for a human health pandemic that will inevitably occur. How does the Minister intend to fulfil his commitment to "one health", and the PM's at the UN and G7 levels, in light of the Chancellor's Statement last week? The criteria for restoring the ODA cut show that that will not happen for several years.

**Lord Bethell (Con) [V]:** My Lords, our contributions to "one health" are partly through our collaborations with foreign Governments, but they also include Defra's work here in the UK and the contribution of British scientists, such as through the Trinity Challenge that I mentioned. The noble Baroness is right that this is not cost free, and we have to explain the value of this work to the taxpayer. That explanation is easier after a pandemic as massive as the one we have had, but we need to look closely at the value-for-money judgments needed before we make the necessary investments in this agenda.

**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.

## Register of Home-educated Children

*Question*

*12.28 pm*

*Asked by* ***Lord Soley***

To ask Her Majesty's Government what plans they have to create a register of all home-educated children.

**The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con):** My Lords, parents have the right to educate their children at home and many do so very well, sometimes in very difficult circumstances. However, there are some cases in which children are not provided with a suitable education. We remain committed to a form of registration for children not in school. Further details on this will be in the government response to the *Children Not in School* consultation, which we will publish in the coming months.

**Lord Soley (Lab):** The Minister and her predecessor, the noble Lord, Lord Agnew, have been supportive of the underlying principles of my Bill, and I welcome that. The whole House has given it its support. It was also welcomed throughout the country in the government consultation, so I really ask: when are we going to act on this? It is urgent.

**Baroness Berridge (Con):** My Lords, unfortunately, I can give the noble Lord no further details on the time. He will be aware that when we launched the consultation on the register in April 2019, we also issued significantly strengthened guidance to local authorities, outlining the current powers and duties they have in relation to children who might not be in school in their local area.

**The Lord Bishop of St Albans [V]:** My Lords, parents often choose home schooling to escape the rigidity, values and standardisations of public education. Some people are deeply fearful that a register might seek to reimpose this. Will Her Majesty's Government assure us that this register is for safety and quality purposes only and that parents will be able to continue to exercise their discretion and freedom of conscience over what and how best to educate their children?

**Baroness Berridge (Con):** My Lords, obviously within our public schools system there are different ethoses, including, of course, many Church of England schools. The statutory duty on parents is that they have to ensure that their children are receiving a suitable education. Obviously, that can be at home. In the consultation there was an obligation on parents to notify the local authority, because a register without any duty to notify would not be a register at all.

**Lord Mackay of Clashfern (Con):** My Lords, is it not important to recognise the high quality that sometimes can be reached by home schooling? It is a great tribute to parents who are able to devote so much time and skill to carrying it out.

**Baroness Berridge (Con):** My Lords, the Government are clear that many parents provide elective home education and do it extremely well. The outcomes for their children are excellent, including for many children

with special educational needs and disabilities. However, in the consultation it was clear that we need the data to find out where certain children are being electively home educated.

**Baroness Meacher (CB) [V]:** My Lords, I am disappointed that the Minister was unable to give a timeframe for the register. In the meantime, is any work being done to assess the extent to which fundamentalist religious parents, in particular, are preventing their children receiving appropriate education and, indeed, teaching in English?

**Baroness Berridge (Con):** My Lords, as I have outlined, every parent, regardless of their religious persuasion, has a duty to ensure that their child receives a suitable education. If a parent removes their child from school—and obviously during Covid we have seen a lot of movement of people and removal from the school roll—we have strengthened the regulations so that head teachers have to inform the local authority and have a specific ground for removing a child from a school roll.

**Baroness Whitaker (Lab):** My Lords, while a few parents educate their children at home well and have nothing to fear from a register, a very large number of children who are not educated in mainstream schools are in real trouble. Two groups cause particular concern: those who are taught the narrow and often anti-social curriculum of unregistered or illegal schools, which are often also unsafe and unhygienic, and the significant proportion of Gypsy, Traveller and Roma children who drop out of secondary school, usually through bullying, and whose parents are not equipped to teach them. How can we leave such children at the mercy of gangs and county lines any longer?

**Baroness Berridge (Con):** My Lords, the noble Baroness is correct in relation to unregistered schools. We have been aware of this issue and Ofsted has been resourced to do this. Between 1 January 2016 and 31 March this year, 494 inspections of suspected unregistered schools took place. Some 166 warning notices were given and 91 settings have been closed, so we are alert to this issue. We are aware that it is important that children are on a school roll or being electively home educated because they are exposed to certain risks if they are not in either of those settings.

**Baroness Burt of Solihull (LD):** My Lords, I welcome that answer, which kind of precludes what I was going to ask. Ofsted has spoken recently about sham home education being used as a cover for illegal schools with extreme methods promoting extreme radical views. The Government have committed to cracking down on illegal schools and I welcome the comments the Minister has already made. Do the Government have a schedule of progress? We know that a number of schools have already been identified. Does the Minister have an idea of how many schools have been closed so far? What is the Government's estimate of how many of these illegal schools exist?

**Baroness Berridge (Con):** My Lords, as I have said, 91 of these settings have been closed or ceased to operate when they were inspected. We are looking at whether Ofsted needs additional powers when it goes into these settings. Every parent who sends their child to that setting has a duty to ensure that they are receiving a suitable education. We reminded local authorities in the guidance from April 2019, which I mentioned, of the suite of powers and duties they currently have, whether that is prosecution or school attendance orders, to ensure that young people are getting the education they have a right to.

**Viscount Ridley (Con) [V]:** My Lords, as my noble friend the Minister has said, the Government have introduced a voluntary code of practice for out-of-school settings. While this is a start, it is unlikely that the villains who operate unsafe, part-time settings and illegal schools, such as those we have heard about from the noble Baroness, Lady Burt, and others, will take note of this. What steps are the Government taking to protect children in these settings from threats such as unsafe conditions and religious extremism?

**Baroness Berridge (Con):** My Lords, many out-of-school settings offer a very valuable service, particularly to those who electively home educate, because they offer services to groups of children that parents alone potentially cannot offer. We have issued that voluntary code of practice. Many of those settings are charities so they have responsibilities to the Charity Commission as regulated bodies. We also have given £3 million to local authorities to examine ways in which they can boost local capacity to intervene when there is a safeguarding issue. Local authorities have a duty to safeguard every child in their area.

**Lord Watson of Invergowrie (Lab):** My Lords, I agree with noble Lords who have said that many parents are able to—and indeed do—successfully home educate their children. However, with respect, that is not the issue here. Is it not a scandal that an accurate figure for school-age children not being educated in school is not available? Local authorities are not required to keep a register and they cannot visit children at home against the wishes of the parents. The latest figure, published by the Office of the Schools Adjudicator in February last year, put it at around 60,000. That was before Covid closures, since when thousands of children have failed to return to school. I hear what the Minister says about the consultation but is it not now time for a compulsory register of home-schooled children, maintained by local authorities as a safeguarding measure? If she will not bring forward government legislation, will the Government commit to supporting a Private Member's Bill such as the one introduced in 2017 by my noble friend Lord Soley?

**Baroness Berridge (Con):** My Lords, in relation to the register, that is precisely the reason we are committed to a system of registration so that there is an accurate dataset. We have made it clear that if a child has been in school, the head teacher must have a specified reason for removing that child from the roll. In addition to the two groups of children—those on the roll and those who are being electively home educated—it is important to remember that when a head teacher does not have one of the specified grounds, it may relate to a child missing from education, which is a third group.

[Baroness Berridge]
Local authorities have specific, named people who co-ordinate. A lot of children will have dropped off the school roll in one area during Covid and we have a system to make sure that when they, we hope, appear on the school roll in another local authority that data is connected. Let us not forget that third group of particularly vulnerable children—those who are missing from education.

**Lord Addington (LD):** My Lords, I thank the noble Baroness for the tone of her reply so far. Will she take this opportunity to give us an assurance that an assessment of the education provided for a child will be taken in each case and that that assessment will have knowledge of things such as special educational needs so that something accurate can be said about what is happening to that child's education? Ultimately, the child is entitled to an education.

**Baroness Berridge (Con):** The noble Lord is correct that "suitable" takes into account different developmental and other characteristics of the child. Any special educational needs that a child has are included in the current statutory definition of a suitable education. What detail the register will or will not include are matters to be determined and will be in the response to the consultation.

**The Lord Speaker (Lord McFall of Alcluith):** My Lords, the time allowed for this Question has elapsed and we now come to the fourth Oral Question. I call the noble Lord, Lord Clement-Jones.

## Spyware
*Question*

*12.39 pm*

*Asked by* ***Lord Clement-Jones***

To ask Her Majesty's Government what assessment they have made of the reports of spyware sold by NSO Group to Governments around the world and the uses to which such software has been put.

**The Minister of State, Cabinet Office (Lord True) (Con) [V]:** My Lords, the UK Government are aware of companies selling high-end, state-like cyber capabilities to Governments. We believe that the use of cyberespionage tools against civil society and political groups is unacceptable. It is essential that nation states and other cyber actors use capabilities in a way that is legal, responsible and proportionate.

**Lord Clement-Jones (LD):** My Lords, the leaked target list of 50,000 people includes UK politicians and journalists. Clearly, all our mobile devices are at risk of being hacked—a huge danger to press freedom and democracy. What is the NCSC doing to counter this, particularly since the whole Civil Service has now moved over to the iPhone? Why has the Home Office given the NSO Group a marketing platform at events such as a security and policing trade fair last year?

**Lord True (Con) [V]:** My Lords, Her Majesty's Government are committed to defending the UK from online threats and boosting national resilience to cyberattacks, which the noble Lord rightly asks about. In the past five years, the national cybersecurity strategy has begun to transform the UK's fight against cyber threats. We do not comment on individual cases or intelligence matters, as noble Lords will know, but while we cannot comment on the specifics, for operational reasons, I underline to your Lordships that we very strongly condemn the targeting of UK individuals.

**Lord Stevenson of Balmacara (Lab) [V]:** My Lords, the *National Action Plan for the Safety of Journalists* was, coincidentally, published yesterday. It says that

"A world where journalists are silenced by either fear or censorship is a much poorer one."

It also says that the Government are committed to keeping journalists "as safe as possible". It has a number of initiatives, which are to be welcomed, but it is silent on the question of the NSO spyware just referred to, which clearly poses exactly these threats. What plans do the Government have to protect our journalists from such spyware in future?

**Lord True (Con) [V]:** My Lords, I reiterate the Government's determination within the cyber strategy to protect all our citizens. I strongly agree with the noble Lord that freedom of the press is an integral part of the United Kingdom's democratic processes. The Government are committed in every way to protecting the rights and values we hold dear, including the protection of journalists.

**Lord Strasburger (LD) [V]:** My Lords, in the wrong hands Pegasus is a weapon of war against democratic institutions. I did not believe the NSO Group when it told me that Pegasus is used exclusively on serious criminals and terrorists; now we have the proof that that was untrue. It is perfectly possible that Pegasus has already been injected into the phones of Members of this House and the other place. Can the Minister assure the House that the British Government have not deployed, and will not deploy, Pegasus or similar software except when investigating serious crime or terrorism?

**Lord True (Con) [V]:** My Lords, again, I cannot comment on operational specifics, but I assure the noble Lord that our intelligence agencies are governed by a robust regulatory framework to ensure that any capabilities are always used in a way that is legal, necessary and proportionate—something we ask of all nations. We do not support the commoditisation of cyber capabilities. We continue promoting, with our international partners, the need for tighter export controls to ensure their use legally and responsibly.

**Viscount Colville of Culross (CB):** I am as appalled as other noble Lords by the revelation about the use of NSO spyware against over 50,000 people across the world. How long have the Government known about the use of this law enforcement-grade software by authoritarian Governments in surveillance of their opponents and journalists across the world, and what have they done about it?

**Lord True (Con) [V]:** My Lords, again, I cannot comment on intelligence and operational specifics. I am obviously aware of the issues raised in the reports,

which in the first instance are all with the company and Israeli authorities. But we have raised our concerns several times with the Government of Israel about NSO's operations.

**Baroness Hayter of Kentish Town (Lab) [V]:** My Lords, what assurance can the Minister give us that no journalist, politician or campaigner in the UK has been affected by this software? Would the Government contact anyone who was so targeted? What UK diplomatic channels are being used to ask questions of the countries identified by these leaks?

**Lord True (Con) [V]:** My Lords, again, I cannot comment on individuals, but I underline what I have said about this Government's deploring of any effort to target UK individuals, the representations that we have made and the commoditisation of this kind of spyware. Unfortunately, the commercial cyber capability industry is global. We are seeking in many ways to try to secure better control and have legal, proportionate and proper use of any such devices, and better control of exports.

**Lord Berkeley of Knighton (CB) [V]:** My Lords, I realise that the Minister is under some constraint here, so let me try to put this in a slightly more philosophical sense. Is there not a somewhat justifiable element of fearing what we wish for, not unlike in the Huawei dilemma? In other words, do we need and use this technology and what it covers, and in so doing might we be lowering our own defences to it?

**Lord True (Con) [V]:** My Lords, I have said something about the controls on our own intelligence framework. As the noble Lord will know, the UK's use of any investigative powers—I am obviously going much wider than this Question—including equipment interference, is governed by the Investigatory Powers Act. That provides extensive and robust safeguards and oversight that is judicial, political and parliamentary.

**Lord Alton of Liverpool (CB):** My Lords, in the light of the targeting of human rights activists, journalists—including 200 reporters from 21 countries—and lawyers, will the Government consider raising the use of this Pegasus malware at the United Nations Human Rights Council, of which we are a member, and confronting authoritarian Governments with violations of the Universal Declaration of Human Rights, specifically Article 19 on the right to have unimpeded access to information and comment? Specifically, will they commit to examining the targeting of people close to Jamal Khashoggi, who was murdered in October 2018 while visiting the Saudi embassy in Istanbul, where his body was dismembered, and whose wife and the Turkish prosecutor investigating his death have been targeted by this malware?

**Lord True (Con) [V]:** My Lords, again, I cannot follow a specific case, but I fully endorse the sentiment of the noble Lord's question. I repeat that we believe that the use of cyberespionage tools against civil society and political groups, including human rights activists, is unacceptable. I can assure the House that the UK continues to champion human rights, at home and abroad, and that where we have concerns on human rights issues we do not and will not shy away from raising them.

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

## Northern Ireland Protocol

*Statement*

*12.48 pm*

**The Minister of State, Cabinet Office (Lord Frost) (Con):** My Lords, with the leave of the House, I will now make a Statement, which is being simultaneously made in the other place, on the Government's approach to the Northern Ireland protocol.

The Northern Ireland protocol was designed to achieve a delicate balance between a number of different aims. It reflected a truly extraordinary compromise by the Government in 2019, driven by our steadfast commitment to the Belfast/Good Friday agreement in all its dimensions. Just over a year afterwards, we also agreed the trade and co-operation agreement, the broadest and most far-reaching such agreement ever struck. Together, these offered the building blocks of a strong, constructive partnership between the UK and the EU, as sovereign equals, yet we have not been able to unlock the potential of that new partnership, and the impact of the current protocol is at the heart of that.

There is no doubt that we have tried to operate the protocol in good faith. We worked throughout 2020 to finalise the areas left open by the protocol text itself, without of course knowing what the real-world impacts of those decisions on the ground would be. This year, we are planning to invest around £500 million in delivering systems and support services to operate the protocol. We have worked with business to help its preparations for the new trading arrangements, but nevertheless, as we have sought to operate the protocol, it is clear that its burdens have been the source of considerable and ongoing disruption to lives and livelihoods. We have seen reductions in supermarket product lines. We have seen more than 200 suppliers decide that they would no longer sell to Northern Ireland. We have seen difficulties not just on the famous chilled meats issue but on medicines, on pets, on movements of live animals, on seeds and plants, and on many others.

Indeed, nowhere are these problems more visible than in the fact that the Northern Ireland Executive conduct 20% of all the EU documentary checks on products of animal origin, despite a population of only 1.8 million people. These burdens will worsen, not improve, over time as grace periods expire, leaving businesses facing ever more unsustainable burdens. These impacts risk being felt in the fabric of our union too. All dimensions of the Belfast/Good Friday agreement need to be respected—that is, Northern Ireland's integral place in our United Kingdom just as much as the north-south dimension of the agreement.

Yet there is a growing sense in Northern Ireland that we have not found the right balance, seen in an ongoing febrile political climate, protests and occasional

[Lord Frost]
regrettable instances of disorder, and strains within a power-sharing Executive already dealing with an unprecedented pandemic. We have worked with the EU to try to address these challenges. Some avenues for progress have been identified in certain areas but, overall, those discussions have not got to the heart of the problem. Put very simply, we cannot go on as we are. We have therefore had to consider all our options. In particular, we have looked carefully at the safeguards provided by Article 16 of the protocol. These exist to deal with significant societal and economic difficulties, as well as with trade diversion. There has been significant disruption to east-west trade, a significant increase in trade on the island of Ireland as companies change supply chains, and considerable disruption to everyday lives. There has also been societal instability, seen most regrettably with the disorder across Northern Ireland at Easter. Indeed, the false but raw perception in the unionist community of separation from the rest of the United Kingdom has had profound political consequences. These are very serious effects, which have put people, businesses, and the institutions of the Belfast/Good Friday agreement under strain.

It is clear that the circumstances exist to justify the use of Article 16. Nevertheless, we have concluded that it is not the right moment to do so. Instead, we see an opportunity to proceed differently—to find a new path; to seek to agree with the EU, through negotiations, a new balance in our arrangements covering Northern Ireland, to the benefit of all. It is in that spirit that today's Command Paper outlines the new balance that we wish to find. It is a balance which needs to ensure that goods can circulate much more freely within the UK customs territory, while ensuring that full processes are applied to goods destined for the EU. It is a balance which needs to enable all in Northern Ireland to continue to have normal access to goods from the rest of the UK, by allowing goods meeting both UK and EU standards to circulate there. And it is a balance which needs to normalise the basis of the protocol's governance, so that the relationship between us and the EU is no longer policed by the EU institutions and the court of justice. We should return to a normal treaty framework, similar to all our other international agreements, that is more conducive to the sense of genuine and equitable partnership that we seek.

Of course, we also recognise our share of responsibility in helping the EU to protect its single market. As part of this, we are willing to explore exceptional arrangements around data sharing and co-operation, and penalties in legislation to deter those looking to move non-compliant products from Northern Ireland to Ireland. I repeat that all this is entirely consistent with maintaining an open border, without infrastructure or checks, between Ireland and Northern Ireland.

These proposals will require significant change to the Northern Ireland protocol. We do not shy away from that. We believe that such change is necessary to deal with the situation that we now face. We look to open a discussion on these proposals urgently. At the same time, we must provide certainty and stability for businesses as we do so, so we believe that we and the EU should also quickly agree a standstill period, as it were, including maintaining the operation of grace periods in force and a freeze on existing legal actions and processes. This is to ensure that there is room to negotiate and to provide a genuine signal of good intent to find ways forward.

The difficulties that we have in operating the Northern Ireland protocol are now the main obstacle to building a relationship with the EU that reflects our strong common interests and values. Instead of that relationship, we are seeing one which is punctuated with legal challenges and characterised by disagreement and mistrust. We do not want that pattern to be set, not least because it does not support stability in Northern Ireland.

It is now the time to work to establish a new balance which both the UK and the EU can invest in, to provide a platform for peace and prosperity in Northern Ireland and to allow us to set out on a new path of partnership with the EU. We have today in our Command Paper set out an approach which we believe can do just that. We urge the EU to look at it with fresh eyes, and to work with us to seize this opportunity and to put our relations on to a better footing. We stand ready to work with it in delivering the brighter future that is within reach.

*12.56 pm*

**Baroness Chapman of Darlington (Lab):** My Lords, I thank the Minister for advance sight of his Statement. However, I was surprised to hear so much of its content on the radio this morning. We are both new to this House, but I have quickly learned the great value of treating this Chamber with respect. Briefing of Statements to the media before the House is discourteous. I hope that he can reassure us that whatever did or did not happen today, this will not become his habit.

When the Northern Ireland protocol was presented as a triumph, I doubt whether the Minister imagined that he would remain responsible for its implementation, yet here he finds himself. Can he tell us whether the problems that he highlights today were anticipated when the agreement was signed? If not, they should have been. If they were anticipated by the Minister before the Government signed up to the agreement, as I suspect, then I am afraid that this will damage our international reputation. In his Statement, he says that he has tried to operate the protocol in good faith, but the technological solutions earlier promised, that would have eased the situation, have not yet materialised, and that does not look like good faith. The problems that he describes are so wide-ranging that if he did not foresee any of them, that raises serious questions about the Government's approach to the negotiations at the time, and their attitude to the serious undertakings to which they committed the country and from which they now seek to break away.

The protocol was described by the Prime Minister as an ingenious solution. We all remember his promise to Northern Ireland businesses and we all remember him saying that there would be no checks whatsoever. He said that if someone asks you to fill in a form, to "tell them to ring up the Prime Minister, and I'll direct them to throw that form in the bin." This is not the first time that the Minister has appeared before this House to discredit his own deal. I regret that this approach has potentially dire consequences for

communities in Northern Ireland and, critically, for our international reputation at a time when we are seeking to forge new agreements. The erosion of trust in our Government, an essential component of stability in Northern Ireland, is deeply regrettable and must not be taken lightly.

The Minister's Statement is, I am afraid, an admission of failure. The Government promised to "get Brexit done", yet here he is trying to unpick it. The Government must find agreement to fix the problems that the Prime Minister created. We have yet more political brinkmanship and more threats to tear up the protocol, with nothing to take its place. The people of Northern Ireland should not be pawns in a chess match. Communities are tired of these games and the political stalemate. The last thing that they need is a summer of crippling uncertainty which is bad for them and damaging to businesses across the United Kingdom.

The Secretary of State knows that the best way forward is to get a veterinary agreement because it is the most straightforward way to remove the vast majority of checks—I am sure that that is what he is saying to the other place right now—but is it not time that the Government simply delivered on what they promised?

The ongoing stand-off is having consequences for Northern Ireland and our relationships with our closest friends and partners. The eyes of Governments around the world are on the Minister this afternoon. President Biden and Prime Minister Ardern of New Zealand are among those who need reassurance that the UK will abide by international law and be a partner that they can trust. Is there anything less British than forging an agreement but never having any intention of making it work? What does the Minister think that our friends, allies and future trade partners will make of this?

I am sure that the Minister would never advise the Prime Minister to put his own political interests over and above the interests of Northern Ireland. The Minister objects to the EU's previous threat to use Article 16 powers—I agree with him and am pleased that he has made it clear that he does not consider now to be the right time for the UK to make use of them—but can he make clear to the House whether, when and in what circumstances he would resort to such a drastic measure as the use of Article 16?

The US State Department has been up front and told us that it is watching this situation closely, and it encourages us to find a solution within the terms of the existing agreement that we so recently and eagerly entered into. What conversations has the Minister had with representatives of the Biden Administration on his new position? What is the assessment of the impact of today's Statement on the favourability likely to be shown to the UK as we seek to make binding deals in the future?

For us to maintain our position as a respected, trusted partner in defence and trade, we must show that we keep our word. We do not make deals knowing that we will break them. I ask the Minister to keep in his mind the people of Northern Ireland. He owes it to them to quickly reach an agreement with the EU and to find a sustainable, long-lasting way forward.

**Baroness Ludford (LD) [V]:** My Lords, this Government drove through the arrangement whereby Northern Ireland would have a different customs and regulatory status from that of Great Britain. The Prime Minister then claimed that this would not lead to controls on trade between Great Britain and Northern Ireland. That claim was not true. The Prime Minister and his colleagues, including the Minister, knew that the EU needed to protect its single market from unauthorised goods entering it through the back door, that this meant checks in the Irish Sea and that this was what they had agreed to. "Economy with the actualité" does not quite do justice to the deception that was perpetrated.

What the Prime Minister and his Government signed up to and their misinformation about it are the real source of the problems and tensions in Northern Ireland—not the EU, which has, true to form, been made a scapegoat. So, when the Minister repeatedly says in this House and elsewhere that the protocol is having a bad effect, we are entitled to ask: why did he promote it, then? The Government's refusal to accept the consequences of their own actions and choices around the nature of Brexit is deeply unimpressive.

The Statement claims that the Government have

"tried to operate the protocol in good faith"—

but, sadly, that is not the case. The Government admit that they did not know

"what the real-world impacts on the ground would be"

of the protocol and that the problem is the way that it is currently operating. However, they either knew, as everyone else did, that this was indeed how it would operate, with Great Britain and Northern Ireland under different regulatory and customs regimes—in which case they are now being dishonest and disingenuous—or they did not, in which case they are incompetent. The answer is of course both. Mr Johnson, the noble Lord, Lord Frost, and their colleagues wanted a hard Brexit for Great Britain at any cost. The great god of sovereignty was their overlord, and no practical argument could be allowed to impede the achievement of that goal. In fact, the Tory Brexiters gave barely a thought to Northern Ireland, despite claiming to be fervent unionists.

The closer the level of alignment, the lower the lever of checks—hence, from these Benches, we have consistently urged that the best way to eliminate checks on food, agricultural products and animals was to reach a veterinary or SPS agreement with the EU. However, the Government have stubbornly put ideology before the needs of industry and consumers in refusing to take that level playing field step or any others. Instead, they simply throw their hands in the air and cry that the protocol is untenable and that it is up to the EU to show pragmatism and forgo most or all checks on goods going from Great Britain to Northern Ireland. You could not make this up. It is rich coming from a Government who have been thoroughly dogmatic, and it is a breath-taking passing of the buck. It would be gratifying if the Minister, just once, here and now, accepted that he and his colleagues must take full responsibility for where we and Northern Ireland are now.

So, while the Minister believes that the protocol

"must work in a different way if we are to find a stable route going forward",

[Baroness Ludford]
he now presents us with a set of proposals that have anything but stable and certain prospects, since they are an attempt to rewrite the protocol with an enhanced threat to trigger Article 16. The choice of confrontation and instability over real solutions, and pushing Article 16 as a potential remedy, are offering a populist, ineffective and false solution. No major business organisation in Northern Ireland or beyond is calling for Article 16 to be invoked, and, if it were, the EU would have the right to take its own rebalancing measures. It is thus not the silver bullet that its advocates think it is.

One of the new suggestions has been labelled an "honesty box" approach, whereby companies that said that their goods were destined only for sale and use in Northern Ireland should be exempted from checks on the Irish Sea border. The deep irony of this from a Government who have proved very far short of honesty and trustworthiness over the protocol does not escape us.

Unilateral action will see a reaction from the Biden Administration and will have consequences for UK-US relations. In view of the fact that the State Department has urged the UK to stay within "existing mechanisms", since the protocol and the TCA

"protect the gains of the Belfast/Good Friday Agreement",

how will the Government prevent harm to the transatlantic relationship that they claim to value so much? It is wholly counterproductive for the Government to engage in more brinkmanship and unilateral action, rather than working in partnership with the EU to address problems.

The real situation is that scope continues to exist to find mutually agreed flexibilities and mitigations, within the context of the protocol, consistent with the legal regimes of both the UK and the EU. In that context, can the Minister tell me what his reaction is to the proposal from the British former senior European Commission official, Sir Jonathan Faull, in yesterday's *Financial Times*? The proposal is a development of proposals that he made two years ago and amounts to "mutual enforcement" or "dual autonomy", protecting the integrity of both the UK's and the EU's internal markets and based on well-tested international trade practice. The UK would introduce, as a matter of domestic law, EU rules only for goods that are exported to the EU and vice versa, and national courts could be empowered to make references to the supreme court of the other party in case of doubt about interpretation.

As Sir Jonathan says, this idea "preserves" UK regulatory autonomy, with "compliance … a legal requirement" here and not an obligation imposed by a foreign power. It avoids the complexities of the TCA's level playing field arrangements—so will the Government pick it up and run with it? After all, the EU hates it, so this Government must find it very attractive. Such a scheme would need mature and rational consideration in a climate of trust with the EU. What the Government are now doing is, sadly, the very opposite of that.

**Lord Frost (Con):** My Lords, I thank the noble Baronesses, Lady Chapman and Lady Ludford, for their comments. There is a lot there, and I will try to deal with them. I will begin by picking up the point that the noble Baroness, Lady Chapman, made at the start about respect for this House in terms of briefing. I reassure her and noble Lords that we have not engaged in any such briefing. It is necessary for Statements of this kind to engage in a certain limited amount of diplomatic contact beforehand.

**Noble Lords:** Oh!

**Lord Frost (Con):** No doubt, that is the source of some of what is read in the press this morning, but I would not like anyone to think that we were not showing appropriate respect to this House in the way that we have gone about this matter.

Turning to the substance: a lot was said about us not standing by our commitments as a Government, about unilateral actions and so on—which I find slightly surprising, because that is not what we have proposed. We have proposed a way forward based on consensus and negotiation. That is the responsible thing in these circumstances. We have always said that all options remain on the table, but we have chosen the way of negotiation and compromise, and we hope that the EU will respond in that way. We believe that the possibilities, if it does, are really quite exciting, so that is the way we would like to proceed.

The issue was raised of why we did not foresee this situation. The current protocol reflects the extraordinary circumstances in which it was agreed, when this Government risked being unable to deliver on a democratically determined referendum result because their negotiating hands were tied by actions in this Parliament. We proposed, and eventually agreed, a protocol that was substantially different from our initial proposals, particularly in customs arrangements and in limiting the consent principle. We thought these changes might well cause problems, but we thought that, with a pragmatic, light-touch application of the rules, the right thing to do was to try to make the protocol work.

We could not predict the future; we could not have foreseen the political turbulence the EU would spark off with its Article 16 proposal in January; we did not anticipate the very purist application that would be applied to some of its provisions. We have all learned from experience. We now know what is working and what is not, and we believe that the best way to resolve the situation is to try to negotiate changes—and we do not see what is wrong with that. Anyone would think that it was a highly unusual thing to renegotiate a treaty; of course, it is not. To take one example: the UK-France treaty on juxtaposed controls was itself a supplementary protocol to an agreement reached in 1986, signed in 1991, renegotiated in 2000 and renegotiated in 2007, as the nature of the juxtaposed controls and the situation they were working in changed. So, there is nothing particularly unusual in this, and we do not apologise for it.

The issue of checks between Northern Ireland and Great Britain was raised, and the noble Baroness raised the issue of the Prime Minister's comments about "throwing forms in the bin". I would note that he made those comments in the context of movements from Northern Ireland to Great Britain, and there are no forms for such movements. That was something we secured with the EU in 2020, and that unfettered access is extremely important for these arrangements.

The issue of trust was raised, which is clearly extremely important. Trust takes two, and the EU's actions on vaccines, on Article 16 and on the immediate resort to legal action to try to stop people in Northern Ireland going on holiday to Great Britain with their pets are all actions that are not conducive to trust. We do not want a relationship with high levels of mistrust. The current problems in the relationship are caused by the extreme difficulties in operating the protocol reasonably. If we can get to a better protocol, we will have resolved some of those problems. That is why we are trying to proceed by consensus and get to a better situation.

The issue of people in Northern Ireland was raised. Of course, the protocol itself requires there to be no impact, or minimised impact, on the everyday lives of people in Northern Ireland. The fact that that is not being observed is one of the major problems with the current situation, and that is why we wish to see if we can resolve it in a negotiated way.

The veterinary agreement was raised, and we have made it clear that our position is that an agreement by equivalence could solve problems. But in this Command Paper we are proposing something more fundamental: dealing with the fundamentals of the difficulties rather than the problems. Our proposal for a dual regulatory zone with appropriate processes backing it up—and one of those things could be a veterinary agreement—will resolve these issues in a more fundamental way.

The issue of Article 16 was raised. We set out the thinking on that in the Command Paper, and it is a very legitimate tool for use within the protocol. That is why it is there. We made it clear that the situation would justify the use of Article 16, if we wished to, to deal with both current issues—for example, chilled meats, parcels and so on—and the broader arrangements under which goods enter Northern Ireland from Great Britain. But we have chosen not to go down that route. We prefer to proceed by negotiation, and I hope we can.

I will make a few final points. I have seen the comments from the US State Department spokesman overnight in which he urges everyone to solve differences by negotiation and protect the Belfast/Good Friday agreement. We absolutely 100% agree with that, and that is what we have set out today.

The issue of stability in Northern Ireland is very important: business needs stability. The problem is that we do not have stability now, and anyone who heard the comments from the chair of Marks & Spencer this morning and has seen his letter will be very clear about the kind of extreme difficulties that businesses will face if we simply proceed without trying to rectify the situation. We do not have stability now. We need to produce a solution that will generate stability and get us forward into the future.

So we look to make proposals. We have made proposals that set out a negotiated approach. They are significant and substantive; they offer a good chance, in our view, of resolving difficulties on a durable basis; and we very much hope that the EU will look at them, consider them carefully and go forward with us on that journey.

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

*1.17 pm*

**Lord Jay of Ewelme (CB) [V]:** My Lords, I am grateful to the Minister for giving evidence on the protocol last week to the committee that I chair. We greatly look forward to future such meetings. We will, of course, study the proposals and the White Paper carefully. Meanwhile, I have one question for the Minister. He spoke about trust. Could he confirm that the Government will do all they can to build—or, perhaps I should say, to rebuild—the trust between the British Government, the European Union and the Irish Government that is essential if we are collectively to find a resolution to the protocol that is in the interests of all communities in Northern Ireland and that they profoundly deserve?

**Lord Frost (Con):** My Lords, I very much agree with those comments. I could spend time, but will not, looking at the origins of this situation of mistrust and why it has been established. I do not think it is helpful to do so today; we are looking forwards and have to deal with the situation as it is. Our very clear proposal to proceed by negotiation, agreement and discussion will, we hope, begin to help re-establish some of the trust that it seems is lacking on both sides.

**Lord Caine (Con):** My Lords, rigid and theological implementation of the protocol has severely disrupted trade, adversely impacted consumers, hit businesses in both Great Britain and Northern Ireland and contributed to political instability. In welcoming my noble friend's Statement, therefore, I ask: does he agree that it is now the time for the EU fully to respect Northern Ireland's position within the UK internal market, along with the constitutional and economic integrity of our United Kingdom? Failing that, I assure my noble friend that he will be entirely justified in taking whatever unilateral action is necessary to remedy the current unsustainable situation. In so doing, he will have the strong support of many of us.

**Lord Frost (Con):** I thank my noble friend for his comments. He is obviously correct in saying the place of Northern Ireland in the United Kingdom, in the single market, in the customs territory, is protected on the face of the protocol and is absolutely fundamental. It is the doubts that have been allowed to develop on that subject that are part of the reason we face the situation we face today.

**Baroness Ritchie of Downpatrick (Non-Afl) [V]:** My Lords, in light of the absence of trust caused by the original internal market Bill last September and the unilateral extensions of grace periods in March, how confident is the Minister that the EU will have the appetite to consider such a fundamental departure from the protocol in terms of Article 5? After all, the UK Government negotiated, agreed and ratified the protocol.

**Lord Frost (Con):** My Lords, obviously we will have to see how the EU reacts to these proposals. I hope it will consider them seriously as a significant proposal to find a durable settlement. It is true that they are significant changes to the protocol text and will require that, but we hope that the EU will see that the prize of a durable settlement that allows us to move on is worth the process issue of reopening the protocol text. We must keep our eyes on the prize and what we are trying to do here.

**Baroness Goudie (Lab) [V]:** My Lords, trust is clearly broken and must be repaired. The protocol would not have been necessary but it is now, and it is an imperfect solution to a problem unnecessarily caused and created. It does, however, avoid the crippling blow to the peace process that a hard border would have represented and would represent, and it contains special measures to protect human rights and equality until someone suggests a better solution. Also, it is vital as part of the Good Friday agreement that investment will be coming to Northern Ireland and I hope that this Government will continue to encourage this, with the other partners of the Good Friday agreement. Can the Minister give me an undertaking that this is still happening? What plans does he have to take it further, working with colleagues in Europe and the United States?

**Lord Frost (Con):** My Lords, we are obviously ready to work with anybody and plans are in train to encourage investment into Northern Ireland; I believe there are some events in prospect in the next few months. The noble Baroness is right to call the protocol an imperfect solution: I think it is very clear that it is imperfect. I would say, as she does, that much of the protocol is not in question. Issues such as the common travel area, human rights, the Good Friday agreement and so on are not controversial. What we must do is make sure that the trade and governance arrangements of the protocol work better, and the proposals we have put on the table work with the concepts in the protocol to try to achieve just that.

**Lord Empey (UUP):** My Lords, today is not the day to enter into a discussion of how we got into this mess, but one fact is clear: the businesses and the people of Northern Ireland are the innocent victims of a situation which they did not create and did not want. With that in mind, I ask my noble friend: are we seriously, as a Government, going to look at real alternatives capable of resolving these issues within the concept of the Belfast agreement, which I believe has been completely demolished by the current protocol? We want new arrangements that are workable, coherent and long-lasting and will bring the stability that businesses and consumers in Northern Ireland urgently need.

**Lord Frost (Con):** My Lords, I very much agree with the thrust of my noble friend's comments. The proposals that we have put on the table are significant and pretty fundamental in the way that they would adjust the way the trading arrangements of the protocol work. They are intended to be durable and to do something significantly different from what is done now. As I say, we work, in these proposals, with concepts of the protocol; we have not swept it away. We do not agree that the right thing is simply to scrap the protocol and that nothing need fill its place. We believe that the right thing is to work with the grain and use the concepts, but use them to make sure that the arrangements work in a significantly different fashion.

**Lord Purvis of Tweed (LD):** My Lords, decisions made by the Boris Johnson Government, not the EU, over the last year have meant that, for the first time in our history, a Government of the UK are compelling UK businesses that trade within the UK to Northern Ireland to register with the Government as an exporter. Any goods from GB to Northern Ireland will have to be separately conformity-assessed and separately labelled and, this month, new parcel and shipping taxes for consumers, set by a foreign power, are now being paid by people, over which we have no representation whatever. There is no mention at all of these in the Command Paper. Does that mean that businesses will have to live with this unacceptable and outrageous burden on UK businesses trading within the UK?

**Lord Frost (Con):** My Lords, we have set out in the Command Paper the very high-level elements of the approach we wish to pursue. Of course, we want to discuss the detail with the European Union, including in many areas. What we are proposing is an extremely light-touch measure to allow trade to flow freely within the UK customs union and single market. We think that is a reasonable response to the situation that currently prevails.

**Baroness Noakes (Con):** My Lords, I very much welcome my noble friend's Statement and I hope the whole House will join me in praising his huge efforts to try to make our relationship with the EU work effectively. Does he agree that the guiding star should be what works for the citizens of Northern Ireland, and that if the EU could shift to a people-centric rather than a rules-centric approach, we could start to make some real progress?

**Lord Frost (Con):** I very much agree with the thrust of my noble friend's comments. The impact of the protocol on everyday lives in Northern Ireland is a significant part of the difficulty. Again, if one looks at the comments from the chair of Marks & Spencer, we see the risks to everyday life; for example, the risk of not being able to deliver supplies for Christmas under the current arrangements. I do not think that is what either the European Union or we actually want in this situation, and if we can focus on the practicalities and the reality of the situation and try to find a way through, we will all be the better for it.

**Lord Dodds of Duncairn (DUP):** My Lords, clearly the Northern Ireland protocol is not fit for purpose; it is not working or delivering for Northern Ireland. Any noble Lord who visits Northern Ireland and talks to people will know that immediately, and the Minister has done that frequently. Whatever the benefits, they are massively outweighed by the disadvantages—economic, societal and political. Can the Minister assure me that at the end of this process of renegotiation, or if direct action may be necessary by the Government,

we will end up in a position where the new balance of arrangements will restore Northern Ireland to its proper place, with no Irish Sea border and with elected representatives of the people of Northern Ireland, either here or in the Assembly, having the final say over the laws that govern Northern Ireland?

**Lord Frost (Con):** My Lords, it is clear that the balance we have in the protocol is not working at the moment, and I have explained why on many occasions. The issue raised by the noble Lord is one reason why we think changes to the governance arrangements in this protocol are so important. It simply does not fit with the reality of the situation to have laws imposed and policed by institutions outside the UK territory and subject to the judgments of courts that are not courts of the UK. If we can agree that—I recognise that it is a significant point—I think we will find some of the problems raised by the noble Lord beginning to melt away.

**The Earl of Kinnoull (CB):** My Lords, there are 32 committees set up under the TCA and the withdrawal agreement, only three of which are directly relevant to the Ireland/Northern Ireland protocol, leaving 29 that are not—presumably now 30, given the overnight news on Gibraltar. Does the Minister share the concerns of many that the trust problems that are taking place within the Ireland/Northern Ireland protocol might leak across to these other 30 forums, which would be most unfortunate? If he shares those concerns, what are the Government doing to address that?

**Lord Frost (Con):** My Lords, where there are trust problems between us and the European Union, they stem ultimately from the issues that we have on the protocol. I agree 100% with the noble Lord that we must try to nip that in the bud and stop it getting in the way, in a durable way, of the rest of the relationship. The issue of Gibraltar that he raises obviously is a dispute about a different issue. There are analogous elements, but it is important to keep these things separate. The mandate that the EU agreed yesterday does seem to be problematic in a number of ways, as my right honourable friend the Foreign Secretary made clear yesterday. But I do not think it makes sense to connect one thing with another. We deal with each of these issues on its own terms and try to proceed in a constructive way.

**Lord Thomas of Gresford (LD) [V]:** My Lords, seven months ago the Minister negotiated and signed the protocol and presented it to the British people as a triumph. Today he stands at the Dispatch Box and says, "It's rubbish, doesn't work, we've got to have something better". Would not the first step—and the best way of resolving the trust problems to which he referred—be for him to resign for a gross failure of government policy for which he is personally responsible?

**A noble Lord:** Just say no.

**Lord Frost (Con):** My Lords, the protocol of course was agreed nearly two years ago now, and a lot of water has flowed under the bridge since then. We are saying, and we continue to say, that it needs improvement. We have experience that elements of the protocol are not working well, and there is nothing wrong with trying to improve elements of a treaty; it happens all the time.

**Baroness Hoey (Non-Afl) [V]:** I thank the noble Lord for his time spent in Northern Ireland listening to people, and for the recognition that the protocol is not working and cannot work. I welcome the proposed changes; particularly important is removing Northern Ireland from being subject to EU rules and the EU court without any say. Could the Minister give us some idea of timescale in terms of just how long these negotiations might go on before it is felt to be time to do something more drastic? Does he agree with me that, if the European Union is really concerned about peace and stability in Northern Ireland, it will respond positively to these proposals—and respond very speedily?

**Lord Frost (Con):** My Lords, there are plenty of deadlines in this process already; I do not want to add to them by generating others. We have proposed a standstill—and I will write shortly to the Commission proposing this. Obviously, if a standstill can be agreed, it will take away some of the significance of the expiry of the current grace period. I very much hope we will be able to do that. Obviously, if we cannot, the 30 September deadline is not very far away. We do not want to be faced with the same situation that we have been faced with before on chilled meats and have to focus on solving the cliff-edge problem, rather than dealing with the fundamental underlying problems.

**Lord Lilley (Con):** My Lords, I welcome my noble friend's practical and forward-looking proposals and deplore the backward-looking point-scoring of both Opposition Front Benches. Can my noble friend confirm that, although the EU and its apologists in this House claim that the protocol requires rigid application of all EU rules and checks on goods entering Northern Ireland from Great Britain, in fact, Article 6 says that the Joint Committee shall adopt "appropriate recommendations" to avoid controls at the ports and airports in Northern Ireland "to the extent possible"? So, if the EU refuses to respond positively to his proposals, it will be in breach of both the letter and spirit of the protocol.

**Lord Frost (Con):** My noble friend as always makes a very good point. The issue of the requirements in Article 5 and the requirement in Article 6 to avoid checks and controls is of course one of the areas where you cannot just read the protocol straight; you have to look at the purpose and the way its different provisions interact. It is certainly arguable that the Article 6 commitments are not being delivered on, but we have not so far sought to argue that, because the protocol is a political and purposive document and we believe that the right way to solve the problems arising is in a political way, rather than immediately reaching for legal arguments and processes.

**Lord Kerr of Kinlochard (CB) [V]:** My Lords, this is serious business. Our Queen's name is on this treaty that we now want to change. The Minister correctly points to precedents for changes to treaties, but I

[Lord Kerr of Kinlochard]
cannot recall any precedent for our condoning—still less proposing—unilateral action if we do not get a negotiated change and the other side does not agree.

I have three particular questions, to which I request precise answers from the Minister, now or in writing. First, on good faith, how does he square with the treaty's Article 5 our continuing refusal to allow the EU access to the customs database, as we said we would? Secondly, on goods at risk, how does he square his honesty box proposal with what the protocol's Article 5.2 says about the onus of proof? Thirdly and finally, on Article 16 on safeguards, which the Minister mentioned, which UK exporters would the Government expect to be hit by EU rebalancing measures under the protocol's Article 16.2?

**Lord Frost (Con):** My Lords, I will address those three points very briefly. We do allow access to the databases. We have recently agreed enhanced access and we have a discussion in train to allow further access. We have no difficulty with access to data; indeed, our own solution requires quite wide access to data to provide reassurances. It is certainly true on the second point that what we are proposing is not consistent with Article 5 as it stands; that is why we need to change it. The system we are proposing is a trust and verify system, which is perfectly normal in business and in these arrangements, and which we think will work very well in this context too. On Article 16, I have set out where we are on this issue. We hope that it will not be necessary to use Article 16. We are trying to proceed by agreement—so hopefully the contingency evoked by the noble Lord will not arise.

**The Deputy Speaker (Baroness Watkins of Tavistock) (CB):** My Lords, the time allowed for Back-Bench questions on this Statement have now elapsed. I will allow a minute for a changeover and we will then proceed with further business.

## Skills and Post-16 Education Bill [HL]

*Committee (4th Day)*

*1.39 pm*

*Amendment 90*

*Moved by* ***Lord Willetts***

**90:** After Clause 25, insert the following new Clause—

"Review of student loans

(1) The Secretary of State must review and update all the terms of—

(a) student loans, and

(b) graduate payments,

every five years.

(2) The outcome of the review under subsection (1) must be published within six months of its completion."

Member's explanatory statement

The purpose of this amendment is to ensure that there is a regular review of the student loan system so that can any problems can be identified and changes made.

**Lord Willetts (Con) [V]:** My Lords, I wish to move Amendment 90 in my name, which proposes a new clause to provide for the review and updating of the terms of higher education loans and repayments every five years. Before I briefly turn to that, I just say to the House and to the Minister that it is much appreciated that the Government have set aside four days for consideration of this important Bill in Committee. This is the last amendment I will move, so this is the right moment to thank the Minister for her engagement with the issues. I assure her that all the amendments I have brought forward are aimed at improving the Bill and helping the Government achieve their policy objectives.

I realise that there may well be a very understandable reaction to this amendment: that higher education finance is so difficult and controversial that the last thing we need is a provision to look at it every five years. But, in reality, because the system is so important in the public finances and so politically charged, it is being changed, and it has been changed, in an ad hoc way, from time to time. In this amendment, I have tried to provide a framework so that it can be reviewed and updated systematically, looking at the system and the interactions between its parts as a whole.

This proposed new clause would also tackle a belief—I think it is misconceived, but there are people who hold it—that somehow the system cannot be changed at all. The terms on which the Student Loans Company deals with students, and then graduates, makes it clear from the beginning that regulations for the terms of repayment can be amended from time to time. Of course, there are advocates of a graduate tax. This current repayment scheme is, in many ways, rather close to a graduate tax—a 9% tax on earnings above a certain threshold but with a cap on the total amount. A graduate tax would clearly come with adjustable rates, so this establishes the reality that the terms of the scheme can be adjusted and altered, and that this should be done with a proper systematic overview from time to time.

It would also enable the system to take account of legitimate political debate about the balance between the amount we expect graduates to pay back for the cost of their education and the amount we expect taxpayers to pay by virtue of writing off unpaid student loans. There is genuine and legitimate debate about what that balance should be. Different people of different political persuasions can take different views on what the balance is, and it is also affected by things such as the performance of graduate earnings. I do not think it is now breaking any confidences to say that, when we set the graduate repayment threshold of £21,000, when we brought in the £9,000 fees, it was based on a rather different forecast of graduate earnings than actually happened. So as earnings overall grew by less, the repayment threshold ended up being higher in real terms than had been envisaged. Those are the types of economic scenarios which Ministers rightly should be able to consider, and they should be able to change the system in the light of them.

In the last few years, we have had a range of ad hoc changes, of which the most significant—and, I have to say, I think the most egregious—was the one in 2017, with a very big increase in the graduate repayment threshold and, therefore, a sudden and large increase in the cost to taxpayers from loans that were being written off. It was introduced with no consultation

and no wider consideration for the system as a whole. In fact, I have to say that it was a case study in the perils of policy-making by conference speech crisis, which is not a good way to decide how our higher education should be funded.

I very much hope that this approach—which provides that there should be an overall review every five years in which, clearly, the terms of the loan scheme can be looked at in the light of economic and political considerations—provides some kind of framework. The Augar review—a serious piece of work, a lot of which I agree with—is one example of how that could be done, and the Minister might cite it. But circumstances change; debates change. Rather than having a one-off specific exercise like that, I think that, every five years, being able to look at what has happened to the so-called RAB charge, loan repayments and graduate earnings, and adjusting the system in the light of public spending pressures and other issues, makes sense, and it does not stop people doing anything else.

There will be some people in this House who believe that the whole system should be swept away. That is their view, and nothing in this provision changes their capacity to do that if they bring in primary legislation. Equally, Ministers may still want to make changes, from time to time. But this just provides, rather as in the historic social security system, for a systematic overview every five years, with the opportunity to look at all the evidence and decide in a structured way how the system could be recalibrated. I think it legitimises the absolute necessity of keeping the scheme adjusted, and provides a framework for doing so, and I hope it will improve the quality of our ability to scrutinise and improve our higher education financing system as it goes forward. That is why I propose this new clause.

*1.45 pm*

**Baroness Bennett of Manor Castle (GP) [V]:** My Lords, I must first apologise for my absence from this Committee on Monday, particularly to the noble Baroness, Lady Sherlock, and the noble Lord, Lord Watson of Invergowrie, whose amendments I had signed. It was entirely due to an administrative foul-up on my part.

I speak today in support of the amendment in the name of the noble Lord, Lord Willetts, which in some ways reflects what is happening now in an ad hoc way. Back in 2018, Philip Augar was asked to review what was happening with student fees. In January, we had an interim response from the Government on that, but, according to the *Guardian* at the start of this month, we are going to get the Government's full response soon—we are looking at a four or five-year time period, the same as is proposed in this amendment.

What we are hearing about the debate going on behind the scenes before we get that response is talk of tuition fee cuts, a cap on student numbers for certain courses and minimum qualifications, which are all designed to lower the cost to the Government of financing the student loan system. The fact is that, when tuition fees were set at £9,000 in 2012, the intention was to have inflationary increases at regular intervals. But since being raised to £9,250 in 2016, the fees have remained at that level while the real value has declined by 12%. It is notable in this context, as the noble Lord, Lord Willetts, said, that this is an intensely political issue and decisions are very likely to be made in an ad hoc, highly political way.

It is interesting that apparently the report suggests that the Treasury is seeking to directly cut fees and increase repayments, while other parts of government favour more indirect means, such as minimum entry requirements and course caps. We really have to think about that latter approach in the context of the Bill we are debating now; it is focused on the need for more skills and education, yet we are expecting sometime soon a proposal from the Government that will squeeze down and reduce people's access.

We have to look at where we are: more than £17 billion is being loaned to students each year. The value of outstanding loans has reached £160 billion, and this is expected to be £560 billion by the middle of this century, at 2020 prices. Some 75% of students will not repay their loans. That means half the people in a single generation going through life for 30 years with that weight resting on their shoulders. We are in a situation now where we are stressing the need for this review. Think about Covid; it descended on us and society changed enormously, and in this age of shocks, we do not know what changes will arrive in future.

The noble Lord, Lord Willetts, reflected that the Government would probably not welcome this amendment, because the issue of fees is so difficult and controversial. However, I agree with the noble Lord that this magnifies the need for a systematic, planned, guaranteed measure of review. We could even argue that it would make it easier for Ministers, because by being on the face of the Bill, it would be a review that had to happen, and it would be set in the government timetable.

The practical reality is that what we have now is a fantasy. These are called loans, but most of the money will never be paid back. We as a society need to reflect on the fact that education is a public good, and it should be paid for from general progressive taxation, not weighted on to the shoulders of individuals, in a system whereby those who earn the most can, by paying off their loans fast, repay the least. We need change. The amendment will not achieve that, but it would at least create a pause, a chance to think—indeed, a requirement to think—about what we are doing to our young people and their future.

**Baroness Sherlock (Lab) [V]:** My Lords, I thank the noble Lord, Lord Willetts, for introducing his amendment, and the noble Baroness, Lady Bennett, for her reflections—and for her courteous but quite unnecessary apology. The current arrangements for student loans are now quite complicated. A recent House of Commons Library brief gave a lovely timeline of all the changes from 1990, when the first loans were introduced for student support—then at just £420 a year. It then tracked the developments, as loans gradually replaced grants for maintenance, and there was a shift from mortgage-style loans to income-contingent repayment schemes. Then loans for fees started, and some maintenance grants came back.

The big shift came in 2012, when fees trebled and the current system was in put in place. The effect of this pattern showed up when I was chatting recently to

[Baroness Sherlock]
a member of our small opposition staff team. She had compared notes with a couple of colleagues in the office, and realised that although the three of them had graduated not so many years apart, each had a different package of debt and repayments.

Part of the reason for the complexity is that the system has so many moving parts. A Government wanting to save money have a range of ways to do it. They can change the size of the original debt, as they did dramatically in 2012. They can change the repayment threshold, as they did in 2016, when they decided to stop tracking earnings and freeze the threshold until 2021—although that went down so badly that they changed it again, not just unfreezing the threshold but raising it to £25,000 from 2018. They can change the contribution period; indeed, Augar recommends raising it to 40 years. They can change the contribution rate. That is still 9% for undergraduate degrees, but loans for master's programmes were introduced in 2016, and for PhDs in 2018. That rate could now go up to 15% of earnings above the threshold for postgrads. Or they could change the interest rates. Indeed, they are spoilt for choice here: they could change the rate while studying or the rate when repaying, or they could change one or both of the lower and upper thresholds. Each of those changes or combinations would have a different distributional effect.

I take it from his introduction that the noble Lord, Lord Willetts, wants a periodic systematic review, and he made his case for that. But does his amendment mean that changes could be made only then? I suspect that the answer to that might affect the Government's interest in the idea.

One benefit of the systematic approach would be the opportunity to ensure that factual information about the impact of changes to the system was gathered and disseminated. Does the Minister agree that work is needed to ensure that the student loans system is widely understood? After all, if Governments are to make changes to student finance, it is vital that it is not done by sleight of hand, or by banking on the HE version of a fiscal drag. It is crucial that the differential impact on people with different likely lifetime earnings is made crystal clear. After all, if the state is advancing £17 billion a year to higher education students in England and the value of outstanding loans is some £160 billion this year, the least the Government owe the country is transparency, and a good public debate. Does the Minister agree?

**The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con):** My Lords, I am grateful for the amendment tabled by my noble friend Lord Willetts, and for his thanks. It is a pleasure to engage with noble Lords. This is my first piece of legislation in your Lordships' House, and I hope that this is the shape of things to come in terms of the tone and the reaction to this legislation.

With £19.1 billion paid out in student loans in the financial year 2020-21, and further increases forecast for future years, it is essential that the Government keep careful control of the student finance system. It is also important that they retain the ability to review and make changes to the student finance system as and when needed, without the potential delays, or the focus on process, that a requirement for a review every five years could impose. I appreciate my noble friend's comments, but inadvertently, a process may, as the noble Baroness, Lady Sherlock, outlined, become constraining, even if it was introduced with the best of intentions.

We must ensure that the system can remain responsive to the needs of the labour market and the wider economy, and thus continue to deliver good value for students and the taxpayer. We agree that, as the noble Baroness said, there is a need for transparency. A wide range of data on student loans and repayments are regularly produced and made publicly available, which enables the Government, and other interested parties, to monitor the student loans system. These include regular publications from the Student Loans Company and the Higher Education Statistics Agency.

As the noble Baroness, Lady Sherlock, outlined, the Government have updated the student loan offer in recent years, with the introduction of several new loan products, including loans to support postgraduate and doctoral study, and we will continue to make changes as and when necessary. Through the Bill, the Government are also introducing a lifelong loan entitlement that will open up new routes for people to retrain and upskill flexibly throughout their lives.

In relation to some of the questions raised by the noble Baroness, Lady Bennett, the fees cap of £9,250 is frozen for this year and the next academic year. She talked about the burden, and the responsibility, obviously, is to repay a loan, but 30 years is at the moment akin to many of the mortgage products available on the commercial market.

As the noble Lord, Lord Willetts, correctly predicted, I shall take this opportunity to remind noble Lords of the recommendations regarding higher education, including on student loans and graduate repayments, that were made by the independent panel appointed to provide input to the review of post-18 education and funding. The Government are carefully considering these recommendations before setting out a response to the review, along with the comprehensive spending review.

In conclusion, while I am sorry to disappoint my noble friend for the second time in recent days, I hope that my remarks have reassured him, as I know this has been an issue of concern to him for many years. I hope that he will feel comfortable in withdrawing his amendment.

**Lord Willetts (Con) [V]:** I am grateful to the Minister for her courtesy, as always. I do not think my score on the amendments that I have tabled to the Bill has been very high—and I will, of course, withdraw this amendment. However, I hope that it will be possible to come back and consider this matter further.

I shall comment briefly on what has been said. The noble Baroness, Lady Bennett, came to this from her own perspective, which was interesting. I much appreciated the fact that she too made the case for some kind of structure involving a review every five years. I can assure the noble Baroness, Lady Sherlock, and the Minister, that there is nothing in the amendment that would stop specific changes at specific times. We have had a lot of those, and that may well carry on.

What I am trying to provide for is something more systematic every few years. I am trying to avoid the need for something like Augar—the setting up of a special inquiry—when it should just be natural that every five years we look at what has happened to graduate earnings, at how much of the graduate loan book is likely to be repaid, and at the terms of maintenance support, and we decide whether there should be any changes in the light of changing circumstances—or, indeed, changing political priorities. Providing that kind of health check on the system as a whole every five years would not deprive Ministers of power; it would actually provide an opportunity for a sensible wider public debate on a subject that is often seen as obscure and difficult but should not be because it is of such public interest.

As I said, I will not press the amendment to a vote today, but I hope that perhaps, over the summer, it might be possible to meet the Minister and consider with her not only this but some other amendments that I have tabled, in case we can find a way forward that takes account of the legitimate concerns that she has expressed. I also hope that she recognises that my amendments are aimed at improving the system in line with the Government's own policy objectives.

**The Deputy Chairman of Committees (Lord Duncan of Springbank):** Does the Minister wish to respond?

**Baroness Berridge (Con):** Just to say that I would be delighted to meet my noble friend at a convenient point.

*Amendment 90 withdrawn.*

*2 pm*

**The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con):** We now come to the group beginning with Amendment 90A. Anyone wishing to press this or anything else in this group to a Division must make that clear in the debate.

*Amendment 90A*

*Moved by* ***The Lord Bishop of Durham***

**90A:** After Clause 25, insert the following new Clause—

"Universal credit conditions: receiving education

(1) In section 4 of the Welfare Reform Act 2012—

(a) in subsection (1) omit paragraph (d), and

(b) omit subsection (6).

(2) The Secretary of State may by regulations made by statutory instrument make consequential provision.

(3) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament."

Member's explanatory statement

This amendment would remove the restriction that those "receiving education" cannot claim Universal Credit, which at present may impede some of the most disadvantaged from benefitting from learning opportunities. It is intended to probe how the Government plans to incentivise take-up of training programmes, and to elicit how cross-departmental working can be made more effective in transforming learning and skills.

**The Lord Bishop of Durham: [V]** My Lords, I am grateful for the support of the noble Lord, Lord Addington, and the noble Baroness, Lady Morris of Yardley. On these Benches, we welcome the Bill as the first step in implementing the much more significant role that further education needs to play in transforming the lives and life chances of individuals, communities and wider society. Quite properly, the Bill is chiefly concerned with structural or technical issues. The House has done its usual, excellent and thorough job of exploring large numbers of those matters through the four days spent in Committee. The Bill deals with what one might call the supply side of provision by aiming to make it more responsive and adaptable to the needs of employers and the community, for example. Turning any vision into action is no easy thing and I am most grateful to the noble Baroness, Lady Berridge, for an extremely helpful meeting, including on the issue of incentivising learners to take up the new opportunities that the Bill seeks to increase.

However, one of the crucial factors in radically increasing the take-up of the opportunities that should flow from such responsiveness is the provision of financial support for those who are unable to meet the costs of their studies because they are reliant on state benefits—for example, if they are unemployed. I therefore also support Amendments 92 to 98, all of which—although in different ways—aim at broadening the range and scope of support for learners. As your Lordships will have noted, Amendment 93 also specifically refers to amending the universal credit conditions in a way that would permit full-time study. There is therefore already a wide degree of support for more flexibility in the benefits system to maximise access to skills training and education.

I turn to Amendment 90A in more detail. The current welfare rules pose a major barrier to upskilling or retraining for many people out of work—a situation that is not new. Historically, that was embodied in the 16-hour rule but persists under the new universal credit system. For example, someone currently in receipt of universal credit will lose access to benefits if they take up the lifetime skills guarantee of a fully funded first level 3 qualification or other further education qualification. The Chancellor has invested in programmes in the Department for Work and Pensions and the Department for Education to support 16 to 24 year-olds but the programmes do not currently operate in tandem and it is difficult to make them work for employers, students, unemployed people and colleges. In addition, while support with tuition fees is one element in enabling people to begin their courses, living costs—the maintenance element—are often a more significant barrier, a matter often discussed in reference to students in higher education but that is just as much a problem for students in further education, if not more so.

I fully recognise that the Government have begun a significant programme of substantial and complex work over the student loan system and the LLE, and that joint work is already under way between the DfE and the Department for Work and Pensions. I am most grateful to the Minister for having shared with me and colleagues some of those issues and their proposed solutions. We appreciate that there are also significant complexities—technical, practical and legislative—in embodying detailed provision for student financial support in primary legislation, and of which those of us who participated in scrutiny of the Higher

[The Lord Bishop of Durham]
Education and Research Act and its cousins will be all too well aware. I am most grateful to the noble Baroness for the information in her recent letter about the lifelong learning entitlement amendments tabled on Wednesday and the invitation to a briefing on the matter.

However, the purpose of the amendment is to give the noble Baroness an opportunity to assure the Committee that the Government are committed to reforming those aspects of the benefits system that may act as barriers to people's participation in gaining new skills or increasing their present skills, which our post-Covid society will need. I would welcome further discussions with her or officials as the Government's proposals are developed. At this stage, subject to those assurances, I will leave this as a probing amendment.

**Baroness Janke (LD) [V]:** My Lords, I speak in support of Amendment 93 in the names of my noble friend Lord Storey and myself. As the right reverend Prelate said, the amendments in this group deal with finance and incentives to take up the training and development opportunities in the Bill, as well as addressing the disincentive posed by universal credit to taking up those opportunities.

Amendment 93 seeks to change the current situation of people who are unemployed and wish to follow full-time training courses to improve their job prospects by giving them entitlement to universal credit, from which they are currently excluded. As has been explained, that is because those receiving universal credit have obligations to prioritise job searches and take available jobs over full-time training. In addition, the length of time in which people can continue receiving universal credit while undertaking work-focused study has been capped at eight weeks. People taking up courses on offer would have to give up universal credit and have the choice of whether to take up chances of reskilling or have enough money on which to live, eat and pay bills. Unemployed people or those on low-paid jobs are the least likely to take out a loan, further risking indebtedness and poverty for themselves and their families.

The Bill is about the importance of training and retraining to support people and employers. The Government have rightly invested in traineeships, apprenticeships and the Kickstart and Restart programmes. However, those schemes have limited eligibility. Unemployment has risen in age groups other than those aged 18 to 25, on whom much attention is focused, but the people who would benefit from claiming universal credit are often those who would benefit most from retraining and development.

There is a lack of co-ordination across departments to make the Bill and its provisions succeed. There needs to be appraisal by the DWP and I should like to hear from the Minister what the Government have done to consider the difficulties of people who are trying to take up courses when they are unemployed and have no other means of support. Amendment 93 seeks to amend the regulations on universal credit to enable a more flexible and enabling approach to those most in need of retraining development for decent jobs. It relates only to courses leading to the lifetime guarantee and I look forward to hearing the Minister's response.

**Lord Addington (LD):** My Lords, I can be fairly brief, given that my noble friend has just done some of the heavy lifting on the amendment standing in her name and that of my noble friend Lord Storey.

Universal credit is there to help people, and it replaced a lot of other benefits. However, there are problems relating to the fact that generally one is supposed to be looking for work, but the system seems to exclude people from taking on training. That is purely an absurdity. If one wants to try to improve the skills levels of the nation, surely every time that people are available, often when they are not in work, it would be a good chance for them to take up that reskilling.

We need to get people better skilled. I hope that the Government when they answer will be able to tell us exactly how they are going to get those groups of people who are available to take up the training and skill opportunities to take part, because presumably some of them are not doing anything else. If one takes away the foundation on which they are able to live, one is stopping them taking part.

That is not a new problem, but at the moment the benefits system is acting in many cases as a disincentive to upskilling. We should do everything we can to change that. This is as good a time as any.

**Baroness Greengross (CB) [V]:** My Lords, I support the intentions of these three amendments. In essence, they would allow people on universal credit to engage in study without being financially disadvantaged.

The current situation creates a perverse disincentive, whereby those wishing to upskill and gain qualifications that may make them more employable find themselves financially worse off as they no longer receive universal credit payments. Allowing people to study and gain new skills improves their chances of getting off benefits and into employment. Whatever short-term savings the Government make by not paying benefits to people who enrol in training courses, they are lost if the system incentivises people to stay on universal credit rather than participating in education.

One understands completely the desire to limit benefit numbers and, further, to encourage those who can work while studying to do so. However, this needs to be carefully balanced with the need to encourage upskilling at a time when our workforce is changing rapidly—and will continue to do so, in my view.

This is an area that the Department for Work and Pensions and the Department for Education need to work together to solve. Can the Government outline what work has been done to date by both departments on this important policy area? What steps will they take to ensure that universal credit policy is not inadvertently discouraging people from participating in crucial skills training?

**Baroness Bennett of Manor Castle (GP) [V]:** My Lords, it is a great pleasure to follow the noble Baroness, Lady Greengross. This group of amendments has already been outlined clearly by the right reverend Prelate the Bishop of Durham. To sum up his contribution, he asked how people could better use their time while unemployed than by upskilling. The

noble Lord, Lord Addington, said that it would be an absurdity not to encourage the unemployed to improve their skills.

On day one of our debates, we talked a great deal about the need, in our climate emergency and nature crisis, to increase our skills. There is simply so much that we need. People who are unemployed are obviously at a potential point where we can start to fill some of those gaps.

The noble Baroness, Lady Janke, made an important point: that unemployed people are of all ages, from those just leaving school to those in their 70s and beyond who still need, or want, to work. They often have commitments, for example to children, to rent, to a mortgage or to supporting older relatives. We cannot assume that they are just a unit of labour that can be shifted around at will.

What we have seen is decades of wretched economic change in many parts of the country, which has only been amplified by Covid. It is worth looking at a study from the Institute for Employment Studies, published in June. It attempts to explain the current conundrum where we have a recruitment crisis yet in parts of the country there are as many as 10 jobseekers for each vacancy. According to the study, the average number of people across the country claiming unemployment benefit and competing for each vacancy is 2.2, and almost 100 local authorities have five jobseekers going for each available role.

People have to be able to make choices in their own interests and in the interests of the country. Leaving people trapped, applying—pointlessly, they know—for scores and scores of jobs that they know they are not going to get is profoundly dispiriting and damaging. We need to give people the option of finding another path forward in life instead of being trapped in that situation.

**Baroness Sherlock (Lab) [V]:** My Lords, I am grateful to all noble Lords who have spoken to air these important issues.

The right reverend Prelate the Bishop of Durham identified some of the major barriers placed in the way of people who want to take up education and training to improve their skills. Did the Minister see the recent report from the Association of Colleges? It concluded that the current social security rules

"actively discourage people from getting the skills they need"—

a point reinforced by the noble Baroness, Lady Greengross. The report argues that, if this is not fixed, it will result in

"fewer people in stable and meaningful jobs … slower economic growth … reduced opportunity to meet employers' skills needs; and … bigger tax burdens."

It is crucial that government policy is joined up, with skills, employment and social security policy properly aligned. Indeed, as the noble Baroness, Lady Bennett, pointed out, all these must be aligned with our overriding plans to deal with the climate emergency. Amendment 98 in my name is designed to probe whether the Government have any plans to do this, in terms of alignment, by changing the rules on universal credit to support skills development.

Most people who are studying full-time cannot get universal credit. There are exceptions, such as for young people who are doing A-levels or other non-advanced courses and do not have parental support, for those who are responsible for children and for some disabled people with a limited capacity for work. Otherwise, people on UC face the kind of conditionality requirements mentioned by the right reverend Prelate, the noble Baroness, Lady Janke, and others. Specifically, unless they have an easement of some kind, UC claimants are meant to spend 35 hours a week looking for work, and to provide evidence. This can result in some pretty dispiriting things of the kind mentioned by the noble Baroness, Lady Bennett. The claimants are allowed to do part-time education or training, but only if they can fit it in in their spare time—in other words, fit it in around a full week's job search.

*2.15 pm*

Work coaches can make an exception if they think that more training would help someone on universal credit to get into work quicker. Even then, the training should normally be for a maximum of 30 hours a week so that the claimant can continue with their job search for the remaining hours. In that circumstance, if the claimant were offered a full-time job—even a temporary one—would they have to stop the training and take the job?

Even with full-time or nearly full-time training, it is normally limited to short courses, usually of up to eight weeks in England and a bit longer in Scotland and Wales. However, there is a DWP pilot running until the end of October where the maximum period is raised to 12 weeks for full-time work-related training throughout Great Britain and 16 weeks for skills bootcamps in England. Is this a pilot with a view to extending the time limit more broadly?

Beyond this, it would be good to understand the Government's plans for enabling everyone to get the skills they need. If the Government want to get everybody initially up to at least level 3, and if they want people to train or retrain for the jobs of the future, what are their plans to ensure that everyone can afford to do this? If some people cannot afford to support themselves while they acquire skills, they risk being trapped either out of work or stuck in low-skill, low-paid jobs, which, apart from anything else, will probably keep them on in-work benefits indefinitely.

I realise that this falls between departments. If this were a DWP Bill, I would not be surprised if the Minister got up and said, "It's not the job of the benefits system to fund full-time students. That's what student finance is for". Since the Minister responding is from DfE, it would be interesting to hear her take on how her department thinks people should be funded to acquire new skills. Above all, government departments need to work together. I look forward to the Minister's reply.

**Baroness Penn (Con) [V]:** My Lords, this group of amendments broadly seeks to enable individuals studying at level 3 and below to claim universal credit. It may be helpful to noble Lords if I set out the work already under way in this space, as was noted by several participants in the debate.

[Baroness Penn]

Officials at the Department for Education and the Department for Work and Pensions are working together—I hope that the noble Baroness, Lady Sherlock, will be reassured by that fact—to mitigate the barriers to unemployed adults taking advantage of our skills offers. In April, an extension to the flexibility offered by universal credit conditionality was announced for a trial period of six months. The noble Baroness, Lady Janke, made a point about the eight-week cap for full-time training for those on universal credit. As a result of the trial under way, adults who claim universal credit and are part of the intensive work search programme can now study full-time for up to 12 weeks, or up to 16 weeks as part of a skills bootcamp in England. This builds on the eight weeks for which claimants were already able to train full-time. Such measures are helping to ensure that universal credit claimants are supported in accessing training and skills that will improve their ability to gain good, stable, well-paid jobs.

Amendment 90A, moved by the right reverend Prelate, and Amendment 93, tabled by the noble Baroness, Lady Janke, have a similar thrust so I will take them together. Section 4(1)(d) of the Welfare Reform Act 2012 sets out that one of the basic conditions of entitlement to universal credit is that the person must be "not receiving education", which can be defined in the regulations made under subsection (6). Financial support for students comes from the current system of learner loans and grants designed for their needs. Where students have additional needs that are not met through this support system, exceptions are already provided under Regulation 14 of the Universal Credit Regulations 2013, enabling those people to claim universal credit.

However, universal credit is not intended to duplicate the support provided by the student support system. Furthermore, the sub-paragraph of Regulation 14 referenced in Amendment 93 provides an exception to the requirement that a person must not be receiving education to be entitled to universal credit. That is designed to support care leavers aged 18 to 21 who wish to catch up on education that they may have missed when they were younger, and to make welfare support available to them. We therefore feel it would be of benefit to maintain this regulation to continue to support this group of adults.

On Amendment 98, tabled by the noble Baroness, Lady Sherlock, and the point raised by the right reverend Prelate and the noble Baroness, Lady Janke, that it is not possible to take advantage of the lifetime skills guarantee while on universal credit, I point out more broadly that an adult undertaking a course up to level 3 may still be entitled to universal credit. This is provided that their course is compatible with work-related requirements agreed with their work coach. Where the course is work-related and will give the person the best chance of securing work, the work coach may consider it a suitable work preparation activity. In such cases, time spent on the courses will be deducted from the amount of time the person needs to spend looking for work.

To answer the questions from the noble Baroness, Lady Sherlock, on this principle, she is right in noting that those on universal credit should not restrict their availability for work in favour of the course that they are undertaking. They might need to be prepared to give up or, more suitably, adjust their course in order to take up work, for example by moving to a part-time basis. The noble Baroness's second question was on the pilot that we introduced for full-time training to last up to 12 or 16 weeks. We will evaluate the impacts of that extension before making a decision on its future. As the noble Baroness noted, the pilot runs until the end of October and then we will look at its effects.

I hope I have set out that the Government are already taking steps to ensure that the benefit system works better for those who need to undertake training to improve their prospects of finding work. As such, I hope that the right reverend Prelate is able to withdraw his amendment and that the noble Baronesses will not move theirs when they are reached.

**The Lord Bishop of Durham [V]:** My Lords, I thank the Minister for her reply and thank all colleagues for their comments on all three of the amendments in this group. I am very grateful for all the insights that were offered. Thank you, Minister, for outlining where work is already under way. That is reassuring, and it is also reassuring to hear that the DfE and the DWP are working together to help mitigate barriers—I trust that will continue and deepen—and to hear of the greater flexibility already under trial.

On reflection, listening to the complexity with which the Minister cited sections, subsections and so on from different Acts to explain the system does not give me great confidence for the poor person trying to do a level 3 qualification and decide whether they can get some financial support through universal credit. I understand that the complexity of the law is a bit different from the way that a work coach might approach it, but she illustrated one of the difficulties for young and older people seeking to find their way through this system. At this stage, of course I will withdraw my amendment, but I hope that on Report there will be evidence of further joint working with the DWP and further consideration of where this might be eased for those for whom access to universal credit would make a complete difference to their upskilling for the future.

*Amendment 90A withdrawn.*

**The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con):** We now come to the group consisting of Amendment 90B. Anyone wishing to press this amendment to a Division must make that clear in the debate.

*Amendment 90B*

*Moved by* ***The Lord Bishop of Durham***

**90B:** After Clause 25, insert the following new Clause—

"Long-term funding review

(1) The Secretary of State must commission a panel of experts to review of the long-term funding for skills and post-16 education.

(2) The panel must consider and make recommendations about—

(a) resources available for different types of technical training, further education and higher education;

(b) support for disadvantaged students and those with special education needs;

(c) the impact of this Act on the long-term funding for skills and post-16 education.

(3) The panel must conclude their review and make a report to the Secretary of State with their findings and recommendations.

(4) Within the period of one year beginning with the day on which this Act is passed, the Secretary of State must lay the panel's report before Parliament."

Member's explanatory statement

This is a probing amendment, intended to draw out the Government's plans to introduce a longer-term funding settlement for FE, as called for by the Education Select Committee, prefigured in the White Paper and signalled, as the direction of travel by recent increases in core FE funding, capital funding allocations and the longer term Lifelong Learning Entitlement.

**The Lord Bishop of Durham [V]:** My Lords, in its 2014 report *Sense & Instability*, City & Guilds made a wryly humorous and powerful case for much greater coherence, greater focus on building on success and greater attention to effective implementation in skills policy. With the White Paper and this Bill, along with associated developments such as T-levels and, we hope, far more radical change to apprenticeships, it is clear that the present Government are moving in that direction—a trajectory that we on these Benches fully support. This amendment seeks to make those policy ambitions more concrete by placing their funding arrangements on a statutory footing.

The goal of joining up the wider education and skills system so that it better meets society's needs and gives people the skills they need is by no means easy to reach. It also requires that goal to be embedded in a long-term national strategy, most appropriately on something like a 10-year horizon. That strategy needs to sit across government, so that it can more imaginatively bring coherence across departments, as well as give greater stability at college, local and regional levels. Crucially, it requires a matching long-term funding settlement.

It is already possible to see how this kind of cross-departmental approach can bring huge benefits, for example in areas such as sustainability and the green agenda, tackling the recruitment needs of nursing and other allied professions, the major changes facing the automotive industry and the significance of digital skills—all of which require colleges to play a major part in delivering the required skills to individuals, employers and businesses. The need for such a longer-term strategic investment has been called for by the Education Select Committee, is an underlying strand in the White Paper and is being signalled by the additional funding already released to colleges, as well as the lifelong loan entitlement already announced. The Augar report also signalled the clear advantages of treating HE and FE in a more comprehensive way. We look to see how the department intends to see that continue to affect policy.

Clearly, much will depend on the comprehensive spending review and the continued impact of the pandemic on public spending. It would, however, be helpful to have an indication of how such a long-term strategy is being developed and, as the amendment indicates, how it will translate into concrete recommendations and thence long-term action. I beg to move.

**Lord Addington (LD):** My Lords, when the Government are asked to have a long-term look at something, the usual answer is, "We are". That is what generally comes out with all these different things, but the advantage of the right reverend Prelate's amendment, which I have signed, is that it puts it in one nice solid place and gives us three good bases to start from.

I was initially attracted by the support for special educational needs, and I remind the Committee yet again of my interests in that particular part of the playground. But looking at things regularly, over a long period of time, is essential if a policy is to develop. To go back to special educational needs, there was a long development of saying, "Of course you can, but a requirement on the way in"—I have an interest in dyslexia—"is that, by the way, you have to pass a written test in English, despite your having God knows how many other qualifications." I remind the Committee of how many hours I have burned on that subject over the years. If you have a way in, how do you maintain that person? Does that maintenance pattern keep up with both the understanding and the technology out there at the moment? That is a pattern of development that comes one after the other and will change over time.

*2.30 pm*

I hope that when the Minister responds, if only on that aspect of the amendment, she will be able to say, "This is the review process, this is where we are going and this is where we are looking at it", because I am getting fed up with saying, "By the way, you can do this a different way", and the Government going, "Oh, really?" A series of rows then goes on, with amendments and government time taken up before they realise. Allow yourselves to be only moderately reactive for once, as opposed to being dragged. Everybody does that to an extent and a degree of moderate reaction is probably understandable, but making sure that you look across this regularly to find out what is possible will probably help. Most other forms of disadvantage come in there as well. The same types of principles apply for general training.

Can the Minister give us an idea of how regularly they are doing this? It should not be the case that they have a look occasionally when something goes wrong or is dragged to them. That really will mean that you have this horrible process of trying to dig out why something has gone wrong, being given an example, saying, "Oh, really? It's been there a while", and then coming back to it. Some way of doing what is suggested in this amendment on a regular basis without requiring politicians to dive in, jump up and down and cause the Government to have a look—all Governments have been guilty of this—is what I would like to come out of this, because it addresses a real and ongoing problem.

**Lord Aberdare (CB):** My Lords, it is a pleasure to follow the noble Lord, Lord Addington, who has made such a valuable contribution throughout this Committee. The Government's skills-related goals, as embodied in the *Skills for Jobs* White Paper and the Bill, are rightly ambitious and will be correspondingly expensive to deliver. The aims of a skills strategy are necessarily long-term, and achieving them will depend on a complex web of specific policies and organisations,

[Lord Aberdare]
as has been clear from the debates we have had in Committee. Ensuring that adequate funding is in place to support all the activities involved across schools, FE colleges, universities, independent training providers, employers, local authorities, combined authorities and, of course, learners themselves, and to ensure a fair balance between them all, will be an immense challenge for government.

Amendment 90B in the names of the right reverend Prelate the Bishop of Durham, the noble Lord, Lord Addington, and the noble Baroness, Lady Morris, proposes commissioning a panel of experts to review and make recommendations on long-term funding for skills and post-16 education, building, of course, on the foundations set by the Augar review as well as the *Skills for Jobs* White Paper. This can be only helpful, if not essential, input for the Government, along with the various consultations they are planning, in addressing this challenge and getting the answers right. I too look forward to the Minister's response and to hearing how the Government plan to tackle the important need for a joined-up, long-term, fully funded skills and training strategy.

**Baroness Wilcox of Newport (Lab):** My Lords, we welcome this probing amendment, introduced by the right reverend Prelate the Bishop of Durham and supported by the noble Lord, Lord Addington, and my noble friend Lady Morris. It is an opportunity to discuss the Government's plans to introduce a longer-term funding settlement for further education, because the White Paper recognised that further education funding has been wholly insufficient.

Alongside increased funding, there is a need for, as alluded to by the noble Lord, Lord Addington, simpler, longer-term funding settlements that allow colleges to deliver on long-term strategic priorities. Their funding compares extremely unfavourably with university and school funding. Annual public funding per university student averaged £6,600, compared with £1,050 for adults in further education. Recent research from IPPR has found that if further education funding had kept up with demographic pressures and inflation over the last decade, we would be investing an extra £2.1 billion per year in adult skills and £2.7 billion per year in 16 to 19 further education. The result of this underfunding is that colleges have had to narrow their curriculum and reduce the broader support they offer to students—including careers advice and mental health services—and 16 to 19 funding for catch-up has also been woefully insufficient.

To deliver on the skills agenda, it is imperative that the Bill is backed up by long-term, multiyear, simplified funding. It will require redressing the long-standing underinvestment of the college sector in the upcoming comprehensive spending review with serious long-term funding—otherwise it will simply not be deliverable. But this must not come at the expense of HE funding. We want FE and HE to collaborate rather than compete for resources, because destabilising university funding, cutting courses or capping numbers will deny students the brilliant education and experience that our world-class institutions in the UK have to offer. Denying young people opportunities must not be the legacy of this Government's approach.

Ensuring parity of esteem between different post-16 routes is enormously important, but it is best achieved by investing in FE and not by taking funds away from HE and levelling down. Having an ability to access further and higher education, with investment that matches that ambition, is the only way that the country can meet its skill needs and provide pathways into good careers today, as well as jobs for the future.

**Baroness Penn (Con) [V]:** I thank the right reverend Prelate the Bishop of Durham for tabling his amendment. Based on the substance of the debate we just had, I am not sure that there is much disagreement between the Government and noble Lords.

The Government are committed to transforming further education so that everyone can access high-value provision relevant to labour market needs and job opportunities. As noble Lords noted, we published the *Skills for Jobs* White Paper in January, setting out the future policy direction in this area.

Over the past two years, we have invested significantly in post-16 education. In the 2019 spending round, we increased 16 to 19 year-old further education funding by £400 million, followed by a further £291 million at the spending review 2020, so the direction of travel for policy has been matched by the direction of travel for funding.

In addition, we are investing £325 million of the £2.5 billion national skills fund this year to support adult skills and retraining. We are continuing our investment in the £1.3 billion adult education budget and the £2.5 billion apprenticeships budget. We are also continuing our £1.5 billion multiyear capital investment in the FE capital transformation fund. This funding is helping to deliver on the commitments made in the *Skills for Jobs* White Paper and the lifetime skills guarantee. Noble Lords have rightly made the point about longer-term funding. However, funding beyond 2021-22 will be considered as part of the wider spending review later this year.

In addition, we have launched an extensive government consultation on reforms to the further education funding and accountability system to address many of the points made by the noble Baroness, Lady Wilcox. This consultation is a first step towards a funding and accountability system that will maximise the potential of further education and help us to build back better. We want to use the consultation to start a dialogue with the sector, employers and other interested parties on how government funding can be administered more simply and effectively so that colleges and other providers can focus on supporting learners to develop the skills they need.

Similarly, in the *Interim Conclusion of the Review of Post-18 Education and Funding*, we committed to consulting on further reforms to higher education, including on future funding. We continue to consider the recommendations made in Sir Philip Augar's report, supported by an independent panel, and will conclude that review in due course.

Furthermore, to address the points made by the noble Lord, Lord Addington, we want all children and young people, no matter their background or special educational needs or disabilities, to reach their full potential and receive the right support. That is

why we are allocating significant increases in high-needs funding—an additional £780 million in 2020-21 compared with 2019-20 funding levels, and a further £730 million in 2021-22, bringing the total support for young people with the most complex needs to over £8 billion.

In addition, the national funding formula for 16 to 19 year-olds includes extra funding for disadvantaged students. This is provided to institutions specifically for students with low prior attainment or who live in the most disadvantaged areas. Last year, the Government allocated more than £530 million in disadvantage funding to enable colleges, schools and other providers to recruit, support and retain disadvantaged 16 to 19 year-olds and to support students with special educational needs and disabilities. We also apply disadvantage uplift through the element of the adult education budget distributed by the Education and Skills Funding Agency to provide increased funding for learners living in deprived areas. The adult education budget also provides funds to providers to help adults overcome barriers to learning. This includes learner support for those with financial hardship and learning support to meet the additional needs of learners with learning difficulties.

As outlined in the *Skills for Jobs* White Paper, we will ensure that those with special educational needs and disabilities continue to gain direct work-related skills alongside maths and English to increase their employability. The noble Lord will know that the cross-government SEND review is identifying the reforms needed to improve support for children and young people with SEND, including those in post-16 provision, by working with system experts to design a SEND system fit for the future drawing on the best evidence available.

The breadth of measures already in train—some noble Lords may say that is a long list—contain many elements of a concerted strategy that is moving in a consistent direction on the back of a number of reports and reviews that have sought to look at this on a long-term basis, whether we go back to the Sainsbury review or the more recent Augar review. While I completely agree with the need to take a long-term and strategic approach to this issue, I am not sure that a further review supported by an independent panel at this time is the right way to knit this all together rather than the progress that we are making on delivering the important outcomes of a number of those reviews already undertaken. I therefore hope that the right reverend Prelate is able to withdraw his amendment.

**The Lord Bishop of Durham [V]:** My Lords, I thank the noble Lord, Lord Addington. I knew I could rely on him to pull out the specifics around special educational needs and the reasons for the need for long-term support and development. I thank the noble Lord, Lord Aberdare, for his support for the amendment.

I am very grateful to the Minister for her long and full answer which I will need to read carefully in *Hansard* to get the full breadth of all she outlined. I thank those who work with her for producing such a comprehensive list at this point. I will need time to look at and reflect on the length of the answer to determine whether there is enough guarantee or whether to pursue the possibility of this being in the Bill.

I wish the Minister well and hope she will have a safe and joyous delivery and much joy in her new child and family life. I beg leave to withdraw the amendment.

*Amendment 90B withdrawn.*

*2.45 pm*

**The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con):** We now come to the group consisting of Amendment 90C. Anyone wishing to press this amendment to a Division must make that clear in the debate.

*Amendment 90C*

*Moved by* ***Baroness Bennett of Manor Castle***

**90C:** After Clause 25, insert the following new Clause—

"Assessment of local skills gaps for life skills

Within two months of the passing of this Act, the Secretary of State must prepare and lay before Parliament a means to assess local skills gaps for non-academic skills, including, but not limited to—

(a) parenting,

(b) budgeting,

(c) mental and physical first aid,

(d) financial management,

(e) practical skills in maintenance and gardening,

(f) community organising, and

(g) community participation."

**Baroness Bennett of Manor Castle (GP) [V]:** My Lords, I shall speak to Amendment 90C in my name. I apologise to the Committee that this is a rather late arrival and very large in scope. It arose from reflections on the earlier stages of the Committee's deliberations about the narrow focus of the contributors to local skills improvement plans, particularly existing employers who are likely to be larger employers. As I listened to that debate, I was forced to reflect on how very old-fashioned and mid-20th century it all felt, even as we were talking about trying to get a wider range of the self-employed and others into the development plans.

We were talking about getting qualifications for work in a very direct, obvious way. Of course, for many roles in society that may still be the case. Brain surgeons inevitably spring to mind—pun unintended—here, but also if you are likely to be, say, a technician maintaining a complicated piece of medical technology, a Passivhaus qualified building designer or a permaculture garden planner, you may go directly to a course and get the job that follows on, but most jobs are not like that, even if we are thinking of this Bill as being only about employment. Most jobs and most lives require a range of technical and soft skills acquired by a mixture of education, training, employment and life experience.

I draw here the example of someone I know from the Green Party—I am going to anonymise this because I did not check with them about using it. They started as a volunteer with a set of technical skills—design skills for leaflets and graphics—but through their voluntary involvement they were drawn into the management of volunteers, fund-raising, administration and management. That eventually led that person into a very different professional job using all those skills. That is what life is like now in employment and well beyond.

[Baroness Bennett of Manor Castle]

On the community side of this amendment, particularly following a decade of austerity, many provisions and services in communities are now provided by volunteers. In the interests of politics, I shall park that to one side while I think about it, but the fact is that often volunteer-run, volunteer-led and voluntarily provided services need people with skills, and with the increasing pension age and the high levels of employment for women, many of the traditional sources of volunteer skills have been closed off. Having been at the centre of a wide range of community groups in some very different communities, I know how deprived, disadvantaged communities, which exist in central London as much as in the north of England, may not have those skills and urgently need them and need local skills providers to be able to help with them.

It is not my intention to press this amendment at this stage. It is a small gesture towards making the Bill about something more comprehensive: skills for life. I hope that the Government will reflect before we reach Report on their approach to the Bill and its very narrow, outdated view of the dividing line between life skills and employment skills, as though they are two separate categories.

My list—I agree that it is somewhat scattergun—includes parenting, which is a skill. One might perhaps include child and older care because those are roles that all of us may well have to fulfil at some stage. Budgeting reflects what we often hear in your Lordships' House about the need for financial literacy in our increasingly complex world. Mental and physical first aid and practical skills in gardening and maintenance are things that people need in their lives. The last two sections of this amendment—community organising and community participation—focus on the idea of people as part of a community, as all of us are. It is not my intention to press this amendment, but I look forward to the discussion and the Minister's response. I hope it will be fruitful.

**Lord Aberdare (CB):** My Lords, it has always seemed odd to me that so many of us complete our education with extensive knowledge of maths, English language and literature, history, languages, the sciences and other academic subjects—in my case including Latin and Greek, much to my benefit—but with few, if any, of the skills listed in Amendment 90C from the noble Baroness, Lady Bennett, nor other rather fundamental skills such as cooking and household maintenance, generic skills such as communications, teamwork and self-presentation, or even typing and map-reading, which may still prove to be not entirely redundant, despite the impact of technology. Yet these are all valuable life skills that schools should be well placed to teach.

One of the skills listed in the amendment, first aid, could even be a matter of life and death. The figures I have, which may not be wholly up to date, indicate that 60,000 people suffer cardiac arrests out of hospital every year in the UK. Almost half of those that occur in public places are witnessed by bystanders, not infrequently children. With every minute that passes, their chances of survival decrease by about 10%, so teaching children quite straightforward first aid techniques at school, such as how to give CPR or use a defibrillator, can literally save lives, as well as being fun for the learners. The many countries in which such teaching is compulsory have significantly better survival rates from shockable cardiac arrest than the UK—as high as 52% in Norway, for example, against 2% to 12% in the UK, depending on where you live.

I will not labour this specific hobby-horse of mine, except to say that, in my view, it is just one of many strong arguments in support of the need for an assessment of current gaps in the teaching of non-academic but highly valuable life skills and how those gaps might be addressed, as suggested in Amendment 90C. I look forward to the Minister's comments on how that might be achieved.

**Lord Watson of Invergowrie (Lab):** My Lords, we are very much in favour of Amendment 90C. I endorse the remarks of the noble Baroness, Lady Bennett, in moving it and those of the noble Lord, Lord Aberdare.

The life skills set out in the amendment are all essential building blocks in a developed, compassionate and forward-looking society. Many of these categories would fall under the heading of "social solidarity", a concept that is, I have to say, anathema to many in the Conservative Party who still hold to the infamous, and utterly fatuous, claim by Prime Minister Thatcher that "there's no such thing as society."

If the past 17 months show us anything, they have graphically described how society has pulled together in ways that perhaps we have not seen before out of wartime. I should make it clear that I have seen no evidence that either of the noble Baronesses looking after this Bill fall under that heading, and I am perfectly happy to do so.

Not to accept that these life skills are necessary in ensuring that there are as few local skills gaps as possible once the locals skills improvement partnerships are developed would be, at best, to leave the Ministers open to the charge that they do not attach sufficient importance to them. In reply, the Minister will no doubt say they are unnecessary, but I believe that what this Government regard as necessary does not correspond with what most people have a right to expect in a civilised, advanced society.

Sadly, yesterday provided the latest example of that, with proposals for severe cuts to arts and creative subjects in higher education confirmed by the Office for Students. The Government claim that they want to redirect funding for high-cost STEM subjects, as well as medicine and healthcare. Nobody is denying that these are important subjects—indeed, priority subjects—but that does not mean that arts and culture subjects are not important themselves. They should not be abandoned.

Almost one in eight businesses are creative businesses. Some 2 million jobs in the UK as a whole are in the creative sector, worth a staggering total of £111 billion a year to the economy, and yet this Government of philistines are prepared to ignore those huge numbers and to seriously undermine the creative industries, which include much more than the arts—themselves a form of social solidarity, of course. Yes, film, TV, animation, video games, children's TV, theatres, museums and orchestras are all included, but so too are advertising and marketing, design, graphic products, fashion, architecture and much more.

The damaging cuts will halve the high-cost funding subsidy for creative and arts university subjects—not next year but as soon as September this year, at the start of the new academic term. That is likely to threaten the viability of arts courses in universities and lead to possible closures, which may well be the Government's ultimate aim. The universities most vulnerable are those with a higher number of less well-off students, so this will deny young people the kind of opportunities that my noble friend Lady Wilcox mentioned during the last debate.

The attack on culture seems to be just the latest example of the Government's rather pathetic culture war strategy over recent months. I cannot imagine that the Minister, the noble Baroness, Lady Penn, as someone who served at the heart of Theresa May's Government, would countenance such deliberately divisive nonsense.

The Bill should oblige local skills improvement partnerships to consider the role played by the creative industries locally and ensure that they are central to skills development plans. Equally, they should cover the life skills specified in the amendment. For that reason, we are fully in support, and I look forward to hearing the Minister's reply.

**Baroness Penn (Con) [V]:** My Lords, the Government appreciate the importance of all forms of education in improving life chances, both through employment and through meeting broader social goals. For example, recent research from the Workers' Educational Association, a leading adult provider, found that 22% of its students took part in activities to improve their local community as a result of their course.

Many of the skills mentioned in the amendment are particularly associated with community learning provision. The objectives of community learning provision are to develop the skills of adults to help them improve their health and well-being, develop stronger communities and progress towards formal learning or employment. Since 2019-20, a significant part of our £230 million funding for community learning has been devolved to mayoral combined authorities and the Greater London Authority. In line with their strategic skills plans, those authorities are shaping education and skills provision, including supporting adults in developing new skills to improve well-being in their local communities. In May 2021, we announced that up to 7,800 colleges and schools will be able to access senior mental health lead training by March next year, as part of the Government's commitment to offer this training to all colleges and state schools by 2025.

We are also supporting community participation elsewhere in the education system through the teaching of citizenship, which is in the secondary school national curriculum. The programmes of study are to direct teaching towards the core knowledge of citizenship to help prepare pupils to play a full and active part in our society. At key stage 4, pupils will be taught about the different electoral systems in and beyond the United Kingdom and how citizens influence decisions locally, nationally and beyond.

Pupils in the school system also currently receive financial education through the maths and citizenship curricula. To reassure the noble Lord, Lord Aberdare, first aid and CPR are included in the national curriculum and are therefore compulsory in maintained schools and a benchmark in academies and free schools.

Improving the responsiveness of provision to the skills needs of local learners and potential future learners is already a key part of the proposals in the Bill. I do not accept that the Government artificially separate employment skills from social or life skills. The new duty set out in Clause 5 would require colleges and designated institutions to review how well the education or training they provide meets local needs and to consider what action might be taken to address any local skills gaps.

As described in our draft statutory guidance, the needs covered by a review would cover the whole of the institution's education and training offer, including wider social needs of the kind currently addressed through community learning provision. The Government's view is that decisions on how effective provision is in meeting local needs is a judgment best reached at a local level, by providers working in partnership with both employers and the wider communities they serve. This duty strengthens that process by establishing a legal framework that will help ensure transparency and consistency, and which promotes accountability around decisions on provision that is vital for local communities.

*3 pm*

To answer the point from the noble Lord, Lord Watson, the Government absolutely understand the value and the importance of the creative industries and are committed to supporting them. We expect that the Bill will help a vast range of sectors across the economy, including the creative industries, to better link up their needs with the skills that the Government are helping to deliver.

On the basis of what I have set out, the Government's view is that it is not necessary or appropriate for the Secretary of State to seek to prescribe the process for the assessment of the local skills gaps mentioned, as envisaged by the amendment. Indeed, I acknowledge colleges and other FE sector institutions for the work they already do to meet the wider needs of their communities and learners, and the very positive impacts of their education and training provision. In reviewing its provision under Clause 5, the governing body of a college must do so in a way that considers the needs of all local learners. As set out in our draft statutory guidance, this is not limited to academic needs, or solely to the needs of local employers.

I therefore hope that the noble Baroness, Lady Bennett, is able to withdraw her amendment and takes some comfort from the fact that the Government acknowledge the importance of the kinds of skills she has set out in her amendment and are seeking to address them both within existing provisions in this Bill but also crucially elsewhere in our policy and agenda.

**Baroness Bennett of Manor Castle (GP) [V]:** My Lords, I thank the Minister for her response and all noble Lords who have contributed to this debate. The contribution from the noble Lord, Lord Aberdare, made me think of an incident when an old man collapsed outside Sheffield Town Hall, obviously extremely

[Baroness Bennett of Manor Castle]
ill. I happened to be the first one to reach him and the first to call an ambulance, but I was very relieved when another passer-by announced that he had first-aid training. I acted as a liaison for the ambulance while he took practical action. It was obvious that most of the bystanders wanted to help but had no idea what to do. I note some figures from 2018 from the British Heart Foundation, which I doubt have improved, sadly: nearly one-third of UK adults were not likely to perform CPR if they saw someone suffer a cardiac arrest.

The noble Lord, Lord Watson of Invergowrie, mentioned social solidarity. I think that phrase is highly apt. These are necessary skills to glue societies together. I also welcome his comments on arts and culture subjects, reflecting the financial value of the creative industries. I also reflect on the value of these to the quality of life for all of us, to well-being and to mental health. We should value creativity as providing challenging, critical ideas. That perhaps give us an idea of why the Government might not be so keen on these subjects. I also note that we have a huge lack of public art in the UK. We could be doing a lot more to fund that in Covid recovery.

I am pleased that the noble Baroness, Lady Penn, acknowledged the way in which skills and training in these kinds of subjects can lead to further study and employment, if not in a direct way. I very much agree with her that decisions about what is needed need to be made at a local level, working with the wider community. This provokes reflections on other debates we have had in this Committee about the role local government and regional and city mayors should have in these local skills improvement plans.

I will go away and read all the contributions carefully, particularly those from the Minister, and will think about where we might go with this on Report. In the meantime, I beg leave to withdraw this amendment.

*Amendment 90C withdrawn.*

**The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con):** We now come to the group consisting of Amendment 91. Anyone wishing to press this amendment to a Division might make that clear in the debate. The noble Baroness, Lady Garden of Frognal, has been delayed so I call the noble Lord, Lord Addington.

*Amendment 91*

*Moved by* ***Lord Addington***

**91:** Before Clause 14, insert the following new Clause—

"Personal Education and Skills Account

(1) A Personal Education and Skills Account ("PESA") is an account—

(a) held by an eligible adult (an "account holder"); and

(b) which satisfies the requirements of this section.

(2) An eligible adult is a person who—

(a) is aged 18 or over; and

(b) is ordinarily resident in England.

(3) A PESA may be held only with a person (an "account provider") who has been approved by the Secretary of State in accordance with regulations.

(4) The Secretary of State may by regulations establish a body to administer the operation of the PESA scheme.

(5) In the case of each person who is eligible under subsection (2), the body established under subsection (4) must open a PESA for that person.

(6) If a person does not wish to hold a PESA, they must inform the body under subsection (4) in writing in accordance with regulations.

(7) The Secretary of State must pay into each PESA a deposit of £4,000 during the year in which each account holder attains the age of 25 and a deposit of £3,000 during the year in which each account holder attains—

(a) the age of 40; and

(b) the age of 55.

(8) Further contributions may be made to a PESA by—

(a) an account holder;

(b) employers; or

(c) any other person as may be prescribed by regulations by the Secretary of State.

(9) At any time after an account holder has attained the age of 25, they may transfer funding from their PESA to an approved institution for their chosen education or training course.

(10) For the purposes of subsection (9) an "approved institution" is—

(a) a "relevant provider" under section 18;

(b) such other education or training providers as may be approved by the Office for Students.

(11) Prior to an account holder making an initial funding transfer, the National Careers Service must offer a careers guidance consultation to that account holder."

Member's explanatory statement

This amendment provides for individual "skills wallets" which may be used by a person to pay for education and training courses throughout their lifetime. The Government will make a payment of £4,000 when an individual turns 25 and then two further payments of £3,000 when an individual turns 40 and 55.

**Lord Addington (LD):** My Lords, I am sorry that I am out from the subs' bench here. This amendment is quite straightforward and an act of unprecedented generosity from the Liberal Democrats because it was a clear commitment in our 2019 election manifesto. It is a practical way of dealing with some of the problems that we are looking at here. We would create a personal education and skills account, or a skills wallet. We can go through the amendment in fine detail, but I think my noble friend Lady Janke will be in a much better position to do that than I will. The principle behind this is that you have a degree of money that you are in control of to help you update or change your skills.

Anybody of my age who looks at the various changes in the work environment will know that you not only had to upgrade your skills, you had to change them. The world is a very different place. Let us face it—everything we hear at the moment suggests that the world of work and the skills required for it are liable to change rapidly over the next few years. There is the technical revolution and the digital revolution. Will they continue? Will they evolve? There is also the green revolution going on in the world of work.

The level of possible change required within those ideas is massive. Having the ability to say, "Yes, I have at certain times the ability to change my skill set," must have some attraction to all those listening. When the Minister responds, I would like her to let us know the Government's thinking on that idea.

We have given the Government a series of options here; whether they will decide to pay us the ultimate compliment by taking our ideas, I do not know. The ones that we have down here are that you can upgrade, you can change and you are in charge. Maybe you could argue about the times at which you might intervene, but not by much. They are reasonably well paced throughout somebody's working life. There is an initial stage, then a few years in, then a few years more and then towards the end, as—we are told—we will all be working longer. Surely, that is about right.

I think the fact that you have good careers guidance going in with this is very important. These are components that have to be involved to keep somebody working productively for longer. They come in together and the person has a greater degree of control. There is less bureaucracy as you can choose where you go. You can go to regular employers and trainers, who are identified as being of a certain standard. That is the idea behind this.

I hope that the Government will be quite open to these ideas—and possibly this amendment. Who knows? I am not putting a great deal of money on that but, hey, we live in hope. If we could find out the Government's thinking on this, we would all be slightly better informed for the next stage of Bill. I beg to move.

**Baroness Bennett of Manor Castle (GP) [V]:** My Lords it is a pleasure to follow—if unexpectedly—the noble Lord, Lord Addington, and to express support for the intention of this amendment. In a way, it is an acknowledgement that individuals gaining skills is to the benefit of all us. We should acknowledge that we are not talking here about narrow, financial cost-benefit calculations, but rather acknowledging that skills have a wide range of advantages for us all, embedded as they are in individuals.

I will be brief and I shall resist, with some difficulty, the urge for a cheap political shot about student fees. I have to note, however, that this amendment provides one way to ensure that people can access courses for free. There is an obvious, much simpler way to do that, which would be to abolish student fees and ensure that we are not, as the Bill is currently doing, expanding the burden of debt weighing on individuals in our society.

I look forward to the Minister's response anyway. The question I am really asking is: do the Government acknowledge that skills are not something just acquired by individuals—I go back to the reference to social solidarity from the noble Lord, Lord Watson—but something that we all benefit from and should all help to pay for?

**The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con):** I call Lord Janke.

**Baroness Janke (LD) [V]:** My Lords, I am not a Lord, as you will see, but I thank the Deputy Chairman for calling me.

I support this amendment, which basically offers much greater certainty and flexibility and indeed—as my noble friend Lord Addington has already said—generosity. It gives confidence to people that lifelong learning is important and that they will have the opportunity throughout their lives to access different development skills and training, so that they can indeed plan their career and own development, while knowing that the flexibility is there to enable them to take maximum benefit from it.

We know that the average British worker will do different jobs throughout their career, so flexible learning will be essential. The developments that we see in green and digital technology will need lifelong learning; they will need people to be engaged at all stages of their lives. This offers a framework and a context for people to have the learning habit throughout their lives and benefit from it. Confidence is important. We heard earlier in the debate that some people will not be able to afford this training. Very often, these are the people who would most benefit from it, so I would like to feel that the Government will consider the idea of giving learners confidence that they will be able to take up opportunities.

With regard to the remarks of the noble Baroness, Lady Bennett of Manor Castle, this is a different kind of learning. We are not talking so much about specialising in higher education, which I think she was referring to, but the opportunity to embrace a learning experience throughout one's life. What we have here is a much better and more flexible system.

I hope that the Minister and the Government will look more closely at some of these plans, and perhaps see whether some ideas here could benefit the Bill. I am sure that we will have a chance to revisit these proposals at a later stage. I hope, too, that noble Lords will support the intention behind these plans sufficiently to give them some real consideration, with the possibility of exploring them further at a later stage.

**The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con):** My apologies to the noble Baroness, Lady Janke: my list has an "L" in front of her name. I call the noble Baroness, Lady Wilcox of Newport.

**Baroness Wilcox of Newport (Lab):** It is always a pleasure to follow the noble Baroness, Lady Janke.

We have heard that this amendment would provide for individual skills wallets, which may be used by a person to pay for education and training courses throughout their lifetime. The Government would make a payment of £4,000 when an individual turned 25, then two further payments of £3,000 when an individual turned 40 and 55. This amendment, as noted by the noble Lord, Lord Addington—a highly competent substitute for the noble Baroness, Lady Garden of Frognal—is based on a commitment in the 2019 Liberal Democrat manifesto. It is offered up as an alternative to the government plans; I presume it has been costed up.

Labour's alternative is a job promise which would guarantee training, education, or employment opportunities for young people who have been out of work, education or training for six months. Today, young people are facing soaring unemployment and the toughest jobs market for a generation. The number of FE students has declined by a quarter since 2015, with the number of younger and poorer students declining fastest. Since 2015, the number of learners from the most deprived backgrounds has declined by nearly a third, climbing to almost 40% among learners

[Baroness Wilcox of Newport]
under the age of 19. Yet young people in desperate need of new opportunities have been overlooked by this Government, whose 16 to 19 funding has been woefully insufficient.

The Welsh Labour Government were successfully elected in May on a manifesto that included a young person's guarantee of training or work. As the Economy Minister told the Senedd on 29 June,

"we need to give young people hope for the future and to ensure that they are not left behind. It is more important than ever that we support young people to gain the skills and experiences that they will need to succeed, whether that's in employment, education or starting their own business."

I would humbly advise the UK Government that they could use this excellent strategy across England.

*3.15 pm*

Labour's job promise plan would also guarantee that no one is involuntarily away from work or training for more than 12 months, to end the scourge of long-term unemployment. It would allow workers made redundant from furlough instant access to job-finding support through a work coach, without the need to claim social security. Labour would deliver the plan by simplifying and bringing forward £4.5 billion of spending on failed government programmes to provide immediate opportunities to help people into work. Labour has urged the Government to use the underspend from the apprenticeships levy to boost opportunities. Last year, this could have created 85,000 new apprenticeship opportunities for young people aged 16 to 24.

As part of a vision to secure the economy and build back Britain, Labour will also support job creation across the country, including 400,000 green jobs, while filling the 127,000 current vacancies in health and social care and 43,000 vacancies in education through improved training offers. We would take a different approach from the Government by building a secure economy that spreads prosperity across the UK. Britain's foundations have been weakened and too many people not allowed the opportunity to achieve their potential. Swift changes are needed. The amendments put forward over the four days of this Committee stage would go some way to addressing the deficiencies, if this were a listening and responsible Government.

**Baroness Berridge (Con):** My Lords, I am grateful for this opportunity to further discuss our vision for lifelong learning. As part of the lifetime skills guarantee, and as I hope noble Lords are now aware, the lifelong loan entitlement will be introduced from 2025. It will provide individuals with a loan entitlement to the equivalent of four years of post-18 education, to use over their lifetime. It will be available for modules and full courses of study at higher technical and degree levels, at levels 4 to 6, regardless of whether they are provided in colleges or universities. I hope that the noble Baroness, Lady Janke, is reassured that this plan will provide flexibility. I say to the noble Lord, Lord Addington, that it will enable people to update and change their skill base across their lifetime.

While the sentiment of the amendment to develop lifelong learning is admirable and one the Government share, unfortunately the personal skills account policy would create significant fiscal and logistical challenges—so at this point I would advise the noble Lord, Lord Addington, not to place any bets on its acceptance. The amendment could disrupt our established loan support system to accommodate an additional system of grants. This would substantially increase the costs to the taxpayer, both in the cost of such grants themselves and in their administration.

The amendment suggests that a new body would be created to administer these learning accounts for every adult resident in England. This process would have to happen seven years before an individual could first make use of any funds at 25, and integration of these new accounts with the Student Loans Company's existing operations would have significant costs and operational impacts. Moreover, there is an opportunity cost to the Government in depositing thousands of pounds into these accounts, only for them potentially to be left idle and waiting for an unknown point of use. This poses a strong contrast to our current loan support, which is available at the point of study.

To answer one of the questions raised by the noble Baroness, Lady Bennett, we are all contributing to further and higher education, as what is called the RAB rate is currently 53p in the pound. That is what the Government end up paying for under the current student loan system that is not repaid by the student.

Finally, these significant changes to the basis of our student finance offer would risk delaying the rollout of the lifelong loan entitlement beyond 2025. I know that many noble Lords have sought to bring that date even earlier. As noble Lords will be aware, the introduction of the lifelong loan entitlement was a key recommendation from the *Independent Panel Report to the Review of Post-18 Education and Funding*, led by Sir Philip Augar. It was also endorsed by the Economic Affairs Committee of your Lordships' House. We want to ensure that the lifelong loan entitlement provides value for money to students, the education sector and the taxpayer. I am afraid this amendment is at odds with these aims. As such, I hope that the noble Lord, Lord Storey—sorry, I meant the noble Lord, Lord Addington—will feel able to withdraw this amendment.

**Lord Addington (LD):** My Lords, I should now mention my noble friend Lady Garden, so that all three of us who have covered the Front Bench can be in on this one.

I am not surprised that the Government are not going down there. If I had any money on the Government accepting this, it would have been only on very long odds. However, we are getting a little clearer on what lifelong learning will mean under the Bill and under the current Government. We might want to dig further into the difference in approach here at a later stage of the Bill, but it is certainly something that we must look at all the options for. If the noble Baroness, Lady Wilcox, looks in our manifesto, she will see that the costings are there. I am sure that is a bit of light reading that she will embrace massively over the holiday.

Having been given that bit of assurance and saying that we will probably come back to this, I beg leave to withdraw the amendment.

*Amendment 91 withdrawn.*

*Clause 14 agreed.*

**The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con):** We now come to the group beginning with Amendment 91A. Anyone wishing to press this or anything else in the group to a Division must make that clear in debate.

### *Clause 15: Lifelong learning: amendment of the Higher Education and Research Act 2017*

*Amendment 91A*

*Moved by* ***Baroness Berridge***

**91A:** Clause 15, page 18, line 17, leave out "In section 83(1) of"

Member's explanatory statement

This is consequential on the Minister's second amendment at page 18, line 17.

**Baroness Berridge (Con):** My Lords, I beg to move Government Amendment 91A and speak to Amendments 91B, 91C, 99C and 99D in my name. These are primarily aimed at amending Clause 15, which in turn amends the definition of "higher education course" in the Higher Education and Research Act 2017, to make express provision for the regulation of modules and to make clear what a module of a higher education course is as distinct from a full course.

The current student finance system does not offer funding for modules, nor is there any fee maximum for such modules or a specific corresponding regulatory system. The lifelong loan entitlement will transform student finance by supporting more flexible and modular provision. This legislative change is needed to ensure that we can deliver modular provision. Taken with the amendments that we have previously laid, this clause makes specific provision for modules in Part 1 of HERA 2017, which relates to the regulatory regime under the Office for Students. The amendments also relieve higher education providers, the OfS and the designated quality body of certain additional burdens which would otherwise arise from the addition of the concept of modules under HERA. These relate to certain requirements to provide or publish information—for example, under Sections 9, 11 and 65 of that Act. We want to reduce bureaucratic burden on providers, and these changes will ensure that the introduction of funding for modules through the LLE will not add to this.

Clause 26 sets out the territorial extent of the provisions in the Bill. This is a standard clause for all legislation. In essence, and with minor technical exceptions, the LLE provisions extend to England and Wales but apply in relation to England, because we are making amendments to the English student finance system. Overall, these changes will help to pave the way for more flexible study and for greater parity between further and higher education. As noble Lords will be aware, we will be consulting on the detail and scope of the lifelong loan entitlement this year. Our commitment to supporting students through the LLE is a key consideration in the public consultation which we will launch in due course. This will include seeking views on specifics of our regulatory system.

**Lord Johnson of Marylebone (Con) [V]:** My Lords, I speak to Amendment 92 in my name and draw attention to my interests in the register, as chair of *TES*, the education software and information group, and of Access Creative College, an independent provider of training for the digital and creative industries.

Amendment 92 is a probing amendment, to test the Government's ambitions for the lifelong loan entitlement and to probe their assumptions about what provision is worthy of funding under it. We do not yet have critical details on the LLE, for which the Bill provides the legislative underpinning. That will emerge only following the consultations that the Minister has just mentioned, and then in secondary legislation due in 2024, ahead of the LLE's actual introduction in 2025. In theory, the combination of the LLE and the introduction of the system of modular funding that the Minister has just mentioned, for sub-degree chunks of study, will make it easier for adults and young people to access learning in a more flexible way, to space out their studies and to earn while they learn if they wish.

Since 2012-13, English HE students have been eligible for loans only if they are studying at an intensity of 25% or more of a full-time equivalent course and are following a full course for a specified qualification, hence students studying individual modules or shorter courses of less intensity have not been eligible for loans. This has been an important factor in the decline of part-time adult learners. The LLE will, in theory, help to address this problem—therefore so far, so good, and I very much welcome it.

However, there is real complexity involved in the introduction of the lifelong loan entitlement, and a danger that theory and practice might diverge in crucial ways in certain respects. One of the main sources of danger is that the Treasury, partly out of its desire for quick savings from higher education in the spending review, may water down the promised skills revolution by insisting on retaining the so-called equivalent or lower qualification rule. Indeed, I expect that the Treasury will put up a valiant attempt to keep the ELQ rule whatever the consultations on the LLE say when they are eventually produced.

The traditional rationale for the ELQ restriction is that funding available for student support is finite and that it is necessary to put in place limits to ensure that all eligible students who wish to enter HE for the first time can do so. Accordingly, the ELQ rule prevents those studying a second HE course, at an equivalent or lower level, from receiving tuition fee loans or maintenance support for the course. For example, if you study classics for an undergraduate degree in your 20s at UCL, you could not then reskill in your 30s by undertaking a diploma in graphic design at UAL.

Restrictions apply even to those who previously followed privately funded courses which they self-financed. These ELQ restrictions seem complex and very unusual, when you look across the global HE landscape. For example, they do not exist in Canada, Australia, or New Zealand, whose HE systems are quite similar to England's. The obvious trouble is that the ELQ rule not only constrains student choice about how best to retrain if they already have a qualification but treats tertiary education—post-18 education—as a one-off event, rather than as part of a process of lifelong learning in a world in which people can expect to have

[Lord Johnson of Marylebone]
multiple careers over their working lives. Keeping it will therefore make a nonsense of the entire lifelong loan entitlement.

My contention is that any savings which the Exchequer might make on the subsidy in the loan book from retaining it are outweighed by the broader economic costs incurred by making it so difficult for students to change subject and retrain for new careers. We need a serious economic impact analysis of the ELQ rule before we can consider the secondary legislation on the LLE. Indeed, since it was introduced in 2008, various Governments have already effectively acknowledged the flaws with the ELQ by peppering it with ever more complicated exceptions, such as those applying for medicine, dentistry, and initial teacher training. Part-time ELQ exemptions have been made for engineering, computer science and technology, extended to STEM courses in 2016-17. In 2018 further exceptions were made for nursing, midwifery, allied health professions, and so on.

ELQ restrictions were possibly appropriate for a restricted grant-based HE system, but, under the current loans-based system, they are anachronistic and antithetical to the broader objectives of the Government's skills reforms. That is why the 2019 Augar report rightly recommended that the ELQ rules be scrapped entirely for those taking out loans for levels 4, 5 and 6—yet nothing has happened since.

*3.30 pm*

Two things seem to underpin the Government's reluctance to remove what remains of the ELQ rule. First is the Treasury's flawed—in my view—conception of value for money, which crudely measures the worth of the course by how much students repay of their loans. Secondly, there is an entirely misplaced belief in Whitehall's ability to predict the skills needs of the economy and to operate a kind of modern-day Gosplan through number controls on particular subjects deemed to be oversupplied and out of kilter with the needs of the economy.

If Covid has taught us anything it is surely that we need to value socially useful but lower-earning professions. I am far from convinced that the Treasury's reliance on the LEO data or belief in its ability to do this micro workforce planning is actually delivering good policy. As my noble friend Lord Willetts said on Monday, we need a "wider range of perspectives"—earnings data cannot be the "be-all and end-all" of education policy. As my noble friend Lord Lucas put it, it is simply much too "one-dimensional" an approach.

We have already seen this short-sighted approach to value for money at work in the rules governing access to the lifetime skills guarantee, which offers funding for those who are 19 or over and do not already have a level 3 qualification. The current list of level 3 qualifications for which the Treasury is allowing funding via the lifetime skills guarantee is far too restrictive, with Ministers stating that this narrow group of courses has been selected principally on the basis of their wage returns. It is striking that, as a result, there is not a single creative arts and design course on that list. In my view, it speaks volumes about whether the Government really do understand the value and importance of the creative industries.

My fear now is that the Government will use this legislation's fine print and the operation of the lifelong loan entitlement to effectively defund level 4 to 6 courses that have lower rates of repayment via a possible combination of student number controls, frozen or selectively reduced tuition fees and tougher minimum entry requirements. If adopted, this approach would, once again, particularly penalise the creative arts and design courses that fuel some of the country's most promising creative industries, including those mentioned by the noble Lord, Lord Watson, and including games design, music production and technology, fashion and textiles and the performing arts.

Of course, it would a false economy. The creative industries were growing two and a half times faster than the rest of the economy as a whole in the decade leading up to Covid. Presumably, they were generating enough tax revenue for the Exchequer to repay the Government's subsidy to creative courses in the student loan book many times over.

The Government seem to have a sense that universities have piled in to creative arts provision and that it has grown like some kind of Japanese knotweed, absorbing an ever-greater share of subsidy in the loan book since the removal of student number controls. This is factually wrong, and it is important that the Treasury recognises that. HESA data shows that 167,000 students were enrolled in creative arts and design courses in 2014-15, representing 7.4% of the student body. There were 187,000 students enrolled in such courses in 2019-20, again representing 7.4% of the student body. Yes—there has been a 12% increase in the number of such students over six years, but that is entirely in line with the growth in HE enrolments across the system as a whole and no more than that. Given that the creative industries were growing at two and a half times the rate of the rest of the economy in the run-up to Covid, it could even be argued that this is a surprisingly low rate of growth in this area of HE provision.

However, we are seeing a number of government levers being simultaneously pulled, effectively discouraging young people from studying non-STEM subjects in the social sciences and the arts and humanities. In my view, this approach is fundamentally mistaken. It will be highly detrimental to international perceptions of the English higher education system if we continue to reduce the subject range of our universities and the supply of high-quality provision across all disciplines and institutional types. The strength in breadth of our higher education system is one of its great features, and it is a big part of what makes it internationally attractive.

So I wonder if the Minister would agree that we need not only a proper economic impact analysis of the ELQ restriction but a serious and holistic evaluation of the economic costs and benefits of creative arts education before we wave through the LLE. If the Treasury really wants to save big money, the Government should abandon any plans that they might have to restrict student choice in this way and instead focus on fixing some of the needlessly costly features of the student loan that my noble friend Lord Willetts mentioned earlier—for example, reducing the student loan repayment threshold could save billions and significantly reduce the proportion of the student loan book that ends up

being subsidised by the taxpayer. This would be a far better way of putting the student finance system on a sustainable footing than constraining student choice, stifling education for the creative industries and choking off the supply of talent to socially valuable but lower-earning professions.

**Lord Addington (LD):** My Lords, of the two speeches that we have had so far, the noble Baroness's introduction of the amendments seemed reasonable and necessary. Then we heard the speech of the noble Lord, Lord Johnson. When someone who has been involved in the system as recently as the noble Lord says that you have got something wrong, I would listen hard and long—so I hope that, when the noble Baroness responds to that, she will give the impression that that is happening, because the creative arts and the creative sector pay for themselves. Many of my noble friends have spent a great deal of time on this, not usually with the noble Baroness but with others—the noble Baroness, Lady Barran, can probably show you the scars of dealing with that. This must be looked at because the creative sector is a growing part of our economy, and the ways in are not usually through formal qualification.

The amendments in this group with my name—Amendments 99 and 99B—go back to the familiar territory of special educational needs. Amendment 99 basically tries to say that higher education has a series of support structures involved for those with special educational needs who are going through it. The noble Baroness, Lady Penn, referred to one of my slight irritants on this subject—that we are dealing with higher needs, but most people with special educational needs do not have higher needs but just have slight difficulties in certain sectors.

In the higher education sector, one of the most useful things is information capture, for instance—namely, taping or recording lectures and tutorials and playing them back in certain formats, meaning that the person can digest it in other ways, such as in a written format that you do not have to take notes on, which is the great killer for dyslexics. Several pages of hieroglyphics are of no use to man nor beast, and, trust me, when you wrote them you did not really listen to what was going on anyway. That sort of device going through would be very helpful. I am trying to make sure that all these types of provision for lower needs will be accessible by anyone who is going through this lifelong learning process.

I was thinking in particular about levels 4 and 5, because here a person will be working independently for some of the time or, if they are taking lectures, et cetera, will need some support. The support is available in higher education, and higher education goes on within colleges of further education, does it not? It does if you look at their syllabuses. Will we make sure that this facility is there, is used and supports these candidates? If it does, we are doing a good thing with something that is already in place; we do not have to reinvent the wheel. We can go back and make sure we are getting the best out of what is in an existing system and transfer it across.

The same is true, as the right reverend Prelate who is speaking after me will confirm—I may be putting words in his mouth but I will take a chance on it—when we come to further education, where we have a different regime again. To the age of 25, support is more tied in with the education, health and care plan—but they are different regimes working across each other. Are we going to take the best of both and bring them together in one place to make sure people are supported, or are we going to let them compete with one another and decide where we come in? This is something of an absurdity that makes sense only if we assume that further education and higher education do not cross. I would have thought some of the subtext behind much of what we have heard here challenges that. Also, good practice in one area of learning will be good practice in another.

I just hope the Minister will be able, when she replies, to tell me that the Bill will bring a bit more coherence to these plans and support. Look for good practice and make it appropriate to the student, not to whether it is an F or an E—or an F or an H, or whatever the thing is. Is that a dyslexic mistake? Probably. Anyway, as we go through this, whether it is further or higher education we are dealing with should not really matter; it is merely what helps that candidate get through. I think I will get told off for using that expression. If the Minister can give me that assurance, I will be a little happier at the end of this. Making sure there is a coherent strategy that refers to good practice would make many people a little more comfortable about the direction of travel here.

We do not want to keep going back to this. If we can take what works in one sector and apply it to another, it would seem logical and sensible. This may be a challenge that is beyond any one Minister or Government—but strike a blow and we will all remember you fondly, no matter what happens.

**Lord Flight (Con):** My Lords, this debate has, I believe, produced extremely valuable advice for government in sorting out our higher education and apprenticeship problems, and I give great praise to what I have heard today.

My amendment requires the Secretary of State to amend the Education (Student Support) Regulations 2011 to ensure that those claiming the lifelong learning entitlement qualify as eligible students for support under those regulations. There is a similar amendment tabled by the noble Lord, Lord Watson, on student maintenance, which I understand may have cross-party support. My proposals would create a maintenance support system that enables everyone to live reasonably while studying or training at colleges of both FE and HE. One might ask why student maintenance is needed when the Government's ambition is to make education and training available to people throughout their life. It is welcome and needed as jobs change and are displaced and are likely to change even faster. The lifelong loan entitlement announced in September 2020 could open up tuition fee loans for people taking level 4 to 5 qualifications, which are especially important for unlocking higher technical skills for the sector.

Clauses 14 and 15 create powers to put this into effect, but they cover only tuition fees and higher-level courses—level 4 and above. This is packaged with an all-age level 3 entitlement in the lifetime skills guarantee. Many adults will be unable to take up those opportunities

[Lord Flight]
because there is no support for living costs when they are taking courses at this or higher levels. These people would be prevented from transforming their life chances and becoming part of the skilled workforce that employers and the economy need so much.

*3.45 pm*

How to change? To address these issues, the Government should extend the system of loans and means-tested grants to support adults to be able to live while in relevant education and training. This could be restricted to be available only for the loan entitlement and lifetime skills guarantee. Work would have to be undertaken to align a system of grants and loans with the benefits system so that everyone can access the support and funding they need. The amendment would oblige the Secretary of State to amend the 2011 education regulations to ensure that those claiming the lifelong learning entitlement qualify as eligible students for support under the regulations.

**The Lord Bishop of Durham [V]:** My Lords, as the right reverend Prelate the Bishop of Leeds observed at Second Reading, colleges play a vital role in providing for students with specific learning difficulties and disabilities—the term widely used in further education as being broader than the "special educational needs" used elsewhere. This amendment seeks to address the discrepancy between the range and funding available to younger students with specific learning difficulties or disabilities, principally those in school settings or specialist institutions, and those applicable to students in FE. It seeks also to harmonise best practice across the FE and HE sectors, as the noble Lord, Lord Addington, outlined a few moments ago. It connects with the earlier Amendments 41 and 43 to 46, especially the requirement to review how well the education and training provided by an institution meet the needs of those with special educational needs in its area, and with Amendment 99, which places a specific duty on the Secretary of State to this end.

According to the Association of Colleges, students with SLDD make up 17% of the overall intake—a figure that rises to 23% of 16 to 18 year-old learners. In 2019-20, local authorities placed more than 64,000 students with education, health and care plans in colleges, 90% of them in general FE colleges and the rest in special institutions. However, the current funding regime does not provide support for those students in FE who do not have EHCPs to anything like the degree required. Yet the Bill makes no specific reference to such students, nor to those with other specific learning needs or disabilities—something to which the noble Lords, Lord Addington and Lord Lingfield, have drawn particular attention during earlier debates and, indeed, on many other occasions in this House.

I know from discussion with the Minister that this is an issue the Government are fully aware of and are eager to address. The Green Paper promised for the summer will, we hope, set out in more detail and in more concrete terms how a much higher degree of priority could be given to this diverse cohort of learners in both policy and funding terms, and how that might best be reflected, if not in the Bill then as government policy develops. It would be most useful if the Minister were able to indicate how she sees progress with the Green Paper and some definite assurance of the Government's commitment to greater equity or parity in the treatment of older students with SEN in our colleges. I would also welcome a further opportunity for discussion with her, which might also advantageously include other Members of this House with a particular concern for such an important area of post-16 provision.

**The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con):** The noble Baroness, Lady Greengross, has withdrawn, so I call the noble Lord, Lord Aberdare.

**Lord Aberdare (CB):** My Lords, this broad group covers many of the crucial features of the lifelong learning entitlement. I will confine my remarks to Amendments 92 and 95, covering the availability of the entitlement and learners' eligibility for it. The lifelong loan entitlement and the lifetime skills guarantee are absolutely at the heart of this Bill and the framework it seeks to create. To achieve the more highly skilled, productive and ambitious nation that we seek, people—not just some people, but all people—need to know that there are great opportunities available to them, whether they desire new skills, higher skills or refreshed skills, and they need to know how to find out how to pursue them. That is where careers information and guidance come in and why they need to be properly covered in the Bill.

People also need to know that the training and educational routes to acquiring the skills to grasp those opportunities are realistically open to them, without undue or unreasonable restrictions or conditions. That is what will generate the enthusiasm and the actual take-up, so that the skills policy and the ambitions behind the Bill achieve the outcomes they deserve. Both the right reverend Prelate the Bishop of Durham and the noble Lord, Lord Addington, have mentioned incentivising learners to encourage them to take part, which may not need to be in the Bill itself but needs to be a central part of the strategy.

If I have always nursed the desire to retrain as a bookbinder—or perhaps as a graphic designer, as in the example of the noble Lord, Lord Johnson, also a classicist—but I find that loans are available only for specific skills not including bookbinding, or that they do not apply to my age group, or do not include any allowance for living expenses I might need, or are not available to me because I already have an equivalent-level qualification, or are ruled out for other reasons, I may well decide to drop the whole idea as an unrealisable or impractical aspiration. If I get the impression from the outset that there are likely to be such barriers or limitations to accessing the entitlement, I will probably not pursue it at all. But if the lifelong loan entitlement actually means what it says, it could unleash a wave of energy and creativity, as people embrace it to expand their skills and pursue their goals—and indeed their dreams. The suggestion of noble Lord, Lord Johnson, of a proper economic assessment, with that in mind, of the ELQ requirement and the limitations on creative and arts funding, would be very welcome.

The lifelong loan entitlement and the lifetime skills guarantee—LLE and LSG—should be the twin banners for a skills revolution, or a skills crusade, not just sets

of rules, regulations and legislation setting limits on training availability. So I enthusiastically endorse Amendment 92 in the names of the noble Lord, Lord Johnson, and the noble Baroness, Lady Garden, and the somewhat similar Amendment 95 in the names of the noble Lord, Lord Watson, the noble Baroness, Lady Bennett, and, again, the noble Baroness, Lady Garden, in their aims to establish a truly all-embracing and inspiring entitlement with a minimum of limitations, driven, above all, by learner aspiration, enthusiasm and desire. The LLE and the LSG together offer a real chance to make education and skills exciting and exhilarating, as they should be. I hope the Government will take that chance, even if not by accepting these amendments.

I wish the Government every success in making progress with this important Bill and with the strategy underlying it. Since this will be my last contribution in Committee, I would like to commend both Ministers—the noble Baronesses, Lady Berridge and Lady Penn—on their contribution to this Committee. I wish them an enjoyable and, I hope, restful—though possibly not, in the case of the noble Baroness, Lady Penn—and very happy recess before we get to grips with the Bill again.

**Baroness Sherlock (Lab) [V]:** My Lords, we have had some really interesting speeches in this group already, but I am afraid that this is the end of that trend. I am merely going to talk about the government amendments, and my noble friend Lord Watson will cover the interesting bits at the end.

They government amendments represent some of the wiring in the basement of higher education that are going to be needed when the Government unveil their renovation plans in the form of the detail of the lifelong loan entitlement. The Minister moved the government amendments in just over two minutes. I want to unpack them a little, so we can understand their potential implications. I confess I may have a suspicious nature, although I am encouraged, having heard the contribution from the noble Lord, Lord Johnson, that I am not alone in that.

Currently, the different bits of legislation that frame the regulation and funding of higher education are predicated on the unit of education being a course made up of academic years. The Teaching and Higher Education Act 1998—THEA—governs which HE courses attract funding via the student loan system, by referring to the Education Reform Act 1988, while HERA governs which bits of HE are regulated by the Office for Students and are subject to fee limits and more besides. But of course the lifelong loan entitlement is intended to cover not just university degree courses but courses and modules in further and higher education. To make that possible, Clauses 14 amends the regulation-making powers in THEA to allow for the funding of courses in FE and modules in FE and HE, to set a lifetime funding limit, and to allow for funding based not only on the academic year.

The Minister explained that Clause 15 amends the definition of a higher education course in HERA to make it clear that the regulatory regime applies to modules of courses. The way it does that is to say that an HE course is either a course mentioned in Schedule 6 to the Education Reform Act 1988 or a module of such a course, whether or not undertaken as part of such a course. So a course is either a course or a part of a course—I confess I wrestled for a bit with whether a thing could be itself or part of itself. But then government Amendment 91C now distinguishes between a full course and a module for the purposes of HERA. A full course means a higher education course that is not a module of another higher education course. A module is a module of a full course, but which is undertaken otherwise than as part of those courses.

I know, on the face of it, that that sounds like a circular definition, but I have decided the only way I can understand it is as a set of Russian dolls: a smaller Russian doll counts as a module if she fits inside a bigger one and is a part of that set; an identical Russian doll that is not part of a set at all would not be a module; and a full course is the biggest Russian doll which does not fit inside any other Russian doll. I am grateful to the Minister for giving me access to some very clever and kind officials to help me try to understand this regulation—although I should say that their language was rather more precise, and there was no mention of dolls. I hope she can tell me whether I have got that right.

Why does it matter? I think that is up to the Minister to tell us. On access to student finance, can the Minister confirm whether this means that a module can be funded only via the student loan book if it is part of a full HE course? Is it right that the student does not have to be registered for that course, or indeed any course, while taking the module? Could I, say, draw on my lifelong loan entitlement to take the "Introduction to Christian ethics" module, which is part of a theology degree at Lindchester University, without being registered for that degree, or indeed any degree? If so, that raises another question. Modular degrees generally have a limited number of pathways that can be taken through them to reach a qualification, in order to ensure there is a coherence to a degree and that certain essentials are covered. Could a student take a series of modules, each of which is part of a full course but which taken together will never add up to a full course, and therefore could never lead to a qualification?

Do the Government intend to prescribe the size or shape of a module further, either for funding or regulatory purposes? There are lots of modules around: short, intensive modules and long, less intensive modules; modules worth 10 credits and others worth 15 or 20; and modules at level 4, level 5 and level 6. Clause 14 provides that two or more modules can count as a single module—for the purposes, I presume, of student finance. Is that a hint that the Government may want to set a minimum credit value that will be eligible for support under the loan? If the centre gets too stuck into defining what a module is, does it not risk both the autonomy and, crucially, the flexibility of providers—maybe even getting in the way of the innovation the Government say they want?

There are so many more questions that need answering, about choice, compatibility, comparability, funding and lots more. I suspect the Minister will say we need to wait until she brings forward more amendments on Report, but there is one matter she needs to address today: the changes these amendments would make to

[Baroness Sherlock]
the powers of the Office for Students. By switching the unit of HE from just a course to either a full course or a module, these amendments would empower Ministers at a later date to allow funding for modules. But it seems to me that they immediately allow the Office for Students to regulate at the level of a module as well as a course. Amendment 91B does place some limits on that by saying, for example, that the OfS cannot request information on modules more often than courses. It also means that the OfS is not obliged to publish information on fee limits for modules, as it is for courses.

But can the Minister tell the Committee if the effect of these amendments is that the unit of higher education can be a module for the purposes of regulation? What will that mean for the way the OfS regulates quality in higher education? Currently its key metrics are student continuation rates, completion rates and progression to managerial and professional jobs. How does that work for modules? If a student takes modules at several different providers, who is responsible for her outcome? Is it the last one she happened to stop at?

*4 pm*

The more I learn about what is in the Bill, the more I realise that there is a hole at the heart of it and that most of the action is happening offstage, beyond this House. The Government want to transform post-18 education and want us to pass a Bill which will give powers to the Secretary of State and the OfS to make changes, but we do not know what those changes will be. The OfS is in the middle of a two-year consultation process. Phase 2 was out only this week and phase 3 is some way off—and that is before we have a spending review, the response to Augar and much more.

How and when will Parliament get to scrutinise all these moving parts of the Government's plan for higher education? The limited scrutiny offered of spending decisions or pieces of secondary legislation taken piecemeal is no substitute for the ability of this House to train its laser gaze on legislation in the Committee stage of a Bill. I hope that the Minister can give us some answers today and that, by the time we get to Report, we will have more information still.

**Baroness Bennett of Manor Castle (GP) [V]:** My Lords, it is a very great pleasure to follow the noble Baroness, Lady Sherlock, and to express my awe at the—to use her phrase—"laser gaze" she applied to the government amendments, which I will not attempt to emulate.

I will focus on the amendments in this group that are not government amendments. For convenience, I will go through them in numerical order, beginning with Amendment 92 tabled by the noble Lord, Lord Johnson of Marylebone, and the noble Baroness, Lady Garden of Frognal, which—as the noble Lord, Lord Aberdare, noted—has some similarities to Amendment 95, which appears in the names of the noble Lord, Lord Watson, and myself. Somewhat to my surprise, I again find myself agreeing with a very large amount of what the noble Lord, Lord Johnson, said, particularly the reflection that earnings data cannot be the be-all and end-all of judging the value of qualifications, and his points on the value of creative subjects, reflecting what many other noble Lords have said in this debate. However, I strongly disagree with his suggestion that lowering the earnings threshold for student loan repayment starting is some kind of solution to the current mess the Government are in. The fact is that we have generations—particularly but not solely—of young people finding it extremely hard to find a secure economic place in the world, and making them more insecure, creating more difficulties and putting further economic pressure on them, very often through those three decades of life when they would normally expect to perhaps settle down, have children or even buy a house, would have widespread effects reaching far beyond the educational impacts.

I move now to Amendments 94 and 95 in the names of the noble Lord, Lord Watson of Invergowrie, and myself. It is a pity that he has not yet introduced these, but their meaning and intention is fairly clear. We are aiming here to introduce more flexibility and to acknowledge, as I said on an earlier group, that we are not in the 20th century, where people's lives started by perhaps doing a course of study or an apprenticeship, working for 30 or 40 years and then collecting their gold carriage clock at the end of it. That is not how the world works; people move in many different directions. I have to say, I was rather attracted by the suggestion from the noble Lord, Lord Aberdare, of taking up bookbinding; that sounds a rather attractive option. But people move in all kinds of different directions in all kinds of ways, and the idea that they could have some linear, progressive, straight-line course currently mars the Bill, and these amendments seek to acknowledge this. I look at Amendment 94 in particular: life happens. A third to a half of pregnancies in the UK are unplanned; people never know what life will throw at them, and they need flexibility to have the lifelong learning entitlement to work for whatever life throws at them. That perhaps applies even more to Amendment 96. We talked earlier about the possibility of people being able to receive universal credit while studying along their life course, and this is an alternative way of approaching the problem by allowing for maintenance grants—indeed, those two things might well go together, given the nature and cost of living these days.

Coming to Amendment 97, I feel I am picking up a subject on which many other noble Lords are vastly more qualified and have been working on for a long time, but we really have to highlight the utter government failure that this proposed new clause reflects on and, indeed, seeks to ensure is not extended. It is acknowledged that 9% of the student population currently are Muslim—I think that is a higher education figure rather than a further education one—but it should be higher. In 2013, David Cameron promised to provide an alternative student finance option to comply with sharia law, which prohibits riba, or interest. The following year there was a consultation to provide a takaful system that would fit within the existing structures. In 2017, the Higher Education and Research Act was granted Royal Assent and gave the Government the power to introduce such a system—yet we are still waiting. I would very much value any news the Minister might be able to give us on progress in this area. Covid really is no excuse; this has been going on and continuing and was an area of failure far before Covid. I note that

in the other place there is an Early Day Motion calling for the introduction of this form of finance for students, which is receiving wide support.

Finally, on Amendment 99—and, indeed, Amendment 99B—I do not feel that I can add anything to what the noble Lord, Lord Addington, who is so extremely knowledgeable in this area, said, except to offer support.

This is my last contribution in this Committee. I join many others in offering the noble Baroness, Lady Penn, the very best wishes for the coming month or two in particular. I thank everyone who has contributed to this Committee. We have been a rather small and select band, which seems to be the case with many of the Bills before your Lordships' House. I hope that we might see a broader level of engagement when we get to Report, but, in the meantime, I thank noble Lords.

**Lord Watson of Invergowrie (Lab):** My Lords, this has been a lively debate. To echo some of the comments made by the noble Baroness, Lady Bennett, I say that this is welcome, because there has been much less engagement than some of us had anticipated with the Bill in Committee. I hope that some of that will be put right on Report.

In this group of amendments, there is a huge opportunity, if the lifelong loan entitlement is designed well, for it to support opportunity around the country by revitalising flexible higher education and reversing the catastrophic decline in the number of adults in England aged 21 and over accessing undergraduate higher education. Yet, as my noble friend Lady Sherlock set out in detail, we still know far too little about the specific design features of the lifelong loan entitlement and how it will work in practice. Like much of this Bill, although urgently needed, the legislation has been laid before the policy detail has been proposed and consulted on.

It is disappointing to say the least that the Government tabled their amendments just a week ago and that further amendments on Report are necessary. I think it is fair to say that the coruscating criticism a few minutes ago by my noble friend Lady Sherlock brilliantly illustrated why we expect the Minister to withdraw and not move the amendments to allow the House time for the proposals to be fleshed out, so that noble Lords can give them the critical analysis necessary to enable the successful implementation that, in fairness, we all want.

We have said before that we believe that 2025 is too long to wait and that the lifelong loan entitlement system, or interim arrangements, must be put in place sooner. Can the Minister clarify whether all adults will be able to access support through the lifelong loan entitlement from its introduction, whenever it does appear, or whether it will be introduced gradually for different age cohorts?

The government amendments tabled on the entitlement provide the building blocks of a modular and potentially credit-based loan funding and fee limit system. We welcome the flexibility for the entitlement to incorporate modular funding and recognise that this presents both opportunities and, given the complexity, significant challenges. We know that details on the funding of courses will need to await the comprehensive spending review in the autumn, but can the Minister confirm whether there will be a fee limit for modules? Will this be proportionate to their credits towards a qualification? In the current arrangements, not all credits attract the same fees; short courses are generally more expensive per credit than full degree courses. The Government's approach to this will be telling because it matters to potential students who would need to access loans in order to study.

Our Amendment 95 is similar to Amendment 92 in the name of the noble Lord, Lord Johnson, which we support. I have to say, I much enjoyed his contribution, even if it is slightly odd to be on the same side as him, given our jousting on what became the Higher Education and Research Act in 2017. It is odd but none the less welcome.

Our Amendment 95 would remove the equivalent or lower qualification exemption rules for the lifelong loan entitlement to ensure eligibility for student loan funding for another qualification at that level or a lower level to make career changes as simple as possible. It would also ensure that eligibility is not restricted in any way that would prevent those seeking to use the entitlement in a manner that fits their lifestyle. Many people will have chosen at 18 a degree that has taken them down a different career path to that intended when they studied. It may be that their industry or sector has since contracted or disappeared completely, and the need to reskill becomes even more apparent.

This is why my Amendment 85 would remove the ELQ exemption rule for the lifelong loan entitlement. The equivalent or lower qualification rules prevent someone with a degree or a lower qualification, such as an HND, receiving a student loan for another qualification at that level or lower. We believe that this is a mistake because some in that position will already be in work and seeking to change career. In a loan system, the equivalent or lower qualification rules should be removed to prevent this block on changing careers. It provides a disincentive to do so.

Amendment 95 also aims to ensure that anyone wanting to undertake modular study can do so in all subject areas and that, when doing so, they are able to access the same support for fees and living costs regardless of how they choose to study, including through modules or full qualifications, part-time or full-time, face to face or at a distance.

The lifelong loan entitlement offers up to four years' equivalent funding for levels 4 to 6. While this may be enough for some people, for others, it simply will not be. Undertaking a foundation or access year plus a three-year bachelor's degree, which is a pretty common route, would swallow it in one go. This is why Amendment 94 would require the Secretary of State to consult on extending the eligibility to six years to give a bit more flexibility. As I said, for some, four years is not long enough. This will be of particular value to those studying part-time and key to the success of encouraging adult learners to take up an offer to study and reskill.

The Government's stated aim is to encourage as many people as possible to prepare for the skills demanded by an ever-changing economy. Amendment 94 supports that aim.

[Lord Watson of Invergowrie]

It is also worth emphasising that the vast majority of part-time students in England are ineligible for maintenance loans, which are currently restricted to full-time students and part-time students on degree courses at face-to-face providers. This illustrates why the lifelong loan entitlement needs to support all modes of study. In fact, this is highlighted on page 42 of the Department for Education's own impact assessment, as the noble Lord, Lord Flight, pointed out. The cost of study, including living costs, is very important yet, as drafted, the entitlement covers tuition costs only. Why have the Government ignored their own impact assessment in this regard? They must introduce a system of loans and means-tested grants that enables everyone to live well while studying or training at college across both the further education and higher education sectors.

Maintenance support will be crucial in preventing further hurdles being placed in the path of learners from disadvantaged backgrounds taking up studies. Otherwise, many adults will be unable to take up these opportunities, frustrating their aim—and that of the Government—of transforming their life chances and being part of the skilled workforce that employers and the economy need. Many will have existing debts and financial commitments, as well as caring needs for children or elderly relatives. If lifelong learning is to succeed, the system simply must recognise these differences and provide solutions.

*4.15 pm*

I also hope that the Minister can assure noble Lords that bursaries and grants at a meaningful level will be made available, on the understanding that adult learners applying for level 4 or level 5 qualifications may well have a different attitude to taking on a loan compared to typical, younger, university students. The Welsh Government recently introduced reforms to tackle this issue by extending maintenance support, including means-tested grants, to all students regardless of mode of study while maintaining low tuition fees for part-time study. This has had a huge impact on participation in Wales. Are the Government willing to learn from that good example or is it their aim to try to introduce the lifelong loan entitlement on the cheap? If so, that would be a false economy on more than one level; I really do hope that the Minister can assure noble Lords that that is not the case.

Finally, Amendment 97 would allow the Secretary of State to make provision for sharia-compliant lifelong loan entitlement loans. As is quite widely known, some people of faith, including Muslims, do not feel able to take on interest-bearing loans; this was identified by the Government as a barrier to participation in a consultation published as long ago as 2016. This is an issue that noble Lords, including the noble Lord, Lord Johnson, will recall because it became an intractable problem during the passage of what became the Higher Education and Research Act four years ago. For reasons I confess to being less than clear about, and despite considerable effort on the part of the noble Lord, Lord Sharkey, there has been little progress since then on a sharia-compliant loans system to ensure that nobody is denied access as a result of their religious faith. I hope that the Minister can assure the House that the lifelong loan entitlement will address the needs of such students, because it is essential that the entitlement does not erect further barriers to participation and upskilling.

We signify our support for the amendments from Amendment 99 onwards, including those in the Minister's name.

It is regrettable that it should be necessary to restate the need for special educational needs, but it is. Once again, it has been done most effectively by the noble Lord, Lord Addington, and the right reverend Prelate the Bishop of Durham. There is very poor alignment between the DWP and DfE strategies on supporting SEND students. In particular, at present, adults in receipt of disability benefits can lose out on benefit entitlements if they engage in education and training, as my noble friend Lady Sherlock highlighted during the debates on previous groups. I hope that the Minister can give noble Lords confidence that the upcoming SEND Green Paper will actively align to the skills reform agenda and describe the strategic oversight needed to support this. This really is an overdue development that cannot be body-swerved by the Government any longer.

There are still many questions for the Government to answer. The policy paper that the Minister circulated to the noble Lords who participated in yesterday's debate was helpful but, none the less, those questions remain outstanding. I look forward to hearing her response.

**Baroness Berridge (Con):** My Lords, I am grateful to all noble Lords. I am feeling sympathy for my noble friend Lady Stedman-Scott as I will deal first with the questions asked by the noble Baroness, Lady Sherlock, on the Government's amendments.

First, we need the flexibility outlined by the noble Baroness in relation to modules to ensure one of the purposes, which is that a module can be transferred from institution to institution. The noble Baroness used the analogy of Russian dolls; I tend to use the analogy of carriages on a train. A course may be three carriages, but you can pick up one of those carriages and do that course as a module. Obviously, we need to define what a module is; that will be part of the consultation. A fee cap will also attach to that module, to answer the noble Baroness's question, and you can do that carriage without signing up to do all three carriages at the same time.

The consultation will inform the questions she asked about whether or how you prevent people doing carriage number one of the six different trains. The consultation will inform the decisions that need to be made and, as noble Lords are aware, there will be amendments on Report, which will further amend HERA to attach a fee cap limit to that module, as it is currently attached to an academic year.

The noble Baroness, Lady Sherlock, raised questions on the regulatory regime of the Office for Students. We will be working closely with the Office for Students on the interconnection with the student outcomes quality framework of starts, continuity and completion and how that will work when we have modular provision. We are aware of the two cogs that will need to work closely together, but there will still be year-long funding.

The HE finance system that at the moment funds straightforward three-year degrees will need to be changed. The Office for Students takes a risk-based approach to its regulatory activity. We are going to work with it to make sure that the expectations on providers are clear. It already regulates the fee limit condition and is required to do so in a proportionate way.

On comments made by the noble Baroness, Lady Sherlock, and other noble Lords, I have specifically been asking questions of officials, because I did not have the pleasure of working on HERA or any of the other legislation, and I respect that noble Lords are often experts on the legislative process and bring their scrutiny to bear. But I believe we are legislating in a similar way to how we did with HERA, in that much of the primary legislation is a framework that gives broad powers to the Secretary of State, and then there are approximately 300 pages of statutory instruments on higher education finance, at the moment, which your Lordships' House will have the opportunity to scrutinise. I sometimes feel a little constrained, because there is a limit to what can be in primary legislation.

In relation to noble Lords' amendments, I assure the noble Lord, Lord Addington, that of course we are listening, and assure my noble friend Lord Johnson that I will make sure that the Treasury has listened to many of his comments, which I think is where he addressed them.

On the amendments tabled by my noble friend Lord Johnson and the noble Lord, Lord Watson, as I mentioned, we intend to consult on the detail and scope of the LLE, including on aspects such as eligibility—I was asked whether we would get it all at once or whether there would be a transition, and that will be in the consultation—and whether restrictions on previous study should be amended to facilitate retraining and stimulate high-quality provision. The final policy design will be informed by consultation and engagement, which is a crucial aspect of ensuring that the transformation of the student finance system is done in a way that takes into account the needs of providers, learners and stakeholders and, as my noble friend Lord Johnson said, enables that process of learning over a lifetime.

As such, it is very important that this legislation does not pre-empt or prescribe any further decisions based on its outcome. Introducing the proposed changes in primary legislation is likely to prejudice the consultation, which is important to ensure that we listen to providers and all affected by it. I also highlight the purpose of the existing equivalent or lower qualification and previous study rules. We are building the LLE on to a system designed to support students pursuing either further or higher education but, at the same time, to share the cost to the taxpayer fairly. We want to ensure that the lifetime loan entitlement provides value for money to students.

Furthermore, regarding the aspects in the amendment on the mode of study, institution of study and both modular and full course pathways, I confirm that the LLE is intended to support greater flexibility in all those areas. As I set out initially, it will be available for modules at levels 4 to 6, regardless of whether they are provided in colleges or universities. Although I respect that my noble friend Lord Johnson is probing and obviously making comments to the Treasury in his amendment, I cannot help but ask what the effect would be of having these amendments in the Bill. At the moment, if the ELQ is prohibited in the manner proposed by the amendment, we would not, in consultation or further regulations, be able to stop somebody doing the same level 4 course four times, for instance. We do not want to rule out the option of having statutory instruments that allow us to do that.

My noble friend asked questions about the creative industries, of which he is a great advocate. All these flexibilities are aimed at opening up opportunities in growing sectors of the economy. We have talked about LSIPs and the Skills and Productivity Board, but I think I am correct in noting that his examples were related to HE creative industry courses. Our hope and expectation are that this will open up many courses in these sectors within FE, as well as HE, institutions.

We are Chancellor in agreement with Amendments 99 and 99B, from the noble Lord, Lord Addington, and the right reverend Prelate the Bishop of Durham. We recognise that many or a disproportionate number of those students are within the FE sector. We want this to be flexible and expect that students who might particularly benefit are those with special educational needs and disabilities, or SLDD, as it was more accurately put by the right reverend Prelate.

I reassure noble Lords that our commitment to supporting FE students through the LLE is a key consideration, but we have yet to determine what form that support will take. I confirm to the right reverend Prelate that the SEND review includes further education; and to the noble Lord, Lord Watson—and the noble Lord, Lord Addington, who has raised this away from the Chamber—that there are certain grants for SEND students in HE at the moment. What happens to those in relation to the LLE is also part of the consultation. I hope that noble Lords, in particular the noble Lord, Lord Addington, will tell us what they believe to be the best of both worlds, both in your Lordships' House and through the consultation—and of course I would be delighted to meet with him and the right reverend Prelate on the issue of special educational needs and disabilities.

On Amendment 94, tabled by the noble Lord, Lord Watson, our vision is for a four-year entitlement, as recommended in Augar. Beyond the significant and obvious potential for additional costs, I also highlight to noble Lords that six years of entitlement would enable students to complete one degree, then turn straight around and do another undergraduate three-year degree. As such, a six-year entitlement might inadvertently further embed full-time study for level 6 degrees as the default option, when it is not necessarily best for some students. We are trying to open up the provision to be more flexible.

It is worth noting that the current HE system, as my noble friend Lord Johnson outlined, funds courses that are part-time, with a minimum intensity of 25%. That part-time study may take place over several calendar years. Under the LLE, we would not wish to remove this flexibility. As such, part-time study would also be able to exceed four calendar years.

[Baroness Berridge]

Amendments 96 and 99A on maintenance were tabled by the noble Lord, Lord Watson, and my noble friend Lord Flight respectively. We agree wholeheartedly with the importance of ensuring that students are supported to succeed in their studies. It is part of our ambition to help students have the opportunity to choose the best course or modules to suit their needs, rather than the most advantageous funding system. The Bill already provides the necessary powers for maintenance support to be introduced as part of the LLE, if the decision is taken that it should be, following the consultation I have outlined. The consultation will inform the way maintenance loans and other forms of living costs support—which the noble Lord, Lord Aberdare, was right to highlight—can be made available to students.

Amendment 97 is in the name of the noble Lord, Lord Watson, and was supported in her speech by the noble Baroness, Lady Bennett. I am grateful for the opportunity to discuss sharia-compliant student finance. Clause 14 already encompasses the possibility of sharia-compliant student finance under the LLE. This is encompassed by the term "alternative payments", taken from the Secretary of State's existing powers to make regulations introduced by Section 86 of HERA. As such, Amendment 97 would not give the Secretary of State any additional powers. Alongside our other priorities, we are carefully considering an alternative student finance product, compatible with Islamic finance principles, and have decided to align a decision on implementation with the outcome of the post-18 review of education and funding. We will provide an update on ASF when we conclude that review.

The Bill makes explicit provision for the funding of modules of courses, as well explained by the noble Baroness, Lady Sherlock, and will help create a more flexible system across both higher and further education. However, it does not set out changes to the rules of eligibility, maintenance support or other points of detail, which I argue are more appropriately a matter for regulations. As I have said, much more work is going to be done through the consultation. I will happily report back to noble Lords once the consultation is launched, and again once it has concluded and we have formulated our response.

In recognition of your Lordships' contributions during this debate, and particularly the comments of the noble Baroness, Lady Sherlock, I beg leave to withdraw the amendments in my name. We will review and table them again on Report, alongside the other amendments we are already planning to table. I hope noble Lords will feel comfortable not moving their amendments when they are called.

*4.30 pm*

**The Deputy Chairman of Committees (Baroness Henig) (Lab):** The noble Lord, Lord Watson of Invergowrie, has a question that he would like to put to the Minister.

**Lord Watson of Invergowrie (Lab):** I am perplexed because, in her response, the Minister said that she expected the announcement made yesterday by the Office for Students on funding for the arts and creative subjects would open up many more such courses. The report that I have received is that high-cost subsidy funding is to be cut by half, with effect from September this year. How on earth could that open up more courses? Universities are saying that they may even have to close down courses. Defunding cannot produce more courses, or have I misunderstood the noble Baroness?

**Baroness Berridge (Con):** To clarify, the point that I was raising was in relation to FE courses. My noble friend Lord Johnson referred to existing courses in HE in terms of the creative industries. What we are hoping is, through this measure, to see a parity of esteem with FE. Obviously, FE delivers an enormous number of courses at the moment, but we would see an expansion of that provision in that sector as well. I just wanted to highlight that FE is also a main player in that sector. I was not referencing yesterday's announcement. I am sorry for any confusion.

*Amendment 91A withdrawn.*

*Amendments 91B and 91C not moved.*

*Clause 15 agreed.*

*Amendments 92 to 99B not moved.*

***Clause 26: Extent***

*Amendments 99C and 99D not moved.*

*Clause 26 agreed.*

**The Deputy Chairman of Committees (Baroness Henig):** We now come to the group consisting of Amendment 100. Anyone wishing to press this amendment to a Division must make that clear in debate.

***Clause 27: Commencement***

*Amendment 100*

*Moved by* ***Lord Watson of Invergowrie***

**100:** Clause 27, page 31, line 24, leave out "22" and insert "23"

Member's explanatory statement

This amendment would prevent Clause 22 from automatically coming into force two months after the Act is passed.

**Lord Watson of Invergowrie (Lab):** My Lords, this is the final group today and I see that I am the only speaker, other than the Minister.

Clause 22 creates a power for the Department for Education to intervene in cases where a college is failing to meet local needs as set out in a local skills improvement plan. The Minister may not be aware that this is the eighth time that the DfE has amended its intervention powers in the past 25 years.

The effect of the amendment would be to prevent the Secretary of State's intervention powers from automatically coming into force two months after the Act is passed. That would allow time for local skills improvement plans to be developed and for providers to have the opportunity to respond appropriately. There is no obvious reason—at least, not to me—why those powers would be needed so soon, given that the trailblazers have only just been announced and are not due to report until next year. It will then take time to develop the local skills improvement plans and for

colleges to action them. The DfE surely needs to allow time for the new arrangements to take effect and should focus on supporting colleges to deliver on long-term strategic priorities and engender trust across the system. Moreover, the system should act to develop the authority, autonomy and accountability of colleges to deliver on long-term strategic priorities.

The Minister will also be aware that we are concerned by the nature of these powers themselves. Intervention should be reserved to cases where it is really necessary, and the legislation should clarify a limited set of circumstances where the DfE would use intervention powers to require compliance with a local skills improvement plan. In January, the DfE proposed to make its intervention rules more targeted, following the finding in a 2020 National Audit Office report that almost half of colleges were in early or full intervention. I hope that the Minister can update the Committee on that progress, too.

I hope that my description of the amendment is clear. I beg to move.

**Baroness Penn (Con) [V]:** The noble Lord has set out his amendment clearly to the Committee. As he said, the measures in Clause 22 strengthen existing intervention powers under the Further and Higher Education Act 1992. They will enable the Secretary of State to intervene where the education or training provided has failed to meet local needs. They will also enable the Secretary of State to direct the governing body to make structural changes. This should help to resolve the most serious cases of college failure more quickly, where other intervention steps have not secured improvements.

As the noble Lord said, the effect of his amendment would be that Clause 22 would not automatically come into force two months after the Act is given Royal Assent. The measures in Clause 22 fit within the package of reforms concerning local needs in Clauses 1 to 5. They also enhance the existing statutory framework that underpins intervention activity undertaken through administrative arrangements, which we are strengthening. For those reasons, the Government's view is that Clause 22 should be commenced at the same time as those other measures, two months after Royal Assent.

I would stress to the noble Lord that there is not an intention on the part of the Government to make early use of the new intervention powers. Our main focus will remain on supporting colleges and designated institutions in their response to the reforms supported by the measures in the Bill. I re-emphasise that use of the powers should only ever be a last resort, where it has not been possible to secure improvement by other means.

I completely understand the noble Lord's point about the time that it will take to deliver local skills improvement plans, based on the outcomes of the trailblazers and other elements of colleges and FE providers meeting local needs. However, we see these reforms as part of an existing single package, and Clause 22 also contains powers to intervene to make structural changes to FE colleges. Although I re-emphasise that it is not our intention to make early use of these powers, we see these as a single set of reforms, which we would like to commence together.

As this has been such a short and sweet debate, I would like to take a moment to address a bugbear that came up in a previous group, when the noble Lord, Lord Addington, reacted to my reference to "higher needs". I have, I hope, completely heard the noble Lord's points throughout this Committee stage to the effect that, for many students, this is not about higher needs but about something much more on the margins, so that they have not been identified previously but do need to be identified when they reach further education. A lower-level intervention could make all the difference to those students' education and their success, so I completely take the noble Lord's point.

As this is the last time I shall be speaking, I thank noble Lords for their good wishes—and I hope that the noble Lord, Lord Watson, will feel able to withdraw his amendment.

**Lord Watson of Invergowrie (Lab):** There has not been much of a "sweet debate", as the Minister described it, to reply to, but I would like to address one or two details in what she said. She said that there is no intention on the part of the Government to make early use of the powers. I accept that: I am sure that is what she believes, and that that is the case at the moment. But such things can change. She also said that the powers would be used only as a last resort. Again, every other attempt should have been made to bring about improvement, and this is a backstop—but that is not likely to happen within two months of the Bill becoming law.

The Minister did not explain why the powers would be needed before the trailblazers had reported. Trailblazers are important; she talked about them herself, and we have all put a bit of faith in them to inform us where we should go in the early years of the effects of the Bill. My point has not been answered, but I do not think there is much further I can take it.

I will conclude by saying that it is usual at the end of a Bill for noble Lords to thank those who have contributed at various stages and at various levels. Of course, at this stage we are only at the end of Committee, which is just finishing now. But for the noble Baroness, Lady Penn, this is the last of her involvement with the Bill. So I certainly want to join in the good wishes from other noble Lords, including the right reverend Prelate the Bishop of Durham, who revealed that—for those noble Lords who do not know—the noble Baroness, Lady Penn, is with child.

We have not only enjoyed her contributions, but I think it is appropriate to say that, to some extent—I am not sure whether she has considered this—she is the personification of the trailblazers whom she herself has talked about today and on other days, because she is the first ever serving Lords Minister to go on maternity leave. Like all other noble Lords, we on these Benches wish her very well and look forward to seeing her back in the new year.

In the interim period, I should also say that, up until now on the Government Benches, it has been very much a case of, in the words of the late, great Aretha Franklin, "Sisters doing it for themselves". So we await the new ministerial team, when we reassemble in a few weeks' time on Report. But for the moment, I beg leave to withdraw the amendment.

[Lord Watson of Invergowrie]
*Amendment 100 withdrawn.*

*Amendment 101 not moved.*

*Clause 27 agreed.*

*Clause 28 agreed.*

*House resumed.*

*Bill reported without amendment.*

*4.42 pm*

*Sitting suspended.*

## Covid-19
*Statement*

*The following Statement was made in the House of Commons on Monday 19 July.*

"With permission, I would like to make a Statement on the pandemic.

Today marks an important milestone in our fight against this virus as we take step 4 on our road map. It is a long-awaited moment for the businesses that can now open their doors at long last, the happy couples who can have weddings without curbs on numbers and, of course, the people who can see more of their loved ones in care homes. Although we have made huge advances in our race between the vaccine and the virus, we are not at the finish line yet. Instead, we are entering what I believe to be the next stage—a stage where we continue with caution while doing what it takes to manage the risk of this virus, which is still with us and still possesses a threat. Cases and hospitalisations have risen over the past week, as we predicted, and we know that these numbers will get worse before they get better. Although there is never a perfect time to take this step, making the move today gives us the best chance of success. We are cautiously easing restrictions when we have the natural firebreak of the school holidays and when the warmer weather gives us an advantage, so we will move forward with caution, drawing on the defences we have built, as we set out in our five-point plan two weeks ago.

One of these five defences is the protective wall provided by our vaccination programme, and I would like to start by updating the House on this life-saving work. Our vaccination programme has given us extra legs in our race against this virus. The protection it has built up in people across the United Kingdom means that the ratio between cases and hospitalisation is the lowest it has been during this pandemic. This reinforces the need to protect as many people as we can as quickly as we can, and we made a four-week delay to step 4 so that we could do exactly that, with 8 million more vaccinations in that period. We set the target of giving second doses to two thirds of United Kingdom adults by today, and we hit that target last week with five days to spare. We also pledged to offer a first dose of a vaccine to all adults, and we have met that target too. Now, almost 88% of adults have taken up that offer. Although uptake among 18 to 30-year-olds is much lower and needs to increase, we are in a good place.

Our work is not over yet. As we strive to reach the remaining adults who have not yet had a first or a second dose, we are already making our plans for the next stage, because we do not know how long immunity lasts. Because coronavirus mutates, just like flu, we must stay one step ahead of it, so we are drawing up plans for a potential booster programme, subject to the final advice from the Joint Committee on Vaccination and Immunisation, so that we can protect the most vulnerable ahead of winter.

We are also looking at extending our vaccination programme so we can protect even more people. We asked the JCVI to consider whether children and young adults should be given the offer of a vaccine, and that advice has been published today. Before I continue, allow me to apologise to you, Mr Speaker, for mistakenly referencing that on air this morning before setting out the details in full before the House. The JCVI considered not just the health impacts but the non-health impacts, as we asked it to do, such as how education is disrupted by outbreaks in schools. I reassure the House that the number of children and young people who have had severe outcomes from Covid is extremely low: the hospitalisation rate during the second wave was between 100 and 400 for every million. When we look at the small numbers who were hospitalised, most had severe underlying health conditions.

Today's advice recommends that we continue to vaccinate 16 and 17-year-olds who are in an at-risk group, as we do now. It also recommends expanding the offer of the vaccine to some younger children with underlying health conditions that put them at greater risk of Covid-19. That includes children aged 12 to 15 with severe neuro disabilities, Down's syndrome, immunosuppression and profound or multiple learning disabilities. The JCVI advice also recommends offering a vaccine to children and young people aged 12 to 17 who live with someone who is immunosuppressed. That means that we can indirectly protect the immunosuppressed, who are at higher risk of serious disease from Covid-19 and may not generate a full immune response to vaccination. Finally, the JCVI advises that we should offer the vaccine to all 17 year-olds who are within three months of their 18th birthday so that they are protected as soon as they turn 18.

Together with Health Ministers in all parts of the United Kingdom, the Secretary of State has accepted that advice and has asked the NHS to put it into action as soon as possible. As we do that, we will be using the Pfizer-BioNTech vaccine, which is the only vaccine in the UK that has been clinically authorised for people between the ages of 12 and 17. I know that people will have questions about what it means for them and their children. I assure them that nobody needs to come forward at this stage. The NHS will get in touch with them at the right time and will ensure that the jabs are delivered in a setting that meets their complex needs.

We also asked the JCVI to consider rolling out vaccines to all children and young people over the age of 12. Although we are not taking that step today, the JCVI is keeping this matter under review and will be looking at more data as it becomes available, especially on children with a second dose of the Pfizer-BioNTech vaccine. The steps that we are taking today mean that

we will be offering even more vulnerable people the protection that a vaccine brings, and we will all be safer as a result.

We know that vaccines are our most important defence against this virus. That is especially the case in adult social care settings, which are home to some of the most vulnerable people in our communities, who are vulnerable to a devastating impact from Covid-19. Last week, the House passed regulations to make vaccination a condition of deployment in care homes, and the Lords will consider those regulations tomorrow. These regulations are designed to help maximise vaccine uptake and protect some of our most vulnerable citizens, yet I recognise the need for more detail on the Government's analysis of their expected impact, so today we have published an impact Statement, and we will be publishing a full impact assessment as soon as possible.

As we learn to live with Covid, we must be pragmatic about how we manage the risks we face. Self-isolation of positive cases and their close contacts remains one of the most effective tools we have for reducing transmission. However, we recognise that there are some very specific circumstances where there would be a serious risk of harm to public welfare if people in critical roles, such as air traffic controllers or train signallers, are unable to go to their workplace. People in such roles who have received two vaccinations, and who are two weeks beyond the second vaccine, will not need to self-isolate to perform those critical tasks. However, they will have to continue to self-isolate at all other times. The people who are eligible for this will receive personalised letters setting out the steps they must follow. This is a sensible and pragmatic step, and one that will be used sparingly and responsibly.

We are being similarly pragmatic at our borders. As the Under-Secretary of State for Transport, my honourable Friend the Member for Witney, Robert Courts, has confirmed, UK residents arriving from amber-list countries who have been fully vaccinated will no longer have to quarantine, although they will still need to comply with necessary testing requirements. This will not apply to France, due to the persistent presence of cases of the beta variant, which was first identified in South Africa.

We are doing everything in our power to restore international travel, and to restore it safely, but new variants pose the greatest threat to our path out of this pandemic. We will not hesitate to act in a similar way with any other country. We will continue to keep a close eye on the data and to be firm and decisive in how we protect the progress we have made, but the enduring message is that getting vaccinated is the best way to ensure that people can travel as freely as possible.

Vaccination also holds the key to doing the things we love here at home. We are supporting the safe reopening of large, crowded settings such as nightclubs, as we saw last night, and music venues through the use of the NHS Covid pass as a condition of entry to reduce the risks of transmission. I encourage businesses to draw on this support and to use the NHS Covid pass in the weeks ahead. We will be keeping a close watch on how it is used by venues, and we reserve the right to mandate it, if necessary.

By the end of September, everyone aged 18 and over will have had the chance to receive full vaccination and the additional two weeks for that protection to take hold. At that point, we plan to make full vaccination a condition of entry to nightclubs and other venues where large crowds gather. Proof of a negative test will no longer be sufficient. Any decision will, of course, be subject to parliamentary scrutiny, and we will ensure there are appropriate exemptions for those who have genuine medical reasons for not getting vaccinated. I am clear that we will always look at the evidence available and do all we can to ensure that people can continue to do the things they love.

Our vaccination programme has put us on the road to recovery. We should all be proud of how this national effort is helping us to take steps towards a more normal life, but we must keep reinforcing the wall of protection—getting the jab, getting the second jab and getting the booster shot, for those who are asked to come forward. With such a deadly virus and the continued threat of new variants, our wall of protection must be more than just vaccines alone. We must continue to do all the other sensible things that we know can keep the virus at bay: getting tested, considering the advice and continuing to act with caution. Taken together, this will help us all enjoy these new experiences and safely slow the spread of this deadly virus. I commend this Statement to the House."

*5.01 pm*

**Baroness Thornton (Lab) [V]:** I thank the Minister for this discussion on the Statement made on Monday in the Commons. In fact, even since Monday the world has moved on. The infection rate continues to rise. There are mixed messages from government Ministers about responses to the ping. For example, does the Minister share my concern that the Investment Minister, the noble Lord, Lord Grimstone, wrote to the car manufacturer Nissan, pointing out that isolating after being pinged by the app was only "advisory" and that there was no "legal duty" to isolate? I recall the noble Lord explaining this to the House some weeks ago at my prompting. Indeed, many noble Lords came to me afterwards and said that they had not realised that there was no legal obligation to isolate after the ping. There is huge confusion now about vaccine passports, and 1 million children are out of school as their term ends. Here in London, we still have some challenges about getting people vaccinated.

So let us start with the issue of the vaccination of teenagers. The MHRA has approved the Pfizer jab for all 12 to 18 year-olds. Indeed, such countries as the United States, Canada, Israel, France, Austria, Spain, Hong Kong and others have started or soon will be vaccinating their 12 to 18 year-olds. Can the Minister tell us when we might start doing the same?

The Prime Minister obviously took fright on Monday, because on Tuesday he made the announcements about vaccine passports in September. I think that even he could see that nightclubs were offering superspreader events, with music and strobe lights attached to them—talk about closing the door after the horse has bolted.

The risk of death to children from Covid is mercifully very low, but they can become very sick and develop long-term conditions and long Covid. Indeed, according

[Baroness Thornton]
to the Office for National Statistics, 14.5% of children aged 12 to 16 have symptoms lasting longer than five weeks. Will the Minister spell out in detail the clinical basis for why the JCVI has made its decision? Will he publish all the analysis and documents in the same way that SAGE has published its analysis, not just its advice? Will he guarantee that this decision was made on medical grounds, not on the grounds of vaccine supply?

The Statement talks about infection among children being disruptive. We know that infection among children is highly disruptive for learning. We have seen hundreds of thousands of children out of school. We are not vaccinating all adolescents. Can the Minister tell the House what the Government's plan for September is, when children return to school? For example, are the Government considering using this summer to install air filtration units in every classroom in every school?

Testing is already stretched, with turnaround times lengthening, so can the Minister guarantee that through the summer, especially once contacts can be released from isolation on the back of a negative PCR test in August, and into September when schools return, there will be sufficient PCR testing capacity to meet demand? As we move into autumn and winter, we can anticipate more flu and respiratory viruses, so do we need multi-pathogen testing going forward? Is this being developed?

It has been announced that critical workers such as food, health, utility and border staff with two Covid jabs will be able to avoid self-isolation. Many ambulance and acute hospital trusts have found themselves under extreme pressure because of the combination of very high demand and very high levels of staff absence due to self-isolation.

Three weeks ago, the Health Secretary told us that unlocking would make us "healthier" and promised us it would be "irreversible", but today we have some of the highest infection rates in the world. Can the Minister tell us what the experts say about the risk of reimposing new restrictions in future? Our already exhausted NHS staff face a summer crisis. Covid admissions are already running at about 550 a day, and hospitals are now all cancelling cancer surgery. For example, liver transplant operations were cancelled in Birmingham last week.

It is clear that more infections mean more isolation. The NHS staff released from isolation if double-jabbed will still want to protect themselves and their patients, so will the Minister ensure that the standard of masks worn in NHS settings is upgraded to the FFP3 requirement that NHS staff have called for? What is his plan for keeping the economy and public services functioning through the summer, as more and more people are asked to isolate? Can the Minister confirm reports that SAGE scientists have advised that some measures, such as mandatory masks and working from home, should be reinstated at the beginning of August?

Recent days have seen some of the lowest numbers getting first-time jabs on record, with the daily average now lower than at any point since the start of the programme—although I suspect the Prime Minister is hoping that his threat that you will need a vaccine passport to get into a nightclub might help in that direction. Unused vaccine doses are being sent back by GPs as demand for jabs slows to a fraction of recent levels, yet we still have millions of unvaccinated adults. Does the Minister share my concern that falling demand, combined with emerging evidence of the effectiveness of vaccines beginning to wane over time, may mean that we in this country will be less protected in September?

Finally, I understand that the "hands, face, space" slogan is about to be dropped in favour of a plea to "Keep life moving", despite the fact that hundreds of thousands of people are still isolating. Can the Minister explain what this actually means?

**Baroness Brinton (LD) [V]:** I thank the noble Lord, Lord Bethell, and the noble Baroness, Lady Penn, their officials and all staff in the Lords, the Whips' Office and the health team, as well as Members, for their extraordinary work this year on Covid-related business—mostly emergency Statements and statutory instruments. From these Benches, we particularly wish the noble Baroness, Lady Penn, a safe delivery and a happy maternity leave.

The Statement talks about enjoying "new experiences" following the lifting of lockdown and safely slowing the spread of this deadly virus, but 48 hours is a long time in politics, as evidenced by the difficulties of taking this Statement two days after it was delivered. So much has happened, much of it demonstrating that this Government are still struggling to get a grip on keeping people safe from this deadly virus.

The phrase in the Statement:

"We are cautiously easing restrictions"

is the most extraordinary thing to say, given all the rhetoric about freedom day—and it is wrong. All restrictions have been lifted—no mandatory face masks—and young people have understandably taken their lead from Ministers. There are videos of young people deservedly enjoying themselves in nightclubs in the knowledge that the Prime Minister has declared it safe to do so, yet hidden in this Statement is the bizarre announcement that in two months' time only those who are double-jabbed will be able to go to such crowded venues, thus delivering Covid ID cards by the back door. Once again our young people, who have had to bear much of the brunt of lockdown life, are the ones targeted by this Government.

That little phrase caused chaos on Tuesday morning. Paul Scully was not clear about which other large venues might be included—for example, pubs with performance dance venues, large or small. He thought so. Two hours later, No. 10 contradicted that: no pubs. Can the Minister tell me what is the difference between a pub with a large dance venue of, say, 500, and a nightclub that can have up to 400 people and why one will require everyone to be double-jabbed but the other will not? I am really struggling to understand the difference. Perhaps the Minister can point your Lordships' House at a safety document that sets out what the risks are for these different venues and why it is appropriate to ignore lateral flow tests and only go on double vaccination when we know that people can still get Covid after they have been double-jabbed.

The Statement is right to praise the progress of the vaccination scheme, although there is some considerable way to go, including awaiting the data on whether the

booster jab can be given at the same time as the flu jab in the autumn. What plans are in place to provide support for GPs if the jabs cannot be given at the same time? We all know that the annual flu vaccine date requires a very large amount of administration by medical and admin staff alike.

The Statement says that JCVI has decided not to vaccinate all 12 to 17 year-olds yet but is keeping it under review. I too refer to today's ONS data that was referred to by the noble Baroness, Lady Thornton, demonstrating underlying illnesses and a greater prevalence of long Covid among the young than among older people. I thank the Minister for the helpful briefing on Monday, but I remain concerned that with up to 1 million children out of school now it has been clear that the alternative to vaccinating secondary-age pupils appears to be allowing Covid to rip through our schools. We all want our children back in school in the autumn, so what are the Government going to do about that? It is good that the Government are finally allowing the children most vulnerable to Covid to receive the vaccine because they deserve protection and that those children with an immunocompromised or immunosuppressed adult in their home will also finally be able to be vaccinated. That is good.

This Statement also refers to the regulations debated in your Lordships' House last night, and I hope the Minister has taken away the many concerns expressed by all sides of the House. The Statement refers to tradespeople, such as plumbers and hairdressers, who will also have to be doubled-jabbed to gain entry into a care home. I have two questions about these non-staff members. I am happy to receive a reply by correspondence if the Minister does not have immediate answers. First, if the registered person is not on the premises when an outside worker comes in, can another member of staff admit them and make the decision about their vaccination status? What does that do to the registered person's responsibilities? If a plumber comes out of office hours to, say, mend a burst pipe and the registered person is not there, must they be turned away? Secondly, care homes are already reporting that some contractors are heavily ramping up the rates for care homes for their staff who have been double-jabbed. Did the hurried and inadequate impact statement published on Monday include the cost to homes of this outrageous practice, and will the Government issue guidance that it should be stopped immediately? Can the Minister say when the detail of how this is all going to work in practice will be published?

The Statement refers to the fact that we must be pragmatic about how we manage the risks we face, yet the past two days have been full of contradictions from the Prime Minister and other Ministers about the need to self-isolate when people are pinged. It has taken journalists to reveal that the only legal responsibility to self-isolate is when called by track and trace, but after the embarrassing U-turns on Sunday morning of the Prime Minister and the Chancellor about not self-isolating, the PM is confidently saying "You must self-isolate once pinged". Apart from the irony of that statement, given his behaviour, once again we have Ministers not seeming to understand the difference between advice to people—moral guidance, perhaps—versus the reality of a chaotic series of SIs that confuse not just the police, the public and Parliament but the very Ministers responsible for them.

With a further 44,000 new cases today, making us world-beating in one league table no one wants to head, a further 73 deaths and millions of people being pinged and everything in chaos, I fear we are in for a long and difficult summer.

**The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con) [V]:** My Lords, I am enormously grateful for the thoughtful and challenging questions from the noble Baronesses, Lady Thornton and Lady Brinton. I will start by using a couple of their specific questions to illustrate, as clearly as I can, the strategy behind our approach and the challenges and limitations in what government can and cannot do.

When it comes to the app, this situation illustrates the difficulties of leaving an epidemic. I remember well the CMO talking about what happens to a country when it enters an epidemic; at the beginning of last year, he gave us an introduction and said how difficult it was when you are trying to make that transition. The challenge is of having a partially vaccinated population that has huge pressures to get on with life, while at the same this infection leaves many largely untouched by the virus—in fact, the largest proportion of people. That is exactly the kind of dilemma we are wrestling with.

With the app and the Government's position on whether you have to isolate when you get pinged, isolation remains the most important action that people can take to stop the spread of the virus. It breaks the chain of transmission. There is no single better measure for breaking the spread of the virus than isolation, so it is argued that it is crucial for people to isolate when told to do so, either by test and trace or by the app. I can confirm that the Government's advice is to isolate if you are pinged by the app although, as I have said previously, this is not captured in law.

Both noble Baronesses asked about policy on schools and why we emphasise Covid vaccination over LFDs for entry into venues. Those questions give me an opportunity, I hope, to be really clear about the strategy. It is to vaccinate a sufficient proportion of the country that the virus cannot spread so easily, and that R is brought below 1. When we have that moment, we can be more confident that the impact of the virus on hospitalisations, severe illness and worse will be brought under control. At the rates at which we are vaccinating, we are hopeful that we can reach that stage relatively soon.

There is no other plan; there is no way of beating the virus other than ensuring that the vaccination deployment is as effective as possible. That is why we are looking at ways to bring young people and those who are reluctant onside, by engaging them in dialogue, answering their questions and emphasising through our measures the critical importance of vaccination, particularly when sharing space with others in your community.

On vaccinating children, healthy children are at a very low risk from Covid-19, with their risk of death being around one in 2.5 million. No previously healthy

[LORD BETHELL]
child in the UK under the age of 15 has died from the pandemic in the UK, and admissions to hospitals or intensive care are very rare. That is why we are taking a cautious approach in this area. The JCVI will keep this advice under review as more safety and effectiveness information becomes available on the use of vaccines in children; for example, regarding reports of myocarditis as an adverse event following vaccination with Pfizer. However, we will be extremely energetic in looking at all avenues in this area.

We are also looking at booster shots. Following the publication of interim advice by the JCVI, the Government are preparing for a potential booster vaccination programme from September. The noble Baroness, Lady Brinton, asked what the state of the country will be in the autumn. That will in large part depend on the flu vaccine and on the Covid vaccine, which can be taken at the same time. We are working closely with GPs to ensure that that rollout is as effective as possible, because the resilience of the NHS depends enormously on the success of our dual vaccine rollout.

Lastly, the noble Baroness, Lady Thornton, spoke about the importance of keeping life moving. I do not know that phrase but I know that there is a huge backlog in the NHS. There are other profound impacts of our social restrictions and our lockdown measures on the health of the nation, the economy and our society. We cannot continue in this way for ever. There is value in trying to open up our economy and giving individuals the information to be able to make decisions for themselves. That is the inflection point we are at now. I have enormous sympathy for those looking for information on the best approach but I hope the direction of travel is crystal clear.

**Lord McNicol of West Kilbride (Lab):** My Lords, we now come to the 30 minutes allocated for Back-Bench questions.

*5.21 pm*

**Baroness Wheatcroft (CB):** My Lords, I too send my best wishes to the noble Baroness, Lady Penn. I echo the concerns of the noble Baronesses, Lady Thornton and Lady Brinton, over the contradictions over nightclubs and pubs and when we are going to insist on double vaccinations. Why not now? Why wait until September?

It is the contradictions in government policy that continue to cause concern. It is good to know that we are going to insist on vaccination for those working in care homes but why not across the NHS? Surely there is good sense in doing that.

We have lessons to learn from the treatment of Covid. We need to learn them as quickly as possible before the next emergency strikes. Sir Jeremy Farrar, the chief executive of Wellcome and a very eminent member of SAGE, has been coruscating about the failure to launch an inquiry now and to wait until March. Can the Minister explain why, when different people would be involved in conducting an inquiry, it cannot get under way immediately and report back as quickly as possible?

**Lord Bethell (Con) [V]:** My Lords, I have complete sympathy with the noble Baroness about the fast-changing nature of our response to this pandemic. However, as I have said from these Benches before, it is the virus that chops and changes and delivers us surprises. Who would have expected two or three months ago that the delta variant would have hit us as hard as it did?

We are trying to be agile and to adapt to changing circumstances. The guidelines on nightclubs and pubs will be published and when they are published, they will, I hope, be clear. The arrangements for September are being arranged right now. On mandatory vaccination in the NHS—which I think is what the noble Baroness inquired about—we have signalled our intention to consult on mandatory vaccination across the healthcare service. I hope that I will be able to share further details on that with the House at a future date.

In terms of an inquiry, of course I hear Sir Jeremy Farrar. However, I and many others are already working all the hours that God gives us on responding to this pandemic. There is no extra bandwidth for dealing with an inquiry. We are doing our best and we will look back and learn the lessons when the moment is right.

**Lord Herbert of South Downs (Con) [V]:** My Lords, given the growing number of people now being pinged and required to isolate, would it not make sense now to extend the sensible and welcome provision for critical workers so that those who have been doubled jabbed and then taken negative PCR tests need not isolate? I appreciate my noble friend's point about breaking the chain of transmission but there is a danger that people will quite reasonably not see isolation as a proportionate requirement when they have been double vaccinated and tested. As well as the growing impact on businesses and public sector organisations of losing staff for up to 10 days, is there not also a need to maintain public confidence in the NHS Covid app? That is clearly now a serious concern.

**Lord Bethell (Con) [V]:** I hear loud and clear the concerns that members of industry and critical services have about isolation of the workforce and the impact that is having on supply chains and the provision of services. However, I cannot hide from my noble friend that the infection rates are higher. It is important that people who have been close to someone who is infected isolate themselves. If they do not, infection rates will go higher still, and if we have sufficiently high numbers of infections, although the vaccines are incredibly effective, that will roll into hospitalisations, severe disease and worse. This is a moment for holding steady and keeping the line. I am hopeful that this moment of acute discomfort for industry and services will pass soon.

**Baroness Donaghy (Lab) [V]:** My Lords, as the noble Baroness, Lady Wheatcroft, said, every contradiction by a Minister not only confuses but encourages opt-out. If even those of us who follow these issues closely are totally confused by what is happening and what the Government's intentions are, it is hardly surprising that people are going to sit down and make their own decisions, rightly or wrongly.

My noble friend Lady Thornton asked what happens if the rates of vaccination fall. Are there any figures to support that and are there any plans to increase the urgency of vaccines? What is the situation for those

involved in social care who are not in care homes but who go visiting from home to home? Will they be made to have double vaccines? Who will be the monitor? Will it be local authorities?

Finally, on the booster jab and the combination with the flu jab, the Minister was fairly definite about this and said that they can be done at the same time. Will they be done at the same time? Also, is a programme of vaccinations for flu and Covid combined already set out, or is that part of a future plan?

**Lord Bethell (Con) [V]:** My Lords, the take-up of vaccine will at some point begin to tail off among some demographics. We are redoubling our efforts with our marketing and the availability of the vaccine, particularly among younger groups. The introduction of domestic certification for major events and pubs and clubs, if that is brought about, will create a strong incentive. These are the kinds of measures that we are putting in place to see through the strategy which, as I said at the beginning, is to get the vaccination levels to such a rate that R is below 1.

In terms of social care, as I mentioned earlier, we are looking to consult on domiciliary care and other forms of the healthcare system. On booster jabs, the noble Baroness makes me want to check my notes. In my briefing it says emphatically that flu and Covid jabs can be taken together, but I will take the opportunity of her additional question to offer to write confirming that point in case I have got it wrong.

**Baroness Barker (LD):** My Lords, throughout the pandemic, epidemiologists have been clearly telling us that when restrictions are eased, there will inevitably be further outbreaks, some of them localised. For the past 15 months, test, trace and isolate has been a shambles. Can the Minister explain what will be done over the summer to improve test, trace and isolate and improve the information going, in real time, to local authorities and to other parts of the NHS, in order that we can move swiftly, as necessary, to very localised lockdowns when that proves necessary for public health?

**Lord Bethell (Con) [V]:** I completely agree that the post-lockdown wave is a well-known phenomenon, and we are living through the pain of it right now. I do not agree that test, trace and isolate is a shambles, and if the noble Baroness really still feels that way, I would be glad to arrange a briefing for her. As for what more we can do, we are investing heavily in the system and we will continue to improve things, as we have done already.

**Lord Hunt of Kings Heath (Lab) [V]:** My Lords, on 28 June, the Secretary of State said that the lifting of restrictions in July would be "irreversible", but the Minister will know that the SAGE meeting of 7 July said that all modelled scenarios show a period of extremely high prevalence of infection, lasting at least until the end of August. It identified four risks associated with high infection, including an increase in hospitalisations and deaths. If there is a risk of the NHS being overwhelmed, surely the Government will have to consider some more lockdown restrictions.

**Lord Bethell (Con) [V]:** My Lords, the noble Lord, who is so wise in these matters, has answered his own question. If necessary, we will do what it takes, but the aspiration is clear: we are seeking to get the vaccination level to such a high rate that R is below 1 and no further lockdowns are necessary. That is an honourable, reasonable and epidemiologically sound objective.

**Lord Scriven (LD):** My Lords, the Secretary of State for Health and Social Care is living proof that, despite having two jabs, 20% of individuals can catch and be spreaders of coronavirus. If this is the case, why are the Government, as a matter of policy, going to use internal Covid passports as a public health measure to deal with the virus in large venues? At best, they will give individuals and venues a false sense of security. At worst, for those who are double jabbed, infected but asymptomatic, they will be useless in the fight against the spread of this disease.

**Lord Bethell (Con) [V]:** My Lords, this is the clinical advice given to us by clinicians. I cannot answer the whole question in the round in this brief session, but a number of considerations include not only that vaccines offer a significantly reduced rate of infection but that the level of infection is much lower, the viral load is much lower, and therefore the infectiousness is much lower. The aggregate effect is that a group of people who have been vaccinated, with a few who have the disease, is less infectious than a group of people who have been tested, however good the test.

**Baroness Altmann (Con):** My Lords, I echo the words of appreciation for my noble friends Lady Penn and Lord Bethell and congratulate them on all the work they have been doing. I also want wholeheartedly to support the aims of the policy that we have now, with so-called freedom. Indeed, I encourage the Government to consider going even further. This is about managing risk, not just of Covid but of all other illnesses, so I have to ask, having listened to this debate, when will be the right time? If all the most vulnerable and two-thirds of all adults are vaccinated, and if the mass numbers of infections do not lead to mass hospitalisations and deaths, and if zero Covid is unachievable, when will we learn to live with the virus and stop government interference with individual citizens' lives in the way that has been, in my view, so frightening over the last period?

**Lord Bethell (Con) [V]:** I am grateful for my noble friend's kind remarks. Her question is extremely complex, and difficult to answer briefly but I will rest on one particular answer. As I said before, this is a question of getting the disease transmission to a point where R is below one. If that can be done on a national basis, we have contained the disease. We can then turn to local outbreak management. That is when test and trace resources will come into their own and local deployment will make a big difference. That is when we can consider the virus to have been beaten. We are not quite there yet, but vaccination rates are incredibly impressive and I am hopeful that we are near to that point.

**Baroness Bennett of Manor Castle (GP) [V]:** My Lords, the Statement given in the other place said that "our wall of protection must be more than just vaccines alone".—[*Official Report*, Commons, 19/7/21; col. 688.]

[Baroness Bennett of Manor Castle]
Yet it made no mention of ventilation despite its obvious importance, given that I am hearing, as I am sure many others are, about double-vaccinated people becoming infected every day, and about the widespread transmission of Covid-19 in schools among children of all ages. The noble Baroness, Lady Thornton, asked, without answer, whether air filtration was being installed over the holidays in every school. I add—this could be done rather more cheaply—can schools be given help over the summer to do a ventilation plan for every classroom? Strategic placement of fans, and the choice and manner of window-opening, could be crucial. I see from media reports that the Government plan to replace the "hands, face, space" slogan with the slogan "keep life moving". If it is not too late, may I suggest that "keep air moving" would be far more useful?

**Lord Bethell (Con) [V]:** I am grateful to the noble Baroness for giving me an opportunity to address this issue, and I hope the noble Baroness, Lady Thornton, will forgive me for overlooking it in my opening answers. The noble Baroness, Lady Bennett, is entirely right: ventilation is critical—but it is also challenging. On air filters, we have to understand better the science of whether filtration really makes an impact on the spread of the virus. I would not want investment in a large amount of ventilation infrastructure that did not actually have an impact. I agree that we have a lot to learn from the Victorians, who understood these matters very well. We must understand how modern buildings, which are often airtight to achieve environmental qualifications, may need to be adapted to get fresh air within them. We may also need to change our lifestyles, so that more socialising, eating and drinking is done outside—something that I, as an outdoorsy person, would very much welcome.

**Lord Taylor of Goss Moor (LD) [V]:** I am sure that the Minister is alive to the fact that the beta variant is less susceptible to the AstraZeneca vaccine in particular, with effectiveness as low as 10%. Perhaps, therefore, he found it understandable that the Government put further restrictions on travel from France. However, could he explain why we are not doing it with Greece, where the levels of that variant are higher than in France, or Spain, where they are much higher than in France?

**Lord Bethell (Con) [V]:** The noble Lord makes an important and serious point—but could I just address one matter first? The AstraZeneca vaccine has very low efficacy on a single dose against beta—around 14% or 15%—but on two doses its effectiveness is significantly higher. None the less, his broad point is right. As we vaccinate the nation, the variants that escape the vaccine will gain a natural advantage, and those will be the ones that begin to outperform the highly infectious variants such as delta that work so well among the unvaccinated. When it comes to travel, the analysis is complex. We have taken a precautionary approach with France, which I think is right, because there is a large amount of beta in France, but we are looking at all countries all the time, and we will take whatever steps are necessary to protect these shores.

**Baroness Fox of Buckley (Non-Afl):** Following on from the noble Lord, Lord Scriven, I want to ask specifically about the surprise in the Statement: the need for vaccination passports in nightclubs and other venues with large crowds gathering. It was a surprise because last year the Prime Minister called vaccine passports unnecessary and intrusive. More recently, the Vaccines Minister called them "discriminatory" and Matt Hancock, when in office, declared that they were a step too far and said that

"we're not a papers-carrying country".

It seems as though we are, because this is about making young people's engagement in public life contingent on papers. Would the Minister comment on whether this rowing back on previous statements will fuel cynicism among the young and the conspiratorial thinking that, "You said you wouldn't do it and now you've done it"? Some Conservatives told me that I am not to worry, that it will not happen and that it is just a plan to threaten the young into compliance. Can the Minister clarify that?

If nightclubs, football grounds, pubs and so on require vaccine passports, does that mean that bar staff, cleaners, bouncers, groundsmen et cetera will need proof of vaccination to keep their jobs? I am worried about another group of workers having vaccines mandated, this time in the hospitality industry.

Finally, does

"other venues where large crowds gather"

include political conferences? I am asking for a friend or two.

**Lord Bethell (Con) [V]:** My Lords, I make no apology for changing my mind during the pandemic. I will admit readily to the House that I have changed my mind and rowed back on all sorts of things that I thought I was certain about. It has been a learning experience, to put it politely, for all of us, and we have all had to adjust our thinking on lots of matters as the evidence and the impact of the virus have affected us greatly. So, no, I do not believe in conspiracy theories, as the noble Baroness specifically asked me.

We all have to be responsible for the fact that our health touches on those we sit next to and share air with. This is a public health truism that is self-evident and has become highly apparent. There is no way out of this pandemic other than through the vaccine; there is no other silver bullet. Therefore, we all have a personal responsibility to ensure that we are as safe as possible when we share space with other people. That is the principle with which we go into this and which we are applying when it comes to domestic certification. The guidelines and precise details have not been hammered out yet, but we will do it in a way that seeks to be as inclusive as possible and is considerate to many of the concerns that the noble Baroness quite rightly articulated.

**The Deputy Speaker (Lord McNicol of West Kilbride) (Lab):** That brings us to the end of the Oral Statement. All questions have been asked.

*House adjourned at 5.42 pm.*

# Grand Committee

*Wednesday 21 July 2021*

## 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 while others are participating remotely, but all Members will be treated equally. I ask Members in the Room to respect social distancing, which remains in place in Grand Committee. 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.

## Fisheries Act 2020 (Scheme for Financial Assistance) (England) Regulations 2021

*Considered in Grand Committee*

*2.31 pm*

*Moved by* ***Lord Benyon***

That the Grand Committee do consider the Fisheries Act 2020 (Scheme for Financial Assistance) (England) Regulations 2021.

*Relevant document: 7th Report from the Secondary Legislation Scrutiny Committee*

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con):** My Lords, this statutory instrument will provide the long-term legal foundation for the payment of grants to the English seafood sector. It has been specifically designed to support the needs of the sector and to give full control and accountability for the delivery of financial support. It expands the previous domestic fisheries financial assistance powers, which were a domestic implementation of European funding provisions, and forms part of our commitment to replace European funding in this area. It is also in line with government policy to, where possible, utilise specific spending powers for long-term public spending in specific areas.

The passing of this instrument will allow us to finalise our transition towards the powers of the new Fisheries Act. The Act gives the UK full control of its fishing waters for the first time since 1973 and provides the legal framework for policies to be tailored to the needs of industry while still protecting the marine environment. Now that we have left the EU, this will ensure a more responsive and autonomous scheme that better supports our newly independent coastal state.

Leaving the EU has also empowered us to develop as a world leader in fisheries management. Global leadership in this space means placing sustainability and innovation at the forefront of government policy-making, ensuring healthy seas for future generations of fishers. These regulations, by utilising the powers in the Fisheries Act, support that ambition. They ensure that the framework for delivering financial support to the fisheries sector is in line with Act's objectives, and they empower the Government to deliver a new fisheries management plan to benefit both the fishing industry and the marine environment. They also support the delivery of the Government's manifesto commitment to maintain the level of financial support provided to the fisheries sector.

Fisheries is a devolved policy area and the Fisheries Act 2020 provides corresponding financial assistance powers to each of the four fishing administrations of the UK. This has empowered each administration to develop schemes that are tailored to the needs and characteristics of their sectors. In line with the devolution settlement, this instrument will provide a legal foundation specifically tailored towards our English scheme to give much-needed financial support under Section 33 of the Fisheries Act 2020.

The instrument sets out the regulations for the payment of grants by the Marine Management Organisation (MMO) to the seafood sector in England, including the provisions and payment conditions that must be adhered to. This approach will ensure clarity for both applicants and grant delivery managers. One point to note with the establishment of these new funding powers is that funding may now be provided, under the scheme established by this instrument, to recreational sea fishers—an important area to support the levelling-up agenda that previously has not been able to receive support.

We have also extended the types of funding that can be provided to include activities such as training and business diversification. The instrument has been carefully developed to ensure that future grant schemes have the flexibility to meet new policies and the needs of the English seafood sector as they change over time. The passing of this instrument will not make any significant policy changes to the scope of grant funding for the seafood sector. It will ensure that we are using regulations specifically designed to support the English seafood industry.

I turn now to how the instrument will be used to deliver support to England's seafood sector through the fisheries and seafood scheme. The scheme opened on 6 April 2020 to provide financial assistance to projects that enhance the marine environment and support sustainable growth in the catching, processing and aquaculture sectors. At present the scheme is using the wide-ranging spending powers in the Natural Environment and Rural Communities Act 2006 which, unlike this statutory instrument, does not set specific conditions on activity restrictions.

This SI will provide a more detailed framework for the scheme to operate within and allow more certainty for applicants and administrators about the legal scope of the scheme. This scheme replaces funding previously available to the UK through the European Maritime and Fisheries Fund. The subsequent European fund is not yet available to our European counterparts as the details are being developed, whereas in England we ensured there was no gap in funding and the scheme was available in early April.

The scheme will provide £6.1 million of funding for the current financial year. In the short term, this will provide stability and continuity to industry by supporting

[Lord Benyon]
businesses to take advantage of opportunities outside the EU and recover from the impacts of Covid-19. In the longer term, the scheme will drive meaningful change to increase sustainability, provide world-class fisheries management, and deliver a significantly decarbonised sector and a thriving marine environment. The scheme will develop flexibly over time to accommodate the development of new policies, data and emerging priorities.

The scheme has been developed to be consistent with wider governmental objectives to support the levelling-up agenda, clean growth and carbon net zero. It addresses the current needs of the sector by supporting the development of new domestic markets and the diversification of businesses to support new income streams. The scheme has been informed by stakeholder engagement and aims to support the issues highlighted by industry, including investments to enhance mental well-being. The opening of the scheme has been welcomed and demand for financial support has been high.

This instrument is one of the first regulations proposed under the Fisheries Act 2020 and will ensure that a responsive and autonomous scheme can be delivered within England which better supports our seafood sector. This support is vital to deliver our vision for clean, healthy, productive and biologically diverse oceans and seas. I beg to move.

*2.37 pm*

**Baroness McIntosh of Pickering (Con):** My Lords, I welcome the regulations and would like to pay personal tribute to my noble friend for all he has achieved for the country during his many years conducting fisheries negotiations when we were a member of the European Union. I particularly welcome the fact that, as he highlighted, there will be no gap in funding in the UK. That is greatly welcomed by the recipients, and by all of us as legislators.

I would like to press the Minister on a number of issues. As he said, this is one of the first set of regulations made under the Fisheries Act 2020. Will the total received be the same as under the previous funds administered through the EU scheme? Does my noble friend think that it might be expanded in due course? He is aware of my particular interest in and concern for inshore fishermen. Paragraph 7.3 of the Explanatory Memorandum states that, as my noble friend said:

"There will be benefits for coastal communities across England".

I am sure that many, particularly in Whitby, will be keen for the recreational sea fisheries to which my noble friend alluded to be helped in this way.

The Minister is aware of my interest in inshore fishermen, who were disadvantaged under the previous fisheries policy. They hope to be advantaged greatly under the new arrangements not just by having more scallops but by having a quota for fish such as cod. I would be delighted to hear if that will be the case.

I welcome my noble friend's saying that sustainability and innovation measures will be supported under the regulations. In the debate we had on fisheries in the previous EU Sub-Committee—my noble friend will doubtless have read the report—we looked at innovation and sustainability in some depth and reached a conclusion regarding the benefits of remote electronic monitoring. Will fishermen be able to apply for these funds and use them to install and operate remote electronic monitoring equipment on their boats?

We are obviously grateful to the Secondary Legislation Scrutiny Committee, which broadly welcomes the instrument, for its report. It received a submission from ClientEarth criticising the instrument for not including provisions to make the payment of financial support conditional on the sustainable management of fisheries. I am slightly perplexed by the response from Defra, which is very general and not entirely specific. Exactly how will the Government deliver on their policy to drive meaningful change to increase sustainability, provide world-class fisheries management and support thriving marine management? My noble friend is better equipped than anyone else I can think of to deliver on that, and I would just like a little more meat on the fish bones this afternoon. I am grateful to him for bringing this instrument before us, so that we can ensure its safe passage before the Recess.

*2.42 pm*

**Baroness Jones of Moulsecoomb (GP):** I thank the Minister for his introduction, which was very clear. However, I do have some problems with this whole process. I support the idea of the funds going to remote electronic monitoring; that is very sensible and might be the only way that some smaller fishers are able to manage.

I would like to be able to say that UK fishing is in good health, and I would like to believe that the Government are world-leading on this, but I am afraid that that is a rather tired and overused phrase at the moment. This is not world-leading. Admittedly, I do not know much about what other countries are doing but I can say that, from a green point of view, this is not sustainable.

Fishing is an important part of our economy, particularly for coastal areas and for our food supply. Really, what we should have been hearing by now is that the potential environmental disaster on the horizon is going to be fixed. Quite honestly, this situation is tolerated only because it is largely unseen; most people do not know what goes on. For example, disturbance of the bottom ecosystem, caused by beam trawlers, is disastrous. I would be interested to hear whether there is any recognition of that. Then, there is marine plastic pollution from the sacrificial ware of beam trawlers—a huge issue that I have yet to hear be discussed. Moreover, turning to fuel consumption, a typical large boat averages about 2 litres per kilo of fish landed, making it two or three times worse than airfreighting vegetables from Kenya, which we all know is a very bad thing.

I am curious as to why day-boats get so little of the quota; that really does not seem fair. For example, in the south-west the huge majority of beam trawlers are owned by just two companies—Carets in Brixham and Stevens in Newlyn—and I just do not understand how that can possibly help smaller, local companies. Are the Government thinking about them at all?

I am also interested in what is really meant by a marine reserve and what is banned there, because sometimes it does not seem like very much. Reserves

are obviously incredibly important. Of course, this is all without taking into account the sustainability or otherwise of the catches. That is why the remote electronic monitoring will be so valuable.

Turning to the regulations, I want to thank Green Alliance and ClientEarth for pointing out their concerns, which I share. While I welcome the exclusions set out in Regulation 5, including that grants may not be used to increase the fishing capacity of a boat, there is a missed opportunity to transform the way we support the fishing industry financially to deliver climate-smart fishing. These technologies are available and should be very high on the Government's "to do" list. It is about more sustainable fishing practices and ocean recovery.

Section 33 of the Fisheries Act permits the Marine Management Organisation to place conditions on the payment of grants. However, as the noble Baroness, Lady McIntosh, pointed out, there are no environmental conditions on payments. That seems astonishing, given that the climate emergency is a very urgent issue.

In order for financial assistance to promote positive fishing practices, the regulations should be amended to include conditions on the provision and use of grants—for example, to encourage investment in more sustainable fishing gear that does not damage the wider marine environment, to help fishers adapt to technologies for efficient data collection, and for restoration schemes and the collection of marine waste by fishers.

The Minister talked about clean, healthy, productive biodiverse activity, but it has to be sustainable as well. At the moment, sustainability cannot be predicted or guaranteed through these measures.

*2.47 pm*

**Baroness Gardner of Parkes (Con) [V]:** My Lords, I welcome the introduction of these regulations and their first use as the fisheries and seafood scheme. Although I fully support the intentions behind them, I have several issues to raise that I hope the Minister can address.

When the regulations were debated in the other House last week, concerns were raised about the transparency and openness of decision-making by the Marine Management Organisation, which determines these applications, and the absence of any mention of an appeals process. The Minister referred to the fisheries and seafood scheme guidance, but on reviewing it, I can see no mention of an appeals process. Section 7 of the guidance simply states:

"We will assess your application within 8 weeks of its receipt and notify you if any further information is required. Once we have all the required information to make a decision, we will contact you to tell you if your application has been successful or not."

This seems remarkably vague, and I suspect I am not alone in worrying about how many cases get to seven or eight weeks, only to be told that information is missing and a decision has been delayed. In fact, the guidance does not actually say that a decision will be made within eight weeks, merely that the application will be assessed within that time.

Given the challenges that the fishing industry has been enduring following Brexit, with many people seeing their catches go to waste due to red tape, and given the financial impact on them and their livelihoods, I hope that the Minister can presume on the MMO to ensure that all applications for grants, particularly those for smaller businesses, are expedited in the current climate and not left until eight weeks or beyond. Also, could the decision-making process be made clearer and timelier, and reference to this and to the appeals process be added to the guidance?

Finally, it appears that applications can be made only through the FaSS E-system. Given the digital divide that still exists across generations, sectors and even the provision of the internet, can the Minister reassure us that this scheme and applications for grants will not solely rely on advertising and applying online?

*2.50 pm*

**Lord Teverson (LD) [V]:** My Lords, first, I very much welcome the Minister to his post; I have not been in a debate or Question Time with him since his appointment. I congratulate him on his work on highly protected marine areas, which I hope we will see progressed quickly through this Parliament.

I have a few brief questions for the Minister. First, can he confirm that this is just a one-year commitment at present? How long do the Government intend the scheme to last? On finance, the EMFF for England was £92 million over seven years, which comes to a round number of about £13 million per annum, whereas this scheme, as he said, provides only £6.1 million. I do not understand where the idea of equal funding, as before, comes from. I should be interested to understand that.

We are all used to the old European match-funding schemes, and I am interested to understand what the rules for this one will be. We should remember that the larger fisheries sector has been extremely profitable and does not necessarily need public money. That is not true of many of the smaller boats and operators. One of the good, well-tried parts of the old EMFF, as it was rolled out in England, was the so-called fisheries local action groups. They were a way to disburse money in relatively small amounts—and quickly, to come back to the point made by the noble Baroness, Lady Gardner of Parkes—to the smaller fishing operators and owners. I very much hope that that system will be replicated in distributing funds for this programme. It would be interesting to know the answer to that.

One thing I do not get at all is Regulation 12, which states:

"The Marine Management Organisation may, at any time before the grant has been paid in full, suspend or revoke the approval, or vary a condition of the approval."

That seems completely unfair. If such a regulation were in consumer law, it would be struck out. It graciously then says that the MMO has to let the person know if it is going to do that—great, but they might already have spent money under the scheme, only to find that the MMO has decided to revoke approval. I do not understand why Regulation 12 is there and why it is so draconian. I would certainly be concerned about that if I were applying for funding.

I welcome the Minister's constant referral to decarbonisation, but perhaps he could give us some examples from the fisheries and seafood scheme, which has been in operation since April last year under a

[Lord Teverson]
different category. Can he give us one or two examples of decarbonisation awards, so we can understand a little more about what those applications might be?

Finally, I reiterate what others have said, not least the noble Baronesses, Lady McIntosh and Lady Jones of Moulsecoomb, about remote electronic monitoring. I should be delighted if the Minister could nudge his department to support my amendment to the Environment Bill requiring that REM be applied, just to make sure that we get much more and better data and information about marine ecology.

*2.54 pm*

**Baroness Jones of Whitchurch (Lab):** My Lords, I thank the Minister for his introduction to this SI today and for the helpful briefing beforehand. The new scheme is welcome as far as it goes, as it will put extra funds into a sector that has been badly impacted by the loss of the EU markets. While I appreciate that this is not primarily what the funds are for, any extra cash is welcome, clearly. However, I have some specific questions about how this scheme will be administered and the rules applied, which I would be grateful if the Minister could address.

First, the SI and the guidance note on the fisheries and seafood scheme use the phrase "sustainability" on a number of occasions. For example, the Explanatory Memorandum states in paragraph 7.2 that

"the scheme will drive meaningful change to increase sustainability".

However, as we discovered during consideration of the Fisheries Bill, the word sustainability is often used to mean economic sustainability of the industry rather than sustainability of the fish stocks. This seems to be the use here, and the truth is that this can run counter to the objective of increasing the environmental sustainability of the fish stocks in our waters. This is why we tried to argue, unsuccessfully, during the debates on the Fisheries Bill that environmental sustainability should take precedence over other objectives.

As noble Lords have said, and as the Secondary Legislation Scrutiny Committee reported, ClientEarth wrote in to challenge why the SI does not make financial support conditional on more sustainable management of fisheries—in other words, more environmental sustainability. I agree with the noble Baroness, Lady McIntosh, that Defra's reply as reported to the committee really did not address that question or give a detailed answer. So I ask the Minister again why greater environmental sustainability is not made a precondition of grants under the scheme? I understand that the scheme will be finessed and improved over time, as the Minister said, so will he agree to take this proposal away and consider introducing it for future years?

I agree with other noble Lords that using some of the money for remote electronic monitoring would be a good step forward, and I echo the bid from the noble Lord, Lord Teverson: it would be helpful if the Minister agreed to support the amendment to the Environment Bill that would deliver support for REM. Perhaps he could reflect on that. Furthermore, I agree with the noble Baroness, Lady Jones of Moulsecoomb, that we need to have climate-smart fishing, which needs to be financially supported.

Secondly, paragraph 5(c) of the SI specifically excludes applications for activities which the applicant has a statutory duty to undertake. Can I ask the Minister to clarify what is meant by this exclusion? For example, fishers have a statutory duty to uphold health and safety standards, and indeed to comply with the powers on conservation of stocks under the Fisheries Act. So why are grants to provide better health and safety equipment, or more selective fishing gear, specifically excluded? Perhaps the Minister could clarify that wording in the SI.

Thirdly, the total sum allocated to this scheme in this financial year is £6.1 million. This seems a very small sum for the rather grand ambitions set out in paragraph 7.3 of the Explanatory Memorandum:

"it is hoped the scheme will contribute towards the Government's levelling up objectives in order to increase the economic prosperity of coastal and rural communities".

That sum of money is not going to go very far in bringing the vital regeneration money which coastal communities urgently require, and this claim seems to be a mockery of the seriousness of this challenge. I hope the Minister can reassure us that significantly larger sums of money are in the pipeline that will genuinely raise coastal communities out of the poverty and unemployment they currently endure.

Like other noble Lords, including the noble Lord, Lord Teverson, we are interested in the sums available in the longer term, and I hope that the Minister can give us some reassurance on that matter. As my colleague Luke Pollard said in the Commons debate on the SI, according to paragraph 12 of the Explanatory Memorandum, no impact assessment has been carried out as there is

"no, or no significant, impact on business".

In that case, what is the point of an initiative of this nature?

Furthermore, I ask the Minister for more details on the separate £100 million which was announced earlier this year by the Secretary of State. As I understand it, since that announcement no more has been said about when it will be available, how it will be deployed or what impact it is expected to have on the fishing sector. The fishers are anxious to have more information about this, so perhaps he can use this opportunity to clarify when that money will be available.

Finally, I want to ask about oversight of the MMO's activities, an issue about which the noble Baroness, Lady Gardner, also asked. These proposals give the MMO complete authority to allocate these funds. Will the Secretary of State take responsibility for monitoring the performance of the MMO in administering these grants? How transparent will the allocation process be? Will there be an appeals mechanism—another point raised by the noble Baroness, Lady Gardner—and can we be assured that it will be independent of the MMO? Will small-scale fishers in particular be encouraged to apply, and will there be a presumption in favour of their applications, since they are the ones who have suffered most since we have left the EU? I look forward to the Minister's response.

*3.01 pm*

**Lord Benyon (Con):** I thank all noble Lords who have contributed today, and I will respond to all the questions as best I can. I apologise if the order in which the answers come does not reflect the order in which the questions were asked.

My noble friend Lady McIntosh asked some important questions, which were echoed by other noble Lords. Remote electronic monitoring is very important. Defra-funded trials are ongoing; they are funded through the data control framework and are separate to this. As a former Fisheries Minister, and having returned to the department, I am impressed by how this has moved forward. I first saw cameras being placed on vessels in Scotland back in 2008, I think, as part of the cod recovery fund. We have come a long way since then. Now, we can manage some of our most remote marine protected areas around our overseas territories with a network system called Catapult, which is a remarkable way of assessing exactly what a vessel is doing at any one time, using satellite technology.

Our domestic fishing fleet now has vehicle monitoring systems: a skipper can receive a text from the MMO automated text system to say when they are approaching the boundary of a marine protected area. Others have been developed—in conjunction with the fishing sector, rather than being imposed on it. Things are working very well in that respect.

My noble friend and others also asked about the benefits to coastal communities, particularly the inshore fleet. The historic bias against the inshore fleet arose because, when it was unregulated, the offshore sector snaffled most of the quota under the EU. That gave rise to the very unfortunate circumstance whereby some 96% of the quota was in the hands of the over-10-metre fleet, while the inshore fleet, on which many coastal communities depend, had to make do with very small or still unregulated areas of fishing capacity. That has been changed. The Government were taken to the Supreme Court by certain fishing sectors when we tried to reallocate some of that, and the Government won. This has now been further changed, with new fishing opportunities being offered to the inshore fleet. It is hoped that this statutory instrument will assist some of the smallest fishing businesses to access the funds they need not just to be sustainable, but to reflect the changing world in which we are demanding that they operate, and the Government's determination to hit, for example, net zero by 2050.

The Marine Management Organisation ensures that small-scale fishers are supported through the application process—this also addresses the point made by the noble Lord, Lord Teverson. Preferential funding rates have also been put in place to lower the match funding required from them. The FaSS application process has been simplified and clear guidance has been provided to encourage and support applications from a diverse range of applicants. Defra is looking to make further improvements to streamline the application process in future.

In line with best practice and better regulation principles, an assessment was made that the costs of applying to the scheme would be outweighed by the benefits of receiving funding. This was assumed to be the case for all businesses applying for funding. An impact assessment was therefore not necessary in this instance.

In response to the noble Baroness, Lady Jones, the MMO is an NDPB of Defra. It is monitored, its performance is rated and how it delivers the Government's marine policies is carefully monitored. The role of the MMO was challenged by some in respect of delivery. It is responsible for processing all funding applications and we want to make sure that its decisions are transparent. Higher-value projects of over £150,000 are assessed through a full financial and economic appraisal before a panel comprising third-party economists and the MMO finance team.

We have defined the objectives of the scheme and developed the robust eligibility criteria used to make funding decisions. I have the scars on my back from assessing the old EMFF, whereby vessel owners from countries such as Spain and France were able to buy newer and better vessels that harvested the seas in much more efficient ways. Our taxpayers' money was being put towards unsustainable fisheries; that has changed in this country—it has also changed in the EU—through the development of this system of funding.

The £6.1 million being delivered through the FaSS this financial year is equivalent to the average annual amount delivered through the English portion of the European maritime and fisheries fund over its seven-year timeframe. I think that addresses the point made by the noble Lord, Lord Teverson. The FaSS will support the Government's levelling-up agenda by providing financial assistance to projects that support the resilience and sustainable growth of the catching, processing and aquaculture sectors. This will benefit coastal businesses and the wider communities that depend on them.

In addition to the FaSS, the Government are providing financial support to the sector through the £100 million fund which will support investment to modernise and rejuvenate the seafood sector across the UK. I will give some more statistics on that now. On 24 December, the Prime Minister announced this sum to develop the seafood sector and help rejuvenate an industry that has suffered from underinvestment and which is working towards both having sustainable businesses and fishing sustainably. I understand that the dual use of that word could cause some confusion, but it is vital to recognise that we are moving as fast as we can towards some degree of sustainability.

My noble friend Lady McIntosh and the noble Baroness, Lady Jones of Moulsecoomb, asked about highly protected marine areas. I can speak on this issue with some authority as before entering the Government, I chaired a review—embarrassingly referred to as the "Benyon review"—published last June, which recommended the inclusion in the suite of spatial measures the Government have introduced, such as marine conservation zones and other European designations, of a highly protected marine area network. The Government are taking this forward and piloting schemes. It would be embarrassing if they were not, as then I would have to stand at the Dispatch Box, under ministerial co-responsibility, and defend their intention not to follow the recommendations of a report which I wrote. Luckily, they are taking it forward, and it is very long overdue.

[Lord Benyon]

We tried to introduce things called reference areas as part of the Marine and Coastal Access Act, but they did not work. Still, I learned from that process, and it was great to be able to take this forward in a detailed review using panel members from right across the marine interest sectors. This will be part of a process.

To address the point about being a world leader, what I think I said in my speech—in fact, I know I did—is that Britain wants to develop as a world leader in sustainable fisheries. We are not so arrogant as to say that we have achieved that. There are still problems of sustainability, and that factor has been the curse of northern European fisheries for decades where we have fished stocks unsustainably. The stocks that exist in our seas today are a fraction of what existed before. We want to go back to a situation where we are able to fish a harvestable surplus under proper scientific guidance that can reflect a growing biomass. That is good for all our health and well-being, it is good for our ability to lock up carbon in our oceans, which is a massive opportunity, and it is vital for the coastal communities and the people that we want to encourage to go into the sector to catch a sustainable source of protein that the country wants as part of a balanced diet.

My noble friend Lady Gardner asked how the £13.5 million fund was used in England. Grant payments to the industry account for £6.1 million, data collection £4.6 million and control and enforcement £1.9 million. The remainder of the £13.5 million will go towards scheme administration and evaluation.

I have already explained how the scheme will be delivered. I confirm that those eligible to apply include: individuals or businesses engaged in commercial or recreational sea fishing, aquaculture or processing activities—we think it is important to add the recreational sector, which is important for coastal communities; those in the sector are the eyes and ears of sustainability, they have been monitoring the areas that they have been fishing and very often they are an important part of fisheries management—a public body or local authority that has a focus on fishing or aquaculture activities; a university or research institute; and a new entrant to the industry that could benefit from developing skills in fishing or aquaculture activities.

I will move on to other points that were raised. I think I have answered the point made by the noble Baroness, Lady Jones of Moulsecoomb, about us wanting to develop as a world leader, and I have talked about HPMA. Plastics from fishing are very important. There is a lot of work going on with the industry to limit the loss of plastic from vessels, usually from losing nets, and to see what can be done to improve that. Fuel consumption is also an important issue. Getting the sector to be, as the noble Baroness says, climate-smart fishers is something that the Government are very much working towards.

The noble Lord, Lord Teverson, asked about the power of the MMO to revoke payments and whether that was a proportionate measure to have. The power ensures that the MMO has the legal protection to suspend or revoke funding approval in the event of a severe infringement—that is important wording. This has been brought forward from the previous EU scheme to ensure that public money is not used illegally or inappropriately. It will be used only in exceptional circumstances.

A number of noble Lords asked about the £100 million. I have covered most of that, but it is there to support investment to modernise and develop the seafood sector. It covers the whole UK, not just England, as this scheme does.

The noble Lord, Lord Teverson, also spoke about the breadth of the scheme and its necessary need to support all fishing activities and the entire supply chain. I can confirm that the scheme will support individuals and businesses across the supply chain. This includes catching, processing, aquaculture and the marketing of seafood products.

The noble Lord asked how long the scheme will last and whether it will be maintained. The £6.1 million has been allocated to deliver grant funding through the FaSS during this financial year of April 2021-22. Given the Government's manifesto commitment to maintain funding for the seafood sector, we are confident that the FaSS will continue to deliver financial support over the coming years. Obviously, we will monitor it and that will be available for parliamentary scrutiny.

The Fisheries Act offers comparable powers to each of the four nations of the UK to develop their own domestic schemes tailored to the needs of their sectors. As a devolved area, it is up to the relevant Administration to design and deliver their own funding scheme. Both England and Scotland have developed financial assistance schemes that are live and open to applications.

I am conscious that I am going on for a long time and we are running out of time, but I will give one final piece of inspiration that has come into my head. I thank the noble Lords who have contributed to this debate. In summary, this instrument will provide a long-term foundation to deliver the payment of grants to the English seafood sector. It has been specifically designed for this purpose and will ensure that we have full control and accountability for the delivery of the fisheries and seafood scheme, through which transformative support is being made available to the English catching sector. This instrument is key to delivering the Government's manifesto commitments and securing a thriving and sustainable marine environment. I commend these regulations to the House.

*Motion agreed.*

*3.17 pm*

*Sitting suspended.*

## Arrangement of Business

*Announcement*

*3.22 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 while others are participating remotely, but all Members will be treated equally. I ask Members in the Room to respect social distancing, which remains in place in Grand Committee. If the capacity of the Committee Room is exceeded or other safety requirements

are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

The time limit for the next debate is one hour.

## European Union (Future Relationship) Act 2020 (References to the Trade and Cooperation Agreement) Regulations 2021

*Considered in Grand Committee*

*3.23 pm*

*Moved by* ***Lord True***

That the Grand Committee do consider the European Union (Future Relationship) Act 2020 (References to the Trade and Cooperation Agreement) Regulations 2021.

*Relevant document: 7th Report from the Secondary Legislation Scrutiny Committee*

**The Minister of State, Cabinet Office (Lord True) (Con) [V]:** My Lords, I beg to move that the Grand Committee do consider the draft European Union (Future Relationship) Act 2020 (References to the Trade and Cooperation Agreement) Regulations 2021, which were laid before the House on 16 June. Of course, I am grateful for the opportunity to discuss the regulations presented before the House, but I apologise again as a Minister that I cannot be present in person as I am currently isolating.

The purpose of this instrument is technical; it does not introduce any new policy. Rather, the main purpose is to update references made in the European Union (Future Relationship) Act so that they match the legally revised trade and co-operation agreement, helping to ensure a clear and coherent statute book.

The trade and co-operation agreement, along with the security of information agreement, and the nuclear co-operation agreement, was provisionally applied, as noble Lords will remember, from 2300 on 31 December 2020, in time for the end of the transition period and pending ratification.

In the UK, it was necessary to pass the future relationship Act, which implemented the agreements in domestic law before provisional application was possible. As I am sure noble Lords will recall, it received Royal Assent on 31 December last year. It was our expectation that the European Union would ratify in turn, in line with its own procedures, the treaty ratification in the European Parliament and the Council. The original deadline for provisional application was 28 February. The Government subsequently agreed to the EU's request to extend the original period of provisional application to 30 April 2021 to give it more time to complete its processes. We are pleased that the European Union completed these processes before the end of April, and the agreements therefore entered into force on 1 May.

Due to the short period of time available between concluding negotiations and the end of the transition period, it was not possible to complete the necessary legal revision process before the agreements were provisionally applied on 31 December. Instead, the agreements have undergone a final process of legal revision since provisional application. The legal revision process provided for by Article FINPROV.9, now Article 780, of the trade and co-operation agreement resulted in typographical and other errors in the agreement being corrected, and the articles being renumbered from Article 1 to Article 783. I underline for your Lordships, however, that the substance and policy content of the agreement has not changed.

As a consequence of this revision to the trade and co-operation agreement, some of the corresponding numbering and references in the European Union (Future Relationship) Act must be updated, which is why this statutory instrument has been drafted and laid. If the instrument is not made, some references in the European Union (Future Relationship) Act, including numbering and annexes, will not match what is contained in the legally revised agreement. It could be the cause of undue confusion for businesses and citizens, potentially making it difficult for them to ascertain what their legal status is and what their legal obligations are. It is therefore crucial that we provide clarity so that businesses and citizens can pursue the opportunities of our agreement with confidence.

This statutory instrument was laid by my noble friend Lord Frost, following the affirmative procedure in exercise of the powers provided for in the future relationship Act. These powers allow Ministers to make amendments that they consider appropriate in pursuit of coherence and clarity following the legal revision process envisaged by the trade and co-operation agreement. The main changes to the European Union (Future Relationship) Act as a result of this instrument are the renumbering of the articles and the correction of cross-references to the TCA in the Act. For example in Section 8(1)(a) of the Act, Article LAW.PRUM.15 will now become Article 537 to reflect the legally revised version of the trade and co-operation agreement. Similarly, in Section 14(1)(a) of the Act, Article TBT.9 now becomes Article 96. I can assure noble Lords that I do not intend to go through all the examples, but they are set out in the instrument.

I can confirm that there was engagement with the devolved Administrations prior to the laying of this instrument, and they are content. I take this opportunity to note my gratitude to the devolved Administrations for their constructive collaboration on this matter.

I hope therefore that noble Lords can agree with me that these draft regulations perform a simple but valuable role in helping to ensure certainty and clarity in the UK's statute book as we take full advantage of the opportunities available to us in the new era. I beg to move.

*3.29 pm*

**Baroness Wheatcroft (CB):** My Lords, I thank the Minister for introducing these regulations in such a straightforward way, and I thank him even more for not going into any more examples of the effect that they will have. Given the fact that they moved from 780 articles to 783, there was clearly scope for him to have at least filled up his full allocation of time with examples that we really do not need. As he said, this is a technical regulation, and I am sure that noble Lords will support it. However, I fear that it will not provide the clarity and do away with the confusion that exists in matters of the TCA that the Minister referred to. I will highlight a couple of issues.

[Baroness Wheatcroft]

First, on the product conformity rules, at the moment, the UK largely recognises the CE designation on UK and EU products but will not continue doing that after January 2022. Can the Minister assure me that businesses are being made fully aware of the fact that, come January 2022, products bearing the CE designation will not be acceptable in the UK and will have to have the UK designation for safety requirements upon them?

Secondly, I will go into the issue of the Northern Ireland protocol and the how it affects UK trade and the TCA. When that TCA was introduced, the British Government, in a statement updated this month, said that the TCA, agreed in December,

"changes the basis of our relationship with our European neighbours from EU law to free trade and friendly cooperation."

Today we are told by the Minister, the noble Lord, Lord Frost, that we are seeing a relationship which is punctuated with legal challenges, characterised by disagreement and mistrust. That sounds rather different from what was envisaged when we went into this business.

Now that we have embarked on a new attempt to try to restructure what was always destined for failure—the Northern Ireland protocol—and negotiations are going to be extremely difficult, does the Minister believe the time may have arrived for us to change negotiators and have a fresh start for a fresh relationship that might be based on trust rather than the mistrust which the noble Lord, Lord Frost, says exists at the moment? Might he also bear in mind, when those renegotiations take place, something the German Government said on 5 July of this year when referring to the trade and co-operation agreement? They said that

"Although the European Union would have wished it, unfortunately the agreement does not contain any provisions on cooperation in the sphere of foreign and security policy."

That seems a significant lack, and I know that others in the House agree. Might the Minister consider whether this is the opportunity to try, in a spirit of co-operation and trust, to reinstitute co-operation in the sphere of foreign and security policy?

*3.33 pm*

**Baroness McIntosh of Pickering (Con):** I am grateful for the opportunity to speak to the regulation before us and to follow my noble friend Lady Wheatcroft. I thank my noble friend Lord True for introducing the regulation and I sympathise with him having to isolate in what is meant to be freedom week, which has not gone quite according to how everyone had hoped.

I take the starting point that my noble friend set out, that this is purely technical in nature and that it came about from the fact that the process of correcting and checking all the cross-references for consistency usually takes place before signature. However, I wonder whether, for example, if there has been an extension of the grace period already for goods travelling not just from Great Britain to Northern Ireland but also in some cases goods travelling from the UK to the whole of the EU and the reverse, there will be any consequential changes if that grace period is either extended again or if further changes are made? As I understand it, that goes to the heart of what was agreed in the trade and co-operation agreement. The sooner we make the changes, the better, but I would just like to know that there are no further consequential changes in part.

I am hearing a lot from the food industry that it is particularly concerned that we do not seem to be on track yet to making the changes by the deadline—I honestly cannot remember whether it is 1 October or 31 October. So I would like confirmation from my noble friend that either the grace period is going to be extended again or we are going to have a revision to the trade and co-operation agreement to try to soften the blow.

The figures that I have from the food industry were issued in the third week of June. They make the point that the reduction in trade is due not just to the fact that we have left the EU but to the ongoing impacts of the Covid-19 pandemic. The fact that a number of Ministers and others are having to isolate makes the point, not just that there is a shortage of lorry drivers already but that lorry drivers and deliveries are being severely challenged at this time because of the further requirements to isolate because of the ping pandemic as opposed to the Covid pandemic.

Does my noble friend share the concern that all the UK's top 10 products exported to the EU have fallen significantly in value in the period 2019-21? Whisky has dropped by 32.3%, chocolate—although I do not think many of us will be eating chocolate in the present heat—has dropped by 36.9%, lamb and mutton have dropped by the lesser amount of 14.3% and dairy products have been severely impacted. I would be interested to see whether the figures are expected to revive, if my noble friend has access to the figures, in the third quarter in the run-up to September.

I share the concerns expressed most eloquently by my noble friend Lady Wheatcroft regarding the ongoing procedures under the Northern Ireland protocol. Coupled with our reduction in trade with the EU, the pandemic and the shortage of lorry drivers, a mood is arising that we are going to have a very difficult run-up to Christmas. I say that as I have the honour to be the honorary president of the United Kingdom Warehousing Association, whose members are being impacted by the fact that they do not have enough drivers to empty the supplies that they have in their warehousing. Obviously, perishable foods are a particular concern, given the heat at this time of year.

I take the point made by my noble friend in introducing this instrument so thoroughly and taking great pains to say that this is purely technical. I just want to be convinced that there have not been any consequential changes to the initial grace period—as I imagine there would have been, since it was enshrined pretty definitely that the grace period was meant to end on, I think, 1 March or 1 April—or to be told if there will be any consequential changes to the trade and co-operation agreement through an extension of the grace period from October. With those remarks, I welcome this opportunity to address the changes set out in the instrument.

*3.38 pm*

**Lord Wigley (PC) [V]:** My Lords, I am delighted to follow the noble Baroness, Lady McIntosh. I too have had some representations from the food industry, which

has expressed the concerns that she has outlined. From what the Minister has said, and from the background notes available to us, this order represents minor and technical changes to instruments that have already been discussed and endorsed. If that is so, there is hardly scope for an extended debate.

I have three questions. First, did the errors and inconsistencies that we are correcting today come to light purely as a consequence of the Government's operation of them, or did they come to the Government's attention through some outside body, company or trading organisation that might have found themselves in difficulties arising from the original wording? The Minister referred to the danger that if we do not pass the order then there could be uncertainty. Might there already have been some uncertainty facing business as a consequence of the wording as it stands?

Secondly, if that is so, did the original wording cause any material negative impact on any commercial organisation? Indeed, has such an eventuality lead to any court action or any dispute with the EU authorities or any commercial body within the EU, or could it conceivably do so in future?

Thirdly, to the extent that these regulations have particular significance for Northern Ireland—I noted the points made by the noble Baroness, Lady Wheatcroft, a moment ago—have the Government discussed the workings of these regulations in detail with the devolved Government in Northern Ireland? Have they asked them whether any aspect of the original order, beyond what we are discussing, caused problems for Northern Ireland? If so, might we expect to have further amending orders, perhaps on more substantive issues, when we return in the autumn, and is that not inevitable in the wake of today's Statement by Brandon Lewis? Will we not have to visit all this again if there is progress on a comprehensive veterinary agreement with the EU?

Finally, I was delighted to understand from the Minister's comments that the Government have, in this instance, consulted with the devolved regimes and that they have been positive in their responses. I would say in passing that, if they are consulted in advance, then their responses will almost always be positive and warm. They only get stroppy when they feel they have been left out of the loop. Can the Minister clarify whether, as a matter of routine, the Government always give all devolved Governments an opportunity to comment on proposed orders of this sort in case there is some unforeseen aspect which impacts on their devolved responsibilities? Having said that, I am happy to support the order.

*3.41 pm*

**Lord Berkeley of Knighton (CB) [V]:** My Lords, I am very pleased to follow my friend Dafydd, the noble Lord, Lord Wigley. We move from one part of Wales to another for what I am about to say, which will be mercifully brief. I, too, thank the Minister for not bombarding us with every single change. I am happy with the process he has outlined.

We have heard a bit from previous speakers about drops in trade. We have heard about co-operation and trust, coherence and clarity; these are things we simply have to build with the EU so that our various sectors can prosper. Although this is slightly off the point, I hope the Minister will give me a moment of indulgence to mention that in terms of trade, as he knows, musicians have been hit appallingly hard and there is a little lack of clarity about how we are going to overcome this.

The noble Lord, Lord Frost, with whom I have had private and public meetings, and the noble Baroness, Lady Barran, at the DCMS, have explained that we will try to find bilateral agreements with countries. I am extremely grateful that they are doing that, but we were hoping that this could be sorted out at least at a TCA level, because the problem for people building a tour in Europe is that, if all or an awful lot of the countries are different, it is an absolute nightmare. I bring this back to trade now. People are seeing their livelihoods pulled from underneath them. I make that point, but I am happy for the Minister to proceed as he outlines.

*3.43 pm*

**Lord Wallace of Saltaire (LD) [V]:** My Lords, this takes me back to when I first started to work on the European Community. The EU is a legal construct; clauses, subclauses, chapters and treaties all matter a great deal—usually in French and English, with others to be carefully compared.

I remind the Minister that, when I started to work on this, Margret Thatcher, the then Conservative Prime Minister, was pushing hard to create a single market by removing non-tariff barriers, which she rightly saw as bigger barriers to trade than tariffs. All Conservative Ministers learned and well understood this. I find it very sad that so many Conservatives and current Ministers appear to have forgotten that a mere 25 to 30 years later.

One of the many things that this Government have declared and then had to go back on is that Brexit is done. We are learning that Brexit is far from done; there is a great deal more to be sorted out. That is of course partly because of the chaotic way in which the TCA was negotiated at the last minute against the deadline—in the clear hope from the Prime Minister, Boris Johnson, that this would leave very little time for Parliament to scrutinise or find holes in it.

Now we have a technical SI on the negative basis to correct some aspects of it. Can the Minister confirm whether he expects there to be further SIs that will deal with minor—or indeed major—amendments to the TCA and, if so, may I warmly suggest that they should in all cases be affirmative SIs? We are trying to redesign our relationship with the European Union and we all have an interest in that relationship not becoming a hostile and ill-tempered one. If we are to achieve that, however, it requires a good deal more to be sorted out, including foreign and security policy co-operation, as the noble Baroness, Lady Wheatcroft, said.

In this respect, the very 19th-century view of the noble Lord, Lord Frost, of sovereignty as much more fundamental than international law is clearly a barrier to reasonable negotiation and reasonable arrangements. We all understand that the greatest difficulty with the Northern Ireland protocol is that, for ideological reasons, the British Government have refused to negotiate a phytosanitary agreement—or veterinary agreement,

[Lord Wallace of Saltaire]
as the noble Lord, Lord Wigley, called it—on the grounds that this would impinge on British sovereignty, not that the British Government have said, so far, that we wish in any way to move away from existing European regulations. That seems to me to be a triumph of ideology over national interest—and, incidentally, it begins to threaten the union and peace in Northern Ireland.

I have some sympathy for the Minister in his position. Honest Conservatives now working for a chaotic Government—I hope not quite as chaotic as Dominic Cummings claims—must find themselves in some difficulty defending the position of a Government who often deny responsibility for what they negotiated less than three years ago. The Government must take responsibility for their future relations, however much they may wish to tilt towards the Pacific. I have to say that I was very amused to discover the other day that the Government are planning to send fishery protection boats to the Pacific in order to enforce fishery protection there, while we are so short of fishery protection vessels in the UK that we could do with another dozen or two here.

There are a number of illogical elements in this Government, which I am sure the Minister quietly regrets as he loyally continues to serve. Can he assure us that further amendments to the TCA, which we unavoidably expect, will be presented, whenever possible, as affirmative SIs and debated on the Floor of the Chamber? We all have strong interests in this relationship becoming a stable and friendly one, and we are some distance from that yet.

*3.49 pm*

**Baroness Hayter of Kentish Town (Lab) [V]:** I too thank the Minister for such a succinct introduction—although in this case it possibly was not difficult as the SI is only about changing the numbering of paragraphs. When we remember that old refrain, "We're here because we're here because we're here", we can respond "We're here to renumber". But at least, unlike the troops, we can ask, "Why are we here to renumber?" The answer, of course, has been suggested by other speakers: the treaty had not been "scrubbed" when the Bill went through.

So anxious was the Prime Minister to hit his self-imposed date that nothing else mattered—not legal certainty nor careful drafting, nor clarity for businesses, their advisers and even enforcers working on behalf of the Government. Indeed, the Government have admitted that the document was signed too late to allow the lawyers to take a proper look at it. That is the cause of us all being here today.

The Minister may recall that we warned again and again of the discomfort of business, which was told to prepare for the end of transition when it did not know what the rules would be. The final hurried signing and implementing of the TCA—no matter how good its content—meant that mistakes and gaps were the order of the day. The errors being rectified at this moment are slight and inconsequential, and the Minister will be pleased to know that they give us no problem, but we fervently hope that future trade deals will not be signed off in this cavalier way. Parliament and stakeholders, as well as lawyers, must have time to scrutinise before treaties are signed and ratified.

This Monday, I heard the noble Lord, Lord Grimstone, reassure our International Agreements Committee that future FTAs would be given plenty of time for that committee, and the new Trade and Agriculture Commission, to interrogate the texts. Perhaps the Minister would like to repeat that commitment for the sake of this Committee, so that we can be confident that all the legal checks will in future take place before any ratification of a treaty. Could he also indicate whether he foresees the proposed parliamentary partnership assembly being able to review how negotiations with third countries interact with the TCA? He might, incidentally, also nudge his colleague, the noble Lord, Lord Frost, about getting a move on in establishing the civil society forum and the domestic advisory group, so that they are able to consider exactly such issues.

It is interesting that the question was raised whether this, albeit very small, technical and necessary change was noticed by the Government's own lawyers or by outsiders, be they business or other users of the particular paragraphs. It is always that outside pair of eyes that makes the better deal. However, for the moment, we are very content with this SI and assume it will go through smoothly when it gets to the Chamber, presumably tomorrow or when we come back.

*3.53 pm*

**Lord True (Con) [V]:** My Lords, the computer is trying to remove the answer to one of your Lordships' questions—if it does, I shall have to reply in writing.

I am very grateful to all noble Lords for their contributions. As I set out, the purpose of the instrument is to help ensure that the statute book works coherently and effectually following the legal revision of the trade and co-operation agreement. I will not get drawn into a detailed debate about historical periods; indeed, it being a hot afternoon—and being I think in a minority on this Committee in the views I took on the events of 2016 to 2019—I excised from my brief all political points.

I will not go into them, except that I must respond to my noble friend Lady Wheatcroft's comments on my noble friend Lord Frost. I repudiate those comments and disagree with her that the country would be better served by another person engaging in negotiations at this time. My noble friend Lord Frost, as a civil servant and as a Minister, has been and continues to be an outstanding servant of his country. I also submit that anyone who was present in the House today or who followed its proceedings could not but agree with the measured, restrained and realistic tone in which he presented the Government's proposals to the House. They were everything one would expect of a diplomat and Minister.

The protocol is not strictly germane to these arguments, but my noble friend has laid out proposals before the House which we wish to negotiate and consider in good faith with the European Union. It is idle to deny that the protocol has caused problems in Northern Ireland; it has done so—and it behoves all of us in a spirit of comradeship, amity and diplomatic endeavour together with responsible institutions, such as our partners in the EU, the Government of the Republic of Ireland and ourselves, to seek to solve the problems that we all agree have arisen to help the good people of Northern Ireland. We wish for the best possible relations

with the European Union. We have long enjoyed those, and I pray for the day, if they are not as satisfactory as we would wish—although I do not say that they are not satisfactory—when good relations between us should ever thrive.

A broader question was raised about exports and imports. That is an important question, and the Government are monitoring closely, as I can assure my noble friend Lady McIntosh, the movements and changes in trade, in exports and imports. It is obviously particularly complex at the moment because of the complicating factors of the Covid emergency, which have distorted so many things in international life over the last few months. However, I assure my noble friend that we have monitored those things extremely closely and will continue to do so.

I was asked by the noble Baroness, Lady Wheatcroft, about CE markings. My computer has not been able to provide me with the answer, but I absolutely undertake to the noble Baroness to get that answer to her and copy that to other members of your Lordships' committee.

I was asked about touring musicians—another broader issue. I dealt with this matter when responding on the European Union in your Lordships' House. It is a matter of concern and one which the Government have taken and did take very seriously. As the noble Lord will know, we made proposals to the European Union that were not acceptable at the time. At the first UK-EU partnership council on 9 June, the UK raised the issues faced by touring performers and noted work under way with member states, as he says, on trying to ease or clarify the barriers presented by visa and work permit requirements. I promise him that we will continue to discuss these issues with all member states to find solutions to this work for our great creative industries. It is a matter of concern, and I assure him that that is the case.

On the question of affirmatives, it is always a bad thing for a Minister to give an absolute categorical guarantee if he is not entirely sure of his ground. What I am sure of is that the Government believe that decisions are made stronger through scrutiny and debate, and in that respect I respond positively to what the noble Baroness, Lady Hayter, said. We are committed to facilitating scrutiny wherever possible.

In this case, the FR Act requires the Government to use the affirmative procedure. Because the power which the Government are using, as today, to make the SI is inherent in that Act and because the SI is being made after IP completion date and amends primary legislation, it is necessary for such a procedure to be affirmative. In reply to the noble Lord, Lord Wallace of Saltaire, my assumption, if not my undertaking, is that because of that legal position, if any further regulations of this kind were to be brought forward—our current expectation is that we are not aware of further, similar statutory instruments in the pipeline—my expectation, as well as that of Parliament, is that they would come forward as affirmatives under the Act.

I was asked whether there had been any complaints or court action as a result of the numbering difficulties—the noble Lord, Lord Wigley, raised that. I am not aware of any. Obviously, the Act made provision to enable this kind of renumbering to happen. If I am wrong on that score, I will correct the issue and let him and other noble Lords know, but I am not aware of such proposals in the pipeline.

I accept the general construct of the remarks from the noble Baroness, Lady Hayter. Parliamentary scrutiny is and will be important going forward in our relations with the EU. I think it is right to place on the record—this is not only my personal view—that the Government are very appreciative of input from the scrutiny committees in both Houses as we consider what shape scrutiny should take going forward. I am informed that our officials are having fruitful discussions about this with committee officials in both Houses, and I am sure that that is the case. Obviously, arrangements for long-term scrutiny must be proportionate and focused on areas where the United Kingdom has direct legal obligations under the new relationship. However, the Government will facilitate transparencies of the withdrawal agreement and TCA governance structures to the extent that we are able.

With regard to consultation with the devolved Administrations, I referred to that in my opening remarks. The DAs were engaged on this. The Government wish to have a constructive relationship, which is why the Prime Minister called the Covid summit after the elections in the devolved Administrations—my right honourable friend the Chancellor of the Duchy of Lancaster is a conspicuous example of this; noble Lords will have heard him before your Lordships' committee yesterday. In this particular case, the Northern Ireland Executive were indeed involved and confirmed that they were content with the SI. Because of its technical content their formal consent was not required, but they were certainly fully involved.

I apologise for not being able to give a detailed answer on the CE marks to my noble friend Lady Wheatcroft. I hope I have not missed anything out. I passed over a few references to Mr Cummings—it is always tempting to mention him to me. As I say, it is a rather hot afternoon and I decline to be drawn on that subject. I hope this has been at least some kind of response to your Lordships. I am grateful for all the points raised, and we will reply to those that I mentioned which we have not replied to. I thank all noble Lords for their contributions and appreciate all those who have come to improve our discussion today. I commend the regulations to the Committee.

*Motion agreed.*

*4.04 pm*

*Sitting suspended.*

## Arrangement of Business

*Announcement*

*4.10 pm*

**The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB):** My Lords, the hybrid Grand Committee will now resume. Some Members are here in person while others are participating remotely, but all Members will be treated equally. I ask Members in the Room to respect social distancing, which remains in place for Grand Committee. If the capacity of the Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a

[Baroness Finlay of Llandaff]
Division in the House, the Committee will adjourn for five minutes. The time limit for the next debate is one hour.

## Environmental Authorisations (Scotland) Regulations 2018 (Consequential Modifications) Order 2021

*Considered in Grand Committee*

*4.11 pm*

*Moved by* ***Viscount Younger of Leckie***

That the Grand Committee do consider the Environmental Authorisations (Scotland) Regulations 2018 (Consequential Modifications) Order 2021.

**Viscount Younger of Leckie (Con):** My Lords, this order will ensure that radioactive substance activity in Scotland is controlled by a single regulatory framework, as opposed to the two different frameworks currently in existence for onshore and offshore areas.

For clarity, the onshore area is devolved to Scotland and comprises the internal waters and territorial sea of the UK that are adjacent to Scotland. The offshore area is reserved to the UK and comprises areas beyond the territorial sea. An example of activities that will be better regulated through the order is the regular movement of contaminated components, such as pumps and valves, which are transported from offshore to onshore for cleaning, maintenance and/or disposal.

The order, known as a Scotland Act order, is made in consequence of the Environmental Authorisations (Scotland) Regulations 2018, which I now refer to as the environmental authorisations regulations. Scotland Act orders are a form of secondary legislation made under the Scotland Act 1998, which forms the foundation of the devolution settlement with Scotland. This type of secondary legislation is used to update, implement and adjust Scotland's devolution settlement. The most common type of order is a Section 104 order, which allows for necessary or expedient legislation or legislative provision in consequence of any provision made by or under any Act of the Scottish Parliament or secondary legislation made by the Scottish Ministers. In this Section 104 order, provision is required in consequence of the previously mentioned environmental authorisations regulations.

Some noble Lords may remember that I recently debated another Section 104 Scotland Act order, which was in consequence of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. Just like the continuity order, this Section 104 order has been agreed by both Governments. Officials from both Governments have been working together for over a year on this order and it stands, as do all Scotland Act orders, as an example of close co-operation between Scotland's two Governments on issues of shared interest.

The environmental authorisations regulations repealed and replaced the Radioactive Substances Act 1993 in Scotland. That Act remains in place for the offshore area. As such, there are two distinct regulatory regimes in operation for the offshore and onshore areas of Scotland in relation to activities involving radioactive substances. As I explained earlier, the offshore area is reserved, so the Scottish Parliament is unable to amend the legislation that would extend the scope of the environmental authorisations regulations to the offshore area. It is for that purpose—to bring Scotland's onshore and offshore areas under one regulatory regime—that we need this Scotland Act order.

I turn to the purpose and details of the order and what it does. Amendments are sought to the Continental Shelf Act 1964 and the Civil Jurisdiction (Offshore Activities) Order 1987. The aim is that both should reference the environmental authorisations regulations where they have previously read "the Radioactive Substances Act". This change will ensure that installations in the Scottish offshore area—that is to say, fixed installations such as oil rigs and mobile installations such as floating production storage and offloading vessels—are considered to be part of Scotland for the purpose of the environmental authorisations regulations in so far as they apply to radioactive substance activities.

To put this into perspective, let me offer an example of the real world changes this order seeks to make. This year the Scottish Environment Protection Agency, known as SEPA, has received 16 applications under the current regime for Scotland's offshore sector, which is dictated by the Radioactive Substances Act. In some instances, operators undertaking onshore and offshore activities will require authorisation under both the environmental authorisation regulations and the Radioactive Substances Act 1993. This creates unnecessary bureaucracy for operators that a single regulatory framework would avoid. Therefore, through the changes made by this order, there will be a single regulatory framework for activities using radioactive substances in Scotland.

The order will also fully implement important safety measures from the Euratom basic safety standards directive. These safety measures are transposed by the environmental authorisations regulations but do not yet apply to the offshore area in Scotland. This order must be passed to give the measures full effect.

I turn now to enforcement. SEPA has been enforcing the environmental authorisations regulations onshore since they came into force in September 2018 and will enforce the regulations in the same way in relation to the offshore area once this order is made and comes into force. SEPA's enforcement includes ensuring that radioactive substances activities are appropriately authorised and inspected, and that enforcement measures are applied if necessary.

Under the environmental authorisations regulations, SEPA has enforcement measures including a regulatory notice, which allows SEPA to place additional temporary conditions on a person whether they are authorised or not, an information notice and an increased maximum penalty of £40,000 on summary conviction.

In summary, this instrument will ensure that the environmental authorisations regulations have the same scope as the Radioactive Substances Act had in relation to the offshore area. We believe this order is a sensible and pragmatic step to ensure that there is one framework for environmental authorisations in Scotland in relation to radioactive substances, which also includes the offshore area. I commend the order to the Committee.

*4.17 pm*

**Lord Bruce of Bennachie (LD) [V]:** I thank the Minister for his very helpful introduction and clarification of the purpose behind this order, which is obviously mutually agreed. It appears to be sensible, reduce bureaucracy and simplify the framework. However, may I clarify one or two issues?

As a member of the Common Frameworks Scrutiny Committee, I ask the Minister: how does this order relates to the common framework process? We are in the process of finalising the radioactive substances one; we are not there yet and I think the next stage is in October. How do these two processes interact—this order and the common frameworks process going through at the moment? It would be helpful to see how they fit together.

It was interesting that the Minister made reference to the Euratom standards and the incorporation of those, given that the undertaking has been that the UK will maintain all radioactive standards at EU level or above. I would be grateful for an assurance from the him that that remains the case.

For the offshore oil and gas industry in particular, but others as well, it would be helpful to have some indication of how SEPA will apply these powers. It is implementing what it calls a "radical new approach": the "three planets" approach. In other words, we should have environmental standards that recognise we have one planet, not three. It states:

> "Our approach is ambitious. It spells out how we will use traditional regulatory tools, such as permits and enforcement, in clearer and more powerful ways, and also sets out some completely new ways, such as novel partnerships that we will develop and use to support innovation in the sectors."

That is obviously a very noble ambition, but for people in the sector it may raise concerns of potential complication or the risk of non-compliance. Again, it would be helpful to have some idea of how this will be approached.

There is an awful lot of detail in the instrument—I have tried to go through it. There is clearly a lot of discretion, a lot of scope for negotiation and a lot of process, which should meet all circumstances—it seems to be extremely thorough. Nevertheless, reassurance that the process will not create bureaucracy and burdens that were not there before would be helpful—although the Minister has made it clear that the one disadvantage of the previous regime was that two applications could be necessary where now only one will be.

The other question is whether there is a role for the UK Government if SEPA or Scottish Ministers take a view which may not be consistent with what is happening elsewhere in the UK—for example, with what is happening in the southern North Sea. In that context, is it entirely a matter for the devolved Administration, or is there any role for the UK Government to intervene, comment or even be consulted?

Specifically, there is an exclusion for matters of national security and, again, some clarification of how this might apply would be helpful. It states that, subject to the provision of this regulation, these regulations "bind the Crown". It does not apply, obviously, for naval, military or Air Force purposes, but presumably other Crown agencies could be impacted by it. Again, it would be helpful to have clarification of whether there is a clear line of communication, whether there is any overlap, or whether the relationship is entirely between the participants participating agency and SEPA and, where necessary, Scottish Ministers.

It is said that the process of these environmental authorisations is taken step by step. This one relates to radioactive substances, but others will be introduced on water, waste management and pollution prevention and control. Can the Minister give any indication of when and how it will be extended to those other sectors—whether it will be through the same process that we are undertaking today or through a different route?

That said, from the consultation that has taken place and from what I have seen and heard, all parties seem to be clear that this is a simplification, a necessary step, one that people have been consulted on and, as far as I can tell—I may have missed something—have not expressed any serious reservations about. However, change can always lead to misunderstanding or complexity, and I would welcome any assurances that the Minister can provide to assure me that those have been consider and eliminated—in particular, on my questions, to whatever extent he can answer them, either now or in writing after the debate.

*4.23 pm*

**Lord Falconer of Thoroton (Lab):** First, I thank the Minister, the noble Viscount, Lord Leckie, for his very clear exposition of the regulations. I apologise to him. Last time we appeared in Committee together, I repeatedly referred to him as "Viscount Leckie" rather than "Viscount Younger of Leckie", but he made no complaint whatever, which is a measure of the man. I apologise for that on this occasion.

Like the noble Lord, Lord Bruce, I indicate that we on this side support the regulations. They seem sensible; we have a number of questions. The first is: my understanding is that the Environmental Authorisations (Scotland) Regulations 2018 do not have the same extent as the Radioactive Substances Act 1993 and that the purpose of these regulations is to ensure that they do.

The Environmental Authorisations (Scotland) Regulations came into effect on 1 September 2018, and my understanding is that these regulations will come into effect tomorrow, which will be 22 July 2021. Am I right in saying that some other body, apart from the Scottish Environment Protection Agency, had responsibility for authorising the use of radioactive substances in areas offshore of Scotland during that period? Can the Minister identify who it was, and whether that body acted completely in concert with the Scottish Environment Protection Agency?

I may have misunderstood what the Minister said, but I think it was that the effect of these regulations is to treat those offshore installations that deal with radioactive substances as covered by the environmental authorisations regulations. Under the devolution settlement at the moment, they would not be covered because those offshore installations are not covered, presumably, by the Scotland Act 1998. How is it—he explained but it was too fast for me to pick up—that we are making a change in what is reserved and what is devolved by secondary legislation?

[Lord Falconer of Thoroton]

Separately from that constitutional issue, can the Minister give us some examples of the sorts of activity involving radioactive substances that will be caught by this new regime, which brings the radioactive substances use offshore into the ambit of the Scottish Environment Protection Agency? What risks do those sorts of activities generally involve and what resources does the Scottish Environment Protection Agency have to deal with these issues?

Finally, the Scottish Environment Protection Agency was, not that long ago, subject to a cyberattack. Should we have any anxieties about cyberattacks in relation to SEPA when dealing with radioactive substances and, if we do, what steps are being taken by SEPA to ensure that this does not happen again? My reading of the Explanatory Notes for these regulations suggests—this is not a complaint; I just want clarity—that there have not in fact been consultations on these regulations, so they have not been the subject of comment in relation to, for example, those people who use radioactive substances offshore or green and environmental organisation that might have issues in relation to that. Have either the Scottish Government or UK Government consulted either with people involved in the industry informally or with green and environmental charities as to their view in relation to this? In particular, has the Scottish Environment Protection Agency indicated, formally or informally, what sort of process it will set up to ensure that there is a fair process for getting the necessary authorisations? By a "fair" process, I mean in the sense that it is fair to the people who seek the authorisation but also properly effective in protecting the environment.

I give a further apology to the noble Viscount, Lord Leckie, in that I gave him no notice of any of these questions and therefore I would quite understand if he wishes to write. I am obliged to have this opportunity.

*4.28 pm*

**Viscount Younger of Leckie (Con):** My Lords, I start by thanking the noble and learned Lord, Lord Falconer, and the noble Lord, Lord Bruce, for their general support for this order and for their interest and questions.

I guess it is fair to say that, having spent 11 years in the Lords, I am quite used to having questions that come out of left field. It is true that I may well have to write to noble Lords on certain aspects, but I shall do my best to answer all the questions. I realise that I should say that I rather milked the opening statement, it is fair to say. I felt that I was saying the same things twice, but I wanted to be quite clear that we might want to give some clarity to the order in opening.

In no particular order, to answer a point raised by the noble and learned Lord, Lord Falconer, on whether the order pushes the boundaries of the devolution settlement, I can reassure him that no, the order is a sensible and pragmatic step on the part of the UK Government to ensure that provision required in consequence of the Environmental Authorisations (Scotland) Regulations 2018 is made. As he will probably know, a Section 104 order is a mechanism provided by the Scotland Act 1998 to ensure the effective working of the devolution settlement.

The noble and learned Lord, Lord Falconer, raised the good question of whether consultation exercises have been undertaken. He may well know that orders taken forward under Section 104 are not usually consulted on, as they are made in consequence of Acts of the Scottish Parliament, which have previously been the subject of separate consultation exercises. Consultation was carried out in 2017 on proposals for the Environmental Authorisations (Scotland) Regulations 2018. The Scottish Government engaged with the Scottish Environment Protection Agency—SEPA—as mentioned earlier, during the development of the regulations and, for both the framework consultation and the draft regulations, I am pleased to report that consultees were supportive.

The noble Lord, Lord Bruce, asked about timing and when the order will come into force. The target in-force date for this order is 1 November 2021. That is subject to parliamentary approval; as he may well know, the order is subject to the affirmative procedure under the Scotland Act 1998 and has been laid in draft for parliamentary approval before it can be made.

I think it is fair to say that the noble Lord, Lord Bruce, asked among his questions how the framework would be enforced. SEPA has been enforcing the environmental authorisations regulations onshore since they came into force in September 2018 and will enforce the regulations in the same way offshore once this order is made. To reassure him, SEPA's enforcement includes ensuring that radioactive substances activities are appropriately authorised and inspected, and that enforcement measures are applied as appropriate if necessary.

The noble Lord, Lord Bruce, asked further about how SEPA works with its counterparts in the rest of the UK, which is a very fair question. It engages routinely with the relevant regulatory bodies and industry groups across the UK, including the other environmental agencies and offshore regulators. As SEPA has already been enforcing the environmental authorisations regulations onshore for several years, its counterparts are aware of the regulations that will be applied offshore by the Environmental Authorisations (Scotland) Regulations 2018 (Consequential Modifications) Order 2021.

The noble Lord, Lord Bruce, also asked about the movement of radioactive substances between offshore areas in Scotland and England. Again, to give a bit more detail, the concordat on the co-ordination of intergovernmental working on radioactive substances policy, which is due to be published shortly, will establish a mechanism for consensus on matters relating to the movement of radioactive substances between the four Administrations of the UK. It is a very important question, because this is inclusive of all sectors, nuclear or non-nuclear, which utilise or produce radioactive substances. It will include ensuring that, in some cases, there is agreement to proceed with common policy across the UK, including the movement of radioactive substances between the four nations. That might go some way to answering the point about security, raised, I think, by the noble Lord, Lord Bruce.

The noble Lord, Lord Bruce, also raised a point about Euratom and maintaining the standards post our exit from the EU. Euratom is already being implemented with the environmental authorisations

regulations 2018 onshore; this order will ensure that Euratom standards apply across the board, which, to reassure the noble Lord, includes offshore.

To extend the answer to the question that the noble Lord, Lord Bruce, raised about security, for example, if an authorised operator moves from one offshore area to another, a new authorisation would be required. However, this is not a new requirement. It is the same position as when the Radioactive Substances Act 1993 applied across the whole UK.

It is fair to say that, in practice, it would be rare for an operator to move between jurisdictions; most installations are fixed. It would be a consideration only for floating production and storage and offloading installation facilities, which usually move only permanently at end of life, or for maintenance.

I am very aware that I have not managed to answer the question from the noble and learned Lord, Lord Falconer, on risks or his important points about cyber, so I shall certainly have to write a letter on that. I hope that I have attempted to answer most of the questions raised. With that, I thank both noble Lords for their general support for this order.

*Motion agreed.*

*4.36 pm*

*Sitting suspended.*

## Arrangement of Business

*Announcement*

*4.40 pm*

**The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB):** My Lords, the hybrid Grand Committee will now resume. Some Members are here in person while others are participating remotely, but all Members will be treated equally. I ask Members in the Room to respect social distancing, which remains in place for Grand Committee. 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.

## Electricity Capacity (Amendment) Regulations 2021

*Considered in Grand Committee*

*4.41 pm*

*Moved by* ***Lord Callanan***

That the Grand Committee do consider the Electricity Capacity (Amendment) Regulations 2021.

**The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con):** My Lords, before outlining the provisions made by this draft instrument, I will provide the Committee with a brief reminder of what the capacity market is and does. The market is at the heart of the Government's strategy for maintaining security of electricity supplies in Great Britain. It secures the capacity needed to meet future peak electricity demand under a range of scenarios through competitive, technology-neutral auctions, normally held four years and one year ahead of the relevant delivery year. Those who win capacity agreements, known as capacity providers, commit to providing capacity during periods of system stress in exchange for receiving capacity payments. Capacity payments are funded by electricity suppliers, which recover this cost from electricity consumers.

Since its introduction in 2014, the capacity market has succeeded in ensuring secure electricity supplies at a low cost to consumers. Furthermore, it has a proven track record of facilitating investment in new-build capacity. To date, the capacity market has supported investment in over 13 gigawatts of new capacity, including smart technologies such as battery storage and demand-side response.

The most recent auctions, which took place in March this year, were successful in securing all the capacity needed to meet peak demand through to 2024-25. This year, for the first time, as a result of the carbon emissions limit introduced to the capacity market in 2019, coal-fired plant did not participate in the four-year-ahead capacity market auction, nor will it be able to participate in any future four-year-ahead auctions. This is just one of the steps that we are taking to help to align the capacity market with our broader decarbonisation objectives on the road to net zero emissions by 2050.

In 2019 we published our five-year review of the capacity market. In it, we found that the capacity market was fundamentally meeting its objectives. However, we identified a number of areas that could be improved through incremental change, many of which have since been implemented through subsequent amendments. That has ensured that the capacity market remains the best way to ensure security of supply at the lowest cost to the consumer. Most years, we also make adjustments to the legislation based on our day-to-day experiences of operating the capacity market in order to ensure that it continues to function effectively.

In that context, the draft instrument before us today makes three technical improvements that will address issues in the functioning of the capacity market that we have encountered over the past year. Specifically, a number of capacity providers had agreements terminated last year but were unable to transfer their obligations to other providers through the capacity market's secondary trading market. To reduce risks to security of supply, the draft instrument aims to remove the barriers restricting the trade of obligations following termination. This will improve the flexibility of the secondary trading regime and make it easier to replace capacity that closes prematurely and at short notice.

The past year also saw a large number of appeals by prospective capacity providers whose applications to participate in the capacity market had been rejected, often for minor administrative errors. The draft instrument aims to make clearer that the capacity market delivery body—the organisation that delivers the capacity market—can accept information that corrects such errors when determining these appeals. That will help to reduce the risk of applicants being rejected due to minor or administrative errors that could otherwise have a detrimental impact on the level of competition in the auction.

[Lord Callanan]

Finally, the draft instrument aims to allow capacity providers who have had the duration of their agreements reduced as a sanction for non-compliance with certain requirements the option to appeal a decision to the Secretary of State. We acknowledge that a reduction in agreement length could have significant impacts on the viability of projects, and we therefore believe that it is right that capacity providers in such a situation should be given the right to appeal.

To complement this draft instrument, we have put forward an amendment to the capacity market rules, which was laid before the House on 5 July 2021. The amendment rules make a number of additional technical improvements. Notably, they update the carbon emissions limits to introduce new formulae that allow for a better reflection of the actual carbon emissions of certain generators, such as those equipped with post-combustion carbon-capture technology.

The rules amendments also extend some of the coronavirus easements which were introduced and debated in this House last year, in recognition that coronavirus has impacted the ability of capacity providers to meet some of their obligations under the capacity market. The extension of some of these arrangements will help providers in coping with the continuing impacts of the pandemic.

In conclusion, this draft instrument introduces a number of technical provisions which are intended to address issues that we have identified over the past year through our experience of managing the annual delivery cycle of the capacity market. Therefore, these technical provisions are necessary to enable the continued efficient operation of the capacity market in delivering on its objectives. I therefore commend this draft instrument to the House.

**The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB):** I call the noble Lord, Lord Bradshaw. Lord Bradshaw? We seem to have lost the noble Lord. We will therefore move to the next speaker and then return to the noble Lord, Lord Bradshaw. I call the noble Lord, Lord Bhatia.

*4.47 pm*

**Lord Bhatia (Non-Afl) [V]:** My Lords, I thank the noble Lord, Lord Callanan, for explaining this instrument, and I fully agree with what he has said. In view of this very important matter, can the Minister explain whether this capacity system will create more emissions?

**The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB):** I think that we can now try to return to the noble Lord, Lord Bradshaw. Lord Bradshaw? We will move on to the noble Baroness, Lady Bowles of Berkhamsted.

*4.48 pm*

**Baroness Bowles of Berkhamsted (LD) [V]:** My Lords, this is a set of changes to the capacity market system following a consultation. As a serial responder to consultations—although not in fact to the one relating to this—I must say that I am surprised by how few responses some get. In this instance, there were 38, although some were from trade associations, so, collectively, it covers more than 38 entities. But it still seems a low number, although, if I remember correctly, there have been fewer on some other electricity generation SIs.

I do not expect that the Minister can easily do anything about that, and there are so many consultations that I can understand if there is consultation fatigue—I have suffered from that myself—but it worries me if responses are obtained only from directly interested parties, important though they are. They are public consultations and the clue is in that name. The consultation informing this instrument seems to have received only one potentially non-industry submission from an individual respondent. Yet, as the Minister has explained, the capacity market is an important part of maintaining a secure and reliable electricity system and even this instrument is not devoid of public interest, as against producer interest, points.

Our capacity auction system is neutral in that all types of generation are included and, as the Explanatory Memorandum says at paragraph 7.2, and as the Minister has alluded to, the purpose of the payments is to,

"incentivise the necessary investment to maintain and refurbish existing capacity,"

and in some instances to support new-build projects. However, there is also a secondary market in capacity agreements and this instrument now breaks the link between the continuing existence of the original capacity agreement owner and the ongoing validity of capacity agreements that they have sold on.

I have some reservations about that change in that it might have perverse incentives to encourage overbidding for the purpose of secondary trading. It could be counterproductive to encouraging investment and, more to the point, knowing where that investment is to be made, and makes trading for cash more likely, which is not really what it was all meant to be about. For example, what pressures might there be from shareholders for certificates to be sold rather than for investment to be made?

Therefore, I am not entirely convinced that the public interest, which is substantial in terms of security of supply, is served by this. I can see that there may be arguments on the other side about maintaining the capacity that has been auctioned, and I should be interested if the Minister elaborated on those more fully and on what other mechanisms compensate for the fact that what was originally a kind of safeguarding mechanism has been removed.

Not surprisingly, the consultation responses agreed with the proposition. However, as I have pointed out, given that all those responses, bar one, have been entirely from industry and therefore from those who would benefit by it, either by way of enhanced secondary-market value of an agreement or from ongoing value irrespective of the status of the original owner, that is hardly a response that can be said to have the public interest uppermost.

I turn now to the reductions in the length of capacity agreements when a provider has breached obligations. I have no objection to the basic fairness of allowing appeals. I cannot help wondering how that might interact with a potentially lively secondary market and keep up with the obligations that attach to the traded

certificates. I would welcome more explanation as to how that works. For example, can the Minister assure me that purchasing an agreement and obligation on the secondary market does not give, of itself, an excuse for non-performance or leniency?

The third change relates to allowing the delivery body to take into account changes in non-material errors in pre-qualification applications during appeals. This seems to be eminently sensible and I wonder whether that is, or can be, part of a wider approach within BEIS to a whole range of matters where non-material points or presentation prevent access to grants and other assistance, in particular for smaller entities. I note the value of the change to smaller entities, as explained in the memorandum. I would welcome that becoming a more general approach in BEIS.

I am interested to hear what the Minister has to say about the issues that I have raised and especially whether the effects on the trading changes will be monitored for any detriment and whether that may have been necessitated because of Covid, rather than the previously-existing steady state?

**The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB):** I will now call the noble Lord, Lord Grantchester, and after that I will call the noble Lord, Lord Bradshaw, again. It would be helpful if he could remain muted until he is called after the noble Lord, Lord Grantchester.

*4.54 pm*

**Lord Grantchester (Lab) [V]:** I am grateful to the Minister for his introduction to the regulations before the Committee today. He looks a little isolated in the Committee Room today, but I hope our words will buoy him up. We are conducting very successful deliberations today. As he remarked, these regulations are non-contentious and provide sensible revisions to strict interpretations to the letter of the previous regulations by the capacity market delivery body. I agree that the three amendments will enable a better dialogue between capacity providers and the body to enable corrections of non-material errors in pre-qualification applications to enable secondary trades to be better maintained and to enable appeals to be heard to extend compliance periods or withdraw reduction decisions. All these should enable a more competitive capacity market to operate, so I am content to approve the regulations today.

Although they are uncontentious, I must comment that I found the Explanatory Memorandum rather scant. While I note from paragraph 15.3 that the Explanatory Memorandum meets the required standards, which I am sure will have been set and agreed with your Lordships' Secondary Legislation Scrutiny Committee, nevertheless it would have been helpful to me if the memorandum had offered an overview of the main pertinent elements of the consultation respondents' comments. I realise that the Minister will reply that further information can be gathered through the link to the consultation document and the Government's response, but some indication of which minor amendments were put forward that have been taken into account where sensible would have given better assurance that respondents were broadly supportive of the proposals. Indeed, the noble Baroness, Lady Bowles, spoke about consultation and its importance with interpretation.

Furthermore, at paragraph 6.2 the Capacity Market (Amendment) Rules 2021 are specifically mentioned as additional to these regulations, but without explanation. The Minister said a little about the background details to that in his opening remarks, and I am grateful to him for that.

Having made these remarks, I merely add that the capacity market has worked well in bringing forward investments and innovations necessary to the electricity market reforms that are now appearing more and more to be merely providing free money to provide generation that either will not be called on or would be provided in any case, should there be a need. The most obvious example of this is nuclear power, where a plant is not subject to being switched on and off. Does the Minister consider this an issue, or does he believe that the price mechanisms adjust to this situation? Certainly, the initial operation of the capacity market has contended with and avoided the potentially huge volatility of price movements should various future energy needs predictions of marginal shortages have proved accurate. As we know, the cut-backs consequential to the Government's austerity programme meant that there was no danger of the lights going out.

As the next review considerations begin to arise, can the Minister confirm that a full appreciation of the capacity market mechanisms to meet potential powers shortages will be part of that review and that it will not be limited to focusing merely on technical, operational measures? Will the review undertake more fundamental appraisals, such as considerations to replace the capacity market mechanisms with alternatives, such as strategic reserve capacity?

**The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB):** I now call the noble Lord, Lord Bradshaw. I will try one more time, before turning to the Minister, to call the noble Lord, Lord Bradshaw. As we are unable to reach the noble Lord, Lord Bradshaw, I now call the Minister to respond.

*4.59 pm*

**Lord Callanan (Con):** Perhaps I could say to the noble Lord, Lord Bradshaw, who has obviously had a problem coming in, that, if he has any specific questions about these regulations and wants to write to me directly, I will be happy to provide him with answers to any concerns he might have. I thank other noble Lords for their valuable contributions to this debate.

The Government continue to believe that the capacity market is the right mechanism for delivering security of supply at the lowest cost to consumers, and we continue to take steps to ensure its ongoing efficient and effective operation. The capacity market is tried and tested. The fact that it has supported investment in over 13 gigawatts of new-build generation and interconnectors since its introduction demonstrates that it can bring forward the capacity needed to meet future peak demand and replace older capacity as it retires.

[Lord Callanan]

Furthermore, the introduction of carbon emissions limits and the fact that coal-fired generation was unable to participate in the recent four-year-ahead auction shows that we are taking steps to ensure that the market is in alignment with our decarbonisation objectives. We acknowledge that further work will be required to ensure that the capacity market is aligned with our net-zero target and we intend to issue a call for evidence that will engage the industry on potential actions for delivering this objective. The Government are committed to ensuring that the right policy tools are in place for delivering a secure and affordable electricity system as we transition to net zero. This includes regularly assessing the performance of the capacity market.

In line with our statutory obligations under the electricity capacity regulations 2014, we have recently begun work on the next five-year review of the capacity market, which will be published in 2024. This in-depth review will scrutinise the objectives and design of the capacity market. It will take account of how the energy landscape has changed since the market was first introduced, in particular our net-zero ambition and changes to wider energy policy. We will also identify and implement changes to the design of the market to ensure that it remains able to deliver security of supply.

Returning to the draft instrument before the Committee today, the changes respond to three technical issues that we have encountered over the past year and will increase flexibility for both market participants and the capacity market delivery body. Ultimately, it will help ensure that the capacity market continues to deliver on its objective of guaranteeing secure electricity supplies at the lowest possible cost to consumers.

In response to the noble Lord, Lord Bhatia, and his brief intervention asking whether the market would create more $CO_2$ emissions, I can tell the noble Lord that the capacity market helps to maintain public support for net zero by ensuring secure electricity supplies as we decarbonise the power sector. Furthermore, as I said earlier, we have introduced emissions limits to the capacity market to help align it with broader decarbonisation objectives.

The noble Baroness, Lady Bowles, was concerned about the low number of responses to the consultation. We held a series of stakeholder workshops during the consultation to gather additional views, including an open invite session which had around 100 different attendees. The noble Baroness also asked what the rationale was for secondary trading. This has been an important part of the capacity market since it was implemented in 2014. It supports the security of electricity supplies by enabling the transfer of agreements which cannot be fulfilled. In addition, the noble Baroness wanted assurances that secondary-trading agreements do not give the transferee a free pass on obligations and safeguards. They do not; capacity providers are subject to the same obligations whether or not they secured their agreements through secondary trading.

The noble Lord, Lord Grantchester, asked whether the market was simply providing payments for capacity which is already there. Existing plants can be the most cost-effective and efficient way of delivering reliable capacity. Including existing capacity in the capacity market auction drives competition and thus reduces the total cost of the scheme for consumers. The noble Lord went on to ask whether alternatives to the capacity market would be considered in the 10-year review. The answer is yes; the review will consider the case for government intervention in terms of security of supply, which scheme is best for this and what the objectives of such a scheme should be.

I think that deals with all the questions I was asked during the debate. So, with that, I commend these draft regulations to the Committee.

*Motion agreed.*

**The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB):** My Lords, that completes the business before the Grand Committee this afternoon. I remind Members to sanitise their desks and chairs before leaving the Room. The Committee is adjourned.

*Committee adjourned at 5.04 pm.*