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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
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 or for the Lords spiritual.

House of Lords

Monday 29 November 2021

2.30 pm

Prayers—read by the Lord Bishop of Durham.

Covid-19: Vaccine Donations
Question

2.37 pm

Asked by ***Lord Lancaster of Kimbolton***

To ask Her Majesty's Government what plans they have to donate COVID-19 vaccines to other countries bilaterally.

Lord Lancaster of Kimbolton (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and declare my interest as deputy colonel commandant of the Brigade of Gurkhas.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, the UK will continue to donate Covid-19 vaccines to bilateral partners in line with the Prime Minister's commitment at the G7 summit in June 2021. The primary objective is to promote the economic development and welfare of recipient countries, although we will also seek to strengthen key relationships in line with the integrated review as a secondary benefit. Decisions are taken on a case-by-case basis when vaccines are available to be donated.

Lord Lancaster of Kimbolton (Con): May I seek my noble friend's reassurance on two points: first, that we will donate, not destroy, surplus vaccines; secondly, that he will look again at the request from the Government of Nepal for a bilateral donation, not least so that we can fulfil our commitment and our duty of care to vaccinate some 30,000 British Army Gurkha veterans who live there?

Lord Goldsmith of Richmond Park (Con): My Lords, the UK donated 130,000 Covid vaccines to Nepal in August, recognising the historic link between our two countries. Since the beginning of the pandemic, our embassy in Kathmandu has reprioritised more than £40 million of development aid to help address the medical and socioeconomic consequences of the pandemic. In response to Nepal's second wave of infections, the UK has delivered an additional package of support, including donating 260 ventilator machines, thousands of pieces of personal protective equipment and constructing an oxygen plant in Kathmandu.

The Lord Bishop of Durham: In the light of the new omicron variant that has dominated the news over the weekend, my colleague Archbishop Thabo Makgoba of Cape Town urged those of us in rich countries to do better at narrowing inequality of vaccination rates, which are 7% in Africa and 70% in Europe. We must acknowledge that this virus knows no national boundaries and will spread, mutate and return to us in the way that we are seeing, so we need a global approach, not simply a bilateral approach. Will Her Majesty's Government's commit to redoubling efforts to seek a truly global approach to vaccine donation to ensure that people in all nations are safer?

Lord Goldsmith of Richmond Park (Con): My Lords, the Government strongly agree and we are committed to supporting rapid, equitable access to safe and effective vaccines through multilateral co-operation to end the acute phase of this pandemic. That is why the UK supports the COVAX facility and was one of the first countries to do so. It is, as the right reverend Prelate knows, a multilateral mechanism that supports access by pooling resources to accelerate the development, manufacture and delivery of vaccines. More than 537 million vaccines have so far been delivered globally through that scheme.

Baroness Sugg (Con): My Lords, I appreciate the Minister setting out what the UK has done, but when we look at vaccination rates in low-income countries, it is clear that the UK and, indeed, all high-income countries have just not done enough. Can the Minister say how many vaccines the UK has drawn down from the COVAX facility and how many vaccines have been destroyed as close to or past their use-by date?

Lord Goldsmith of Richmond Park (Con): As my noble friend will know, COVAX is designed to work for both high and middle-income countries; this allows for the pooling of investments behind early vaccine candidates. The UK has procured 539,370 doses of the Pfizer vaccine through COVAX; those were delivered early this year. These doses help the NHS to deliver our vaccination programme as quickly as possible. No further doses have been received by the UK from COVAX. I am afraid I cannot answer my noble friend's question on the waste of unused vaccines, but clearly, it is in all our interests and a key priority that we minimise any potential waste.

Lord Bilimoria (CB): My Lords, in May this year, as president of the CBI, I chaired the B7. Dr Gita Gopinath, chief economist of the IMF, spoke at it and in May sent me a report called *A Proposal to End the COVID-19 Pandemic*. It would cost $50 billion to vaccinate the whole world by the first half of 2022. If one company, Serum Institute of India, can produce 1 billion vaccines, surely the Minister and the Government agree that we should follow the recommendations of this report, pull together and end this pandemic. Until we are all safe, no one is safe.

Lord Goldsmith of Richmond Park (Con): The noble Lord is absolutely right that until we are all safe, no one is safe. That is why the UK has been if not the biggest contributor then certainly one of the biggest contributors to the COVAX scheme. As the noble Lord says, making vaccines available globally not only helps to end the pandemic in developing countries but reduces the threat posed by vaccine-resistant variants emerging in areas with large-scale outbreaks, which of course threatens the UK. It is in all our interests that we do so.

Baroness Chakrabarti (Lab): My Lords, it is a bitter irony indeed that tomorrow's ministerial meeting of the WTO has had to be cancelled indefinitely because of a variant that could have been prevented had we all collaborated sooner on, for example, the TRIPS waiver. Given that the overwhelming majority of the R&D money spent on vaccines came from public and philanthropic funds, is it not time that the European Union stopped blocking the TRIPS waiver and that Her Majesty's Government sided with the United States, India, South Africa and much of the global south, so that we do not just donate but collaborate over patents and know-how?

Lord Goldsmith of Richmond Park (Con): My Lords, the UK is engaging intensively and constructively in the TRIPS waiver debate. We continue to be open to all ideas that have a positive impact on vaccine production and distribution. A balanced and effective intellectual property regime has proved invaluable in this crisis, as in others, in supporting innovation and collaboration. In the meantime, we know we need to continue to push ahead with pragmatic action now, including voluntary licensing and technology transfer agreements.

Lord Oates (LD): My Lords, did the Minister have a chance to listen to last night's broadcast by South African President Cyril Ramaphosa? He said that

"the Omicron variant should be a wake-up call to the world that vaccine inequality cannot be allowed to continue … Until everyone is vaccinated, we should expect … more variants … Instead of prohibiting travel, the rich countries … need to support the efforts of developing economies to access and to manufacture enough … doses for their people".

In light of those comments, will the Government convene an urgent meeting of the G7 to tackle the issue of the TRIPS waiver—we do not have time to wait—but also to agree an economic support package for southern African economies, which will be devastated by this travel ban?

Lord Goldsmith of Richmond Park (Con): My Lords, I did not hear the broadcast, but I heard the summary of the message. I do not think anyone pretends it is an either/or decision: either blocking flights temporarily into this country or enabling the widespread vaccination of vulnerable populations. Our view is that both are necessary as immediate-term steps. The G7 has been dominated by discussions around this issue, and no doubt that will continue.

The Lord Speaker (Lord McFall of Alcluith): I call the noble Lord, Lord Bethell. He is not here. I call the noble Lord, Lord Collins of Highbury.

Lord Collins of Highbury (Lab): My Lords, too many of the vaccines gifted to the poorest countries are within 12 weeks of their use-by dates. These short lead times between donation and expiry show why a strengthened G20 and a month-to-month delivery timetable are now urgent. Will the Government follow the Swiss example of expeditious transferring of delivery dates with their recent transfer to COVAX? We can act now and have an effect now.

Lord Goldsmith of Richmond Park (Con): My Lords, the UK does not hold a stockpile of Covid vaccines; we manage the supply chain carefully. However, for all bilateral donations we sought assurances that recipients have the capacity to roll out the quantity of doses in line with the national vaccination programmes and ahead of their expiry dates. For donations through COVAX, the UK is working closely with both COVAX and its partners—such as UNICEF—to allocate vaccines according to need, facilitate the rapid delivery of doses and maximise the shelf-life available to recipients.

Baroness Coussins (CB): My Lords, I return to the issue posed by the noble Baroness, Lady Chakrabarti. The WTO's waiver—the TRIPS waiver—was activated for antiretroviral drugs at the height of the HIV/AIDS crisis. Can the Minister say exactly what the blockages are at the moment? This would be one good way of getting Covid vaccines much more rapidly produced and distributed in the countries that need them most.

Lord Goldsmith of Richmond Park (Con): The noble Baroness is right and that is why the UK is engaging actively in this debate. I will ask my colleagues across government in whose department this sits to provide an update, which I will share with the noble Baroness.

Baroness Fall (Con): My Lords, only 2% of people in low-income countries have received vaccines—woefully short of what is needed if we are to put this behind us. I echo the point made by the noble Lord, Lord Oates: we are still president of the G7 and we should use that power to convene another meeting, a global summit on vaccines. I ask the Minister to put this to the Government.

Lord Goldsmith of Richmond Park (Con): I am very happy to make that commitment—I will put this to colleagues across government.

Rivers and Coastal Waters: Sewage

Question

2.46 pm

Asked by ***Baroness Quin***

To ask Her Majesty's Government what recent discussions they have had with water companies about the discharge of sewage into rivers and coastal waters.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, the Government have repeatedly made it clear to water companies that the current number of sewage discharges is totally unacceptable. My counterpart in the other House has made this very clear directly to the CEOs of the water companies. Government and regulators are working with the industry as part of the Storm Overflows Taskforce, and the Environment Agency and Ofwat have launched a major investigation into sewage discharges from sewage treatment works.

Baroness Quin (Lab): My Lords, this past week has seen the publication of a report by Surfers Against Sewage. It detailed an increase in sewage discharges as a result of which, one in every six days in the swimming season was declared "unswimmable". There are also reports, just referred to by the Minister, of new investigations of widespread, unpermitted releases of sewage by water companies, which they are now admitting to. Given the urgency of the situation, has the Minister—beyond his concluding remarks on the Environment Bill—any updates on the timescale for progressively reducing sewage discharges, on bringing forward the Government's own plan currently scheduled for next September, or on any other plans for new measures?

Lord Goldsmith of Richmond Park (Con): I very much agree with the comments of the noble Baroness and strongly welcome the work of Surfers Against Sewage, which has worked wonders in putting this issue at the top of the political agenda, where it belongs. On the back of that pressure, this House mobilised in a very effective way and that strengthened the hands of those in government who are keen to push the issue further. On timescale, the Government can use our direction-making powers in the drainage and sewage management plans to direct companies to take more action if needed. We will provide a further definition of what that means, and the ambition that we are working to, in early 2022—a few months' time.

Baroness Browning (Con): What has my noble friend's department done on the need to improve infrastructure—for example, separating out foul water from surface water so that the amount of foul water that needs to be discharged is reduced? Does his department have a plan, has it been costed and is there a timetable?

Lord Goldsmith of Richmond Park (Con): My Lords, one of the things that the Government committed to during the passage of the then Environment Bill, now Act, was to conduct an assessment of what it would cost to eliminate storm overflows and—separately, because it is a different question—to eliminate the harm from storm overflows. We do not know yet what the cost of the former would be; estimates vary wildly from £150 million to £600 million. So we do not know what the cost will be or even where the opportunities are, but that is the purpose of the study that is being conducted and we will act on its results as a matter of urgency.

Lord Campbell-Savours (Lab) [V]: My Lords, I have a very simple question. I cannot understand how the Government can trumpet the privatisation of water as a success when companies such as United Utilities not only unsettle whole populations by failing to control their assets and stop flooding in Lake District towns such as Keswick, but also, following flooding, seem blind when their sewage plants overflow, fail and then pollute lakes such as Lake Bassenthwaite, destroying local wildlife. For how long do we have to tolerate these excesses and failures?

Lord Goldsmith of Richmond Park (Con): My Lords, the Government are committed to the private model, supported by strong independent economic regulation—that bit is the key. We have no plans to bring water into public ownership but, equally, holding a near-monopoly licence to provide these services is clearly a privilege and the Government and regulators have high expectations of the behaviour of owners and investors. That is now reflected in the toughest laws that this country has ever had in relation to our water quality.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, Southern Water is named as by far the largest culprit among the water companies in the report after the company issued 1,949 sewage discharge notifications, from a total of 5,517 around Britain. This accounted for 35% of all incidents from nine water companies. The company has already been fined but appears unrepentant. How are the Government going to bring Southern Water into line, given that fines do not appear to be a deterrent?

Lord Goldsmith of Richmond Park (Con): My Lords, we have made it clear to the water industry, including Southern Water, that it needs to reduce the adverse impacts of all sewage discharge discharges, whether treated or untreated, as a matter of urgency. In addition, the sector will need to demonstrate year-on-year progress in meeting those targets. Where the targets are not met, the Government will have no hesitation whatever in stepping in and using all the tools at our disposal.

Baroness Altmann (Con): My Lords, I thank my noble friend, his department and his officials for all the support that they have given on this issue during the passage of the then Environment Bill and the amendment from the noble Duke, the Duke of Wellington, that was finally accepted. I welcome the investigation into the sewage discharges. Does my noble friend agree that a ban on wet wipes would significantly improve the ability of water companies to manage sewage treatment more effectively and, if he does, when any such measures could be anticipated?

Lord Goldsmith of Richmond Park (Con): The noble Baroness makes a really important point. There is no doubt that wet wipes can be a serious contributing factor to overflows at treatment works. Defra has already announced a call for evidence, which will explore among other things a possible ban on single-use wet wipes—or at least those that contain plastics. I assure the noble Baroness that, whatever the outcomes of that call for evidence, we are absolutely determined and willing to do whatever is necessary.

Baroness Jones of Whitchurch (Lab): My Lords, the chair of the Environment Agency, Emma Howard Boyd, said recently that the directors of water companies that are guilty of repeated deliberate or reckless breaches of environmental law should be struck off and, potentially, given custodial sentences. Does the Minister agree with her? If so, what are the Government doing to ensure that the individual directors responsible for these environmental crimes pay the right penalty for those actions?

Lord Goldsmith of Richmond Park (Con): My Lords, I was not aware of her suggestion, but it sounds like a very good idea and I will convey it back to my colleagues at the department. The cumulative effect of the Environment Act and the direction provided to Ofwat just a few months ago means that we have more tools to deal with these issues than we have ever had in the past. The Government have been clear, publicly but also directly with the water companies, that we are absolutely willing to—and, where necessary, will—use the tools at our disposal.

Lord Moylan (Con): My Lords, does my noble friend agree that our forebears who built our sewerage system sought to work with nature so as to reduce tremendously the amount of sewage discharge into natural watercourses but not to eliminate it; that the cost of going for total elimination at this stage would be enormous; and that it is important to consult the consumer before any dramatic pledges are made to see where he and she would like to put this in their scheme of priorities?

Lord Goldsmith of Richmond Park (Con): The noble Lord makes a really important point, and that is why we, and many campaigners, talk not about eliminating overflows but about eliminating the harm from overflows. That would then allow us to make more use of the kinds of natural systems that he mentioned—reed-bed systems, for example, which purify the water as it re-enters circulation. That would not be possible were we to eliminate overflows—but the key is eliminating harm and that is what we are focusing on.

Lord Whitty (Lab): My Lords, does the Minister accept that unauthorised discharges of untreated sewage will continue unless the regulators of this industry significantly up their game? I declare a past interest as a board member of both agencies in the past, when I think we did it rather better. Ofwat needs to assign part of the capital allowance to sewage treatment and the Environment Agency, in particular, needs to monitor and enforce the rules that, as the Minister says, are now there—but it needs staff to enforce them. When will the decline in the number of field staff at the Environment Agency be reversed?

Lord Goldsmith of Richmond Park (Con): My Lords, like all public bodies, the Environment Agency had to make difficult spending decisions in 2015. However, since 2015 the agency has brought nearly 50 prosecutions against water companies and secured fines of over £136 million, including a £90 million fine for Southern Water. Defra and its agencies also received a £1 billion increase in overall funding at the spending review and, given that this is a government priority, much of that resource will be spent tackling this issue.

Lord Oates (LD): Can the Minister tell the House what calculation the Government have made of the economic and ecological cost caused by the continued discharge of untreated sewage into coastal waters and inland waterways? Does he recognise that, if the Victorians had taken the approach of the Government, and apparently of the noble Lord, Lord Moylan, they would have determined that laying the original sewage network was prohibitively expensive, and we would still be throwing our waste into the street?

Lord Goldsmith of Richmond Park (Con): I think the noble Lord is wrong about that. I am sure he would be the first to applaud the use of nature-based solutions in treating sewage run-off around the country. I think my noble friend Lord Moylan was advocating a continuation of that approach, because it is much cheaper and has all kinds of benefits that go beyond simply purifying the water. That is preferable to spending potentially unprecedented sums of money in other ways.

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

Football Clubs: Ownership Test

Question

2.57 pm

Asked by ***Lord Bassam of Brighton***

To ask Her Majesty's Government what plans they have, if any, to legislate to strengthen the "fit and proper person" test for the ownership of football clubs.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, the Government have published the final report setting out the independent fan-led review of football governance's recommendations for the reform of English football. These include proposals for a new and more robust test for owners and directors, resulting in a unified system which would be created and overseen by a new independent regulator for English football. The Government welcome the work of the review and will consider its detailed recommendations ahead of providing a full government response in the new year.

Lord Bassam of Brighton (Lab): My Lords, I thank the Minister for that helpful Answer, but the recent takeover of Newcastle has raised many questions about the suitability of the fit and proper persons test. To be honest, concerns have been around for years but neither the footballing authorities nor the Government have come up with satisfactory answers. Last week, the Premier League's chief executive said that, while there were concerns about the relationship between Newcastle's owners and the Saudi state, he

"can't choose who is chairing a football club"

because:

"The owners test doesn't let us take a view".

Does the Minister believe that that is right, and can he tell us when, or if, the Government will legislate on the test?

Lord Parkinson of Whitley Bay (Con): My Lords, the takeover of Newcastle United by PCP Capital Partners has always been a matter for the club and the Premier League, which undertook its own due diligence as part of the owners and directors test. My honourable

friend Tracey Crouch looked into that with the fan-led review and, as I said, we welcome the report of that review and are looking at all its recommendations, including on the owners and directors test. We will come back with our response to those in full.

Lord Addington (LD): My Lords, the Newcastle situation is rather different from others because part of a British city's identity is effectively being taken over by a foreign power with a questionable reputation for human rights abuses. Are we going to take in special regulation that means that we actually look at that when we are considering football ownership—because we have such a profitable Premiership?

Lord Parkinson of Whitley Bay (Con): My Lords, a lot of Newcastle United fans would take exception with the way that the noble Lord characterises that. They certainly welcome the investment in the club and the opportunity for dialogue, which is such an important part of sporting endeavour.

Lord Faulkner of Worcester (Lab): My Lords, I declare a slightly ancient interest: I was a vice-chair of the Football Task Force, whose report in 1999 was the last serious attempt to, in the words of the *Independent*, "deliver a fair deal" for fans. Our proposal for independent regulation was blocked by the Premier League, the Football League and the FA. Can the Minister assure me that Tracey Crouch's excellent report will not go the same way as the Football Task Force's final report? Has he seen these words in her fan-led review:

"The fit and proper persons test has failed to stop many owners who are not 'fit and proper'. It's a disaster of a system."

Lord Parkinson of Whitley Bay (Con): I know that the noble Lord is a committed fan and campaigner. My honourable friend Tracey Crouch will certainly not let the matter rest. She has led a very good review. She was in another place when it was debated last week, and I know that she will not let up on this important issue. It is also thanks to the contributions of many thousands of football fans, which have informed the review very well.

Lord Holmes of Richmond (Con): My Lords, is my noble friend aware of the work that we did at UK Sport on good governance as part of the Mission 2012 and Road to Rio programmes, delivering benefits not just in the boardrooms of sport but in the pool, on the pitch and across the park? Would he agree that good governance is not a "nice to have" or a matter of compliance; it is essential for ethical and safe support and absolutely essential for sustainable and successful sport?

Lord Parkinson of Whitley Bay (Con): I agree with my noble friend: Mission 2012 helped to identify athlete performance issues and challenges, enabling them to be dealt with quickly and efficiently in the run-up to the London Games in 2012. I am pleased to say that the process has been used in subsequent Olympic and Paralympic cycles. Since 2017, the *Code for Sports Governance* has set out the standards that all sporting organisations must meet in return for public funding, either from UK Sport or Sport England.

Lord Londesborough (CB): My Lords, I should perhaps declare an interest as a supporter of West Ham United, which looks set to be owned by Czech billionaire Daniel Křetínský. But does the Minister agree that foreign ownership is not the core issue here—rather, it is the need for clearly defined integrity tests for all football club owners, whether British or foreign? Does he also agree that the fit and proper person test should include human rights, mindful of so-called "sportswashing"? On that basis, a club like Newcastle might not now be 80% owned by the Saudi Arabian Public Investment Fund.

Lord Parkinson of Whitley Bay (Con): Tracey Crouch, in the fan-led review, makes the point about an integrity test. As I said, we welcome the report—we will look at all the recommendations and come forward with our response to them in due course.

Lord Grantchester (Lab): I declare my interest as recorded in the register. Would the Minister agree that transparency is an important part of the fit and proper person test? Has the Premier League given an answer to the following question to its football clubs, the Government or the media: what are the governance differences from the previous position, which ruled out the Newcastle United purchase, to the position agreed by the Premier League on 7 October that the takeover is now acceptable, such that the assurances of no interference from the Kingdom of Saudi Arabia can be relied upon? Can the answer be given to assure all football fans concerned about the propriety of the game?

Lord Parkinson of Whitley Bay (Con): I do not know if the Premier League has answered that, but I will certainly take the point away and ask on behalf of the noble Lord. But, as I say, the takeover of Newcastle United has been a matter for it and the Premier League, which undertook its own due diligence as part of the owners and directors test.

Lord McNally (LD): My Lords, I do not think anybody doubts Tracey Crouch's commitment to reform, but as the noble Lord, Lord Faulkner, reminded us, the Mellor-Faulkner report 20 years ago was equally determined to clean up football and was defeated by vested interests within the game. Can the Minister assure us that there will be backbone in No.10 as well as with Tracey Crouch in seeing these reforms through?

Lord Parkinson of Whitley Bay (Con): Yes, and I would point to the Government's manifesto, which committed to this fan-led review. Football is nothing without its fans. That is why we have taken action at every step to support them, both through the manifesto commitment but also during the pandemic by getting football back on television and using the events research programme to get fans back safely into stadia.

Lord Mann (Non-Afl): I declare my interest as the fan-elected chair of the oldest fan group in world football, at Leeds United. Does the Minister agree that the Premier League is the biggest single success that this country has in terms of reputation across the world and is loved by people wanting to watch it well beyond this country? Does he further agree that there

[Lord Mann]
is a fundamental difference between the Premier League and those who have owned clubs such as Bury, Darlington and Chester who have managed to wreck and ruin them?

Lord Parkinson of Whitley Bay (Con): The noble Lord is right about the great pride that fans across the country place in the national sport and its huge impact not just in this country but worldwide. That is why we welcome the fan-led review and committed to it in our manifesto. It is also why we will study it carefully and come back with our response.

Baroness Brinton (LD) [V]: My Lords, my noble friend Lord McNally reminded us of the fate of the report by the noble Lord, Lord Faulkner, two decades ago, and Tracey Crouch's report must see the light of day. However, I ask again, as others have: what does "in due course" mean and what will happen to any other proposed changes of ownership between now and any future legislation?

Lord Parkinson of Whitley Bay (Con): My Lords, Tracey Crouch's report saw the light of day on Thursday. It was published; it is 160 pages long. She makes 47 detailed recommendations. The Government are studying all those. We will do her and the 20,000 fans who took part in the review the respect of looking at it and will come forward with our response.

Lord Lennie (Lab): I add my congratulations to those offered to Tracey Crouch and the team for producing the report with its 47 recommendations. It has the potential to become truly transformational, if and when it is implemented in full. But can I clarify one point? As a Newcastle United fan, under some pressure, I ask the Minister what the Government believe is meant by the term "good character" on page 69 of the report, and does he believe that the new owners of Newcastle United would pass that specific test?

Lord Parkinson of Whitley Bay (Con): My Lords, what Tracey Crouch meant in her report is a question for her, but, as I have said, we are studying the report and its recommendations and will take them forward. The takeover of Newcastle United has always been a matter for it and the Premier League. Without knowing the specifics, it is hard for me to say what impact such a recommendation would have. As the noble Lord will know as well as I do, Newcastle United fans have welcomed the new investment in the club, but have done so with open eyes and while engaging in the dialogue that is an important part of sport.

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

Ukraine: Military Equipment

Question

3.08 pm

Asked by ***Lord Balfe***

To ask Her Majesty's Government what plans they have to sell missiles to the government of Ukraine; what discussions they had with the governments of (1) Germany, (2) France, and (3) the United States of America, prior to opening negotiations on the supply of military equipment to Ukraine; and what assessment they have made of the impact of any such sales on peace in the region.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, we have signed a number of agreements with the Government of Ukraine to work together and with industry to boost Ukraine's defence capabilities. This is part of the UK's ongoing commitment to the Ukrainian defence capabilities and the support announced during President Zelensky's visit to the UK in October. The UK maintains close dialogue with key allies, including Germany, France and the US, regarding Ukrainian military development. These agreements reflect and underline the UK's commitment to Ukraine's territorial integrity and sovereignty.

Lord Balfe (Con): My Lords, in eastern Europe, we seem to be drifting towards a war that we will inevitably lose, since we are outnumbered by about four to one. Would the Minister like to take back to the department the need for a comprehensive conference to deal with the frozen conflicts of eastern Europe, most of which date back 20 years? We need to review the Minsk II agreement and possibly look at an Austrian state treaty solution to the problems of Ukraine. Can we have a new initiative please, and not just a drift to war?

Baroness Goldie (Con): I thank my noble friend for the question, but I do not share his analysis. No one is disputing that there is a serious situation within Ukraine and on the Crimea peninsula. That is precisely why, over the last 20 years, and particularly in the past six years, the UK, along with allies and partners, has been supporting Ukraine with training, in capacity-building missions and maritime and other training initiatives. That is what the recent agreement was predicated on when we signed the treaty with Ukraine on official credit support for UK Export Finance. It is all about supporting that country and helping it to build its military capabilities.

Lord Coaker (Lab): To build on what the noble Lord, Lord Balfe, has just said, it was General Sir Nick Carter, the Chief of the Defence Staff, who only recently spoke of a drift towards an accidental war with Russia. Can the Minister explain to us how, in our desire rightly to stand by our ally in Ukraine and our other allies, we are going to stop that drift to any sort of accidental incident or war with Russia?

Baroness Goldie (Con): The accidental occurrence to which the noble Lord refers would obviously be very negative and unwelcome, and what all powers, particularly the UK and NATO allies, are anxious to avoid. The noble Lord will be aware that, within NATO, we are focused on dialogue and discussion and on doing what we can to provide support to Ukraine, not in some provocative sense but, simply, in a sensible and supportive manner, helping it to build a capability. A lot of very good work has gone on in that respect, not just from the UK but from our other allies and partners.

Lord Lancaster of Kimbolton (Con): My Lords, Operation Orbital is the long-standing military training package that we have offered to Ukraine for some years. Historically, it has only ever delivered defensive training. Now that we are looking at delivering military hardware to Ukraine, has the time came also to offer lethal training?

Baroness Goldie (Con): My noble friend is quite right in that Operation Orbital was conceived and has been delivered as a training mission, again with the objective of building Ukraine's military capacity. As I said earlier to the noble Lord, Lord Coaker, this is part of a chain of events—and this is why we are moving on to assist Ukraine with acquiring other support for its military and naval capability. We wish to support an ally and a friend and partner, and make sure that we can use our expertise and skill to enable it to be stronger—that is what this composite package of measures is about.

Baroness Smith of Newnham (LD): My Lords, capacity building is obviously important, but last week the *Daily Telegraph* reported the defence intelligence chief of Ukraine as saying that there were 92,000 soldiers massing towards Ukraine's borders. Can the UK Government really help capacity building to the extent that that can be offset? If not, as the noble Lord, Lord Balfe, said, can some other action not be taken so we can begin to look at diplomacy rather than military capacity building?

Baroness Goldie (Con): Operation Orbital, the training arm of what the UK has been doing with Ukraine since 2015, has actually trained around 22,000 Ukrainian troops to date. Operation Orbital delivers tactically focused training to the Armed Forces, such as medical logistics, counter-improvised explosive device training and maritime and air domain training. We have other training initiatives as well. In addition, we support Ukraine in the defence reform space, and we do that with our allies, so a great deal of support is being given to Ukraine. We regret the attitude and posture adopted by Russia and urge it to de-escalate pressure and help to stabilise the region.

Lord Robathan (Con): My Lords, the Question refers to "peace in the region" but, unless I have got it wrong, it is Russia that has invaded South Ossetia, annexed Crimea, Moldova and now Donbass. Surely nobody can doubt the malign intent, and determination for aggrandisement of Putin's regime. Does my noble friend agree that to take a disinterested or neutral stance on the conflicts in Ukraine would be to the detriment of world peace?

Baroness Goldie (Con): My noble friend is correct in his analysis that the perpetrators of the pressure are indeed the Russian Government. We have significant concerns about their aggressive pattern of military build-ups on Ukraine's border, certainly in the illegally annexed Crimea. That behaviour is unacceptable. We and our allies are monitoring the situation and continually call on Russia to adhere to its international obligations and commitments.

Lord Truscott (Non-Afl): My Lords, anyone who has studied Russia knows that if the Ukrainians try to retake the Russian-populated areas of Donbass and Crimea by force, Russia will go to war. Meanwhile, as the Minister said, we are providing lethal weapons to Ukraine, training its military and providing loans so that it can buy military equipment. May I press the Minister to say what effort Her Majesty's Government are making to seek a peaceful solution to this conflict?

Baroness Goldie (Con): The noble Lord will be aware that we engage in discussions with and make representations to Russia. Indeed, the Prime Minister spoke to President Putin on 25 October and was very clear about the views that we hold. We understand and sympathise with Ukraine, which obviously feels vulnerable, and it is our duty along with our allies and partners, particularly in NATO, to provide support and reassurance. That is what we are endeavouring to do.

Lord West of Spithead (Lab): My Lords, the greatest risk to the survival of mankind is not global warming, it is an accidental thermonuclear war. One has only to look at the dreadful behaviour of Putin, not just around Ukraine but in a number of other ways, and his very loose talk about his de-escalatory policy of using a nuclear weapon should he be losing a conventional war, to see what the real risks are. I believe it is very important that we get the people who were around the table in Minsk when we made the Ukrainians get rid of their nuclear weapons who have failed since that time in terms of their handling of Russia. Does the Minister agree? We dealt with Crimea badly; everything that has happened with Ukraine has been dealt with badly. We need urgently to get back round the table or there will be a mistake—and, goodness me, that will be it.

Baroness Goldie (Con): That would be a very alarming prognosis and a very unwelcome outcome, which I obviously hope can be avoided. The noble Lord is aware of the programme of engagement that has continued over a number of years with Ukraine. It is not just on the part of the UK, it is with our other allies, not least, as I said, within NATO. Ukraine enjoys a strong bilateral relationship with the United Kingdom; it is a relationship that we value and nurture and, as recent events have indicated, is it one that we support by deeds in addition to words.

Baroness Bennett of Manor Castle (GP): My Lords, the noble Lord, Lord Balfe, asks about the impact of arms sales on peace in eastern Europe. In the light of the US and allied withdrawal from Afghanistan, the broader pursuit of "America first" policies from Washington, and the fact that the UK is the world's second-largest arms exporter, with the majority going to the Middle East, are the Government reviewing all arms sales and indeed the place of the UK arms industry? Are they truly counting the cost on UK and global security of our arms industry?

Baroness Goldie (Con): The UK Government take very seriously our responsibility for the security of this country and our support for our global allies. That is why we have a strong defence capability. The noble

[Baroness Goldie]
Baroness will be aware that exports of arms and weapons are monitored extremely closely under a very robust regime.

The Lord Speaker (Lord McFall of Alcluith): My Lords, that concludes Oral Questions for today.

Independent Fan-led Review of Football Governance

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Thursday 25 November.

"First, may I take this opportunity to thank my honourable friend the Member for Chatham and Aylesford, Tracey Crouch, the advisory panel of experts and the thousands of football fans up and down the country who have contributed to this report? Football clubs are at the heart of our local communities, and fans are at the heart of those clubs, but there were problems in football governance and the voice of fans was not always being heard. That is why we committed to the fan-led review of football governance in our manifesto. The events seen at Bury and at Macclesfield Town, and with the European super league, made it vital that we looked at what reform was needed to protect those fans, and we triggered the review back in April. My honourable friend has today presented her final report, setting out her recommendations. A copy has been made available in the Library, and of course the Government will formally and fully respond to the independent report in the new year.

The review is a comprehensive examination of English football, founded on more than 100 hours of engagement across the game and the views of more than 20,000 fans. I am grateful to all those who have given evidence, but most importantly to the fans who have had their voice heard. That voice will remain at the heart of our thinking in assessing the recommendations. The final report is a thorough and detailed examination of the challenges faced by English football. It shows the problems in football and is clear that reform is needed to solve them. I will not go through the 10 strategic recommendations and the 47 detailed recommendations here, Mr Speaker, but they are wide-ranging and comprehensive, addressing the need for an independent regulator, improved financial sustainability, better governance and a proper role for fans.

The report shows that fundamental change is needed in our national game, and fans deserve that. We are at a turning point for football in this country. The review is a detailed and worthy piece of work that will require a substantive response and plan of action from across government. However, the primary recommendation of the review—that football requires a strong, independent regulator—is one that I, and the Government, endorse in principle today. The Government will now work at pace to determine the most effective way to deliver an independent regulator, and any powers that might be needed. That is what the fans want, and this Government are on the side of fans."

3.19 pm

Lord Bassam of Brighton (Lab): My Lords, we strongly welcome the independent Crouch review, whose recommendations, I have to say, look suspiciously like the sports section of the Labour Party manifesto, going back several general elections. We have long called for fans to be placed at the centre of the game that they do so much to sustain and for stronger protections when they are mistreated or their beloved clubs mismanaged. The Government say they will respond to the review in spring 2022 but, let us be clear, there is much that can be done in the interim. Will they, for example, establish a shadow regulator ahead of the 2022-23 season? Can the Minister confirm that any enabling legislation for Tracey Crouch's reform package will not only feature in the next Queen's Speech but be made a genuine political priority?

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, this is a matter that transcends party politics. Football clubs are at the heart of our communities and fans are at the heart of those clubs, and everybody with an interest wants to make sure that they are. I am very proud that our manifesto commitment to set up this review has led to it in swift time; Tracey Crouch has done very thorough work at good speed. We will give her report and the views of all the fans who contributed to it the respect that they deserve; the report deserves a substantive response from the Government and it will get one. But the noble Lord is right that there are things that can be done now, not least by football clubs themselves, with regard to heritage, financial flows and governance. They need not wait for us to go through the report and come forward with our response to start taking the action that people want to see.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I declare an interest as one of 8,800 owners of Heart of Midlothian Football Club, the largest fan-owned club in the whole of the United Kingdom. I also have the privilege of having prepared a report on football governance for the Parliamentary Assembly of the Council of Europe, which will be considered at a committee on Thursday and then at the plenary session in January. That report endorses what Tracey Crouch has said but goes even further. Can I have the Minister's assurance that, when the Committee of Ministers approves my report, as I expect it will, it will then be considered in detail by Her Majesty's Government?

Lord Parkinson of Whitley Bay (Con): Yes, I am sure my honourable friend the Sports Minister will be delighted to receive a copy of the report when it is published and will of course look at it with the attention and respect it deserves.

Baroness Verma (Con): My Lords, will my noble friend, in asking for better commitment towards fans, also recognise that, if fans were much more involved in the management of their clubs, we might be able to reduce the scale of racism that has come into football?

Lord Parkinson of Whitley Bay (Con): My noble friend makes a very good point. Fans have been aghast at some of the appalling things that we have seen in recent years directed at football players at every level. That is why we want to ensure that true fans of football have their voices heard at every level, not least in calling out the abhorrent racism that we sometimes see.

Lord Addington (LD): My Lords, can the Minister give an assurance that, if we follow the lines of the report, the Government will take seriously the fact that the Premier League has got to pump more money into the lower professional leagues to keep them viable? Without this, we will see more and more of the fiascos that have happened with smaller football clubs such as Northampton, where something that is part of that town's heritage is taken away, or threatened to be taken away, from it.

Lord Parkinson of Whitley Bay (Con): My Lords, yes, the Government were very clear that cash should flow through the football pyramid more fairly and called on clubs to do that during the pandemic. I am very glad to say that, in many cases, it was so, but that is one of the recommendations followed up by Tracey Crouch and her review and one that we will look at carefully.

Baroness Armstrong of Hill Top (Lab): My Lords, as a member of the north-east fanatical football supporters' league—but not a Newcastle United fan—I was disappointed when the Minister said earlier on that, essentially, the way the Premier League assesses "fit and proper person" is none of the Government's business. It should be. Some of us have been saying for 20 years—for a lot longer than that, actually—that too much of our football governance is not fit for purpose and that the drive of the Premier League for more and more money has undermined much of what football is meant to be about. It is tragic that we do not have more fans properly engaged in governance in this country. The Premier League—I challenge it on this—does not want that because it believes that it will put off money and monied people coming into the Premier League. Therefore, will the Government, in their review of the Tracey Crouch report and their thoughts about future governance, really think about the model that is spread throughout the UK that would involve fans much more centrally in direct governance of football?

Lord Parkinson of Whitley Bay (Con): My Lords, as I say, while we are considering the review's recommendations, it is clear from Tracey Crouch's report that there is a significant opportunity to tighten up and strengthen the current owners' and directors' test. We will look at that very seriously and come forward with our response to the report in due course.

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend commend the report by our honourable friend Tracey Crouch for being so bold? I support the point made by the noble Lord, Lord Addington; 62 insolvencies of lower-league clubs have occurred. Will my noble friend's department use every good office to ensure that—while not harming the Premier League in the long term—more money will filter down to the lower levels?

Lord Parkinson of Whitley Bay (Con): My Lords, I join my noble friend in reiterating my thanks to our honourable friend Tracey Crouch for the work that she has done. Football has had many opportunities to get its house in order but has not taken them, and that is why this report is such an important and timely one. In the past, football's failure to reform itself has had an injurious impact on many clubs, as we saw with the proposals to set up the closed shop of a European super league. That is why we have taken the action of commissioning this fan-led review and why we will respond to it thoroughly.

Lord Austin of Dudley (Non-Afl): My Lords, there are not many things that England leads the world at, but the Premier League is one of them. One of the reasons for that is because it has attracted investment from right around the world. While I am no fan of the Saudi Arabian takeover of Newcastle, I think we have to be really cautious about anything which might undermine the Premier League's success in future.

I want to ask the Minister a couple of specific questions. Can he explain how he thinks an independent regulator would, for example, have prevented the collapse of Bury? What happened there was that a guy came in, bought the club and eventually did not have the funds to sustain it, and the club went bust. Would an independent regulator have blocked his purchase of Bury? If it had done so, the club would have gone bust sooner and the independent regulator—and by extension the Government—would have got the blame. I think there is no possibility that an independent regulator would have done that. People talk about more money cascading down the pyramid. Is the Minister not aware that the Premier League gave £250 million to the Championship and millions more to the leagues below that? One of the reasons it was able to do that is because the league has been so successful, so let us be cautious about undermining that.

Lord Parkinson of Whitley Bay (Con): My Lords, Tracey Crouch's review demonstrates that there are fundamental issues with our national sport and that there is a case for significant reform. We do not want to see any more of our historic clubs vanishing from the football leagues and football not doing enough to help itself. The scenarios the noble Lord outlines are the ones we will have in mind as we look at the recommendations she made and as we formulate our responses to them.

Lord Holmes of Richmond (Con): My Lords, would my noble friend agree that, though football is the national game, it cannot in any sense be separate from the national culture and values? To this end, it has a way to go to be truly inclusive for all. Would he agree that the Crouch review makes many excellent recommendations to this effect and is well worth the Government considering extremely seriously?

Lord Parkinson of Whitley Bay (Con): Yes, we are indeed considering it very seriously. My noble friend is right that the pride we invest in our national sport and

[Lord Parkinson of Whitley Bay]
demonstrate when it is watched and enjoyed by people all over the world is a demonstration of our values as a nation. That is why the international reach of football and the great interest it attracts—whether that is from fans or investors overseas—should be a source of pride as well, and our response to the fan-led review will aim to strengthen all of that.

Public Authority Algorithm Bill [HL]

First Reading

3.30 pm

A Bill to regulate the use of automated decision-making in the public sector; to require a public authority to complete an algorithmic impact assessment in prescribed form where it procures or develops an automated decision-making system; to establish a Minister for standards in algorithm use; and for connected purposes.

The Bill was introduced by Lord Clement-Jones, read a first time and ordered to be printed.

Modern Slavery (Victim Support) Bill [HL]

First Reading

3.30 pm

A Bill to make provision about supporting victims of modern slavery.

The Bill was introduced by Lord McColl of Dulwich, read a first time and ordered to be printed.

Armed Forces Bill

Third Reading

3.31 pm

Motion

Moved by ***Baroness Goldie***

That the Bill do now pass.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, it has been a great pleasure to lead the Bill through this House. It delivers on the manifesto commitment to strengthen the legislation of the Armed Forces covenant that will deliver for the Armed Forces community across the United Kingdom. It further strengthens the service justice system for our Armed Forces, wherever they serve. Most importantly, without this Bill, the Armed Forces Act 2006—the legislation that maintains the Armed Forces as a disciplined body—could not continue in force beyond the end of this year.

I therefore convey my deep gratitude to all noble Lords for supporting the Bill and for their invaluable contributions to our extremely incisive and well-informed debates. Undoubtedly, this is a marked tribute to your Lordships' shrewdness, the depth and breadth of knowledge and the passion that has persistently shone through when debating issues affecting our Armed Forces. I particularly express my appreciation for the constructive engagement made possible by the noble Lords, Lord Coaker, Lord Tunnicliffe, Lord Thomas of Gresford and Lord Dannatt, the noble Baroness, Lady Smith of Newnham, and the noble and gallant Lords, Lord Boyce, Lord Craig of Radley and Lord Houghton of Richmond.

It is an incontestable fact that all within this House have bought into the spirit of what this Bill seeks to achieve. We all want to do the very best for our Armed Forces community, from the sailors, soldiers and aircrew at the forefront of operations around the world, to the veterans whose days of active service have long since passed, and to the families who unstintingly provide support and are the bedrock to their success. I thank your Lordships for their continuing interest in the Armed Forces.

It would be unacceptably remiss were I not to acknowledge and thank the Bill team under the formidable leadership of Jayne Scheier, supported by her able and committed colleagues. There is a lot of technical detail in the Bill, with complex legal consequences, and the team's guidance and expertise has been exemplary—as has their patience in supporting a Minister who I am sure must have been very irksome at times.

Before I finish, I remind the House again of the undertakings I made both in Grand Committee and on Report that I will keep the House informed of progress on the recommendations of Sir Richard Henriques's review. We expect to submit very shortly our response to the House of Commons Defence Committee's report on women in the Armed Forces; that response is detailed and substantial. This Bill now passes from my stewardship to my colleagues in the other place—so, over to them.

Finally, I pay tribute to the courageous, professional and dedicated men and women in our Armed Forces. We are proud to have the best Armed Forces in the world and, ultimately, this Bill is for them. I beg to move that the Bill do now pass.

Lord Coaker (Lab): My Lords, it has been a real pleasure for me to see my first Bill through your Lordships' House on behalf of Her Majesty's Opposition, with my noble friend Lord Tunnicliffe, who I thank for his support. It has been helped enormously by the generosity of spirit and co-operative attitude of the Minister. I sincerely thank her and her officials for the briefings and advice that we have received throughout the Bill's passage. I also thank her sincerely for the way in which she has responded to our questions and amendments, and her commitment to reflect on the various points as policies are taken forward by the Ministry of Defence.

In that regard, I also thank the noble Baroness, Lady Smith of Newnham, and her colleagues, notably the noble Lord, Lord Thomas of Gresford, for their collegiate approach, which has helped us all scrutinise the Bill more effectively. I also thank the noble and learned Lord, Lord Thomas of Cwmgiedd. Thanks to him, I now understand terms such as "concurrent jurisdiction". Throughout the Bill, advice from my noble friends Lord West and Lord Reid was gratefully received, as was the tireless and impressive work of

Dan Harris, our adviser. It was also a privilege to have my noble and learned friend Lord Morris and my noble friends Lord Browne and Lord Robertson alongside me. Their expertise and experience is a huge asset to our country, as is the active involvement of many noble and gallant Lords, some present here this afternoon. We hope that the Government will further consider the amendments that we have passed back to the other place, which are intended not to undermine the Bill but merely to improve it, and that they will reflect and think again.

We are all united by admiration for our Armed Forces and the service they give to our country. We know that we depend on them to defend our democracy and values at home and across the world, with our allies. We know that those values are likely to be tested again and again over the coming years and decades. The Bill, soon to be an Act, is part of the contract we make as our duty of care for them and their families, and we as Her Majesty's Official Opposition have been proud to support it.

Baroness Smith of Newnham (LD): My Lords, I join the noble Lord, Lord Coaker, in thanking the Minister, and join her in thanking her officials for the time they have been willing to take to brief the opposition spokespeople here in the Lords, and to answer questions in private, in Grand Committee and in the Chamber. It has been an important process and helpful to have had detailed responses, particularly on some of the legislative aspects, where my noble friend Lord Thomas of Gresford is expert and I am not. It has been very useful to have the legal input, and I am grateful for that.

Like the Minister and the noble Lord, Lord Coaker, I pay tribute to the Armed Forces. The Bill is important, and it is particularly important at this time to be putting the Armed Forces covenant on a statutory footing. We have now left Afghanistan—Op Pitting has just taken place—and, for many of our service personnel and veterans, there will be questions about the end of Op Herrick and what we have managed to achieve. For some, there may be consequences with which, I hope, the Armed Forces covenant will help them deal.

I very much hope that the two amendments passed in your Lordships' House will go through the other place without needing to come back for ping-pong. I suspect that may not happen but, pending that, I thank the Minister again and hope that the Bill is passed as quickly as possible, because we clearly need it on the statute book by the end of the year.

Lord Craig of Radley (CB): My Lords, as one of the sponsors of a number of amendments, I have added to the work of the Minister and her Bill team. I add my thanks to her for the way she has dealt with them. The Bill team, having been faced with a very large number of late government amendments, have done a magnificent job; Jayne Scheier and all of them ought to be thanked very much for that effort. I hope that the Minister will not forget that I mentioned the Hong Kong veterans and have yet to have a decent reply about that. The issue has been outstanding for 35 years, so it is about time it was dealt with.

I hope, too, that the amendments we have sent back to the other place will be accepted. Time is short, Covid threatens and it would be sensible if the Government avoided ping-ponging it in this direction again. I thank the Minister very much for all that she has done on this Bill.

Baroness Goldie (Con): I thank the noble Baroness, Lady Smith, and noble Lords across the Chamber for their contributions. They reflect what I said in my remarks: we are all united in our admiration for, and desire to support, our Armed Forces. I thank noble Lords for these helpful and constructive comments.

Bill passed and returned to the Commons with amendments.

Public Service Pensions and Judicial Offices Bill [HL]

Report

3.40 pm

Clause 1: Meaning of "remediable service"

Amendment 1

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

1: Clause 1, page 1, line 7, leave out "a person's service" and insert "any continuous period of service of a person"

Member's explanatory statement

This amendment clarifies that the definition of "remediable service" applies separately in relation to service of a person that takes place at different times (so that a person may have some service that is "remediable service" and some that is not, and may have more than one period of remediable service).

Viscount Younger of Leckie (Con): My Lords, before I turn to the amendments in this group, I will begin by briefly reminding the House of the driving force behind this Bill and why it is so important that we get it right.

In the light of the Court of Appeal's judgment, the Government have taken steps to provide an effective remedy to the discrimination that arose in public service pension schemes. The Government have sought to approach this matter responsibly from the outset, and this Bill is key in ensuring an effective remedy for the 3.4 million people who are affected. At the heart of the Bill is fairness and equal treatment for the public servants on whom we all rely. To ensure that we achieve this objective, the Bill is underpinned by the core principles of greater fairness between lower and higher earners, fairness for the taxpayer, future sustainability and affordability of public service pensions.

I recognise that tabling a large volume of amendments is highly unusual at this stage of a Bill's passage. I want to take a moment to explain why this approach has proved necessary—indeed, crucial—to ensuring a robust and effective remedy. As we have all acknowledged, this is a complex and technical matter. The Bill covers more than 40 schemes which each individually have their own layers of detail and complexity. We are dealing with a somewhat unprecedented issue, and retrospective changes on this scale have not previously

[Viscount Younger of Leckie]
been required for occupational pension schemes. However, it is undoubtedly vital that, despite the complexity, we get this right.

Since the Bill was introduced, the Government have continued to work with the schemes, stakeholders and departments to check and re-check it to ensure that it will deliver our commitments to remove the discrimination and offer a complete and effective remedy. The amendments I have tabled today reflect that work and clarify, correct or adjust the Bill to ensure that it works correctly for each of the schemes.

The first group is large and consists of technical amendments. The House will hopefully be pleased to hear that I will not seek to set out the detail of each and every amendment, but I hope your Lordships will find it helpful if I explain the themes that they address. I will of course be happy to turn to specific amendments if your Lordships have any questions.

A large number of the amendments in this group deal with a single theme. In reviewing the Bill, we recognised that a gap exists in how some of the processes operate for members who die before they are able to make a deferred choice. So, 44 amendments are needed to correct the position and ensure that the Bill provides an effective remedy for instances in which a member sadly dies before they reach their retirement. The reason why so many amendments are needed to achieve this outcome is that it must be applied across all the key areas of the remedy so that, for example, any correction of pension benefits or member contributions in relation to a deceased member can be addressed with the member's personal representatives. The changes must also be made across the provisions for the main schemes and those for the judiciary.

The next theme is amendments which have arisen from work that we have undertaken with each of the public service pension schemes. There are a number of differences between the schemes within the scope of the Bill—for example, to reflect the different needs of the workforces. We have identified some scheme-specific issues that must be reflected in the Bill to ensure that the remedy operates correctly for their members.

3.45 pm

Amendment 5 ensures that the remedy correctly applies to members who were subject to fair deal arrangements. This refers to instances in which employees are subject to a compulsory transfer from the public sector to the private sector, and therefore a period of service in a private sector pension scheme does not count as a

"disqualifying gap in service"

when assessing their eligibility for the remedy. I am grateful to the trade unions for identifying the need for this amendment and I am happy that this has been addressed.

Turning to the firefighters, a technical change is made to Clause 1 setting out the scope of the remedy, to ensure that all affected members of the firefighters' schemes are included. This clarification is necessary to reflect the fact that the eligibility criteria in certain schemes for firefighters were slightly different to those provided in all other arrangements.

The Armed Forces pension schemes contain features that reflect the unique nature of the Armed Forces. Members of the Armed Forces may qualify for an early departure payment when they leave the service and a separate pension benefit when they subsequently reach pensionable age, which is potentially many years later. Amendments 13 and 16 introduce new clauses to the Bill ensuring that these members make their decision about both entitlements at the time they leave service, therefore avoiding having to revisit payments made under the early departure scheme in future. Similarly, an amendment is made to Clause 10 ensuring that members of the Armed Forces who are discharged as a result of ill health can make an election at the correct time—for example, the point at which they become entitled to an ill-health lump sum on the grounds of incapacity for service. One further amendment is made for the Armed Forces: Clause 88 is amended to ensure that restrictions in the Armed Forces Act 2006 which prohibit pension or pay from being assigned and thus would conflict with the operation of the remedy do not apply to the operation of Part 1 of the Bill.

Turning to family courts, the amendments also deal with specific issues regarding the judiciary. The Bill as drafted allows the Lord Chancellor to consider only the resourcing needs of the magistrates' court when reappointing retired magistrates. Amendments will allow the Lord Chancellor additionally to consider the needs of the family court, in which magistrates also sit, when making such decisions. This will allow the judiciary to boost capacity when needed to better meet the demands placed on both courts.

Finally on this theme, there are scheme-specific amendments for members of the judiciary and Civil Service. Members of these schemes were provided with the option of alternative pension arrangements and could choose to participate in partnership pension accounts. These are defined contribution arrangements, rather than the main defined benefit schemes. The Bill already allows for this decision to be reversed where the member made their decision as a result of the discrimination that arose. A number of technical amendments to the Bill are being made to ensure that where members wish to be reinstated in the main judicial or civil service pension schemes, that can be done correctly and the member placed in the position they would have been in, had the discrimination not occurred.

Turning to the third theme, a number of corrective or clarifying changes are made to ensure that the Bill operates as intended. Amendments to Clause 1 ensure that where a member has multiple periods of service, those periods are separately considered in determining whether they are subject to the remedy provided by the Bill. These clarifications ensure that a member who was affected by the discrimination will be subject to remedy for each and every period of service that was affected. These amendments are replicated for the judiciary. Following on, there are multiple legacy schemes in most public service workforces. Amendments to Clause 4 ensure that it is clear which legacy scheme a member's remediable service should be returned to, which is the scheme they would have been eligible to participate in had the discrimination not occurred.

An amendment to Clause 20 clarifies that scheme regulations that make provision about special cases may modify the application of Chapter 1 of the Bill to certain persons. This ensures that scheme regulations can provide an accurate remedy for members with less straightforward circumstances, for example, those who have mixed service—your Lordships may know that otherwise as tapered protection—or have partially retired. Again, equivalent amendments are made for the judiciary.

An amendment is made to Clause 29 to provide greater clarity around the scope of the clause, to ensure that all cases where a person has obtained an immediate detriment remedy are captured—that is, members in relation to whom a scheme has taken actions to correct that member's position outside the operation of this legislation. Following on, further minor amendments are made to definitions and references to ensure that there is consistency across the Bill.

The final theme specifically deals with tax-related consequences of remedy, to ensure that members are returned to their correct position absent the discrimination. Amendments to Clauses 20 and 55 provide that scheme regulations may make provision for cases where a liability for a lifetime allowance charge or annual allowance charge is settled via the scheme administrator. This is where the scheme pays the tax liability on behalf of the member and adjusts their pension benefits to recover the amount from future payments. The amendments ensure that schemes can vary a member's benefits to take account of amounts that the member has paid in the past or will pay in the future in respect of the lifetime allowance tax charge, or the annual allowance tax charge, via the scheme.

Although it has been rather lengthy, I hope that my explanation of how the amendments in this group will work has proved helpful. I reiterate that these amendments all share the objective of ensuring that members affected by the discrimination identified by the courts are able to receive a comprehensive remedy in line with the overall approach set out in the Government's consultation response, on a fair and equal basis. I beg to move.

Lord Davies of Brixton (Lab): My Lords, I do not have a current interest to declare, but it would be appropriate to mention that, until the end of August when I gave up the work, I was the paid adviser to a number of trade unions, advising them on this specific issue. It appears in the register of interests for another year, but I no longer have any direct interest.

I have three questions for the Minister. First, he foreshadowed at Second Reading that a raft of amendments was coming. I think it has been suggested that there will be further amendments; clearly not in this House, but there will be a further batch when the Bill is considered in the Commons, which will come back to us. Is this still the case?

Secondly, and more specifically, the Government have made proposals for changes to the cost control mechanism, for which primary legislation will be required. Is it envisaged that they will be made to this Bill or will a separate Bill come forward at a later stage? Before I make my third point, I first thank the Minister very much; he has been extremely open and informative. He has gone out of his way to make sure that we understand what these amendments are for, and I welcome that.

One of the amendments picks up a point I made in my Amendment 6 in Committee relating to the potential payment of remedial AVCs—a wonderful concept. My amendment was obviously very simple, and we now have a much more extensive and substantial change. It will be a complex issue and I recognise that it will be complex to administer. One of the problems we have is that there is a demand, but we have no way of telling how big it will be. The respective scheme advisory boards will have to look at and decide what proportionate and appropriate steps they need to take. I hope the Minister will indicate that they are prepared to facilitate that.

Baroness Janke (LD): I too thank the Minister for his time and for the engagement he has provided throughout the Bill, particularly regarding these amendments. Considering the scale, complexity and magnitude of the Bill, together with the millions who will be affected by it, I understand that these amendments try to cover a variety of contexts and circumstances to provide a comprehensive remedy to the previous discrimination. I recognise that the whole range of contexts and circumstances means that many will require fine detail. I hope these will, in many ways, support the millions of public sector workers who have suffered discrimination as a result of earlier circumstances.

We will see later some of the specific issues we raised in Committee. I hope the Minister can assure us that these amendments have taken account of those. We will explore that later.

Lord Ponsonby of Shulbrede (Lab): My Lords, I thank the Minister for his explanation of this extensive group of amendments. I too thank him and his Bill team for engaging with me and my noble friend Lord Davies leading up to Report and for the explanation of the late additions to the Bill. The Minister recognised that it is unusual to bring forward such a large number of amendments at such a late stage. However—and this is unusual on our part—we are content that he has done so. As my noble friend said, we understand that there may be further amendments when the Bill goes to the other place.

We have no objection to the amendments. They are largely technical and clarifying in nature. For example, they would ensure that the Bill operates as intended when a member of one of the affected pension schemes dies. I also accept that adding these amendments now will ensure that the Bill will start its scrutiny in the House of Commons with these points clarified, which we welcome. For these reasons, we are content with this group.

Viscount Younger of Leckie (Con): My Lords, I will make a few very short closing remarks. I thank the noble Lords, Lord Davies and Lord Ponsonby, and the noble Baroness, Lady Janke, for their brief remarks. In particular, I thank the noble Lord, Lord Ponsonby, for his supportive remarks and his understanding—there

[Viscount Younger of Leckie]
is probably a better word to use—of what we needed to do for this group of amendments and the next one. I appreciate it.

As I said in my opening remarks, the Bill deals with a complex and unprecedented issue. These amendments reflect the several months of continued work with the schemes, stakeholders and departments to check and recheck the Bill to ensure that it will offer a complete and effective remedy for members affected by the discrimination identified by the Court of Appeal.

The noble Lord, Lord Davies, raised a good point about what might happen next with potential amendments in the Commons, but I reassure him that, as I outlined, this is a highly complex area and the Government are committed to ensuring that members in all relevant schemes receive an effective remedy. We will continue to work closely with stakeholders, including the pension schemes in scope, to consider whether any areas of the Bill require further clarification to ensure legal operability.

I also took note of the points raised by the noble Lord, Lord Davies, concerning additional voluntary contributions and the cost control mechanism. The noble Baroness, Lady Janke, alluded to the fact that we will be addressing them in subsequent groups. I think it probably makes sense to do that, but I have taken note of the noble Lord's questions, and I am sure he will raise these matters as the afternoon goes on.

Amendment 1 agreed.

4 pm

Amendments 2 to 5

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

2: Clause 1, page 2, line 3, after "that" insert "all of"

Member's explanatory statement

This amendment clarifies that the second condition (which is concerned with whether service is pensionable) must be met in relation to all of the service in question.

3: Clause 1, page 2, line 8, after "normal pension age" insert "or another specified age"

Member's explanatory statement

This amendment recognises that some legacy schemes offered transitional protection to people who met conditions relating to a lower age than normal pension age.

4: Clause 1, page 2, line 9, leave out subsections (5) and (6) and insert—

"(5) The third condition is that the person—

(a) was, on 31 March 2012 or any earlier day, in service in any employment or office that is pensionable service under—

(i) a Chapter 1 legacy scheme,

(ii) a judicial legacy scheme (within the meaning of Chapter 2), or

(iii) a local government legacy scheme (within the meaning of Chapter 3), or

(b) is not within paragraph (a) and was, on 31 March 2012, in service as a firefighter which entitled the person to be an active member of a relevant firefighters' legacy scheme.

(6) The fourth condition is that there is no disqualifying gap in service falling within the period—

(a) beginning with—

(i) in a case in which the third condition is met by virtue of subsection (5)(a), the day after the most recent day in relation to which that condition is met;

(ii) in a case in which the third condition is met by virtue of subsection (5)(b), 1 April 2012, and

(b) ending with the day before the first day of the service in question."

Member's explanatory statement

This amendment adjusts the third condition in this clause to cater for the fact that certain schemes for firefighters gave transitional protection to those who on 31 March 2012 were in active service but were not active members of the scheme. The fourth condition is amended consequentially.

5: Clause 1, page 2, line 21, leave out from "which" to end of line 24 and insert—

"(a) is pensionable service under—

(i) a Chapter 1 scheme,

(ii) a judicial scheme (within the meaning of Chapter 2), or

(iii) a local government scheme (within the meaning of Chapter 3), or

(b) is, as a result of a Fair Deal transfer, pensionable service under a Fair Deal scheme."

Member's explanatory statement

This amendment ensures that service in a private sector scheme under Fair Deal arrangements (which, before 2013, governed the pension arrangements that had to be offered to those in public service who were compulsorily transferred to the private sector) does not count as part of a "disqualifying gap in service" for the purposes of the fourth condition.

Amendments 2 to 5 agreed.

Clause 4: Meaning of "the relevant Chapter 1 legacy scheme" etc

Amendments 6 and 7

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

6: Clause 4, page 4, line 12, leave out from "person" to "the" in line 16 and insert "from becoming an active member of"

Member's explanatory statement

This amendment simplifies the condition in subsection (2)(b).

7: Clause 4, page 4, line 24, leave out paragraphs (a) to (c) and insert—

"(a) at any time after the closing date, the person—

(i) opted that their service in the employment or office in question should no longer be pensionable service under a Chapter 1 scheme, or

(ii) ceased to be in service in the employment or office in question,

(b) at any later time before 1 April 2022, the person—

(i) opted that their service in the employment or office in question should again be pensionable service under a Chapter 1 scheme, or

(ii) resumed service in the employment or office in question,

(c) at that time, the rules of the Chapter 1 legacy scheme mentioned in subsection (1) prohibited a person from becoming an active member of the scheme, and"

Member's explanatory statement

This amendment expands the special case dealt with in subsection (3) in two ways. First, so that it covers those who remained in legacy schemes after the closing date, subsequently opted out, and then decided to opt back in to a Chapter 1 scheme;

and second so that it covers those who left service in the employment or office in question after the closing date and subsequently resumed service.

Amendments 6 and 7 agreed.

Clause 5: Election for retrospective provision to apply to opted-out service

Amendments 8 to 11

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

8: Clause 5, page 5, line 42, leave out from "which" to "or" in line 43 and insert "a remediable service statement is first provided in respect of the member"

Member's explanatory statement

This amendment ensures that the definition is apt for a case in which the member to whom a remediable service statement relates has died.

9: Clause 5, page 6, line 26, at end insert—

"(c) in cases in which any assets and liabilities that are referable to pension contributions made by or on behalf of the person have been transferred out of a partnership pension account, a condition requiring the payment to the scheme of an amount in respect of the transfer."

Member's explanatory statement

This amendment makes clear that scheme regulations may require that, in a case in which an amount has in the past been transferred out of a partnership pension account, an election under this clause can be made only if a payment in respect of the transfer is made to the Chapter 1 legacy scheme.

10: Clause 5, page 6, line 29, leave out "(1)"

Member's explanatory statement

This amendment clarifies the reference in subsection (7) of this Clause to the definition of "the relevant Chapter 1 legacy scheme" in Clause 4.

11: Clause 5, page 6, line 30, leave out "the" and insert "any"

Member's explanatory statement

This amendment clarifies the reference in subsection (7) of this Clause to the definition of "the relevant Chapter 1 legacy scheme" in Clause 4.

Amendments 8 to 11 agreed.

Clause 7: Elections by virtue of section 6: timing and procedure

Amendment 12

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

12: Clause 7, page 7, line 38, leave out from "which" to "or" in line 39 and insert "a remediable service statement is first provided in respect of the member"

Member's explanatory statement

This amendment ensures that the definition is apt for a case in which the member to whom a remediable service statement relates has died.

Amendment 12 agreed.

Amendment 13

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

13: After Clause 8, insert the following new Clause—

"Persons with remediable service in more than one Chapter 1 legacy scheme

(1) This section applies where—

(a) an election is made by virtue of section 6 (immediate choice to receive new scheme benefits) in relation to the remediable service in an employment or office of a member ("M") of a Chapter 1 legacy scheme that is pensionable service under the scheme, and

(b) M has any remediable service in that employment or office that is pensionable service under another Chapter 1 legacy scheme.

(2) If M is a relevant member within the meaning of section 6 in relation to the scheme mentioned in subsection (1)(b), the election has effect as an election by virtue of section 6 in relation to M's remediable service that is pensionable service under that scheme (as well as having effect as such an election in relation to M's remediable service that is pensionable service under the scheme mentioned in subsection (1)(a)).

(3) If M is a relevant member within the meaning of section 9 (deferred choice to receive new scheme benefits) in relation to the scheme mentioned in subsection (1)(b), the election has effect as an election by virtue of section 9 in relation to M's remediable service that is pensionable service under that scheme (as well as having effect as an election by virtue of section 6 in relation to M's remediable service that is pensionable service under the scheme mentioned in subsection (1)(a))."

Member's explanatory statement

This amendment ensures that where a person has remediable service in an employment or office that is pensionable under more than one legacy scheme, the person can opt for new scheme benefits in respect of service in that employment or office in all of those schemes, but cannot opt for new scheme benefits in only some of those schemes.

Amendment 13 agreed.

Clause 10: Elections by virtue of section 9: timing and procedure

Amendments 14 and 15

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

14: Clause 10, page 9, line 5, leave out from "which" to end of line 6 and insert "it is reasonably expected that, if an election were made, new scheme benefits would become payable under the scheme to or in respect of the member."

Member's explanatory statement

This amendment adjusts the rule in subsection (2) so that it operates by reference to the time that benefits would become payable in accordance with an election (which may be a different time to the time at which benefits would become payable if no election were made).

15: Clause 10, page 9, line 24, leave out "relevant"

Member's explanatory statement

This amendment removes a redundant word from subsection (6).

Amendments 14 and 15 agreed.

Amendment 16

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

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

"Persons with remediable service in more than one Chapter 1 legacy scheme

(1) This section applies where—

(a) an election is made by virtue of section 9 (deferred choice to receive new scheme benefits) in relation to the remediable service in an employment or office of a member ("M") of a Chapter 1 legacy scheme that is pensionable service under the scheme, and

(b) M has any remediable service in that employment or office that is pensionable service under another Chapter 1 legacy scheme.

(2) If M is a relevant member within the meaning of section 9 in relation to the scheme mentioned in subsection (1)(b), the election has effect as an election by virtue of section 9 in relation to M's remediable service that is pensionable service under that scheme (as well as having effect as such an election in relation to M's remediable service that is pensionable service under the scheme mentioned in subsection (1)(a)).

(3) If M is a relevant member within the meaning of section 6 (immediate choice to receive new scheme benefits) in relation to the scheme mentioned in subsection (1)(b), the election has effect as an election by virtue of section 6 in relation to M's remediable service that is pensionable service under that scheme (as well as having effect as an election by virtue of section 9 in relation to M's remediable service that is pensionable service under the scheme mentioned in subsection (1)(a))."

Member's explanatory statement

This amendment ensures that where a person has remediable service in an employment or office that is pensionable under more than one legacy scheme, the person can opt for new scheme benefits in respect of service in that employment or office in all of those schemes, but cannot opt for new scheme benefits in only some of those schemes.

Amendment 16 agreed.

Clause 13: Pension contributions: pensioner and deceased members

Amendment 17

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

17: Clause 13, page 11, line 42, at end insert—

"(6A) A reference in subsection (6) to pension contributions paid by M includes, in relation to any pension contributions paid under a partnership pension account, such sums as are deducted by M under section 192 of FA 2004 (relief at source)."

Member's explanatory statement

This amendment clarifies that "the paid contributions amount" defined in subsection (6) includes tax relief deducted at source.

Amendment 17 agreed.

Clause 14: Pension contributions: active and deferred members (immediate correction)

Amendments 18 to 21

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

18: Clause 14, page 12, line 29, leave out "M" and insert "the appropriate person"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

19: Clause 14, page 12, line 33, leave out "M" and insert "the appropriate person"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

20: Clause 14, page 12, line 39, at end insert—

"(5A) A reference in subsection (5) to pension contributions paid by M includes, in relation to any pension contributions paid under a partnership pension account, such sums as are deducted by M under section 192 of FA 2004 (relief at source)."

Member's explanatory statement

This amendment clarifies that "the paid contributions amount" defined in subsection (5) includes tax relief deducted at source.

21: Clause 14, page 12, line 41, at end insert—

"(6A) In this section "the appropriate person" means—

(a) M, or

(b) if M is deceased, M's personal representatives."

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

Amendments 18 to 21 agreed.

Clause 15: Pension contributions: active and deferred members (deferred correction)

Amendments 22 to 25

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

22: Clause 15, page 13, line 22, leave out "M" and insert "the appropriate person"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

23: Clause 15, page 13, line 26, leave out "M" and insert "the appropriate person"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

24: Clause 15, page 13, line 32, at end insert—

"(5A) A reference in subsection (5) to pension contributions paid by M includes, in relation to any pension contributions paid under a partnership pension account, such sums as are deducted by M under section 192 of FA 2004 (relief at source)."

Member's explanatory statement

This amendment clarifies that "the paid contributions amount" defined in subsection (5) includes tax relief deducted at source.

25: Clause 15, page 13, line 40, at end insert—

"(7A) In this section "the appropriate person" means—

(a) M, or

(b) if M is deceased, M's personal representatives."

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

Amendments 22 to 25 agreed.

Clause 18: Voluntary contributions

Amendment 26

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

26: Clause 18, page 15, line 34, leave out subsection (2)

Member's explanatory statement

This amendment is in consequence of the government amendment of clause 92 which applies the definition of "voluntary contributions" to the whole of Part 1.

Viscount Younger of Leckie: My Lords, this second group consists of three technical areas of amendments. I reassure the House that my remarks will be somewhat shorter than on the previous group. As before, I will

set out the key themes in each area, rather than talking through the detail of each amendment. The three key themes these amendments relate to are: first, matters concerning voluntary contributions; secondly, flexibility in delivering the remedy in respect of judicial scheme members; and, thirdly, the closure of old schemes. Once again, I will be happy to turn to specific amendments if your Lordships have any questions they would like to raise.

Before I turn to the first area of amendments, which relate to member voluntary contributions, I thank the noble Lord, Lord Davies of Brixton, to whom I am most grateful for raising this matter in Grand Committee, which has assisted the Government in developing these new amendments. I gave the noble Lord assurances in Grand Committee that the Government would consider how the Bill should provide for members who were prevented from making voluntary contributions to the legacy schemes as a result of the discrimination that arose, and I am pleased to be able to bring forward amendments to that effect now.

First, these amendments insert new clauses so that scheme regulations may allow members to enter into remedial voluntary contributions arrangements where they would have done so had the discrimination not arisen. Additionally, the amendments ensure that information that must be provided to members includes information about remedial voluntary contribution arrangements as well as details of the eligibility criteria and the process for entering into those arrangements.

Secondly, these amendments will amend Clause 18 to ensure that the provisions work correctly in relation to persons other than a member who may obtain rights in relation to a member's voluntary contributions.

Thirdly, the amendments clarify that, where compensation is paid to members of the judiciary representing an amount that was paid as voluntary contributions less the tax relief they received at the time, any rights that were associated with those contributions are extinguished. The amendments also clarify that, where the member is deceased, the compensation should be made to the member's personal representatives.

Finally, the amendments add a new clause to provide that no new arrangements to pay voluntary contributions may be entered into after 31 March 2022 in a legacy scheme. This reflects the fact that the legacy schemes will close on that date. However, any existing voluntary contributions arrangements that members may have entered prior to 1 April 2022 may continue. Additionally, this prohibition does not apply to the new clauses which permit members to enter into remedial voluntary contributions arrangements in the specific circumstances I have set out.

Let me now turn to the second area of amendments in this group. These are technical amendments required to ensure the remedy can be applied most effectively in respect of judicial scheme members. Clause 65 defines the election period as a three-month period beginning with such date as is specified by the relevant authority and that the relevant authority may extend the election period in relation to a particular person, if they consider it just and equitable to do so.

It is important that judges in scope of the remedy have enough time to make an informed decision regarding their scheme membership for the remedy period. Therefore, amendments are made to Clauses 65 and 60 to provide for further flexibility to respond to judges' individual circumstances by allowing for there to be more than one election period, and for an information statement to be sent to each member before the start of their respective election period.

Finally, I come to the third and final area in this group. This last area amends the valuations and governance framework for public service pension schemes to ensure that it operates correctly when old schemes established under the Public Service Pensions Act 2013, or its Northern Ireland equivalent, are closed and new schemes are established. In the present context, these amendments are most relevant to the reformed judicial pension scheme that is set to replace the 2015 scheme. However, the same issues will arise if, in future, other schemes are closed and new ones created.

Schemes that are closed to future accrual do not require future stand-alone valuations. A new clause will ensure that these are no longer required and that an employer cost cap need not be set for the purpose of measuring changes in the costs of those schemes under the cost control mechanism.

The new clause will also allow existing governance frameworks to be carried over from old schemes to new schemes. Additionally, an amendment to Clause 80 will ensure that the cost control mechanism can operate correctly by ensuring that the employer cost cap of a new scheme can be set after the regulations have been created.

I hope the House will agree that, important though they are, all three sets of amendments I have outlined in this group make necessary technical changes to the existing legislation so as to ensure that the remedy can operate as intended. With that, I beg to move.

Baroness Janke (LD): My Lords, I thank the Minister for responding to many of the issues that arose in Committee and welcome the additional flexibility with regard to the voluntary contributions and the period when remedial contributions can be made.

I would like to question the eligibility for voluntary contributions. One of the areas we discussed was about people—for example, with caring responsibilities—who would wish to make up their pension and in their legacy scheme would have been able to do that. Examples include women who have taken time out to look after children or people with caring responsibilities who have done the same. Will these members have the chance to make these remedial contributions to augment their pensions, as they would have been able to within the legacy scheme? Perhaps the Minister could clear that up for me.

Lord Ponsonby of Shulbrede (Lab): My Lords, once again I thank the Minister for his explanation of this group. We are content for these changes to be made to the Bill. I particularly welcome the provisions on voluntary contributions, which will now allow for a member to make voluntary contributions where they would have done, but did not due to the pension

[Lord Ponsonby of Shulbrede]
changes that led to the arising discrimination. This responds to a concern raised by pension schemes and by my noble friend Lord Davies in Committee, which was recognised by the Minister. I wonder whether the Minister can give us an assurance that more information will be forthcoming, over the Bill's passage through the Commons, on how this will be provided for in practice.

I also welcome the provision providing flexibility for judges over their election period and that every member must be provided with an information statement by the scheme before their election period starts. At later stages this afternoon we will come back to this question of how information and guidance are provided to members and how they will access support. That is in an amendment to be moved by the noble Baroness, Lady Janke. I am glad to see that this has been recognised, at least to some extent, in this group. We are happy to support these amendments.

Viscount Younger of Leckie (Con): My Lords, once again, my closing remarks will be relatively brief. I thank the noble Baroness, Lady Janke, and the noble Lord, Lord Ponsonby, for their broad support for these amendments. As one or two questions were raised, I will give some more information on additional voluntary contributions, which may be helpful, particularly with regard to the question on eligibility raised by the noble Baroness.

The proposed new clauses provide that scheme regulations may not permit a member to enter into such arrangements after one year from the day on which the member is provided with their remediable service statement, or their information statement in the case of the judiciary, or such later time as the scheme manager considers reasonable. The proposed new clauses will be subject to Treasury directions, which I understand we will be speaking about in a later group—under Clause 24 for Chapter 1 schemes and under Clause 58 for judicial schemes. This is set out in Amendments 45 and 90, and is consistent with the similar powers in Part 1 of the Bill. These directions will help to ensure that scheme regulations take a consistent approach, which is very important in providing members with remedial voluntary contribution arrangements.

I hope that this offers some explanation but, again, bearing in mind the technical nature of the noble Baroness's question, I will be keen to read *Hansard* and will write if further information is required.

Amendment 26 agreed.

Amendments 27 to 30

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

27: Clause 18, page 16, line 9, leave out "member in question" and insert "person whose rights are extinguished"

Member's explanatory statement

This amendment recognises that persons other than the member who pays voluntary contributions (for example their spouse) may obtain rights in consequence of the contributions.

28: Clause 18, page 16, line 11, leave out from beginning to "secured" in line 12 and insert "rights are conferred under a Chapter 1 scheme that would have been"

Member's explanatory statement

This amendment recognises that persons other than the member who pays voluntary contributions (for example their spouse) may obtain rights in consequence of the contributions.

29: Clause 18, page 16, line 14, after "scheme" insert "manager"

Member's explanatory statement

This amendment is to clarify that a payment of compensation under regulations under subsection (6)(c) of this Clause would, like other payments of compensation by virtue of Part 1 (such as those under Clause 21), be paid by the relevant scheme manager.

30: Clause 18, page 16, line 14, leave out "in question" and insert "who paid the contributions or, if that member is deceased, that member's personal representatives"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

Amendments 27 to 30 agreed.

Clause 20: Further powers to make provision about special cases

Amendments 31 to 37

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

31: Clause 20, page 17, line 17, at end insert—

"(aa) provision about the benefits payable to or in respect of a member who has remediable service in an employment or office where—

(i) there is another Chapter 1 scheme that provides benefits for persons in that employment or office, and

(ii) the two schemes provide (or in any circumstances might provide) benefits to or in respect of a person in relation to the same period of service;"

Member's explanatory statement

This amendment is to enable provision to be made where service may entitle a person to benefits under more than one scheme (for example, some service in the armed forces entitles a person both to early departure payments under one scheme and (when they are older) to pension payments under another scheme).

32: Clause 20, page 17, line 29, leave out paragraph (d) and insert—

"(d) provision about cases in which the scheme administrator of a Chapter 1 scheme pays a liability under section 217 or 237B of FA 2004 (joint liability of scheme administrator to lifetime allowance charge or annual allowance charge);"

Member's explanatory statement

This amendment generalises the power in subsection (2)(d) of this Clause so that it confers power to make provision about any case in which a member's liability to a lifetime allowance charge, or an annual allowance charge, is paid under the "scheme pays" facility (under which the liability is paid by the scheme administrator and the member's benefits are reduced in consequence).

33: Clause 20, page 17, line 32, at end insert—

"(e) provision about cases in which remuneration is or was payable to a person on the satisfaction of a condition relating to whether any remediable service of the person is or was, or is or was eligible to be, pensionable service under a particular Chapter 1 scheme (including provision requiring any such remuneration that has been paid to be repaid)."

Member's explanatory statement

This amendment is to enable provision to be made under this Clause about employments etc (such as the armed forces) in which a person's pay may be determined by reference to whether their service is (or is eligible to be) pensionable service under a particular scheme.

34: Clause 20, page 17, line 32, at end insert—

"(f) provision about cases in which a former member of the armed forces—

(i) is, disregarding section 2 (1), entitled under regulation 19 of AFEDP 2014 (lump sum awards: incapacity for armed forces service) to a payment determined (to any extent) by reference to the person's remediable service in an employment or office, or

(ii) would be entitled under that regulation to such a payment if the benefits payable to the person, so far as determined by reference the person's remediable service in the employment or office, were new scheme benefits."

Member's explanatory statement

This amendment is to enable provision to be made under this clause to ensure that the Chapter works fairly for members of the armed forces who would be entitled to an incapacity lump sum under the new armed forces scheme, even if they would not have been entitled to such a payment under the rules of the legacy scheme.

35: Clause 20, page 17, line 32, at end insert—

"(2A) Scheme regulations for a Chapter 1 new scheme may make provision about injury and compensation benefits payable under a relevant injury and compensation scheme to or in respect of a member who has remediable service in an employment or office.

(2B) Provision made under subsection (2A) may in particular be made by amending the relevant injury and compensation scheme.

(2C) In subsections (2A) and (2B) and this subsection—

(a) "injury and compensation scheme" means a pension scheme that is listed in Schedule 6 to PSPA 2013 or Schedule 6 to PSPA(NI) 2014 (existing injury and compensation schemes);

(b) an injury and compensation scheme is "relevant", in relation to a Chapter 1 new scheme, if it is connected with the Chapter 1 new scheme;

(c) a reference to "injury and compensation benefits" payable under an injury and compensation scheme is a reference to—

(i) in the case of an injury and compensation scheme in relation to which Schedule 6 to PSPA 2013 or Schedule 6 to PSPA(NI) 2014 specifies particular benefits, those benefits;

(ii) in the case of any other injury and compensation scheme, any benefits payable under the scheme."

Member's explanatory statement

Where Chapter 1 of Part 1 retrospectively alters pension benefits payable to or in respect of a person, this may require retrospective changes also to be made to injury and compensation benefits to which the person is entitled (for example where their amount is calculated in a way that takes account of the amount of pension benefits payable). This amendment provides a power to ensure that appropriate provision can be made in such cases.

36: Clause 20, page 17, leave out lines 35 to 38 and insert—

"(a) provision modifying any provision of this Chapter in its application to persons of a description specified in the regulations;

(b) provision corresponding to, or applying, any provision of this Chapter, with or without modifications."

Member's explanatory statement

This amendment clarifies the way in which special cases may be dealt with in regulations.

37: Clause 20, page 17, line 38, at end insert—

"(4) In this section—

"AFEDP 2014" means the Armed Forces Early Departure Payments Scheme Regulations 2014 (S.I. 2014/2328);

"modifying" includes disapplying or supplementing (and cognate expressions are to be construed accordingly);

"scheme administrator" has the same meaning as in Part 4 of FA 2004 (see section 270 of that Act);

"the armed forces" has the same meaning as in PSPA 2013 (see paragraph 8 of Schedule 1 to that Act)."

Member's explanatory statement

This amendment inserts definitions required for other government amendments of this Clause.

Amendments 31 to 37 agreed.

Clause 21: Power to pay compensation

Amendments 38 and 39

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

38: Clause 21, page 17, line 42, at end insert "or, in the case of deceased members, their personal representatives."

Member's explanatory statement

This amendment ensures that, where a member has died, compensation can be paid to the member's personal representatives if they incur a compensatable loss.

39: Clause 21, page 18, line 1, after "member" insert ", or by a member's personal representatives,"

Member's explanatory statement

This amendment ensures that, where a member has died, compensation can be paid to the member's personal representatives if they incur a compensatable loss.

Amendments 38 and 39 agreed.

Amendment 40

Moved by ***Lord Davies of Brixton***

40: Clause 21, page 18, line 13, at end insert—

"(6A) In subsection (5), a loss "attributable to the application of any provision of, or made under, this Chapter" includes a loss incurred by a member with remediable service who—

(a) is transferred to the new scheme and reaches the required number of years of pensionable service to retire with full benefits under the legacy scheme, but

(b) is unable to access the full value of those benefits because they must continue to work to retire with full benefits under the new scheme."

Member's explanatory statement

This amendment provides that certain losses arising from the interaction of the rules of the new and legacy schemes respectively will be compensated.

Lord Davies of Brixton (Lab): My Lords, this amendment is about what has been termed "the pension trap". Much concern has been expressed about this phenomenon by different groups and members of different schemes, not least the Police Superintendents' Association and the Fire Brigades Union. It is important to be clear that this issue affects all the major public service schemes. It is more salient in the uniformed service schemes as they previously had a much lower pension age, so the impact of the pension trap is more

[Lord Davies of Brixton]
significant, but it runs through all the schemes. When you put two schemes together that work on significantly different bases, problems can arise that perhaps we should have spotted at an earlier stage of the discussions on the scheme.

The key issue concerns where you combine schemes with different normal retirement ages in the legacy and new schemes respectively, and the impact of extending working lives in that situation. Extending working lives has been a theme of the reform of public service pensions, so we should perhaps have thought through this a little more clearly. I may have been a little to blame myself in my previous life. When the issue was first raised I was somewhat doubtful but, the more I have looked at it, the more I have come to appreciate that it is a real problem.

The underlying problem is where the combined benefits, old and new, do not reflect the benefits that the members lose by having a later retirement age. They suffer a net loss. With most private sector schemes and the new state or public service schemes, if you defer your retirement, you get some credit: you lose a year's worth of pension because you have decided to retire a year later, but the money that you have surrendered by doing so is used to increase the subsequent pension. Whether you take the pension at 65, 60 or 67, overall, the broad value of your benefits remains the same. This contrasts with the situation in most, if not all, of the significant public service schemes, where, if you defer your retirement, you simply lose that year's benefit and receive no credit for it. The reason for this difference between public and private schemes is lost in the mists of time.

4.15 pm

The problem now is that scheme members are effectively forced to defer their retirement to accrue benefits in the new scheme but, because they are forced to defer their benefits in the legacy scheme, they are losing money. This can be significant amounts for those involved. I provided a detailed example in Committee, and I will not go through it all again—but, for example, a police constable who will be aged 40 next year and has been in the service since joining at 18 has accrued a decent pension under the legacy scheme. They could have retired at 51 on an unreduced pension but, because they are required to remain in service to further build their pension in the new scheme, they cannot afford to take it. Each year that they put off retirement in the legacy scheme, they lose the pension for that year, which they otherwise would have expected. A typical sum might be as much as £18,000 a year. So they put off their retirement until they are 52, and lose a year's pension but are still required to face a significant reduction in their new pension because they are taking it early. Ultimately, if they keep working until they are 60, when they can get their full pension under the new scheme, they have lost nine years' worth—at £18,000 a year—of pension funds in the legacy scheme. They incur a further loss because, each year that they stay in service, the lump sum that they can take from the scheme is reduced as well. We are talking about significant sums because of the interaction between the two schemes that they are required to belong to in order to accrue a decent pension.

The members concerned think that this simply cannot be right, and I share that view. It was not the intention that, when people were asked to work longer than they originally expected, they would lose substantial amounts in the value of their pension because of that. I hope that the Minister will give an indication that the Government take the problem seriously and realise that there is an issue here. I readily admit that my amendment does not completely solve the problem—no doubt I will be told so—but it effectively raises it and puts it before the Government. They can then give an indication that they take the problem seriously and will seek from the respective scheme advisory board—each public service pension scheme has one—a workable solution so that people to whom we owe a substantial debt do not incur a potentially unintended loss from the new combined scheme to which they have to belong.

Baroness Janke (LD): I thank the noble Lord, Lord Davies, for his explanation of the amendment. I know we had quite a lot of discussion about this in Committee. My understanding of it in this specific case is how it affects members of the Police Superintendents' Association. Previously, a number of years' service entitled them to their pensions whereas the new scheme is age-related. As the noble Lord, Lord Davies, said, that prevents them being able either to retire early and still have their pension, as was guaranteed, or work later to augment their pension.

This is an important issue, particularly in terms of public services such as the police, where undertakings were given and promises made. These were parts of agreements about pay levels and general conditions of service. So I believe the Government have some obligations here, and I very much hope that this can be looked at further as the scheme progresses and that it can be evaluated and solutions found. I hope the Minister can give us some clarification on that. I certainly support the spirit of the amendment and hope that we can resolve this in future.

Lord Ponsonby of Shulbrede (Lab): My Lords, my noble friend Lord Davies has given a thorough explanation of this issue, which will impact members of certain public service pension schemes. I simply echo the hope that the Government will look carefully at this issue before the Bill goes into its Commons stages.

To reinforce the point made by the noble Baroness, Lady Janke, the Police Superintendents' Association has reported that this issue is one of the most-raised questions in sessions that it is holding with its members, and it is trying to talk through the possible remedies and related pension issues as they affect police superintendents. This is an unintended consequence that has arisen due to the current complexities, rather than an intentional outcome of what the Government are seeking to do.

With that in mind, could the Minister inform us, first, whether the Government have considered ways to remedy this issue, in which certain members will be caught, and, secondly, what ongoing consultation and engagement are the Government undertaking with those who are affected? I will be interested to hear the Minister's response.

Viscount Younger of Leckie (Con): My Lords, I thank the noble Lord, Lord Davies of Brixton, for raising this issue again today, and I thank other noble Lords for their comments.

Clause 21 provides the power for scheme managers to pay compensation for certain losses incurred by members. Compensation can be paid for losses that satisfy any of the three conditions set out in subsections (4) to (6) and are of a description specified in Treasury directions.

It might be helpful for the House if I set out the background and purpose of the clause. I hope I can provide the clarifications that have been asked for by the noble Baroness and both noble Lords. The purpose of the clause is to confer power on scheme managers to make payments in relation to compensatable losses. This is an important element of the remedy provided by the Bill. The Government have set out to Parliament, in public announcements and to the courts that we will take steps to remedy the discrimination that occurred when transitional protection was provided to some members when the public pension schemes were reformed in 2015. That means taking steps to place members as far as possible back into the position where they would have been had the discrimination not occurred.

Clause 21 provides for compensation in relation to losses incurred as a result of the discrimination or the retrospective remedy provided by the Bill, or in respect of certain tax losses. The clause allows for matters that are not directly remedied by other provisions of the Bill or by the intended scheme regulations to be put right. As I understand it, having listened carefully to the speech from the noble Lord, Lord Davies, the intended effect of his amendment is to compensate members who reach the required length of service to retire with full benefits in their legacy scheme before they reach the necessary age to retire with full benefits in their reformed scheme. The amendment appears to relate closely to representations made by police staff associations, which a number of speakers mentioned, regarding members of the 1987 and 2015 police pension schemes who reach 30 years of service in the legacy pension scheme before reaching minimum pension age in the reformed scheme.

However, by referring to "full benefits" in the reformed pension scheme, the noble Lord's amendment appears to go considerably beyond these representations and proposals, effectively requiring compensation for those below normal pension age, not minimum pension age, in the reformed scheme. I know that he raised the question of whether this applies to all public servants. Perhaps I may just gently put him right—I defer to his greater knowledge but I will put him right on this—that it does not.

As implied by the reference to the required number of years in the amendment text, this issue arises for members of schemes where retirement on full benefits is based on length of service rather than age. The 1987 police pension scheme falls into that. Members of other public service pension schemes will often move from a scheme where the normal pension age is 60 to a scheme where the NPA is equal to state pension age. However, it is not quite the same issue as the normal pension age and a legacy scheme, for these members will be higher than the minimum pension age in their reformed scheme. I hope that offers a reasoned explanation.

Turning to the police pension scheme, under the Bill all members in active service on 31 March 2022 will be moved into the reformed 2015 police pension scheme in respect of service from 1 April 2022 onwards. That is what is known as a "prospective remedy" to ensure that all active members are treated equally from that date onwards. I am grateful for the hard work and extraordinary dedication shown by police officers. The Government support the police and the important work that they do to protect the public, and recognise that they face changing demands from crime.

The reformed police pension scheme is, rightly, one of the most generous pension schemes in the United Kingdom. Moreover, members with service under the 1987 police pension scheme are already afforded significant protections in the Bill, including by maintaining the final salary link of the 1987 scheme and the protection of weighted accrual. This means that accruals in the 1987 scheme will be calculated in relation to a member's final salary when they retire or otherwise leave the police pension scheme of 2015 in the future, not their salary at the point when they leave the police pension scheme of 1987 on 31 March 2022. The improved accrual rate linked to length of service in the older scheme is also protected and will remain the same in relation to service in those legacy schemes.

The Government have been considering the issues raised by the police representatives and this amendment carefully, including the question of whether there are viable policy mitigations. I want to answer the important point raised by the noble Lord, Lord Ponsonby, on engagement. The Home Office is also currently consulting on detailed regulations to implement the prospective McCloud remedy for the police pension scheme; I hope that provides some reassurance that this is an important matter. That includes communication as well. However, the Government must not take action that would be contrary to the Bill's intention to remove the discrimination identified by the courts and to ensure that all members are treated equally from 1 April 2022 by accruing service in the reformed schemes, regardless of their age.

It is important to stress that the Court of Appeal found in the McCloud and Sargeant cases in 2018 that the transitional protections offered under the PSPA 2013 amounted to unlawful discrimination against younger members, because they allowed older members to accrue service in the legacy schemes for longer because of their age. Accordingly, offering compensation to members depending on their age and resulting position relative to service length and normal pension age would risk perpetuating such unlawful discrimination through different means. This is an important point of clarification for the noble Lord, Lord Davies.

I thank the noble Lord for bringing attention to this issue and reassure him that the Government have been considering the position of these members, including the viability of policy solutions such as the proposal submitted by police staff associations. However, careful consideration must be given to the need to avoid introducing new discrimination against other pension scheme members—I made this point earlier—and a

[Viscount Younger of Leckie]
broadly drafted amendment to the Bill risks doing just that. I therefore ask, with that rather full explanation, the noble Lord to withdraw his amendment.

4.30 pm

Lord Davies of Brixton (Lab): I thank the Minister for his detailed reply. At the appropriate time, I will indicate my intention to withdraw the amendment.

First, I want to say that the purpose and intention of the amendment—I never believed that it was complete in itself—was to prod the Government into taking the issue seriously. The problem arises in any scheme where, if you do not take your pension at the scheme pension age, you do not get any credit for giving up the pension that you lose by deferring your retirement. That is the underlying problem, and it occurs across the public sector. It is currently far more acute, as we have been told in detail by the Fire Brigades Union and the Police Superintendents' Association.

I have no doubt that the real solution to this issue lies in scheme-level discussions, but such discussions will take place only if the Government give an indication that they take this issue seriously and want the respective scheme advisory boards to discuss and address the issue and seek out practical solutions. Whether they can be funded, and the extent to which any solution would fall within the cost cap and so not incur substantial additional cost, would have to be addressed as part of those discussions. That is all I am asking for.

I am grateful to the House for the opportunity to raise this issue. On that basis, I beg leave to withdraw the amendment.

Amendment 40 withdrawn.

Amendments 41 and 42

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

41: Clause 21, page 18, line 44, leave out "the member" and insert "any person"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

42: Clause 21, page 19, line 1, leave out "the member" and insert "any person"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

Amendments 41 and 42 agreed.

Amendment 43

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

43: After Clause 22, insert the following new Clause—

"Remedial arrangements to pay voluntary contributions to legacy schemes

(1) Scheme regulations for a Chapter 1 legacy scheme may make provision so as to secure that a relevant member may enter into remedial voluntary contributions arrangements.

(2) In subsection (1)—

"relevant member", in relation to a Chapter 1 legacy scheme, means a member (other than a deceased member) who has remediable service in an employment or office which, after the coming into force of section 2 (1) in relation to the scheme, is pensionable service under the scheme (whether or not by virtue of that provision);

"remedial voluntary contributions arrangements" means arrangements—

(a) which are entered into by a member after the coming into force of section 2 (1) in relation to the scheme, and

(b) under which the member pays voluntary contributions to the scheme.

(3) Provision by virtue of subsection (1) may permit a member ("M") to enter into arrangements only if the scheme manager is satisfied that it is more likely than not that, but for a relevant breach of a non-discrimination rule, M would, during the period of M's remediable service in the employment or office, have entered into the same or similar arrangements.

(4) The provision that may be made by virtue of subsection (1) includes, in particular, provision under which liabilities to pay voluntary contributions that would otherwise arise under the arrangements are reduced by tax relief amounts.

(5) In subsection (4) "tax relief amounts" means amounts determined by reference to the tax relief under section 188 of FA 2004 (relief for members' contributions) that would have been available in respect of the amounts owed if they were paid in a different tax year.

(6) Provision by virtue of subsection (1) may not permit a member ("M") to enter into arrangements after—

(a) the end of the period of one year beginning with the day on which a remediable service statement is first provided in respect of M, or

(b) such later time as the scheme manager considers reasonable in all the circumstances.

(7) Subsection (6) does not affect the continued operation after the time mentioned in that subsection of any remedial arrangements entered into before that time.

(8) In this section "non-discrimination rule" means a rule that is, or at any time was, included in a Chapter 1 scheme by virtue of—

(a) section 61 of EA 2010, or

(b) paragraph 2 of Schedule 1 to EEAR(NI) 2006.

(9) For the purposes of this section a breach of a non-discrimination rule is "relevant" if it arises from the application of—

(a) an exception to section 18(1) of PSPA 2013 made under section 18(5) to (7) of that Act, or

(b) an exception to section 18(1) of PSPA(NI) 2014 made under section 18(5) to (8) of that Act."

Member's explanatory statement

This Clause makes it possible for a Chapter 1 legacy scheme to make provision giving members with remediable service the facility to enter into new arrangements to pay voluntary contributions. The facility may only be made available to members who show that they would have entered into similar arrangements but for unlawful discrimination, and may be made available only for a limited period.

Amendment 43 agreed.

Clause 23: Interest and process

Amendments 44 and 45

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

44: Clause 23, page 19, line 33, leave out first "member" and insert "person"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

45: Clause 23, page 19, line 33, leave out second "member" and insert "person"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

Amendments 44 and 45 agreed.

Clause 24: Treasury directions

Amendments 46 to 49

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

46: Clause 24, page 20, line 19, at end insert—

"(ha) the power to make scheme regulations by virtue of section (Remedial arrangements to pay voluntary contributions to legacy schemes) (remedial arrangements to pay voluntary contributions to legacy schemes) and any powers exercisable by virtue of such regulations;"

Member's explanatory statement

This amendment ensures that Treasury directions can be used in relation to remedial voluntary contributions arrangements.

47: Clause 24, page 20, line 23, leave out from "paid" to "or any" and insert "by or to a scheme in relation to a member"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

48: Clause 24, page 20, line 25, after "member" insert "and (if different) the person to whom or by whom the amount is to be paid or the liability is owed"

Member's explanatory statement

This amendment ensures subsection (3) of this Clause operates as intended in a case in which an amount is payable to or by a person who is not the member who has remediable service (for example a surviving adult or personal representatives).

49: Clause 24, page 20, line 27, leave out "the member" and insert "that person or those persons"

Member's explanatory statement

This amendment ensures subsection (3) of this Clause operates as intended in a case in which an amount is payable to or by a person who is not the member who has remediable service (for example a surviving adult or personal representatives).

Amendments 46 to 49 agreed.

Clause 26: Remediable service statements

Amendment 50

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

50: Clause 26, page 21, line 27, at end insert ", and

(d) a description of—

(i) the arrangements (if any) that, by virtue of section (Remedial arrangements to pay voluntary contributions to legacy schemes) (remedial arrangements to pay voluntary contributions to legacy schemes), may be entered into under the scheme, and

(ii) the circumstances in which, and the process by which, such arrangements may be entered into."

Member's explanatory statement

The amendment ensures that a statement under this clause includes information to enable the recipient to decide whether they are entitled to enter into new arrangements to pay voluntary contributions, and if so how to go about doing it.

Amendment 50 agreed.

Clause 28: Application of Chapter to immediate detriment cases

Amendments 51 and 52

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

51: Clause 28, page 22, line 36, leave out from "if" to "in" in line 37 and insert "an immediate detriment remedy has been obtained"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

52: Clause 28, page 22, line 39, leave out from "have" to "so" in line 40 and insert "rights in respect of remediable service in relation to which an immediate detriment remedy has been obtained"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

Amendments 51 and 52 agreed.

Clause 29: Persons who have "benefited from an immediate detriment remedy"

Amendments 53 to 56

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

53: Clause 29, page 23, line 15, leave out from "of" to "person's" in line 16 and insert "section 28 an "immediate detriment remedy" has been obtained in relation to a"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

54: Clause 29, page 23, line 20, leave out "the" and insert "any"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

55: Clause 29, page 23, line 28, leave out second "the" and insert "any"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

56: Clause 29, page 23, line 30, leave out first "the" and insert "a Chapter 1"

Member's explanatory statement

This amendment is to ensure that the definition in this Clause catches all cases in which a scheme makes arrangements outside the mechanism of the Chapter to give a person a remedy for

discrimination of the kind the Chapter deals with, including in particular a case in which the discrimination occurred under a different scheme.

Amendments 53 to 56 agreed.

Clause 33: Meaning of "opted-out service"

Amendment 57

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

57: Clause 33, page 25, line 25, leave out "A person's service" and insert "Any continuous period of service of a person"

Member's explanatory statement

This amendment clarifies that the definition of "opted-out service" applies separately in relation to service that takes place at different times (so that some service may be "opted- out service" and some may not and a person may have more than one period of opted-out service).

Amendment 57 agreed.

Clause 35: Interpretation of Chapter

Amendments 58 to 60

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

58: Clause 35, page 26, leave out lines 22 and 23

Member's explanatory statement

This amendment is in consequence of the government amendment of Clause 29(1).

59: Clause 35, page 26, line 45, at end insert—

""Fair Deal scheme" means—

(a) a pension scheme that, in accordance with the Fair Deal Statement of Practice, has been certified by the Government Actuary's Department as offering, to persons who have been subject to a Fair Deal transfer, pension arrangements that are broadly comparable with those offered to them before the transfer, or

(b) a pension scheme in relation to which the obligation to give such a certificate has been waived in accordance with that statement of practice;

"Fair Deal Statement of Practice" means the statement of practice entitled "Staff Transfers in the Public Sector" issued by the Cabinet Office in January 2000, as supplemented and modified from time to time;

"Fair Deal transfer" means a transfer of a person's employment from a public sector employer to a private sector employer in accordance with the Fair Deal Statement of Practice;"

Member's explanatory statement

This amendment adds definitions that are required for one of the government amendments of clause 1.

60: Clause 35, page 27, line 10, at end insert—

""a relevant firefighters' legacy scheme" means—

(a) Schedule 1 to the Firefighters' Pension Scheme (England) Order 2006 (S.I. 2006/3432) (new firefighters' scheme),

(b) Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007 (S.I. 2007/1072) (new firefighters' scheme),

(c) Schedule 1 to the Firefighters' Pension Scheme (Scotland) Order 2007 (S.S.I. 2007/199) (new firefighters' scheme), or

(d) the Annex to the New Firefighters' Pension Scheme Order (Northern Ireland) 2007 (S.R.(N.I.) 2007 No. 215) (new firefighters' scheme);"

Member's explanatory statement

This amendment adds a definition that is required for one of the government amendments of Clause 1.

Amendments 58 to 60 agreed.

Clause 36: Meaning of "remediable service"

Amendments 61 to 63

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

61: Clause 36, page 27, line 32, leave out "a person's service" and insert "any continuous period of service of a person"

Member's explanatory statement

This amendment clarifies that the definition of "remediable service" applies separately in relation to service of a person that takes place at different times (so that a person may have some service that is "remediable service" and some that is not, and may have more than one period of remediable service).

62: Clause 36, page 27, line 38, after "that" insert "all of"

Member's explanatory statement

This amendment clarifies that the second condition (which is concerned with whether service is pensionable) must be met in relation to all of the service in question.

63: Clause 36, page 28, line 8, after "with" insert "the day after"

Member's explanatory statement

This amendment ensures that 31 March 2012 (or, where the person left pensionable service before then, the final day of pensionable service) is not counted towards a disqualifying gap in service.

Amendments 61 to 63 agreed.

Clause 38: Partnership pension account: requirement to transfer and surrender rights

Amendment 64

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

64: Clause 38, leave out Clause 38 and insert the following new Clause—

"Partnership pension account: requirement to transfer and surrender rights

(1) Subsection (2) applies where—

(a) a person ("P") has remediable service in a salaried judicial office, and

(b) any of the remediable service is PPA opted-out service.

(2) A legacy scheme election in respect of P may not be made unless—

(a) the relevant authority is satisfied that the steps mentioned in subsection (3) have been taken, or

(b) the appropriate person has notified the relevant authority that they intend to instigate and facilitate the taking of those steps.

(3) The steps are—

(a) the transfer of any relevant assets and liabilities to the relevant judicial legacy salaried scheme,

(b) the surrender of any entitlement to a pension under the relevant judicial legacy salaried scheme, and any right to a future pension under that scheme, that would otherwise arise under the rules of the scheme in respect of the value of the assets and liabilities transferred, and

(c) if at any time any relevant assets and liabilities were transferred out of the partnership pension account (otherwise than in the course of a transfer to the relevant judicial legacy salaried scheme), the payment

by the appropriate person to the relevant judicial legacy salaried scheme of an amount, determined by the relevant authority after consulting the Government Actuary, in respect of the value of the relevant assets transferred.

(4) Subsection (5) applies where—

(a) a person ("P") has remediable service in a fee-paid judicial office, and

(b) any of the remediable service is PPA opted-out service.

(5) A legacy scheme election in respect of P may not be made unless—

(a) the relevant authority is satisfied that the steps mentioned in subsection (6) have been taken, or

(b) the appropriate person has notified the relevant authority that they intend to instigate and facilitate the taking of those steps.

(6) The steps are—

(a) the transfer of any relevant assets and liabilities to the judicial legacy fee-paid scheme,

(b) the surrender of any entitlement to a pension under the judicial legacy fee-paid scheme, and any right to a future pension under that scheme, that would otherwise arise under the rules of the scheme in respect of the value of the assets and liabilities transferred, and

(c) if at any time any relevant assets and liabilities were transferred out of the partnership pension account (otherwise than in the course of a transfer to the judicial legacy fee-paid scheme), the payment by the appropriate person to the judicial legacy fee-paid scheme of an amount, determined by the relevant authority after consulting the Government Actuary, in respect of the value of the relevant assets transferred.

(7) In this section "the appropriate person", in relation to a person ("P") who has PPA opted-out service, means the person by whom a legacy scheme election in respect of P may be made (see section 43).

(8) For the purposes of this section assets and liabilities are "relevant" in relation to any PPA opted-out service of a person ("P") if—

(a) they are referable to pension contributions or voluntary contributions that were made by or on behalf of P in respect of the service, and

(b) they are held for the purposes of a partnership pension account.

This is subject to subsection (9).

(9) Where—

(a) the total of the pension contributions, together with any voluntary contributions, that were paid by P in respect of the PPA opted-out service, exceeds

(b) the total of the pension contributions that would have been payable by P in respect of that service if the service had been pensionable service under the judicial legacy scheme to which the relevant assets and liabilities are to be transferred,

the assets and liabilities that the relevant authority, after consulting the Government Actuary, determines are referable to the excess are not "relevant" in relation to the PPA opted-out service.

(10) A reference in subsection (9) to pension contributions or voluntary contributions paid by P in respect of PPA opted-out service is a reference to the amount of the contributions paid, net of any tax relief under section 188 of FA 2004 (relief for contributions) to which P was entitled in respect of them."

Member's explanatory statement

This amendment substitutes Clause 38. The replacement Clause is updated in a number of respects, and now caters in particular for cases in which the member has died, and cases in which transfers have been made from the partnership pension account.

Amendment 64 agreed.

Clause 45: Benefits for children where election made

Amendment 65

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

65: Clause 45, page 34, line 10, leave out ", civil partner or other adult" and insert "or civil partner"

Member's explanatory statement

In the judicial legacy schemes, the only adult who may be entitled to benefits on a member's death is a surviving spouse or civil partner. This amendment therefore removes the redundant reference to other adults.

Amendment 65 agreed.

Clause 48: Pension benefits and lump sums benefits

Amendments 66 and 67

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

66: Clause 48, page 37, line 8, at end insert—

"(5A) If—

(a) M is deceased,

(b) a PPA lump sum death benefit has been paid on the death of M, and

(c) a legacy scheme election has been made in respect of M,

the PPA lump sum death benefit is to be treated for the purposes of subsection (4)(a) as a lump sum benefit paid under the scheme in respect of M's remediable service in the judicial office."

Member's explanatory statement

Where a person has opted out of the public service pension scheme available to them and instead has a partnership pension account, and the person dies, a lump sum may be paid by the department to the person's nominated beneficiary (or, in the absence of a nomination, to the person's personal representatives). Where a legacy scheme election is made in respect of the person, the arrangements for lump sum death benefits under the legacy scheme will apply. This amendment ensures that a correction is made for the lump sum already paid.

67: Clause 48, page 37, line 23, at end insert—

""PPA lump sum death benefit" means an amount paid by the relevant authority, on the death of a person who has a partnership pension account, to a person nominated by the deceased or to the person's personal representatives."

Member's explanatory statement

Where a person has opted out of the public service pension scheme available to them and instead has a partnership pension account, and the person dies, a lump sum may be paid by the department to the person's nominated beneficiary (or, in the absence of a nomination, to the person's personal representatives). Where a legacy scheme election is made in respect of the person, the arrangements for lump sum death benefits under the legacy scheme will apply. This amendment ensures that a correction is made for the lump sum already paid.

Amendments 66 and 67 agreed.

Clause 49: Pension contributions

Amendments 68 and 69

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

68: Clause 49, page 37, line 28, leave out subsections (2) to (4) and insert—

"(2) Where—

(a) the paid contributions amount for an in-scope tax year in respect of M's remediable service in the judicial office, exceeds

(b) the payable contributions amount for that tax year in respect of that service,

the scheme manager must (directly or indirectly) pay an amount in respect of the difference to the appropriate person.

(3) Where—

(a) the paid contributions amount for an out-of-scope tax year in respect of M's remediable service in the judicial office, exceeds

(b) the payable contributions amount for that tax year in respect of that service,

no amount is to be paid by the scheme manager in respect of the difference to the appropriate person.

(4) Where—

(a) the paid contributions amount for an in-scope or out-of-scope tax year in respect of M's remediable service in the judicial office, is less than

(b) the payable contributions amount for that tax year in respect of that service,

the appropriate person must pay pension contributions in respect of the difference to the scheme.

(4A) A reference in this section to "the paid contributions amount" for a tax year in respect of M's remediable service in a judicial office is a reference to the sum of—

(a) the aggregate of the pension contributions that (after taking into account the effect, if any, of section 47(2), (4) and (6)) have been paid under the scheme by M in the tax year in respect of so much of the service as was not PPA opted-out service, and

(b) where any of the remediable service was PPA opted-out service—

(i) the aggregate of the pension contributions and any voluntary contributions that have been paid by M under the partnership pension account in the tax year in respect of the PPA opted-out service, or

(ii) if lower, the aggregate of the pension contributions that (after taking into account the effect, if any, of section 39(2) to (5) or 42 (2)) were payable under the scheme by M for that tax year in respect of the PPA opted-out service.

(4B) A reference in this section to "the payable contributions amount" for a tax year in respect of M's remediable service in a judicial office means the aggregate of the pension contributions that (after taking into account the effect, if any, of section 39(2) to (5) or 42 (2)) were payable under the scheme by M for that tax year in respect of the service.

(4C) In this section "the appropriate person" means—

(a) M, or

(b) if M is deceased, M's personal representatives."

Member's explanatory statement

This amendment ensures that the treatment of contributions paid to a partnership pension account is properly accounted for; it is also one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

69: Clause 49, page 38, line 19, after "contributions" insert "or voluntary contributions"

Member's explanatory statement

This amendment ensures that voluntary contributions paid to a partnership pension account are accounted for net of tax relief.

Amendments 68 and 69 agreed.

Clause 50: Effective pension age payments

Amendments 70 to 73

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

70: Clause 50, page 38, line 24, leave out "Subsection (2) applies" and insert "Subsections (1A) and (2) apply"

Member's explanatory statement

This amendment clarifies the treatment of effective pension age payments under this clause.

71: Clause 50, page 38, line 28, at end insert—

"(1A) The rights that would otherwise have been secured by the effective pension age payments are extinguished."

Member's explanatory statement

This amendment clarifies the treatment of effective pension age payments under this Clause.

72: Clause 50, page 38, line 29, leave out "P an amount" and insert "the appropriate person an amount by way of compensation"

Member's explanatory statement

This amendment clarifies the treatment of effective pension age payments under this clause, and is also one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

73: Clause 50, page 38, line 34, at end insert—

"(2A) In subsection (2) "the appropriate person" means—

(a) P, or

(b) if P is deceased, P's personal representatives."

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

Amendments 70 to 73 agreed.

Clause 51: Transitional protection allowance

Amendments 74 and 75

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

74: Clause 51, page 39, line 1, leave out "P" and insert "The appropriate person"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

75: Clause 51, page 39, line 4, at end insert—

"(2A) In subsection (2) "the appropriate person" means—

(a) P, or

(b) if P is deceased, P's personal representatives."

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

Amendments 74 and 75 agreed.

Clause 52: Power to reduce benefits in lieu of paying liabilities owed to scheme

Amendment 76

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

76: Clause 52, page 39, line 17, at end insert—

"(1A) Scheme regulations for a judicial scheme may make provision under which, in a case in which a person is (by virtue of provision made under subsection (1)) not required to pay an amount to the person's employer, the scheme manager is required to reimburse the employer."

Member's explanatory statement

This amendment ensures that, where a person has an obligation to pay an amount to the person's employer as a result of this Chapter (for example a requirement to repay transitional protection allowance under clause 51) and regulations under subsection (1) of this clause mean that, instead of paying the full amount immediately, the person receives reduced benefits from the scheme in retirement, the scheme is require to reimburse the employer for the amount owed.

Amendment 76 agreed.

Clause 54: Pension credit members

Amendments 77 to 79

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

77: Clause 54, page 39, line 41, leave out "member of the scheme" and insert "person"

Member's explanatory statement

This amendment is to ensure that the power under Clause 54 is available in relation to the benefits payable to or in respect of any person who has a pension credit or debit under a scheme, whether or not they are regarded as a member of the scheme under its rules.

78: Clause 54, page 40, line 4, leave out "member" and insert "person"

Member's explanatory statement

This amendment is to ensure that the power under clause 54 is available in relation to the benefits payable to or in respect of any person who has a pension credit or debit under a scheme, whether or not they are regarded as a member of the scheme under its rules.

79: Clause 54, page 40, line 6, leave out second "member" and insert "person"

Member's explanatory statement

This amendment is to ensure that the power under Clause 54 is available in relation to the benefits payable to or in respect of any person who has a pension credit or debit under a scheme, whether or not they are regarded as a member of the scheme under its rules.

Amendments 77 to 79 agreed.

Clause 55: Further powers to make provision about special cases

Amendments 80 to 84

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

80: Clause 55, page 41, line 13, leave out paragraph (g) and insert—

"(g) provision about cases in which the scheme administrator of a judicial scheme pays a liability under section 217 or 237B of FA 2004 (joint liability of scheme administrator to lifetime allowance charge or annual allowance charge);"

Member's explanatory statement

This amendment generalises the power in subsection (2)(g) of this clause so that it confers power to make provision about any case in which a member's liability to a lifetime allowance charge, or an annual allowance charge, is paid under the "scheme pays" facility (under which the liability is paid by the scheme administrator and the member's benefits from the scheme are reduced in consequence).

81: Clause 55, page 41, line 16, at end insert—

"(2A) The provision that may be made by virtue of subsection (2)(a) includes, in particular, provision under which—

(a) the rights that would otherwise have been secured by the payment of any voluntary contributions are extinguished, and

(b) the scheme manager is required to pay the member or, if the member is deceased, the member's personal representatives an amount by way of compensation equal to—

(i) the aggregate of the voluntary contributions paid, less

(ii) an amount in respect of the tax relief under section 188 of FA 2004 (member contributions) to which the member was entitled in respect of those payments."

Member's explanatory statement

This amendment clarifies the nature of the provision that it is envisaged will be made under subsection (2)(a) for the refund of voluntary contributions.

82: Clause 55, page 41, leave out lines 19 to 22 and insert—

"(a) provision modifying any provision of this Chapter in its application to persons of a description specified in the regulations;

(b) provision corresponding to, or applying, any provision of this Chapter, with or without modifications."

Member's explanatory statement

This amendment clarifies the way in which special cases may be dealt with in regulations.

83: Clause 55, page 41, line 23, leave out subsection (4)

Member's explanatory statement

This amendment is in consequence of the government amendment of Clause 92 which applies the definition of "voluntary contributions" to the whole of Part 1.

84: Clause 55, page 41, line 34, at end insert—

"(6) In this section—

"modifying" includes disapplying or supplementing (and cognate expressions are to be construed accordingly);

"scheme administrator" has the same meaning as in Part 4 of FA 2004 (see section 270 of that Act)."

Member's explanatory statement

This amendment inserts definitions required for other government amendments of this Clause.

Amendments 80 to 84 agreed.

Clause 56: Power to pay compensation

Amendments 85 to 88

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

85: Clause 56, page 41, line 38, at end insert "or, in the case of deceased members, their personal representatives."

Member's explanatory statement

This amendment ensures that, where a member has died, compensation can be paid to the member's personal representatives if they incur a compensatable loss.

86: Clause 56, page 41, line 42, after "member" insert ", or by a member's personal representatives,"

Member's explanatory statement

This amendment ensures that, where a member has died, compensation can be paid to the member's personal representatives if they incur a compensatable loss.

87: Clause 56, page 42, line 27, leave out "the member" and insert "any person"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

88: Clause 56, page 42, line 29, leave out "the member" and insert "any person"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

Amendments 85 to 88 agreed.

Amendment 89

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

89: After Clause 56, insert the following new Clause—

"Remedial arrangements to pay voluntary contributions to judicial schemes

(1) Scheme regulations for a judicial scheme may make provision so as to secure that a relevant member may enter into remedial voluntary contributions arrangements.

(2) In subsection (1)—

"relevant member", in relation to a judicial scheme, means a member (other than a deceased member) who has remediable service in a judicial office which, after the end of the election period, is pensionable service under the scheme;

"remedial voluntary contributions arrangements" means arrangements—

(a) which are entered into by a member after the end of the election period, and

(b) under which the member pays voluntary contributions to the scheme.

(3) Provision by virtue of subsection (1) may permit a member ("M") to enter into arrangements only if the scheme manager is satisfied that it is more likely than not that, but for a relevant breach of a non-discrimination rule, M would, during the period of M's remediable service in the judicial office, have entered into the same or similar arrangements.

(4) The provision that may be made by virtue of subsection (1) includes, in particular, provision under which liabilities to pay voluntary contributions that would otherwise arise under the arrangements are reduced by tax relief amounts.

(5) In subsection (4) "tax relief amounts" means amounts determined by reference to the tax relief under section 188 of FA 2004 (relief for members' contributions) that would have been available in respect of the amounts owed if they were paid in a different tax year.

(6) Provision by virtue of subsection (1) may not permit a member ("M") to enter into arrangements after—

(a) the end of the period of one year beginning with the day on which a statement under section 60 (information statements) is sent in respect of M, or

(b) such later time as the scheme manager considers reasonable in all the circumstances.

(7) Subsection (6) does not affect the continued operation after the time mentioned in that subsection of any arrangements entered into before that time.

(8) In this section "non-discrimination rule" means a rule that is, or at any time was, included in a judicial scheme by virtue of—

(a) section 61 of EA 2010, or

(b) paragraph 2 of Schedule 1 to EEAR(NI) 2006.

(9) For the purposes of this section a breach of a non-discrimination rule is "relevant" if it arises from the application of—

(a) an exception to section 18(1) of PSPA 2013 made under section 18(5) to (7) of that Act, or

(b) an exception to section 18(1) of PSPA(NI) 2014 made under section 18(5) to (8) of that Act."

Member's explanatory statement

This Clause makes it possible for a judicial scheme to make provision giving members with remediable service the facility to enter into new arrangements to pay voluntary contributions. The facility may only be made available for members who would have entered into similar arrangements but for unlawful discrimination, and may be made available only for a limited period.

Amendment 89 agreed.

Clause 57: Interest and process

Amendment 90

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

90: Clause 57, page 43, line 6, leave out subsection (3) and insert—

"(3) In this section "relevant amounts" mean any amounts that are payable under or by virtue of this Chapter—

(a) by a person to the scheme or to an employer in relation to the scheme, or

(b) by the scheme to a person."

Member's explanatory statement

This amendment broadens the definition of "relevant amounts" so that it covers payments to a member's employer. It is also one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

Amendment 90 agreed.

Clause 58: Treasury directions

Amendments 91 to 94

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

91: Clause 58, page 43, line 29, at end insert—

"(fa) the power to make scheme regulations by virtue of section (Remedial arrangements to pay voluntary contributions to judicial schemes) (remedial arrangements to pay voluntary contributions to judicial schemes) and any powers exercisable by virtue of such regulations;"

Member's explanatory statement

This amendment ensures that Treasury directions can be used in relation to remedial voluntary contributions arrangements.

92: Clause 58, page 43, line 33, leave out from "paid" to "or any" and insert "by or to a scheme in relation to a member"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

93: Clause 58, page 43, line 35, after "member" insert "and (if different) the person to whom or by whom the amount is to be paid or the liability is owed"

Member's explanatory statement

This amendment ensures subsection (3) of this clause operates as intended in a case in which an amount is payable to or by a person who is not the member who has remediable service (for example a surviving adult or personal representatives).

94: Clause 58, page 43, line 37, leave out "the member" and insert "that person or those persons"

Member's explanatory statement

This amendment ensures subsection (3) of this Clause operates as intended in a case in which an amount is payable to or by a person who is not the member who has remediable service (for example a surviving adult or personal representatives).

Amendments 91 to 94 agreed.

Clause 60: Information statement

Amendments 95 to 98

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

95: Clause 60, page 44, line 24, leave out subsection (1) and insert—

"(1) The relevant authority must—

(a) prepare a statement in relation to any person ("P") in respect of whom a legacy scheme election or a 2015 election may be made, and

(b) send it to the person who may make the election (see section 43).

(1A) Subsection (1) must be complied with before the beginning of the election period in relation to P."

Member's explanatory statement

This amendment is consequential on the government amendments of Clause 65.

96: Clause 60, page 44, line 40, after "available)," insert—

"(ca) a description of—

(i) the arrangements (if any) that, by virtue of section (Remedial arrangements to pay voluntary contributions to judicial schemes) (remedial arrangements to pay voluntary contributions to judicial schemes), may be entered into under judicial schemes, and

(ii) the circumstances in which, and the process by which, such arrangements may be entered into,"

Member's explanatory statement

The amendment ensures that a statement under this clause includes information to enable the recipient to decide whether they are entitled to enter into new arrangements to pay voluntary contributions, and if so how to go about doing it.

97: Clause 60, page 44, line 42, leave out "appropriate person's"

Member's explanatory statement

This amendment is consequential on the government amendments of Clause 65.

98: Clause 60, page 44, line 44, leave out subsection (3)

Member's explanatory statement

This amendment is consequential on the government amendments of Clause 65.

Amendments 95 to 98 agreed.

Clause 63: Application of Chapter to immediate detriment cases

Amendments 99 and 100

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

99: Clause 63, page 45, line 20, leave out from "if" to "in" in line 21 and insert "an immediate detriment remedy has been obtained"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

100: Clause 63, page 45, line 23, leave out from "have" to "so" in line 24 and insert "rights in respect of remediable service in relation to which an immediate detriment remedy has been obtained"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

Amendments 99 and 100 agreed.

Clause 64: Persons who have "benefited from an immediate detriment remedy"

Amendments 101 to 103

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

101: Clause 64, page 46, line 2, leave out from "of" to "person's" in line 3 and insert "section 63 an "immediate detriment remedy" has been obtained in relation to a"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

102: Clause 64, page 46, line 7, leave out "the" and insert "any"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

103: Clause 64, page 46, line 15, leave out second "the" and insert "any"

Member's explanatory statement

This is one of a number of amendments clarifying or adjusting the processes and powers under Part 1 of the Bill so that they operate as intended in cases in which a member dies.

Amendments 101 to 103 agreed.

Clause 65: Meaning of "the election period"

Amendments 104 and 105

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

104: Clause 65, page 46, line 29, after "period"" insert ", in relation to a person who has remediable service in a judicial office,"

Member's explanatory statement

This amendment (together with the other government amendment of this Clause) makes the definition of "the election period" more flexible by enabling different periods to be specified for different descriptions of judge.

105: Clause 65, page 46, line 31, at end insert—

"(1A) Different dates may be specified in relation to different descriptions of person."

Member's explanatory statement

This amendment (together with the other government amendment of this clause) makes the definition of "the election period" more flexible by enabling different periods to be specified for different descriptions of judge.

Amendments 104 and 105 agreed.

Clause 69: Meaning of "opted-out service" and "PPA opted-out service"

Amendment 106

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

106: Clause 69, page 47, line 42, after "to" insert "pension"

Member's explanatory statement

This amendment clarifies the reference to pension contributions in subsection (2) of this Clause.

Amendment 106 agreed.

Clause 71: Interpretation of Chapter

Amendments 107 and 108

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

107: Clause 71, page 48, leave out lines 21 and 22

Member's explanatory statement

This amendment is in consequence of the government amendment of Clause 64(1).

108: Clause 71, page 49, leave out line 9

Member's explanatory statement

This amendment is in consequence of the government amendment of Clause 92 which applies the definition of "voluntary contributions" to the whole of Part 1.

Amendments 107 and 108 agreed.

Clause 73: Meaning of "remediable service"

Amendments 109 and 110

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

109: Clause 73, page 49, line 38, leave out "a person's service" and insert "any continuous period of service of a person"

Member's explanatory statement

This amendment clarifies that the definition of "remediable service" applies separately in relation to service of a person that takes place at different times (so that a person may have some service that is "remediable service" and some that is not, and may have more than one period of remediable service).

110: Clause 73, page 50, line 3, after "that" insert "all of"

Member's explanatory statement

This amendment clarifies that the second condition (which is concerned with whether service is pensionable) must be met in relation to all of the service in question.

Amendments 109 and 110 agreed.

Amendment 111

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

111: After Clause 78, insert the following new Clause—

"Prohibition of new arrangements to pay voluntary contributions

(1) No arrangements are to be entered into after 31 March 2022 under which voluntary contributions are payable by a member of a relevant scheme to the scheme.

(2) In subsection (1) "relevant scheme" means—

(a) a Chapter 1 legacy scheme (within the meaning of Chapter 1),

(b) a judicial legacy salaried scheme (within the meaning of Chapter 2),

(c) a local government legacy scheme (within the meaning of Chapter 3),

(d) the Judicial Pensions Regulations 2015 (S.I. 2015/182),

(e) the Judicial Pensions Regulations (Northern Ireland) 2015 (S.R.(N.I.) 2015 No. 76), or

(f) the pension scheme established for certain employees of the Secret Intelligence Service which came into operation on 1 January 1946 and was amended on 1 September 1957 and 1 July 1964.

(3) Subsection (1)—

(a) does not affect the continued operation after 31 March 2022 of any arrangements entered into on or before that date;

(b) does not apply to arrangements entered into by virtue of section (Remedial arrangements to pay voluntary contributions to legacy schemes) or (Remedial arrangements to pay voluntary contributions to judicial schemes) (remedial arrangements to pay voluntary contributions)."

Member's explanatory statement

This Clause sets out the general rule that no arrangements to pay voluntary contributions to legacy schemes may be entered into after 31 March 2022.

Amendment 111 agreed.

Amendment 112

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

112: After Clause 79, insert the following new Clause—

"Amendments relating to the establishment or restriction of schemes

(1) PSPA 2013 is amended in accordance with subsections (2) to (7).

(2) In section 4 (scheme manager)—

(a) after subsection (3) insert—

"(3A) Subsection (1) does not apply to a scheme under section 1 if—

(a) the scheme is connected with another scheme under section 1, and

(b) a scheme manager is provided for under subsection (1) in scheme regulations for that other scheme.";

(b) after subsection (6) insert—

"(6A) The reference in subsection (6) to a statutory pension scheme includes a statutory pension scheme established (under section 1 or otherwise) after the establishment of the scheme under section 1 mentioned in that subsection."

(3) In section 5 (pension board), after subsection (2) insert—

"(2A) Subsection (1) does not apply to a scheme under section 1 if—

(a) the scheme is connected with another scheme under section 1, and

(b) a pension board is provided for under subsection (1) in scheme regulations for that other scheme."

(4) In section 7 (scheme advisory board)—

(a) in subsection (1), for "on the desirability of changes to the scheme" substitute "on—

(a) the desirability of changes to the scheme, or

(b) the desirability of changes to any other scheme under section 1 which—

(i) is connected with it, and

(ii) is not an injury or compensation scheme.";

(b) after subsection (1) insert—

"(1A) Subsection (1) does not apply to a scheme under section 1 if—

(a) the scheme is connected with another scheme under section 1 which is not an injury or compensation scheme, and

(b) a scheme advisory board is provided for under subsection (1) in scheme regulations for that other scheme."

(5) In section 11 (valuations), after subsection (1) insert—

"(1A) Subsection (1) does not apply to a scheme under section 1 if—

(a) the scheme is connected with another scheme under section 1, and

(b) actuarial valuations are provided for under subsection (1) in scheme regulations for that other scheme."

(6) After section 12 insert—

"**12A** Sections 11 and 12: restricted schemes

(1) Section 11(1) (valuations) does not require scheme regulations to provide for actuarial valuations to be made of a scheme to which this section applies.

(2) Section 12(1) (employer cost cap) does not apply to a scheme to which this section applies.

(3) This section applies to a scheme under section 1 which—

(a) is a restricted scheme, and

(b) is specified for the purposes of this section in Treasury regulations.

(4) For the purposes of this section a scheme under section 1 is a "restricted scheme" at any time if any enactment restricts the provision of benefits under the scheme to or in respect of a person in relation to the person's service after that time.

(5) Treasury regulations under this section may include consequential or supplementary provision.

(6) Treasury regulations under this section are subject to the negative Commons procedure."

(7) In section 30 (new public body pension schemes), in subsection (1)(e), for "and 12" substitute "to 12A".

(8) PSPA(NI) 2014 is amended in accordance with subsections (9) to (15).

(9) In section 4 (scheme manager)—

(a) after subsection (3) insert—

"(3A) Subsection (1) does not apply to a scheme under section 1 if—

(a) the scheme is connected with another scheme under section 1, and

(b) a scheme manager is provided for under subsection (1) in scheme regulations for that other scheme.";

(b) after subsection (6) insert—

"(6A) The reference in subsection (6) to a statutory pension scheme includes a statutory pension scheme established (under section 1 or otherwise) after the establishment of the scheme under section 1 mentioned in that subsection."

(10) In section 5 (pension board)—

(a) in subsection (1), for "subsection (2)" substitute "subsections (2) and (2A)";

(b) after subsection (2) insert—

"(2A) Subsection (1) does not apply to a scheme under section 1 if—

(a) the scheme is connected with another scheme under section 1, and

(b) a pension board is provided for under subsection (1) in scheme regulations for that other scheme."

(11) In section 7 (scheme advisory board)—

(a) in subsection (1), for "on the desirability of changes to the scheme" substitute "on—

(a) the desirability of changes to the scheme, or

(b) the desirability of changes to any other scheme under section 1 which—

(i) is connected with it, and

(ii) is not an injury or compensation scheme.";

(b) after subsection (1) insert—

"(1A) Subsection (1) does not apply to a scheme under section 1 if—

(a) the scheme is connected with another scheme under section 1 which is not an injury or compensation scheme, and

(b) a scheme advisory board is provided for under subsection (1) in scheme regulations for that other scheme."

(12) In section 11 (valuations), after subsection (1) insert—

"(1A) Subsection (1) does not apply to a scheme under section 1 if—

(a) the scheme is connected with another scheme under section 1, and

(b) actuarial valuations are provided for under subsection (1) in scheme regulations for that other scheme."

(13) After section 12 insert—

"12A Sections 11 and 12: restricted schemes

(1) Section 11(1) (valuations) does not require scheme regulations to provide for actuarial valuations to be made of a scheme to which this section applies.

(2) Section 12(1) (employer cost cap) does not apply to a scheme to which this section applies.

(3) This section applies to a scheme under section 1 which—

(a) is a restricted scheme, and

(b) is specified for the purposes of this section in regulations made by the Department of Finance.

(4) For the purposes of this section a scheme under section 1 is a "restricted scheme" at any time if any statutory provision restricts the provision of benefits under the scheme to or in respect of a person in relation to the person's service after that time.

(5) Regulations made by the Department of Finance under this section may include consequential or supplementary provision.

(6) Regulations made by the Department of Finance under this section are subject to negative resolution."

(14) In section 31 (new public body pension schemes), in subsection (1)(e), for "and 12" substitute "to 12A".

(15) In section 34 (general interpretation), at the appropriate place insert—

""statutory provision" has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954;"."

Member's explanatory statement

This new Clause amends the Public Service Pensions Act 2013 (and its Northern Ireland equivalent) so as to clarify and adjust the way the governance of schemes, and the valuation process, work where a scheme established under the Act for a description of persons is closed, and a new scheme under the Act is established for the same description of persons.

Amendment 112 agreed.

Clause 80: Amendments relating to employer cost cap

Amendment 113

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

113: Clause 80, page 56, line 3, leave out "(2) and" and insert "(1A) to"

Member's explanatory statement

This amendment is consequential on the new subsection inserted into this Clause after subsection (1).

Amendment 113 agreed.

Amendment 114

Moved by ***Lord Davies of Brixton***

114: Clause 80, page 56, line 3, leave out "(2) and (3)" and insert "(1A) to (3).

(1A) In subsection (4) omit paragraph (c)."

Member's explanatory statement

The amendment removes from the calculation of the employer cost cap the effect of changes in the cost of connected schemes, including the cost of rectifying the unlawful discrimination.

Lord Davies of Brixton (Lab): My Lords, I raised this issue at Second Reading in the context of questioning the use of directions. I believe that there is a general issue here about the respective weight given to primary legislation, regulations subject to approval by one or both Houses, and directions, which are the decision of the Treasury. Clearly, there is a balance to be drawn here on the appropriate level of parliamentary scrutiny; it is a debate that we should have, but it is not one I propose to pursue any more in the context of this Bill.

However, some concerns remain about issues that are being dealt with through directions which, I believe, should be subject to parliamentary scrutiny. In the context of this Bill, there are two issues of concern. The first is the decision that the cost of the remedy—that is, the remedy required to address the issue of age discrimination—should be counted as a member cost in the cost-control mechanism. The second issue is that, in that calculation, the costs of the remedy should be spread over a period of four years.

This is beginning to verge on technical issues but, at heart, these are policy decisions, and ones that should be subject to parliamentary scrutiny. They go far beyond what have been described. This legislation amends the Public Service Pensions Act 2013, and there was a report on that legislation, looking at the directions, which said that the directions did not need parliamentary scrutiny because they were simply technical matters of actuarial practice. My argument today, on those two issues—and I am going to focus only on the issue of whether this is a "member cost"—is around whether this is a technical matter of actuarial practice or whether it is a policy decision that should be subject to parliamentary scrutiny.

There is no doubt that the decision to make this a member cost will mean that members end up paying more money or receiving lower benefits. It will directly affect the benefits that they receive. The issue was raised in Committee, and the Minister at that stage maintained the position that

> "Treasury directions … exercise a particular power, rather than creating a new power".—[*Official Report*, 11/10/2021; col. GC 353.]

I would argue that the decision to make this a member cost as part of the cost-control mechanism goes beyond the exercise of a particular power and creates a new power, and hence it should be considered as regulations.

This is a complicated issue, and, to understand it, you need to have a clear understanding of the purpose of the cost-control mechanism. It is not, as the Government have suggested, a mechanism for assessing the value of pensions; this is not something that directly affects the calculation of the contribution rate being paid for the scheme. It simply affects the cost-control mechanism, which is the trigger for deciding whether changes should be made to the scheme. The costs of the scheme are the costs of the scheme; whatever the benefits are, they are the costs of the scheme. This is a mechanism for deciding whether those benefits should be changed or, alternatively, whether contributions should be changed.

It has always been accepted that there are certain elements in the calculation involved in the cost-control mechanism that are regarded as member costs that will impact on the cost-control mechanism—but there are also these other elements in the calculation that are employer costs, which do not impact on the cost-control mechanism. The issue has been discussed, and there have been government reports on what counts as a member cost or an employer cost, but they have never considered the issue of the cost of a remedy incurred by the Government's own error. It was the Government's mistake to have age discrimination in this scheme and, to address the Government's mistake, there has to be a remedy. That remedy is the subject of this Bill. Should the cost of that remedy be a cost for the Government, who created the problem in the first place, or a member cost? The Government argue that members are receiving additional benefits and so it is clearly a member cost.

This is an important issue and what I am arguing about now is not an ultimate answer—I have made my position clear; I think it should be an employer cost—but it is not an issue that should be addressed through directions; it should come before Parliament through regulations. Because of the nature of the regulations, they would probably be financial regulations and considered only by the House of Commons. That is effectively what I am arguing, and I have put down my amendment in order to raise this issue. To a certain extent, our deliberations here are not final, because this is the subject of extensive legal action. However, that is nothing to do with the argument today. The argument is technical; it is on the relatively narrow point of whether the cost of the remedy falls to be treated as an employer cost or as a member cost.

Lord Hodgson of Astley Abbotts (Con): My Lords, I have not participated on this Bill before; indeed, I just want to pick up the point made by the noble Lord, Lord Davies, about the way that more and more government actions are taken by subordinate legislation. I chair the Secondary Legislation Scrutiny Committee, and we produced a report last week entitled *Government by Diktat*. My noble friend Lord Blencathra, who chairs the parallel committee, the Delegated Powers and Regulatory Reform Committee, produced another report called *Democracy Denied?*

We all know that secondary legislation it is not well scrutinised. It cannot be amended, and this House and indeed the other place are therefore reluctant to undertake what I call the nuclear option—we cannot amend a bit of it, so we have to reject the whole lot. The last time that happened there was a huge constitutional crisis, to which my noble friend Lord Strathclyde had to set up a committee to answer.

However, we have moved from that unsatisfactory position to one where we now have guidance. Guidance may or may not form part of the regulations; sometimes it says that the guidance "must have regard to" the

regulations. What does that mean? Does it mean "I thought about it and I did not want to follow it", or does it mean "The court will decide, and you had better have a jolly good reason for not complying with it".

The point from the noble Lord, Lord Davies of Brixton, takes it further away from the control of this House. We have what is now tertiary legislation: directions and decisions made by bodies that are not answerable to Parliament but whose decisions and regulations are enforced and required to be obeyed by every single member of the population of this country. Whatever the rights and wrongs of the point from the noble Lord, Lord Davies—I am not in a position to judge—he raises a very important matter for the House, which needs to be debated and discussed. As we move to new ways of regulating and legislating, because our society is moving on faster than the rather stately pace of primary legislation, we need to find new and better ways of making sure that Parliament, as the legislature, is not subject to the creeping, increasing control of the Executive—the Government.

My committee and my noble friend Lord Blencathra's committee are pretty convinced that the situation needs seriously addressing here—and of course in the other place, which must lead the way on this—if we are to make sure that the balance, which has shifted, is put back in the right place and in the right form. The speech by the noble Lord, Lord Davies of Brixton, underlines some of the dangers that we are facing by direction, which is not good enough because it does not come before your Lordships' House or indeed the other place but will nevertheless have a very significant impact for our fellow citizens.

4.45 pm

Baroness Janke (LD): My Lords, I again thank the noble Lord, Lord Davies, for his explanation and for raising these issues, as he did in Committee. I listened again with interest to the noble Lord, Lord Hodgson, as he has intervened in two Bills on the issue of secondary legislation. I am sure that many Members of this House would support his view that there is inadequate scrutiny of secondary legislation and that the House's powers are so severely curtailed that it requires us to ask whether we adequately exercise our scrutiny of subsequent legislation as we do with primary legislation.

As for the cost cap mechanism, I know that there was great criticism, both from the Public Accounts Committee and the National Audit Office, about the costs of the remedy and how they would be paid for by the members, whereas it was an error by government and it was certainly felt, as the noble Lord, Lord Davies, said, that it should be faced by government. However, the Government have certainly produced a more satisfactory cost cap mechanism, with a number of concessions relating to the future costs of the pensions. We welcome the new arrangements for payments for any breach of the cost cap or floor, which were to be paid for by the members of the new scheme, as we do the widening of the margin for material breach of the ceiling or floor. We also appreciated the new application of the economic test should the cost floor be breached. We feel that the Government have made some attempt to address criticisms of the cost cap mechanism and will follow with interest how that operates in future.

Lord Ponsonby of Shulbrede (Lab): My Lords, I again pay tribute to my noble friend Lord Davies for his contribution and for setting out the range of concerns surrounding the cost-control mechanism and the inclusion of the remedy as a member cost. I recognise that this question is subject to ongoing legal action and once again put on record that we welcome the provisions in Clause 80, although, as the Minister is only too aware, it does not deal with the wider question of plans for the cost-control mechanism.

Members of the House are not the first to raise questions over the Government's plans. The cross-party Public Accounts Committee said:

> "HM Treasury should have foreseen the age discrimination issue that gave rise to the 2018 McCloud judgment, and putting things right will take many decades to resolve. HM Treasury wants members to pay to put this right—at an estimated cost of £17 billion—despite this being its own mistake."

That point was repeated by my noble friend Lord Davies and the noble Baroness, Lady Janke.

I look forward to the Minister's response on this issue but, before I finish, I want to echo one specific question. Am I right that there will be a number of members who will not benefit from the remedy but will be impacted by it if it is included as a member cost?

I listened with interest to the noble Lord, Lord Hodgson of Astley Abbotts, on Parliament being subject to the creeping control of the Executive—I think that is the way he put it. He talked about examples of secondary legislation and indeed gave this as an example of tertiary legislation. I think a lot of us will have sympathy with what he said.

Viscount Younger of Leckie (Con): My Lords, an amendment has been put forward to Clause 80 by the noble Lord, Lord Davies of Brixton, which concerns the employer cost cap. The noble Lord seeks to amend this clause to prevent the increase in value of schemes associated with the McCloud remedy being accounted for in the cost-control element of the 2016 valuations. I thank the noble Lord for bringing this to the attention of the House and am grateful to him for his prior engagement on the policy.

I can confirm that the Government have received pre-action protocol letters on behalf of some trade unions which have indicated that they may issue judicial review proceedings to challenge the Government's decision to include the costs of remedy in the cost-control mechanism at the 2016 valuations. As the House will expect, and as the noble Lord, Lord Ponsonby, acknowledged, I cannot comment on the specifics of live or threatened litigation.

I acknowledge and appreciate the support the noble Baroness, Lady Janke, has given in general to the changes we have made to the cost-control mechanism—but there is more I want to say. I will talk through the general background, to reassure the noble Lord, Lord Davies, of the reasons for the Government's decision. I will start by commenting on the policy rationale, starting with amending directions.

[Viscount Younger of Leckie]

In Grand Committee, I brought to your Lordships' attention that the Treasury had published amending directions on 7 October 2021 that will allow schemes to complete the cost-control element of the 2016 valuation process. These amending directions confirm that the increase in value of schemes associated with the McCloud remedy will be taken into account in the completion of the cost-control element of the 2016 valuations. The Government believe this is right, given that addressing the discrimination identified in the Court of Appeal's judgment by giving members a choice of scheme benefits for the remedy period involves increasing the value of members' pensions.

The cost-control mechanism was designed to assess costs arising from a change in value of schemes to members. Failure to capture the value of the remedy could have meant that members' benefits may have changed going forwards, based on an incomplete and inaccurate assessment of the value of these pension schemes. This would represent an unacceptable risk to taxpayers, contrary to the objectives of the mechanism.

Turning to some specific detail on ceiling breaches, the Government have previously announced their intention to waive any ceiling breaches that arise from the 2016 valuations, and this is implemented by the current version of Clause 80. However, any floor breaches that occur will be honoured. This means that no member will see a reduction to their benefits as a result of the 2016 valuations. This decision, and the completion of the 2016 valuations, should provide certainty to scheme members over their benefits.

I will attempt at this stage to answer the point raised by my noble friend Lord Hodgson of Astley Abbotts and the noble Lord, Lord Ponsonby, about the use of directions. The Government acknowledge the key interest of the House in the scrutiny of secondary and tertiary legislation. The DPRRC considered this Bill and chose not to bring forward any comments for the attention of the House. The Government have powers under Section 12 of the PSPA 2013 to set out in Her Majesty's Treasury's directions what costs must be taken into account as part of the cost-control valuations. More broadly, I acknowledge the points my noble friend made; I have no doubt that *Hansard* will be read and I will say simply that his points are noted.

I will now say a few words about the amendment itself. The amendment seeks to amend the Treasury's powers, set out in Section 12 of the Public Service Pensions Act 2013, to make directions which set the employer cost cap. Section 12 grants the Treasury a wide power to specify in directions which costs should be taken into account as part of the cost-control mechanism.

The amendment put forward by the noble Lord seeks to amend subsection (4) by omitting paragraph (c). I understand that the noble Lord's intention is to remove the Treasury's power to specify that the costs of remedy, or any other costs associated with the legacy schemes, should be accounted for in the mechanism.

This amendment may not have what I understand to be the noble Lord's intended effect of preventing the increased value associated with the McCloud remedy from being included in the mechanism at the 2016 valuations. Subsection (4) sets out the type of costs that Treasury directions may specify for inclusion in the cost-control mechanism, but it is not intended to be an exhaustive list; rather, it provides some illustrative examples of how the wide power in subsection (3) may be exercised. I also note that the 2021 amending directions came into effect on 8 October 2021, as I mentioned earlier, under the existing powers. The noble Lord's amendment as drafted would have no effect on the 2021 amending directions.

I want to attempt to answer some questions that were raised by the noble Lord, Lord Davies, supported, I think, by the noble Baroness, Lady Janke. There was some debate about why members are being made to pay for, as they put it, mistakes made by the Government. When the cost-control mechanism was established, it was agreed that it would consider only costs that affect the value of a scheme to members. Addressing the discrimination identified in the McCloud and Sargeant judgments by giving members a choice of scheme benefits for the remedy period involves increasing the value of schemes to members. The costs associated with this should therefore be taken into account as part of the cost-control element of the 2016 valuations process. However, any ceiling breaches that occur will be waived, no member will see a reduction in benefits as a result of the 2016 valuations, and any floor breaches that occur will be honoured.

The noble Lord, Lord Davies, asked when we will introduce amendments to reform the cost-control mechanism. I hope I can provide some reassurance by saying that the Government published our response to the consultation on the CCM on 4 October, we are currently working through our options and we will legislate for changes to the mechanism when parliamentary time allows. While a precise date has not been set—I am sorry I cannot give that date—the aim is to implement any changes in time for the 2020 valuations. As should now be clear, the Government have no intention of tabling an amendment in the House of Lords to implement these reforms. Instead, the package of amendments being introduced in this House are technical amendments that ensure the consistent application and legal operability of measures in the Bill.

I hope that, with these explanations, I have provided the noble Lord, Lord Davies, in particular, with some helpful reassurances on the policy rationale and the powers used, and I ask him to withdraw his amendment.

Lord Davies of Brixton (Lab): My Lords, at the appropriate time I will indicate that I will withdraw the amendment. I am prepared to accept the advice that it does not actually achieve what I would like to achieve, and that the retrospective factor needs to be taken into account. But I would just like to highlight an issue mentioned by my noble friend Lord Ponsonby.

What the decision to make this a member cost means is that it will impact on those members who gain no benefit from the remedy. The remedy is not arbitrary, but there are broad patterns in who benefits from the remedy, and large numbers of members do not benefit from the remedy but will be affected by the inclusion of this as a member cost in the cost-control mechanism. The Government have suggested that they

chose the four-year period within the cost-control mechanism for undertaking the calculation because they did not want to impact on future members of the scheme who gain no benefit from the remedy, but exactly the same problem applies to many current members of the scheme who will be active members during the relevant four-year period. To me, that sounds like an argument that the remedy should not be treated as a member cost, because of its inequitable impact.

I am very grateful to the noble Lord, Lord Hodgson, for his remarks. This is an issue that I have perhaps said more about than I originally intended, but I very much hope it will be taken seriously. What comes to me from it is that it is not easy to say what is or is not suitable to be dealt with through particular types of legislation. The issue is the impact it has, not its precise formulation—and making it a member cost has a substantial impact and so should get the appropriate level of consideration.

I note what the Minister said about the amendments to the cost-control mechanism and that he did not rule out the possibility that it would be added to this Bill during its Commons stages. I am a bit concerned about the idea of debating such significant changes in the context of the ping-pong process, so maybe he could give some sort of reassurance on that. But subject to those points, I beg leave to withdraw my amendment.

Amendment 114 withdrawn.

5 pm

Amendments 115 to 117

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

115: Clause 80, page 56, line 3, at end insert—

"(1A) After subsection (1) insert—

"(1A) Subsection (1) must be complied with before the end of the period of one year beginning with the day on which the scheme's first valuation under section 11 is completed.""

Member's explanatory statement

This amendment imposes a time limit for scheme regulations to comply with section 12(1) of the Public Service Pension Schemes Act 2013 (which requires scheme regulations to set the employer cost cap for the scheme).

116: Clause 80, page 56, line 35, leave out "(5) and" and insert "(4A) to"

Member's explanatory statement

This amendment is consequential on the new subsection inserted into this Clause after subsection (5).

117: Clause 80, page 56, line 35, at end insert—

"(4A) After subsection (1) insert—

"(1A) Subsection (1) must be complied with before the end of the period of one year beginning with the day on which the scheme's first valuation under section 11 is completed.""

Member's explanatory statement

This amendment imposes a time limit for scheme regulations to comply with section 12(1) of the Public Service Pension Schemes Act (Northern Ireland) 2014 (which requires scheme regulations to set the employer cost cap for the scheme).

Amendments 115 to 117 agreed.

Clause 86: Power to make provision in relation to certain fee-paid judges

Amendment 118

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

118: Clause 86, page 63, line 8, at end insert—

"(vi) section 57 (interest and process)."

Member's explanatory statement

This amendment ensures that regulations under Clause 86 are capable of including provision about interest.

Amendment 118 agreed.

Clause 88: Section 91 of the Pensions Act 1995

Amendment 119

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

119: Clause 88, page 65, line 3, at end insert—

"(3) Subsection (4) applies in relation to any reference in section 356 of the Armed Forces Act 2006 (avoidance of assignment of, or charge on, pay and pensions etc) to an assignment (or, in Scotland, assignation) of, or an agreement to assign, any relevant pay or pension (within the meaning of that section).

(4) The reference does not include anything done under or by virtue of this Part of this Act."

Member's explanatory statement

This amendment ensures that the restrictions in section 356 of the Armed Forces Act 2006 do not apply to the operation of Part 1 of the Bill.

Amendment 119 agreed.

Clause 90: Power to make consequential provision

Amendment 120

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

120: Clause 90, page 65, line 9, at end insert—

"(1A) Regulations under this section may make retrospective provision."

Member's explanatory statement

This amendment ensures that the power to make consequential provision in this clause can be used to make provision that operates in relation to times before it is made.

Amendment 120 agreed.

Amendment 121

Moved by ***Baroness Janke***

121: After Clause 90, insert the following new Clause—

"Guidance

(1) Within six months of the day on which this Act is passed the Government must lay before Parliament a copy of draft guidance to members of pension schemes affected by this Part.

(2) The purpose of the guidance under subsection (1) is to ensure members are able to make informed choices about their pensions.

(3) The guidance may also outline plans by the Government to—

(a) notify members if they are entitled to apply for compensation under the provisions of this Part, and provide them with the information necessary to do so, and

(b) provide a free helpline or online service which members can use to receive further guidance about their pension.

(4) Within six months of the day on which the guidance is published the Government must lay before Parliament a report on its effectiveness in achieving the purpose in subsection (2)."

Member's explanatory statement

This amendment would require the Government to publish guidance to members of pension schemes affected by this Part and allows for provision of a helpline or online service to offer further assistance. The amendment also ensures that the Government informs individuals if they are due compensation.

Baroness Janke (LD): My Lords, as we have heard today and previously, the implementation of this Bill is likely to be extremely challenging, including, I would say, for scheme members. Millions of public sector workers will be affected by this scheme, and the process will involve unpicking, administering and communicating with members. I believe that members will need a lot of help to understand what is happening and to make good decisions. It seems to me essential that we should include a requirement on the Government to plan and resource support systems to enable members to make the best choices, and to provide the same to trustees and pension schemes.

Time is short, so I will not go into great detail, but I would like to hear how the Government plan to support and advise the millions of scheme members who will be faced with life-changing choices as a result of the changes that have come forward through this Bill.

Lord Hope of Craighead (CB): My Lords, I support this amendment. I raised the issue in my speech at Second Reading because I look back with gratitude to the guidance I received shortly before I retired as to the choices I had to make under the judicial pension schemes. I think my position was relatively simple compared with the position we have now, because there were two clearly expressed schemes, the guidance I was given was intelligible and I was happy to follow it. Of course, I was aware—as I am sure everybody would be under this new arrangement—that the choice I made was going to be irrevocable, and I had to be very careful to make the correct choice.

I cannot claim to have studied the impact of this Bill—and, indeed, all the amendments that have just come to the House today—but my impression is that the situation is a good deal more complicated than the one I had to deal with when I was on the point of retirement. There is a great deal of force in this amendment, and I am delighted that it has been brought back on Report so that we can have a full response from the Minister.

Lord Ponsonby of Shulbrede (Lab): My Lords, I pay tribute to the noble Baroness, Lady Janke, for tabling and introducing this amendment, to which I have added my name. I also thank the noble and learned Lord, Lord Hope, for giving it his support.

This is the issue which I think is really at the centre of deliberations on this Bill and planning for the introduction of the remedy: how information and advice are going to be provided to members. In Committee, the Minister agreed with the importance of this issue. He said:

"The Government recognise the importance of providing members with clear, accessible and accurate information."—[*Official Report*, 11/10/21; col. 357GC.]

The Bill provides for remedial statements to be provided to all members, which in itself is welcome. Before the Bill reaches the House of Commons, I ask the Minister to consider carefully what practical, accessible and time-sensitive help there will be for a member who is struggling to understand the statement and the complex background which precedes it. As I asked in Committee, if a person has no idea what their statement means, how their pension has been affected and when they are likely to be required to make a decision, who do they call? Where do they go for practical advice?

The amendment also raises the question of compensation. The Bill provides for applications to be made for compensation, but what information will be circulated to ensure that impacted members are aware that they are eligible to apply?

These are the questions we have to get right to ensure that members can confidently navigate the remedy, which, not to remind the Minister of this too often, was due to a government error. I hope that the Minister can give a commitment to take this away and to look at what more could be done in the Bill to ensure that members are given first-class accessible support in navigating this complex issue.

Viscount Younger of Leckie (Con): My Lords, I am very pleased to be able to debate this important matter. As the noble and learned Lord, Lord Hope, and the noble Lord, Lord Ponsonby, said, these matters must be covered and the Government must be sure that enough information is given to pensioners to make the necessary decisions. I hope my remarks will give the reassurances on this.

As I set out in Grand Committee, providing sufficient guidance for members to make informed decisions regarding their pensions is, of course, of utmost importance. Indeed, this Bill implements a deferred choice for members so that they know what their pension options are at the time they make their decision. I acknowledge the point that the noble and learned Lord, Lord Hope, made about the complexity of this. I hope he will agree that we have taken this into account.

There are a number of problems with the approach proposed in the amendment, which would require the Government to publish guidance within six months of the Bill being passed. There are a significant number of schemes within the Bill's scope, and scheme regulations will need to be developed, consulted on and implemented in each scheme. The Bill provides that the remedy must be implemented by October 2023, but that is just the beginning of the process. Decisions will be taken in relation to pensioner and deceased members from that time, but active and deferred members will be making their deferred choice over many years into the future. It would not be possible to produce guidance

within six months in relation to regulations that may not have been made, nor useful to report on the effectiveness of such guidance before the remedy is implemented. Leaving aside the detail of the amendment, allow me to explain why the Government do not consider the amendment necessary.

On the question raised by the noble Lord, Lord Ponsonby, on the support that will be given to members, I assure him that members will be provided with information about their choice and will be able to understand the options available to them. In most cases it will be straightforward for a member to determine which benefits they wish to receive, but I also reassure noble Lords that schemes are developing tools to support members in planning for their retirement. Members will have access to up-to-date information about their benefits and be able to understand what each option will be worth at their planned retirement age.

Turning to the detail, as I set out in Grand Committee, the Bill already provides that scheme regulations must provide for each member to be provided with remediable service statements containing personalised information about the benefits available to them. That information will include details of the benefits currently available to them under the legacy scheme, and the benefits available to them if they elect to receive new scheme benefits or to opt for a period of opted-out service to be reinstated.

For active members, statements will be provided on an annual basis, enabling members to see how the two sets of benefits compare throughout their career. For deferred members, a one-off statement will be provided initially, with up to one further statement per year on request. For pensioner members, and in respect of deceased members, a one-off statement will be provided for such members or their relations to make an immediate choice.

However, remediable service statements are only part of the information and support that the schemes provide to members. The Public Service Pensions Act 2013 will continue to require schemes to provide members with information about their pension benefits, not just those relating to remediable service. In due course, members will also see information about their pensions through the pensions dashboard, which the House will be familiar with. Schemes already provide members with a wealth of guidance, support and information, and existing legislation already requires them to inform members about changes to pension schemes.

The noble Baroness makes an important point about members planning for retirement, and legacy and reformed schemes often have different retirement ages attached to them. The schemes have implemented significant changes before and are experience and adept at providing their members with support and guidance. The fact is that, across their careers, members will often have a range of different pension entitlements, with different rules and benefits payable at different ages. Therefore, these complexities are not unique to the remedy under the Bill, and the schemes already provide members with tools and support to help them to understand their options and plan for their retirement.

The Government Actuary's Department is developing tools that will allow members to see exactly how their entitlements change, depending on when they access their benefits. Again, this is not specific to the remedy, but such tools will help members to understand how decisions about when to retire interact with their scheme benefits.

The amendment introduced would also require members to be notified if they are entitled to compensation, but it is already the Government's intention that, in most cases, compensation will be automatic—for example, in relation to overpaid tax. In all cases, schemes will set out the process for claiming compensation in scheme regulations and inform members of this.

On tax guidance, schemes are already required to provide members, where appropriate, with the relevant information to complete their tax return, and this information will be updated and provided to the member, where their tax position changes. However, where there is an interaction with the tax system, the Government recognise that there will need to be further guidance to complement existing HMRC guidance and scheme processes that already provide the required information to complete a self-assessment return.

That was a rather long-winded response, but I hope that I have reassured the House once again that the Bill, existing legislation, the schemes' existing processes and the Government's intentions for implementing the remedy already combine to provide for all the information required for members to make the necessary informed decisions. With that, I ask the noble Baroness to withdraw her amendment.

Baroness Janke (LD): My Lords, I thank all noble Lords who have contributed to the discussion on this amendment, particularly the noble Lord, Lord Ponsonby, and the noble and learned Lord, Lord Hope. I also thank the Minister for his clarification of the situation, as defined in the Bill.

Of course the remediable service statements will help, but the changes are taking place over such a short time and are on such a scale that it seems to me that there needs to be some form of helpline. I do not know whether the pensions dashboard could accommodate one; this might be something that the Government could look into. I ask that the implementation of these measures be closely monitored and that, should the workload and the volume of change give members a challenge in the choices that they have to make, support may perhaps be provided at a later stage. Having said that, I beg leave to withdraw the amendment.

Amendment 121 withdrawn.

Amendment 122 not moved.

Clause 92: Interpretation of Part

Amendments 123 to 125

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

123: Clause 92, page 66, line 6, at end insert—

> ""continuous period of service", in relation to an employment or office, means a period of service in that employment or office that does not include a gap in service;"

Member's explanatory statement

This amendment ensures that "continuous period of service", which is an expression which, elsewhere in pensions legislation, is defined to include non-continuous periods, is not interpreted in such a way in Part 1 of the Bill.

124: Clause 92, page 67, line 19, at end insert ", or

(b) amounts that a person is required under or by virtue of this Part to pay to the scheme by way of pension contributions;"

Member's explanatory statement

This amendment ensures that the definition of pension contributions is wide enough to cover contributions that are required to be paid under or by virtue of Part 1.

125: Clause 92, page 67, line 49, at end insert—

""voluntary contributions" means amounts that are paid to a pension scheme by a member of the scheme on a voluntary basis, in accordance with the scheme, for the purpose of securing additional benefits, or securing the earlier payment of benefits, under the scheme;"

Member's explanatory statement

This amendment generalises the definition of "voluntary contributions" previously contained in clauses 18 and 55 so that it applies throughout Part 1.

Amendments 123 to 125 agreed.

Clause 107: Appointment to sitting in retirement offices: further provision

Amendment 126

Moved by ***Lord Ponsonby of Shulbrede***

126: Clause 107, page 78, line 27, leave out "75" and insert "72"

Member's explanatory statement

This would set the judicial retirement age to 72, rather than 75 as currently provided in this bill.

Lord Ponsonby of Shulbrede (Lab): My Lords, I will speak on the group of amendments consequential on Amendment 126. We have been talking about complex matters to do with public sector pensions, but this is a simple amendment that I will seek to explain to the House. I open by thanking the noble and learned Lord, Lord Etherton, and the noble and learned Baroness, Lady Hallett, for supporting this amendment. I look forward to the contribution later from the noble and learned Lord, Lord Etherton.

5.15 pm

The Bill proposes harmonising the mandatory retirement age for all judicial officeholders at 75 years old. This group of amendments seeks to amend the mandatory retirement age to 72. I recognise that a lot has changed in the 27 years since the mandatory retirement age was set at 70. Life expectancy has risen, people are working longer and the mandatory retirement age has been abolished for most professions. None the less, the opposition Labour Party has reservations about raising the retirement age to 75 rather than 72.

When the Ministry of Justice consulted on this, it consulted on both 75 and 72 as possible retirement ages. While the overwhelming majority of respondents to the Government's consultation, some 84%, supported raising the MRA, the Lord Chief Justice of England and Wales, the Lord Chief Justice of Northern Ireland, the President of the Supreme Court and the Lord President in Scotland were unanimous that it should be raised only to 72. In addition, the Magistrates' Leadership Executive also favoured 72.

When the Minister comes to respond, I am sure he will quote other judicial associations that favour 75 over 72, as well as the results of the Ministry of Justice consultation, in which some 67% of the respondents favoured 75 over 72. I seek to persuade the House that the lower age, 72, is a more appropriate age and that 75 is a step too far. I believe it has distinct disadvantages. I base my argument on two principal reasons. The first is that it militates against judicial diversity. The second is that the mental decline of older members of the judiciary is a factor that should be borne in mind.

Simply put, raising the MRA to 75 will reduce the opportunities for candidates from BAME backgrounds. As we know, it is a scandal that only 1% of the judiciary are from a BAME background at the moment, and this has not changed in the last decade. The situation for magistrates is a bit better, but the same argument applies and there is still plenty of room for improvement among the magistracy as well.

Regarding mental decline, I remind the House that I sit as a magistrate. I regularly appraise colleagues, and this is a sensitive issue for me to address. It is my experience that some colleagues experience a mental decline. As a magistrate, it is a sensitive issue to appraise these colleagues. Of course, one has to be robust, but it is not unusual to find oneself appraising a colleague who has been a long-standing friend and having to have a frank discussion with them about some level of mental decline.

I will give a particular example from my own experience of sitting in the youth court in London. Almost always, when I have youths in front of me, I am considerably older than their grandparents. I see very serious crime in the youth courts, and a very high proportion of it is centred around communication apps for whatever the offence is—be it drugs, knives, or whatever. It is a reality that, although I am not nearly 70, I feel distant from the nature of the crimes; although I can understand their severity, the way that they are communicated among the youths is something that I have to work on to fully understand. But it is not only youth crime; it is also adult crime. I am also older than the grandparents of many of the adults that I see when I sit in magistrates' courts in London.

I believe there is a limited administrative effort available for changing and updating the judiciary, and that effort should go into expanding the magistracy and increasing diversity. That limited administrative effort would be far better used in this way rather than in increasing the age of retirement to 75. I put forward 72 as a compromise, which has been consulted on, and I think it would be a step too far to go straight to 75 without taking into account the factors to which I have referred. I beg to move.

Lord Etherton (CB): My Lords, I have joined in this amendment and I support it and the other amendments in the group, as I have previously with similar amendments by the noble Lord, Lord Ponsonby, because of the potentially severe adverse impact on diversity in our most senior courts, especially the Court of Appeal and the Supreme Court.

While all judges are critical to the administration of justice, the most senior courts are the courts that send the clearest message to our own nation and to other countries about whether we value diversity in those who administer the law. One must remember that the members of the most senior courts also provide the role models that are so important in encouraging and inspiring others. We do not have a diverse senior judiciary. Although some progress has been made, particularly in the last 10 years, with the recruitment of women, there is an unacceptable and embarrassing lack of people of colour who are senior judges.

There are no black and minority ethnic justices in the Supreme Court, and never have been. Just two of the 12 Supreme Court justices are women, one of whom is about to retire. Out of a maximum of 39 judges of the Court of Appeal, there is one judge from a minority ethnic background and only 10 women. Out of a maximum of 108 judges of the High Court, only five are from a minority ethnic background.

There can be no doubt that an increase in the age of retirement from 70 to 75 in one go will have a severely adverse effect on inclusion and diversity in our most senior courts. It will diminish, almost to a vanishing point, opportunities for appointment and advancement for a number of years. That is why, as the noble Lord, Lord Ponsonby, has pointed out, all the most senior judges were in favour of an increase in the judicial MRA to 72 rather than 75.

My noble and learned friend Lady Hallett, who spoke in Committee but is unable to be here today, has added her name to the amendment. She chaired the diversity committee of the Judges' Council until 2019 and was a member of the judicial diversity forum. She said:

> "It is impossible to improve the diversity of the Bench significantly … unless there is a constant flow of new recruits".—[*Official Report*, 11/10/21; col. GC 374.]

That is equally true of advancement within the higher courts, from the High Court to the Court of Appeal and ultimately to the Supreme Court. As she said, raising the MRA of the judges is bound to restrict the number of vacant posts. The point, one would have thought, is self-evident, and it is borne out by the facts.

As I have said, one of the two women justices of the Supreme Court will shortly retire. If the Bill is enacted with an MRA of 75, it will be a number of years before any further vacancy will arise. There is no evidence of a pattern of early retirement of justices of the Supreme Court. Of the nine justices who have retired in the last five years, eight continued until the MRA. As I have said before during the passage of the Bill, so far as concerns the Court of Appeal, the average age of judges is just under 64. This means that, potentially, if the MRA is raised to 75, there will be very few vacancies for a further 11 years. Of the 13 judges who retired from the Court of Appeal in the past two years or so, over 70% stayed until the current MRA of 70. The best evidence that I have been able to obtain is that 90% of those due to retire in the next three years will go beyond 70 if permitted.

How, then, will it be possible for those minority ethnic judges in the High Court to progress to the Court of Appeal, let alone to the Supreme Court? The short answer is that it will be highly unlikely. The Government have said that raising the MRA to 75 will increase diversity and the attractiveness generally of applying for judicial office, because it will enable potential applicants to work for longer before seeking judicial appointment. In Committee, my noble and learned friend Lady Hallett said that she had spoken to literally hundreds of potential applicants, including women and BAME lawyers, over the years, and had never once heard an argument that the MRA of 70 was a factor in not applying for the Bench. The Government also say that, in their pre-legislative consultation, a majority of women and BAME groups opted for 75. I do not accept for one moment that, if such groups had been aware of the potentially adverse impact of the MRA on their appointment to the higher courts and on promotion within those courts, they would have endorsed 75.

It has been said by one noble Lord who supports the proposed rise in the MRA to 75 that this is a once in a generation opportunity. Again, I do not accept for a moment that, if and when an increase above 72 is thought desirable, the Government would not readily find a suitable legislative vehicle. In choosing to prolong to 75 the judicial careers of those currently in office, to the disadvantage of underrepresented groups, especially those who are black and from ethnic minorities, the Government have preferred exclusivity to inclusivity. This is out of touch with social attitudes within our wider society, and indeed those of other European countries and the United States. The judiciary is not excused from the call of so many for greater fairness, equality of opportunity and advancement for people of colour and other underrepresented groups within our society. The statutory public sector equality duty, which had its origins in legislation that followed the Stephen Lawrence inquiry, is now to be found in Section 149 of the Equality Act 2010.

Subject to certain exceptions, it requires public authorities, in the exercise of their functions, to have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic—which includes race and sex—and persons who do not share it. The Act states that a person who is not a public authority as defined in the Act, but who nevertheless exercises public functions, must also have due regard to those matters.

Raising the MRA to 75 is inconsistent with such a duty, or at least its objective and underlying ethos. The House should not endanger its reputation by accepting the increase to 75. To do so would lay it open to the criticism that it is out of touch in preferring to prolong the status quo, rather than enhancing equality of opportunity and inclusivity; in preferring age and standing over fairness and greater participation in our judiciary of all groups within our society, whatever their background, ethnicity, sex or gender. I urge the House to endorse the amendment of the noble Lord, Lord Ponsonby.

5.30 pm

Lord Woolf (CB): My Lords, it is a pleasure to follow my noble and learned friend Lord Etherton, in this debate, but it was of great concern to hear what the noble Lord, Lord Ponsonby, said in his remarks. I am hugely impressed by the other names that have

been supporting the suggestion that the age should be raised to 72 rather than 75, as the Government have proposed.

I have the advantage that the noble Lord, Lord Ponsonby, perhaps has not—not yet, at any rate—of being considerably older than 75. I address the House on the basis of what I have learned during the period that I have been a judge and a former judge. I am absolutely committed, as, I am sure, are colleagues, to the need to have a judiciary that is as diverse as possible, to persuade the public that they can continue to have the faith in the judiciary that they have had up to now, and if all the evidence is looked at, I am convinced that the fears so eloquently described by my noble and learned friend Lord Etherton and the noble Lord, Lord Ponsonby, are unrealistic. They leave out of account another very important issue which, I suggest, is realistic.

Unfortunately, the evidence is that the change made 27 years ago to reduce the age from 75 to 70 produced a situation that was very dangerous to the judiciary's standing. The most senior posts—the posts that should be most active and attractive to applicants—were not being taken up. There was a risk that we did not have the quality of applicant for those posts, which I am sure both previous speakers would agree is critical. Above all, the very best people available should be appointed to the most senior judicial posts of this country.

We have, fortunately, international standing as a judiciary because of its quality. I venture to suggest that advancement applies not only to the more junior judiciary but, above all, to the most senior judges in this country, who, when they retire, are offered all sorts of opportunities to serve in a judicial capacity elsewhere, where they recognise the quality of our judiciary.

The most telling evidence on this important and difficult question is the fact that now, for 27 years, we have had the reduction in the retirement age of the judiciary not to 72 but to 70. Attention must be paid to all the views expressed by colleagues with whom I served and whom I hold in regard. Surely the diversity in our judiciary that they and I desire would have been fulfilled in those 27 years. The fact is that the lamentable situation today is that we still do not have sufficient numbers in the two grades of the judiciary which have been referred to in argument.

My conclusion is that there is a real difficulty in getting the very best judges by changing the age to 72. There is a danger which is supported by evidence. There is no evidence to suggest that anyone else would apply if the age up to which they could retire was 72. Unfortunately, the people we wish to apply who currently support our position in respect of diversity do not see it as their chosen career at that stage.

I say to the House that the Government are right. The evidence from their consultation supports what I say, and that is what we should do—not adopt a compromise that serves no particular purpose.

Viscount Hailsham (Con): I declare an interest: I sit as a legal assessor for regulatory bodies, and I am very nearly 77—and therefore significantly older than the age of 72 proposed by the noble Lord, Lord Ponsonby. There are many other legal assessors of my sort of age sitting on regulatory authorities. I know full well that we are talking about judges, not legal assessors, but the principle is very much the same. If you were to say to legal assessors, "You cannot serve beyond 72", you would lose an awful lot of quality which is now available to those regulatory authorities. I believe that the same is also true of the courts. I think judges should be able to sit until 75.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I join those who have indicated that they fully support Part 3 of the Bill and would raise the retiring age for judges—or rather return it to where it was 27 or 28 years ago—to 75, which it was for nine years of my own time on the Bench. I should declare that I too am well beyond the age when such as the noble Lord, Lord Ponsonby, might be having a discreet word with me.

I point out that this provision is fully supported by—as I understand it from Second Reading—the noble and learned Lord, Lord Mackay of Clashfern, who originally lowered the age to 70. He recognises that, all these years on, frankly, 75 year-olds now are a good deal younger than the 70 year-olds of those days past.

I suggest that the most important consideration is really that of judicial recruitment, which is still proving extremely difficult. The imperative surely is to get the most able people on to the Bench, whether they be men or women, whether they be gay, trans or straight, and whether they be young or old. The fact is that most cases are decided by a single judge. It is no good having the most wonderful judge trying the case in the next court if your judge is perhaps rather an indifferent one. So it is too with courts of three, five, seven or whatever.

Of course diversity is a highly desirable objective; obviously, public confidence in the justice system overall is enhanced if more people see themselves represented among the judiciary. In a three-judge, five-judge or seven-judge court, the wider the diversity of judges—including, of course, more women—the likelier the court is to bring to bear a wider experience and judgment on the questions. But I suggest that the argument in favour of 72 rather than 75 being supportive of diversity is, frankly, somewhat speculative; certainly, it is not sufficiently clear, I suggest, to justify sacrificing the goal of individual excellence on the altar of supposed greater diversity. Getting the best candidates to apply and appointing them on merit has to be the cardinal rule.

As to that, raising the MRA to 75 is, to my mind, assuredly going to assist in the recruitment of the ablest candidates, and I suggest that is so equally of women candidates as of male ones. First, it becomes more attractive because it is viable to take the job rather later in one's career than at present. It gives candidates, male and female, longer to pursue whatever their initial career has been—it may have been in academe or in a range of areas on the borders of the law. It certainly gives practitioners a longer working life in which they can earn more than we all recognise they are going to be earning on the Bench.

Secondly, it gives candidates the option—it is not compulsory; they do not have to serve until 75—of being employed, useful and busy, as most of us would wish to be, for longer and later in their lives. Most of us do not actually want to be forced into compulsory retirement at 70—or, for that matter, at 72.

Thirdly, not only does a retirement age of 75 provide a yet better incentive than 72 for encouraging the best applicants to apply but it serves the public good. It retains supposedly skilled and experienced judges for that much longer. Despite what the noble Lord, Lord Ponsonby, suggests, it is surely not to be supposed that judges suffer a significant and noticeable failing in their abilities between the ages of 72 and 75 sufficient to draw the line at 72. It must therefore be in all our interests to keep these judges working, if they wish to, for that much longer.

Finally, I add as a footnote that it will save the taxpayer the need to pay these reluctantly retired judges a judicial pension for those three years for doing nothing.

5.45 pm

Lord Hope of Craighead (CB): My Lords, I too believe that the Government have made the right choice in going to 75 in one go, as my noble and learned friend Lord Etherton put it. We have to bear in mind that what is being suggested is a maximum; I think my noble and learned friend Lord Brown was making that point in passing in what he was saying a moment or two ago.

I am not sure that the examples that my noble and learned friend Lord Etherton gave of people going on until 70 is a very sound guide as to how people will behave if the age is raised to 75, for the very particular reason that a factor that someone has to bear in mind in choosing the age of retirement is whether he has served long enough to earn the full judicial pension. In my day, you had to serve for 15 years; now, you have to serve for 20. For those who have gone on to the Bench in their early 50s, the age of 70 does not give them long enough. When they reach the time when they have achieved that, they may well take the decision to go then, rather than going on for the extra few years, because they have actually earned their full pension. So we are, to a degree, in an area of speculation. We are having to consider human behaviour and how people will behave in view of the two choices of age that we are being given.

We are also contemplating human behaviour in the problem of diversity. I pay tribute to what my noble and learned friend Lord Etherton was saying about the need to increase diversity at all levels on the Bench. I had the responsibility for a while, as Deputy President of the Supreme Court, of being on a commission considering applicants for the position of justice. One of the issues that concerned us at the time was the lack of diversity in the applicants coming before us—a point that I think has been hinted at by my noble and learned friend Lord Brown of Eaton-under-Heywood. Again, we are trying to speculate about human behaviour. There is an immense amount to be said for the diversity element, but I do not think one can be sure that choosing 75 instead of 72 is going to be as damaging as has been suggested.

As for the in-one-go point, I think my noble and learned friend Lord Etherton was referring to me when he mentioned someone who said at Second Reading that the opportunity to legislate on this issue comes quite seldom. I would be concerned, if we were to settle on 72 this time, as to when one would ever get back to the age of 75. As it happens, the Bill has enormous importance behind it because of the need to deal with pensions, which is a pressing issue. It has been possible to bring in the retirement age element and other parts of the Bill because the Bill is already there and the issue fits quite neatly with its broad aim and subject matter. How soon could we be sure that we could ever get back to this issue? For that reason too, the in-one-go point has a lot to commend it.

There is even more to be said for the points made by my noble and learned friends and the point that we are dealing here with an element of speculation, since we are setting a maximum age, not a compulsory one, and it will have the benefits that have been referred to. I believe the Government have made absolutely the right choice here.

Lord Mackay of Clashfern (Con): My Lords, I am in the rather unusual position of having brought the judicial retirement age down, all those years ago, to 70 from 75. Your Lordships will remember that 75 was a fairly recent innovation because, originally, judges were appointed for life, and if they did not care for resignation, that sometimes meant fairly long periods in office.

I am very given to wishing for diversity on the Bench, and I realise what the authorities responsible for appointments have done over the past few years. I do not think the noble Lord, Lord Ponsonby, or the noble and learned Lord, Lord Etherton, can be sure that if they get 72 instead of 75 there will be an increase in diversity on the Bench. I had a great deal of experience—it is a long time ago—of trying to work with the ethnic minorities to improve their chances of getting to the top. Indeed, the death of one of those appointments—Mr Kadri, the first Muslim Silk who originated from Pakistan—was reported just the other day. During my time in office, I struggled to bring up the standards of ethnic minorities at the Bar because I felt that was the way to build up a chance of diversity. One of the difficulties in doing that was getting the arrangements needed for that purpose. I was of the view, and am still, that the best chance for ethnic minorities is not Chambers that are entirely of an ethnic minority but diverse Chambers with people from different backgrounds. That has happened to a considerable extent in recent times. It has produced some ethnic-minority members on the Bench, although nothing like as many as I would have liked.

I am convinced that the situation is very different now from what it was 27 years ago, as the noble Lord, Lord Ponsonby, said. Just after the Supreme Court was set up, the noble and learned Lord, Lord Irvine of Lairg, and I wrote to the then Lord Chancellor suggesting that the age limit for Supreme Court judges should be raised to 75 from 70 to accommodate for a reasonable length of time some of those who were there and had the potential to be very good examples of service in the Supreme Court. I am not sure that diversity has

necessarily increased very much since then. It is perhaps worth my commenting that the President of the Supreme Court and the Deputy President of the Supreme Court are from Scotland. That is a very important move, although it is not in the way of diversity. It shows that those making the appointments are doing their best to secure the best quality they can at this time. However, it is important to do everything we can to raise the quality of those who are thinking of going to the Bench.

I do not know on what basis the noble Lord, Lord Ponsonby, and the noble and learned Lord, Lord Etherton, whose experience and position is a matter of great importance so far as I am concerned, know that if this is left at 72 there will be greater diversity than now. The people making appointments are as keen on diversity as we are, but they find it difficult in the context in which they are working to bring it forward. I do not believe that it is at all likely that 72 will be more fruitful in that respect than 75. There is no doubt in my mind that going to 75 will increase the possibility of people in senior positions at the Bar taking the appointment. That is one of the things that I realised. The reason is simply that, as has been pointed out, the pension is important in these situations. People who are at the top of the profession are rather unwilling to take a judicial appointment unless they have a pension that encourages them to leave the Bar, with what they are making. I support this move to 75 very strongly, although I know it reverses what I did all those years ago.

Lord Thomas of Cwmgiedd (CB): My Lords, it is an enormous privilege and pleasure to be able to follow the noble and learned Lord, Lord Mackay, because when he was Lord Chancellor he swore me in as a judge of the High Court. At that time, the retirement age had been reduced to 70. Before turning to this particular amendment, because it is of particular relevance, I say how much I welcome and appreciate what the Government have done in bringing forward this Bill and clearing the terrible problem related to judicial pensions. Of all the research that was done during the time that I was the senior judge, it was clear that the biggest impediment to recruitment was what had happened on pensions, so I thank the Government with all my heart for putting this matter right.

I could not possibly begin to say that a retirement age of 75 was in ordinary circumstances the right age. It would be a difficult proposition to make to this House in any event, but I will be of that age next year and I still sit in a judicial capacity. However, that is not the issue. The issue is, starkly, diversity. I do not think that this House can run away from that, for reasons that I will endeavour to explain. The senior leadership judges whom the noble and learned Lord, Lord Etherton, has described all support moving only to 72 because of the imperative of diversity.

When I was Lord Chief Justice, I was under a statutory duty to promote diversity. Working hard with Lady Justice Hallett, as she then was—she is now the noble and learned Baroness, Lady Hallett—we did it not because we were under a statutory duty but because we believed it was imperative for the judiciary to increase its diversity. The figures are telling. In 2005, there were two female members of the Court of Appeal. By 2015, there were eight, but—the noble and learned Lord, Lord Etherton, gave the figures—there are only 10 now. In the Supreme Court, there was one, then there were three, and now there are two, so the battle for diversity has yet to be won, particularly as regards our ethnic communities.

Why do I have this belief in diversity? There are three reasons. First, it is critical to public confidence in the judiciary—without which, the whole of society suffers. Secondly, diversity represents the fundamental principles of justice: equality of opportunity and fairness. Thirdly, unless we fully embrace the principles of diversity, for the whole of our society, we will not recruit and bring into the judiciary the broad background that we need—possibly not to decide the most intellectually important cases but to bring justice that is appreciated to everyone.

6 pm

The noble and learned Lord, Lord Etherton, gave the figures with great clarity. He explained the simple mathematics of the position—and mathematics is often the easiest way of seeing the difficulty. As the noble and learned Baroness, Lady Hallett, put it, unless there are vacancies at the most senior levels of the judiciary, we will not be able to improve on the figures that have been given. It seems to me that the critical question for this House is the extent to which we wish to give a message that diversity matters to our society, and then we can move in due course to 75.

My first point is that I do not understand the Government's answer to this question. When I was Lord Chief Justice, there were a number of Lord Chancellors. Each and every one of them believed in diversity; some, such as the present Foreign Secretary, perhaps more than others. Why the change? Why is it not seen as an overriding objective to make the most senior levels of the judiciary more diverse?

Secondly, it seems to me that we have not only to look at the figures but, more importantly, to ask ourselves about the symbolism. Why are we setting an older retirement age, which—I regret to say—will largely benefit men to the detriment of advancing ethnic minorities and women? That is a question that each and every one of us must be prepared to answer publicly.

Thirdly, this is not a question of the net benefit of keeping a number of very senior judges. When I was Lord Chief Justice, it became a common experience that people would calculate their prospects of moving to the Court of Appeal or the Supreme Court. If the retirement age is raised to 75 up to five years before there is much prospect of movement for some, we will lose judges, and among them we may well lose are those who presently represent diversity.

I strongly support the speeches made by the noble and learned Lord, Lord Etherton, and the noble Lord, Lord Ponsonby; it seems to me that this is an amendment that we must carry. We must give the right message to the public as a whole, and we must do so from our hearts. I believe we should do as the noble and learned Baroness, Lady Hallett, has done: we must do all we can to promote diversity in our judiciary and thus increase public confidence in it. I warmly support the amendment.

Baroness Janke (LD): My Lords, the debate this afternoon has been passionate and enlightening. Here is a quote from Second Reading:

"I think that everybody in this House would say that it is important that our senior judges in the Court of Appeal and the Supreme Court reflect the society that we live in if they are to be respected and seen as part of our current era. At the moment, they do not."—[*Official Report*, 7/9/21; col. 792.]

It is also a great pity that the Government have not conducted impact assessments with benchmarking of different ages, but they have not. In the absence of impact assessments, I look to the arguments that we have heard. The point has been admirably made: unless there are vacancies, there will not be opportunities for diversity.

We have heard arguments as to why we should not do this; for example—an argument we often hear when there is talk of promoting diversity—that somehow quality will suffer. I have heard those arguments for the last 40 years. Whether scientists, engineers or Members of Parliament, we now see women operating in spheres that were occupied only by men in the past, with no diminution in quality at all. In fact, the contrary has been the case.

I very much respect what was said by the noble and learned Lord, Lord Mackay, with his experience and knowledge. He mentioned context, however, and, the more we listen to this debate, the more we realise that it is the context that has to change. The present context does not promote diversity at all; I would venture to suggest that, to create greater diversity, the circumstances need to change. This amendment seems to me to promote the kind of change that we need.

We heard from the noble and learned Lord, Lord Etherton, that the position of women has improved and continues to improve slowly, but—to use his words—that the embarrassing position as far as minority ethnic judges is concerned is something we all ought to be ashamed of. The cause of diversity is one that we in this House, as well as people from all walks of life, welcome. Everybody here wants to see a more diverse judiciary. Whatever our own situation, and whether or not we believe, as some in this Chamber clearly do, that somehow the courts will not attract the very best people to be judges, the cause of diversity is absolutely self-explanatory and vital if the people of the country are to be able to respect those in eminent positions. From what I have heard today and in Committee, I would say that the cause of diversity is best served by this amendment. We on this side will support it.

Viscount Younger of Leckie (Con): My Lords, I start by thanking all noble Lords for their contributions during this lively debate. I also thank the noble Lord, Lord Ponsonby, and the noble and learned Lord, Lord Etherton, for the consideration they have both given to this issue, not just today but throughout passage of the Bill. I have listened with care to both sides of the argument put forward today. However, I would like to use this opportunity to set out in full why—in a robust response following detailed public consultation—the Government continue to believe that 75 is the right judicial mandatory retirement age.

All four nations of the UK conducted public consultations on this important question and, following careful analysis of responses, the decision taken by each Government was to increase the mandatory retirement age to 75. I appreciate the support of noble Lords today, from my noble friend Lord Hailsham, to the noble and learned Lords, Lord Woolf, Lord Brown and Lord Hope, and my noble and learned friend Lord Mackay.

I remind the House of some of the data emerging from the UK Government's consultation. The vast majority of respondents—84%—believed that the mandatory retirement age should be increased, with 67% indicating that a retirement age of 75 was better, all things considered. Notably, 74% of respondents believed that such a change would not damage confidence in our world-class judiciary—something raised by one or two noble Lords today.

On a point raised by the noble and learned Lords, Lord Etherton and Lord Thomas, as to why we appeared to be going against the views of the senior judicial responses to the consultation, we recognise the varied opinions on the appropriate retirement age. However, I assure noble Lords that this decision was taken after careful consideration of all responses including those of the senior judiciary. Some 67% of respondents to the consultation on this matter favoured increasing the age to 75, as I have said. We recognise the concerns raised by the senior judiciary over impacts on judicial diversity, which I shall address later in my remarks. However, on balance, we believe that raising the retirement age to 75 sets the right balance.

It is clear that we agree on one point: that the mandatory retirement age should be increased. The question being debated here is to what age. Here is a point raised by the noble and learned Lord, Lord Hope. If the retirement age is to be increased as this Bill intends, it should be a meaningful increase, which will bring a clear and tangible benefit to the resourcing of our courts, not just a minor raise by two years to 72—a decision which I suspect will not put this issue to bed and will mean that we find ourselves discussing it again in the not-too-distant future, as has been said.

This leads me to an important point on life expectancy. Since the current mandatory retirement age was set in 1993, life expectancy is longer, and social attitudes to working in later life have changed significantly. An age of 75 much better reflects this change. That was a point that the noble and learned Lord, Lord Brown, alluded to in his powerful remarks. Indeed, as I have noted previously, many Members of this House over the age of 75 are among its most knowledgeable, productive and vibrant. I look around now—not wishing to bring any individual Peer to the attention of the House—but I hope that my point is well made.

I stress that the mandatory retirement age is a maximum, not a minimum. Judges will by no means be forced to continue working to 75. The key objective here is additional flexibility, both for officeholders themselves as well as for the resourcing of courts and tribunals. Increasing the mandatory retirement age to 75 maximises this flexibility. Indeed, we already have some officeholders sitting up to the age 75 who play a key role in the administration of justice.

I must also note that, based on the evidence available, it is not clear that all, or even most, judges would choose to continue working to 75. With some trepidation, I do not entirely agree with the statistics put forward by the noble and learned Lord, Lord Etherton, on judiciary retirement. The average retirement age of salaried judges is, I understand, about 67. Over the last five years senior judges—that is, judges of the High Court and above—with a mandatory retirement age of 70, have also on average retired at 67. Evidence therefore suggests that the majority of judges do not continue working till their mandatory retirement age. As I have stated, the objective of this measure is additional flexibility to support the resourcing of courts and tribunals.

I understand that the intended effect of this amendment is to raise the mandatory retirement age to 72 rather than to 75, as has been made clear. However, I must make it clear that this presents a number of consequential issues for other related provisions in the Bill. I note that the amendments do not include changes to paragraph 25(2)(b) of Schedule 1, which repealed the powers to provide for extensions up to 75. In the consultation, only 10% of respondents believed that, if the mandatory retirement age were 72, extensions past the mandatory retirement age should not remain. The amendments as drafted would leave us with a lower retirement age but without retaining these provisions for extensions which are currently in place. Additionally, those "sitting in retirement" can currently continue to decide cases up to the age of 75. The effect of the amendment to Clause 107 would require those sitting in retirement to also retire at the age of 72. This would reduce the resourcing flexibility that "sitting in retirement" arrangements provide.

I also highlight that the amendments do not appear to take account of Part 2 of Schedule 1 to the Bill, which allows for the reinstatement of retired magistrates who are younger than the mandatory retirement age, where there is a business need. This would provide necessary additional capacity in the magistrates' and family courts to meet forecast case volumes and provide timely access to justice as the courts recover from the pandemic. The Government's modelling indicates a pool of about 4,000 retired magistrates would be eligible to be considered for reinstatement with a retirement age of 75, but only around 1,300 would be eligible to be considered with retirement at 72. In addition, an age of 72 would provide a much shorter timeframe over which those magistrates reinstated could sit, which means that, when the time and investment necessary to reappoint and retrain is taken into account, the number who would be able to make a meaningful contribution would be smaller still. Therefore, the amendments as tabled result in a hard cut-off at age 72, and with less flexibility than now.

6.15 pm

I turn to one of the main thrusts of this debate, which is judicial diversity. I have listened very carefully to the arguments put forward by the noble Lord, Lord Ponsonby, and the noble and learned Lords, Lord Etherton and Lord Thomas. I reaffirm the Government's unwavering commitment to judicial diversity, including recruitment north of the border. We aspire to a judiciary that better reflects the society that it serves. I understand that the Judicial Diversity Forum's updated action plan is to be published this winter and will include more detail about the important actions that the Ministry of Justice and other members of the forum will be taking to continue to drive recruitment and improvements in diversity.

While we must strive to do more in this space, progress continues to be made in increasing judicial diversity. Some 48% of new court and tribunal judges in 2020-21 were women, and 14% were from a black, Asian, or minority ethnic background. Furthermore, women judges made up 48%, and black, Asian, or minority ethnic judges made up 12% of all judges promoted in that period. In years to come, I have no doubt that many of these fine putative legal minds will climb to the highest levels of our judiciary, and a later mandatory retirement age will give them more time to do so.

I also make clear the projected diversity impact of a higher mandatory retirement, and how this differs depending on the age. If the mandatory retirement age is increased from 70 to 72, this is projected to result in a 1% decrease in diversity growth in the medium to long term, considering both gender and ethnic diversity together. This is a crucial argument, and it is where I do not agree with the noble and learned Lord, Lord Etherton, who called the impact severely adverse. If the MRA is increased from 70 to 75, this is projected to result in a 1% to 3% decrease. While there is a difference in impact, as I acknowledge, I hope that it makes clear just how marginal this would be: between a 0% and 2% difference in diversity impact when considering 72 against 75, a point raised by my noble and learned friend Lord Mackay.

I also stress that this is not a decrease in diversity per se, but in the rate of diversity improvement compared to maintaining the current retirement age. We expect that judicial diversity will continue to improve, because we intend to continue recruiting around 1,000 judges per year in the coming years. I accept that, if current officeholders opt to remain until 75, the progress in increasing diversity of the senior judiciary would be affected in the short term. Requiring senior judges to retire earlier than 75 could result in more vacancies sooner. However, the path to a more representative senior judiciary is long, as the candidate pool in the short to medium term is also not particularly diverse. This is emblematic of why projected differences in overall judicial diversity are marginal even with a higher mandatory retirement age. But I again stress the important actions that the Ministry of Justice and all members of the Judicial Diversity Forum are, and will be, taking to improve the diversity of senior lawyers and the judiciary.

While judicial diversity is an extremely important issue which we must continue to take steps to address, the capacity of our justice system is also critical. A mandatory retirement age of 75 gives us scope to significantly boost the capacity of our judiciary with only a very marginal overall diversity impact. A mandatory retirement age of 75 brings significantly greater operational advantages than 72. As of April 2021, we have over 12,000 highly valued magistrates dispensing justice in

our courts, which is simply not enough to meet demands. An age of 75 would retain around 2,000 additional magistrates, more than double the amount retained by a mandatory retirement age of 72, at a time when we have a significant shortfall.

I want to spend a short amount of time explaining what we are doing to improve the diversity of the magistracy, because we are delivering a new recruitment programme to recruit a greater number of magistrates from diverse backgrounds. We are planning to recruit 1,500 per annum overall. In addition, we are gathering qualitative research through surveys and discussions to identify the barriers that we absolutely need to eliminate when recruiting magistrates to recruit a more diverse pool. Using these findings, we will invest in a targeted marketing strategy, directed at underrepresented groups in local areas, to improve diversity. It is important that we do not just rely on magistrates sitting longer. That is why the Government are delivering a new recruitment programme for the magistracy.

I end by noting that legislative consent Motions are being processed in Scotland and Wales, while one has been passed in Northern Ireland, to agree to the UK Government changing the mandatory retirement age to 75. I must stress how important it is, in the Government's view, that we retain a consistent mandatory retirement age for judicial officeholders in all four nations. These amendments could seriously jeopardise that imperative. With that, I hope that noble Lords will not press their amendments.

Lord Ponsonby of Shulbrede (Lab): My Lords, let me provide some context to the figures that the noble Viscount has given. He said that there are 12,000 magistrates in England and Wales today, but when I became a magistrate 14 years ago there were 30,000, so there has been a managed decline of the magistracy. I support, of course, the recruitment programme, which is targeting and, as he said, marketing to try to get greater diversity through that process.

The simple point is that you cannot run away from diversity. There is an absolute imperative to increase diversity within the whole of the judiciary. It is not good enough just to wring your hands and say, "It's all very difficult". It has been very difficult for decades and the situation has not improved. The maths is very simple; we heard the maths from the noble and learned Lord, Lord Etherton, who also quoted the noble and learned Baroness, Lady Hallett, who is in a particular position to know. There need to be vacancies for people to progress through the system. It is a simple argument, which I do not think a number of noble Lords fully took on board.

When I introduced this debate, I made a simple example of my role as a youth magistrate and how I felt that I was moving further and further away from the youths I was judging. I gave the example that I am older than the grandfathers of nearly all the youths I am judging. Not one noble and learned Lord addressed that point. They addressed points about the difficulties of recruitment and the ins and outs of the pension scheme, but not the central issue that I tried to raise about the judiciary being further away from the people who they are judging. I argue that we need to have some level of connection to reach fair judgments.

My amendment is a modest compromise. It says that 75 is too far and that 72 is a better age to see how it goes. I acknowledge that people are working and living longer—I made those points when I introduced the amendment—but I say to the noble Viscount and to a number of contributors to this important debate that I am not convinced. I wish to test the opinion of the House.

6.23 pm

Division on Amendment 126

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6.36 pm

Schedule 1: Retirement date for holders of judicial offices etc

Amendments 127 to 202 not moved.

Amendments 203 and 204

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

203: Schedule 1, page 93, line 27, leave out "court" and insert "courts or the family court"

Member's explanatory statement

This amendment enables the Lord Chancellor to remove a person from the supplemental list on a temporary basis for the purpose of facilitating the disposal of business in the family court as well as in the magistrates' courts.

204: Schedule 1, page 93, line 34, leave out "court" and insert "courts or the family court"

Member's explanatory statement

This amendment enables the Lord Chancellor to extend the period during which a person is removed from the supplemental list if the Lord Chancellor is satisfied that the extension would be expedient as a temporary measure in order to facilitate the disposal of business in the family court as well as in the magistrates' courts.

Amendments 203 and 204 agreed.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): We shall now have a short interval for a change of personnel before we move on to the next business.

Covid-19 Update

Statement

6.38 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): My Lords, I shall now repeat a Statement made in another place. The Statement is as follows:

"Mr Speaker, with permission, I would like to make a Statement on the omicron variant and the steps we are taking to keep our country safe. We have always known that a worrying new variant could be a threat to the progress that we have made as a nation. We are entering the winter in a strong position, thanks to the decisions we made in the summer and the defences we have built. Our vaccination programme has been moving at a blistering pace and this weekend we reached the milestone of 17 million boosters across the UK. This means that even though cases have been rising, hospital admissions have fallen a further 11% in the past week and deaths have fallen by another 17%. But, just as the vaccination programme has shifted the odds in our favour, a harmful new variant has always had the opportunity to shift them back.

Last week, I was alerted to what is now known as the omicron variant, now designated a variant of concern by the World Health Organization. We are learning more about this new variant all the time, but the latest indication is that it spreads very rapidly. It may impact the effectiveness of one of our major treatments for Covid-19, Ronapreve, and, as the Chief Medical Officer said this weekend, there is a reasonable chance that our current vaccines may be impacted. I can update the House that there have now been five confirmed cases in England, and also six confirmed cases in Scotland, and we expect cases to rise over the coming days.

The new variant has also been spreading across the world. Confirmed cases have been reported in many more countries, including Austria, Belgium, the Czech Republic, Denmark, Germany, Italy, the Netherlands and Portugal. In this race between the vaccines and the virus, the new variant may have given the virus extra legs. So, our strategy is to buy ourselves time and strengthen our defences while our world-leading scientists learn more about its potential threat.

On Friday, I updated the House about the measures that we have put in place, including how, within hours, we had placed six countries in southern Africa on the red list. Today, I would like to update the House on the more balanced and proportionate steps that we are taking. First, measures at the border to slow the incursion of the variant from abroad. On Saturday, in line with updated advice from the UK Health Security Agency, we acted quickly to add another four countries to the travel red list: Angola, Mozambique, Malawi and Zambia. This means that anyone who is not a UK or Irish national or resident who has been in any of these countries for the previous 10 days will be refused entry; and those who are must isolate in a Government-approved facility for 10 days.

Beyond this red list, we are also going further to put in place a proportionate testing regime for arrivals from all across the world. So we will require anyone who enters the UK to take a PCR test by the end of the second day after they arrive and to self-isolate until they have received a negative result. The regulations for this have been laid before the House today and will come into force at 4 am tomorrow.

Secondly, we have announced measures to slow the spread of the virus here in the UK. We are making changes to our rules on self-isolation for close contacts in England to reflect the greater threat that may be posed by this new variant. So close contacts of anyone who tests positive with a suspected case of omicron must self-isolate for 10 days, regardless of whether or not they have been vaccinated. Face coverings will also be made compulsory in shops and on public transport in England, unless an individual has a medical exemption.

The regulations for self-isolation and face coverings have been laid before the House today and will come into force at 4 am tomorrow. I can confirm to the House that there will be debates and votes on these two measures to give the House the opportunity to have its say and perform valuable scrutiny. My right honourable friend the Leader of the House will set out more details shortly and we will review all the measures that I have set out today after three weeks to see whether they are still necessary.

Thirdly, we are strengthening the defences that we have built against this virus. We are already in a stronger position than we were when we faced the delta variant. We have a much greater capacity for testing, enhanced ability for sequencing and the collective protection offered by 114 million jabs in arms.

I will update the House on our Covid-19 vaccination programme, which has been a national success story. We have delivered more booster doses than anywhere in Europe, and we have given top-up jabs to over one in three people over the age of 18 across the UK. I pay tribute to the NHS, the volunteers, the Armed Forces and everyone else who has been involved in this life-saving work. Our vaccines remain our best line of defence against this virus, in whatever form it takes. There is a lot that we do not know about how our vaccines respond to the omicron variant, but although it is possible that they may be less effective, it is unlikely that they will have no effectiveness. So it is really important that we get as many jabs in arms as possible.

We were already planning to do 6 million booster jabs in England alone over the next few weeks, but, against the backdrop of this new variant, we want to go further and faster. So I asked the JCVI—the

[Lord Kamall]
Government's independent expert advisers on vaccinations—to urgently review how we can expand the programme and whether we should reduce the gap between second doses and boosters. The JCVI published its advice in the last hour. First, it advised that the minimum dose interval for booster jabs should be halved, from six to three months. Secondly, it advised that the booster programme should be expanded to include all remaining adults aged 18 and above. Thirdly, it advised that these boosters should be offered by age group in descending order to protect those who are most vulnerable to the virus. Priority will be given to older adults and people over 16 who are at risk. Fourthly, it advised that severely immunosuppressed people aged 16 or above who have received three primary doses should now also be offered a booster dose. Finally, it advised that children aged between 12 and 15 should be given a second dose, 12 weeks from the first dose. I have accepted this advice in full. With this new variant on the offensive, these measures will protect more people more quickly and make us better protected as a nation. This represents a huge step for our vaccination programme.

I will update the House on the part that the UK is playing. We currently hold the presidency of the G7, and, earlier today, I convened an urgent meeting of the G7 Health Ministers to co-ordinate the international response. We were unanimous in our praise for the leadership shown by South Africa, which was so open and transparent about this new variant, and we were resolute in our commitment to working closely with each other, the World Health Organization and the wider international community to tackle this common threat.

Our experience of fighting this virus has shown us that it is best to act decisively and swiftly when we see a potential threat, which is why we are building our defences and putting these measures in place without delay. Scientists are working at speed, at home and abroad, to determine whether this variant is more dangerous. I assure the House that, if it emerges that this variant is no more dangerous than the delta variant, we will not keep measures in place for a day longer than is necessary.

Covid-19 is not going away, so we will keep seeing new variants emerge. If we want to live with the virus for the long term, we must follow the evidence and act in a proportionate and responsible way if a variant has the potential to thwart our progress. As we do this, we are taking a well-rounded view, looking at the impact of these measures not just on the virus but on the economy, education and non-Covid health, such as mental health. I am confident that these balanced and responsible steps are proportionate to the threat that we face.

This year, our nation has come so far down our road to recovery, but we always knew that there would be bumps in the road. But this is not a time to waver; it is a time to be vigilant and think about what each and every one of us can do to slow the spread of the new variant: getting a jab when the time comes, following the rules that we have put in place and getting rapid, regular tests. If we all come together once again, we can keep this virus at bay and protect the progress that we have made. I commend this Statement to the House."

6.49 pm

Baroness Thornton (Lab): My Lords, I thank the Minister for repeating the Statement from today and for the Statement from Friday. I add my thanks to the scientists in South Africa for their prompt sharing of this information, as unwelcome as it may be.

We understand that scientists believe that it will take two to three weeks before they can establish whether the omicron Covid variant is more transmissible, causes more severe disease or can make vaccines less effective than was the case with delta, or all three. We support the Government's strategy of tougher travel restrictions and mandatory face masks, as far as it goes. It seems that there is already real-world evidence from South Africa and Hong Kong that omicron is highly infectious, which begs the first question: why are the Government limiting the mandating of mask wearing to travel and to shops, and not extending it to indoor meetings and social events? Mask wearing is the single most effective public health measure in tackling Covid according to the first global study of its kind, which found that the measure was linked to a 53% fall in the incidence of the disease. As Dr David Nabarro said recently:

"We know that wearing a face mask reduces the risk. We know that maintaining physical distance reduces the risk. We know that hygiene by regular hand washing and coughing into your elbow reduces the risk. We should do it all, and we should not rely on any one intervention like vaccination on its own."

On these Benches, we support taking swift action and the inclusion of new countries on the red list. We do not want a repeat of the inertia that saw the delta variant run rampant through the country and, as the Minister said, we must protect the progress that we have made. We welcome an increase in the availability of the booster jabs. The only question that I would ask him is about the capacity of the NHS to deliver the massive increase that the Government have reported today.

We support the move to PCR testing, but there are still holes in the testing programme. Ministers have not introduced pre-departure testing and there is little, if any, follow-up on PCR test results, so we need action on this if we are to take it seriously.

The Government could, of course, go further to keep people safe. Fixing sick pay, improving ventilation and properly utilising antivirals remain crucial to ensuring that we reduce the spread of this deadly disease. Do any of these feature in the Government's plans?

I agreed with my right honourable friend the former Prime Minister Gordon Brown when he said:

"Whatever happens to this particular variant, we've got to realise our failure to vaccinate the rest of world … is going to come back to haunt us."

He said that the new variant was a "wake up call" for rich nations with surplus vaccines. There seem to be surplus vaccines which will expire within the next month. How many vaccines in the UK will pass their use-by dates before Christmas, and will these be destroyed? I am afraid that Ministers have not met the commitments made at this summer's G7 to roll out the vaccine to other parts of the globe. There is now sufficient vaccine to reach almost every adult in the world. I agree with the Minister that we need to play our part in ensuring that everyone around the globe has access to vaccines to stop the emergence of new variants.

This variant is indeed a wake-up call. The pandemic is not over. We need to act with speed to bolster our defences to keep the virus at bay. In that context, I ask the Minister about preparedness for new Covid variants in general. Both Clive Dix and Kate Bingham, former chairs of the Vaccine Taskforce, have expressed worries about our preparedness for dealing with new variants. Mr Dix has said of a paper that he sent to No. 10 in May:

"I wrote a very specific proposal on what we should put in place right now for the emergence of any new virus that escaped the vaccine."

It seems that, thus far, No. 10 has not responded, so perhaps I can ask on Mr Dix's behalf what the Government's plan is for an escape variant? What is the plan for resistance for the future? The country needs to know. He suggested that a strategy should involve a co-ordinating team to seek out new vaccines and give the company involved a fast track to a swift trial, access to the data and regulatory approval in return for early access to vaccines. If that sounds familiar, it is exactly what the Government did at the start of the pandemic, and it needs to be repeated. Is this in the Government's plan?

Reports from South Africa and other places indicate that the new infection seems to manifest itself with nausea, headaches, fatigue and a high pulse rate, but not the original and distinguishing features of loss of taste or smell, nor the headaches, sore throat, runny nose, fever and persistent cough which have been the most common in the delta variant. Will the NHS stick to the old symptom guide or will it update it to allow those running test and trace to recognise that they are not necessarily looking for things like loss of taste and smell but for other symptoms?

If the Government intend to report again in three weeks' time, if not before, it takes us into the Recess, so I would like the Minister to ensure that colleagues will be briefed appropriately. On Saturday evening, the Secretary of State held a Zoom call to brief MPs about the new world that we now entering. I hope that the Minister will do the same for all Members of your Lordships' House.

We must all be concerned that any spike in serious cases from this new variant could coincide with the NHS's peak winter period, particularly given that the service is already at full stretch. We all want to enjoy Christmas but, most of all, we all want to stay safe.

Baroness Brinton (LD) [V]: My Lords, I thank the Minister for repeating today's Statement. The World Health Organization and many globally respected scientists and doctors have been warning us that variants of Covid-19 might pose a serious risk, especially when a Government think that we are winning the war against the virus and that we can all afford to relax. Omicron reminds us that the battle is not won until it is won across the world. From these Benches, we also thank the South African scientists for their genome sequencing that has alerted the world, and I hope that the UK and the other G7 countries will offer them not just gratitude but countries in southern Africa more practical support.

I echo the comments of the noble Baroness, Lady Thornton, about arrangements for international travel and test and trace. I also support her request for a briefing for Peers. For some bizarre reason, the Liberal Democrat MPs were not included in the MPs' briefing. Please could the Minister make sure that we are included in any such meeting in the Lords.

In April, before the Minister was appointed, we warned Ministers that the Government were responding far too late to the reports of the delta variant in India. So we warn again. While the face mask mandate in shops and on public transport is welcome and well overdue, we are absolutely bemused that it excludes hospitality and that the advice to schools excludes classrooms. Professor Chris Whitty said in Saturday's No. 10 press conference that when there is a risk we should go in hard, so can the Minister explain how the virus will be kept at bay in those indoor settings where masks are not required? Why is there no encouragement for people to work from home where possible? Trains and buses are crowded and unventilated. Risks will remain there too, even if lessened with masks.

I have said before that I am in the clinically extremely vulnerable group. I have had my third dose of the vaccine and now look forward to my fourth, or booster, dose. But many of those who should be getting the third dose still face a series of problems in the NHS about who should get it, as opposed to a booster, and how it is recorded. Indeed, today, in response to a Written Question to my honourable friend Daisy Cooper about the recording of a third dose, the Minister, Maggie Throup MP, replied:

"Work to assess the need to include boosters in the NHS COVID Pass is ongoing and we will provide a further update in due course",

so even the records cannot distinguish. Can the Minister say when "in due course" is? I am afraid this is symptomatic of the way the clinically extremely vulnerable have been ignored and left to fend for themselves.

I will ask a question that I have asked the Minister's predecessor repeatedly since June of this year. In May 2021, Jenny Harries left Public Health England to set up the UKHSA. For the preceding 12 months she had specific responsibility for co-ordinating all the different elements of Covid issues for the CEV and for shielding. When she left, no one was given that responsibility, and it was noticeable that all communications with CEV people and the different parts of the NHS on Covid just stopped when shielding stopped. Can the Minister tell us which senior person in the NHS has that managerial responsibility? It has been five months since I first asked and there are 3.7 million worried people still waiting for answers. It would be good to know which Minister has the responsibility to co-ordinate all Covid matters for the CEV or former shielders. This is important, because the last letter from the Secretary of State tells the CEV not to go into any environment where people have not been double-jabbed. There is no mention of boosters, and obviously no mention yet of omicron.

Is there a confirmed register that distinguishes between the CEV and the severely CEV? Unlike in Scotland, hospital consultants in England do not have access to individual patient records that GPs use or even to the Covid app data. Can the Minister say how NHS England will be able to communicate directly with eligible people if they do not have a register? Is there a specific communications plan to ensure that primary

[Baroness Brinton]
care, secondary care and the 119 vaccine helpline are fully aware of plans and processes for this group? Reports are coming back of blood cancer patients being told at vaccine centres that they do only boosters—there is no knowledge or understanding of the third dose.

I recognise that I am asking the Minister a large number of questions on the immunocompromised. I really do not expect answers to them today—written answers are always very welcome—but please will he agree to meet with me, Blood Cancer UK and the Anthony Nolan Trust to discuss these key questions, not least because we are now in a different situation, with the 3.7 million, which is 5% of the country, left in limbo?

As the noble Baroness, Lady Thornton, said, it is too early to say whether omicron is more dangerous than delta or beta, or whether treatments such as Ronapreve and the current vaccines might not be as effective. The Government are right to be cautious. I echo her comments about Clive Dix, the former head of the Government's Vaccine Taskforce. What plans are in place for vaccine development for an escape variant?

At a time when manufacturing is one of the key issues slowing down the delivery of vaccines worldwide, why is the Vaccine Manufacturing and Innovation Centre at Harwell, which has received in excess of £200 million of public funding via UK research and development, now up for sale, long before the pandemic is over? We still need its expertise. Selling off a publicly funded, not-for-profit organisation during the pandemic, if at all, seems, frankly, bizarre.

Finally, the Statement has a passing reference to test and trace domestically. It says:

"We have a much greater capacity for testing, enhanced ability for sequencing".

Genome sequencing in the UK has been a real strength of UK science and has undoubtedly helped us considerably in this pandemic. But, in recent weeks, with the Government's determination to open up and return to normality, test and trace has been scaled back, with reduced centres and reduced hours for those that remain open. Can the Minister say what plans there are to increase these back as needed? Are directors of public health and their local resilience forums receiving funding for the current omicron problem? It also appears that there is no Covid funding for them next year at the moment. If omicron is a viable variant, we must plan to fund them to keep these safety nets of test and trace in place, because without an effective test, trace and isolate system, including proper payments to those who need to isolate, we will not manage, let alone control, this virus. Defences are not defences when there are large holes in them.

Lord Kamall (Con): I thank both noble Baronesses for their questions. I will try to answer as many as I can.

On the first issue of face coverings and why not all places, we are taking temporary, targeted and proportionate action as a precaution while we learn more about this new variant. Face coverings have been introduced as part of the temporary measures being put in place to slow the spread of the omicron variant. We know that face coverings are effective at reducing transmission indoors when people are likely to come together—for example, on public transport or in shops—while having a low impact on our daily lives. We continue to encourage everyone to wear face coverings in settings that are crowded or where they meet or come into contact with people they do not normally meet, but we are also guided by the advice of our scientific and medical experts. We are constantly keeping these under review.

One of the reasons why our advice is not the same for hospitality venues is that the advice has been that it is not seen as practical for people to wear a face covering when eating or drinking. It is not recommended that face coverings are worn when undertaking strenuous activity, including exercising and dancing. That is the advice we have had to date on that one.

Questions were asked about NHS capacity. The NHS can respond to local surges in demand in several ways, including through expanding surge capacity in existing NHS hospitals, mutual aid between hospitals, and making use of independent sector capacity and accelerated discharge schemes. The NHS is the Government's key spending priority. That is why we committed to the historic settlement of the cash increase of £33.9 billion a year by 2023-24, and other investments we have made to make sure we have that capacity.

The booster vaccine will be offered in order of descending age groups, with priority given to older adults. This will probably be the most complex phase of the NHS vaccination programme so far, but the NHS is working through updated guidance and will set out how this will be operationalised shortly. It will contact you when you need to act and book in for your life-saving vaccination.

On helping the rest of the world, the UK remains committed to donating 100 million doses by mid-2022. We will have donated more than 30 million vaccines by the end of 2021 and we have announced plans for 70 million doses in total so far. We will continue to work to ensure that any vaccine that the UK does not need is reallocated to other nations that require it, wherever possible.

On future preparedness for variants and future pandemics, as noble Lords will know, the UK Health Security Agency, which focuses on health protection, became fully operational on 1 October 2021. It will operate as an integral part of our health system and utilise state-of-the-art technologies and ground-breaking capabilities in data analytics, including genomic surveillance, as acknowledged by the noble Baronesses. The UKHSA will play a critical role in the route to developing vaccines that are effective against new and emerging variants. In the longer term, to make sure we learn the lessons, we will build on the infrastructure developed for Covid-19 to tackle and prevent other infectious diseases and external health threats. This work will include a strong focus on the life sciences, strengthening relationships with academia, research organisations and industries that have developed and grown through the pandemic, in which there are now several centres of expertise.

We are delighted to see students back at schools and higher education settings, but to reduce transmission we are keeping some sensible measures in place across education and care settings. These include access to twice-weekly testing in secondary schools and the provision of CO_2 monitors to all schools. We have said that education settings must continue to comply with health and safety law, and we are working between the Department of Health and the Department for Education to make sure we have the right and appropriate response in our education settings.

The noble Baroness, Lady Brinton, asked about severely immunosuppressed individuals—I thank her for the acknowledgement that I will not be able to answer all the questions in detail and that it probably would be better if I write to her in more detail. So far, however, the individuals who have completed their primary course of three doses should be offered a fourth booster dose with a minimum of three months between the third primary and fourth booster dose. If they have not yet received their third dose, they should have that now to avoid further delay.

The other point I will make is that it is not too late for anyone who has not yet had their first or second dose. Please do not think that, because we are advertising for boosters, it means that you have missed the boat. In fact, we are working very hard—and I have received a lot of advice from noble Lords across the House—on how to address the low take-up of vaccines among certain communities and demographics. I am grateful to noble Lords for that. I also reiterate the point that it is not over. I humbly disagree with the statement that we have given the impression that it is over. We have been quite clear that it is not and that we must continue to be vigilant.

In terms of briefings, I will commit to giving a briefing to all Peers. I thank the noble Baroness for that suggestion. I have apologised for not being more proactive on that—maybe I should have done so on Sunday afternoon or evening after the Secretary of State. To the noble Baroness, Lady Brinton, I can only apologise for not having an answer sooner to the questions she has asked in the past. The best way to resolve this is for me to commit to the meeting that she has requested so that we can try to answer the questions that she has outstanding. I apologise to her for those questions not being answered previously.

7.12 pm

Baroness Masham of Ilton (CB) [V]: My Lords, it is very difficult to find out why many people are hesitant about having a booster jab having had two vaccinations. Does the Minister think that, if something went wrong and left a person seriously disabled from the vaccine, but if they knew they would have adequate compensation, they might be more willing to have the booster?

Lord Kamall (Con): I thank the noble Baroness for raising that important point. We have made the point that it is not over, but one thing that we have seen, sadly, with the uptake of the booster vaccine is that a number of people felt that because they had had the first and second doses, they could almost return to normal. Maybe we could have been stronger with the message that it is not over, but we continue to say that we should be ever vigilant. The important point is that, if you have not had the booster, we ask you to come forward, just as we ask all those who have not had their first or second vaccine to come forward. We are trying to work with all those in different communities to make sure that they come forward. We are, for example, working with interfaith communities and local groups.

Viscount Hailsham (Con): My Lords, I welcome the Statement, but may I express the hope that the requirement to wear masks in shops and on public transport is not relaxed prematurely? Is there not a case for continuing those requirements while the pandemic is prevalent?

Lord Kamall (Con): My noble friend will be aware of the constant debate that there has been in the public sphere about the effectiveness of masks, when they are effective and who is affected. Therefore, we have always followed scientific advice on the wearing of masks and where would be most appropriate. We know that many noble Lords and others have called on us literally not to let the masks slip, as it were, and to make sure that people continue to wear masks. There have been others, however, asking why people still need to wear masks. We have always been vigilant, and the fact that we now have this new variant means we are taking a precautionary approach. We will continue to review it and it could well be that, in three weeks' time, we will see how dangerous it has been and how effective mask wearing has been in the places that we have specified.

Lord Davies of Brixton (Lab): My Lords, it is now recognised widely that none of us is safe until we are all safe, leading to the conclusion that we need a worldwide vaccination programme. However, there is mounting evidence that populations that are immunocompromised, especially people living with HIV, provide a particularly ideal environment for the mutation of the virus. Does the Minister accept that we must therefore contemplate the possibility of having a global programme of antiretroviral medicine as part of our response to Covid?

Lord Kamall (Con): I thank the noble Lord for the point he just made. If he will allow me, I will take that back and try to get an answer for him.

Baroness Watkins of Tavistock (CB): My Lords, I hear from colleagues in South Africa that nasal swabs alone are not as effective at picking up the new variant and that there have been many false negatives reported. I would welcome the Minister's comment on that, as we are moving to more nasal swabs. I also suggest that it would be more sensible to encourage the use of face coverings in offices and to encourage people to work from home wherever it is feasible in terms of employers, so that the next two weeks can be used by scientists to really identify other problems that might be associated. This would help to safeguard NHS clinical staff as well as hospitals. If people are getting false negatives and then being admitted to hospital, it puts the very staff we need to keep at work at risk.

Lord Kamall (Con): As the noble Baroness, Lady Watkins, will be aware, our scientific medical advice and the data are constantly reviewed. We are currently conducting thorough tests to review both LFT and PCR efficacy when it comes to the omicron variant. The advice that I have been given is that we must wait for the data and take a cautious, proportionate approach as scientists work urgently to better understand the variant. In terms of the question on more restrictions in terms of where face masks should be worn, the advice at the moment is still on public transport and in shops, and to continue to encourage people to work either from home or in offices, as appropriate.

Lord Lansley (Con): My Lords, in my noble friend's repeat of the Statement, he said that

"our strategy is to buy ourselves time and strengthen our defences".

May I ask him about our border controls? Given our testing capacity, would it not make sense for us, for example, to test everybody who comes into our airports at the airport itself so that we have certainty that, where they are positive, we know who they are and are able to conduct the contact tracing required?

Lord Kamall (Con): I thank my noble friend for giving me notice of the question; I appreciate it. The answer that I have been given in response is that we have built a thriving private diagnostic market to meet the demand of the international travellers and day 2 PCR testing for travellers is provided by these private providers. Based on forecast modelling, we are confident that the market has sufficient capacity to meet the rise in demand that omicron may pose.

Baroness Ritchie of Downpatrick (Lab): My Lords, I thank the Minister for his Statement, in which he indicated that he was chairing a meeting of G7 members to deal with this specific issue. Will that meeting deal with the rollout of excess vaccines to the rest of the world, particularly those countries in southern Africa? I can only think of what my right honourable friend the former Prime Minister Gordon Brown said at the weekend, which was also reaffirmed in the leader column in yesterday's *Sunday Times*: that nobody is safe in this world until everybody is safe. So is there a strategic plan to deal with excess vaccines to ensure that they are all used up, and particularly that they are used in those countries in the developing world that need them most?

Lord Kamall (Con): I believe all noble Lords will agree with the points made by the noble Baroness on making sure that as many people in the world as possible have access to the vaccines. Someone said to me today that we are talking about third and fourth doses in the UK, but there are people in many parts of the world who have not yet had their first dose. I am sure noble Lords are aware of that. There is an analogy with when you are on an aircraft and the oxygen masks fall; do you protect yourself before you protect others? There is clearly a debate on this.

The UK remains committed to donating 100 million doses by the middle of 2022. We will have donated more than 30 million vaccines by the end of 2021 and have announced plans for 70 million doses in total so far. We will continue to ensure that any vaccines that the UK does not need are reallocated to other nations which require them wherever possible. Having sat in one of those G7 meetings with Health Ministers and joint G7 meetings with Health and Transports Ministers, I can assure noble Lords that one of the issues that comes up constantly is how we can help the rest of the world, particularly those countries which have not had access to even first doses of the vaccine.

Lord Patel (CB): My Lords, on whether LFT swabs should be nasal or nasal plus throat, it is more important that the test is carried out properly; we know that LFTs have low specificity, as opposed to sensitivity, compared to PCRs. Those who test positive with the new variant and their contacts must isolate for 10 days. If a traveller arrives on these shores and tests positive for the new variant, will the whole of the aeroplane have to isolate for 10 days or only close contacts? If only close contacts, who counts as a close contact? What risk assessment have the Government made on the transmissibility of the new variant in superspreader events such as clubs and sporting events?

Lord Kamall (Con): The noble Lord raises an important point. I will double-check the details as I do not wish to mislead him or the House. Given that this is a fast-moving situation, in which the data is very new, changing constantly and constantly being reviewed, it would be more appropriate if I double-check before I answer.

Baroness Tyler of Enfield (LD): The new requirements are for all travellers arriving in the country to take a PCR test on or before day two and to self-isolate until they have received a negative test. However, on the government website today, it says that if someone has tested positive with a PCR, they should not be tested again using either a PCR or lateral flow test for 90 days, unless they have developed new symptoms. What are returning travellers who have tested positive in the last 90 days meant to do? Who is cross-checking the existing guidance against new regulations?

Lord Kamall (Con): All I can do is thank the noble Baroness for her question. I will have to double-check; as she will imagine, I do not have all the answers at the moment. Throughout the day, as I was preparing for this, the advice was changing constantly, and things were being swapped in. Advisers from the Department of Health and Social Care were saying, "This is the latest advice", but it was changing literally hourly. I will try to get the latest advice and share this with noble Lords.

Lord Naseby (Con): In light of the overall success of the vaccination programme, is it now a condition of employment that every new recruit to the NHS, at every level, must be vaccinated against Covid and agree to accept any future recommendations on protection against it?

Lord Kamall (Con): As my noble friend will be aware, vaccination as a condition of deployment has been brought in for the social care sector. It will be brought in for the wider NHS, but there is a grace

period in certain cases. Management are being encouraged to meet with staff to encourage them, particularly staff who are vaccine-hesitant. There is a grace period to see us through the winter period; it runs up to April next year. However, we are encouraging as many members of NHS staff as possible to get vaccinated and we have a high rate of vaccination so far.

Baroness Bennett of Manor Castle (GP): My Lords, the Minister referred to a thriving diagnostic market in PCR tests. When these were previously commonly required, there were huge problems with misleading advertising about costs and people being misled about the services and timings on offer. Have the Government solved these problems and are they looking at how much money these companies are making out of this thriving market?

Lord Kamall (Con): The important thing for us is to make sure that PCR tests are available and that there is sufficient supply and capacity to deliver them. Frankly, as much as we want to make sure there are enough PCR tests, we want to make sure that supplies come to the market. But, as the noble Baroness will be aware, my right honourable friend the Secretary of State has raised concerns about the cost of some of the PCR tests and has been quite public about that.

Lord Robathan (Con): My Lords, first, did the Minister see the interview with Dr Coetzee, the South African doctor who first identified the omicron variant, on "The Andrew Marr Show" yesterday? She said that the British Government were overreacting and, when asked, specifically agreed that they were panicking. Secondly, could he identify and publish for the benefit of everyone the studies that have shown that wearing these flimsy, non-surgical face masks is effective in preventing transmission? I refer to the excellent research which my noble friend Lord Ridley detailed in the Grand Committee on 26 October, which is in column 123 of *Hansard*. So far, no proper study has shown that wearing a face mask is effective.

Lord Kamall (Con): I thank my noble friend for those points. On the comments made by the South African expert, I raised these issues with officials and experts today; one of the points made was that there are different demographics of who has been affected. We want to make sure that we are being cautious and proportionate. Therefore, we have taken these measures as a precaution. On the efficacy of face masks, the point my noble friend makes shows that there is a debate, but we have decided to err on the side of caution to make sure that we are prepared.

Baroness Hoey (Non-Afl): My Lords, what is the position with aeroplanes coming into Dublin Airport? Have the Irish Government followed the United Kingdom Government? Otherwise, what will happen to people who have come into Dublin and then come across a border where there is obviously no restriction into the United Kingdom?

Lord Kamall (Con): The noble Baroness makes a good point. Health issues are devolved to Northern Ireland, but I will double-check this point and write to her.

Viscount Waverley (CB): My Lords, I too generally find the GOV.UK website wanting in the detail. Frankly, it is very confusing and is never kept accurate enough in a timely manner; I encourage the Minister to pay regard to that. May I drill into one particular issue on a point which other Peers have touched on? What is the rationale for the emphasis on testing after arrival into the UK, rather than catching those with Covid before departure?

Lord Kamall (Con): The noble Viscount raises a good question; I am afraid that I will have to double-check the answer.

Viscount Stansgate (Lab): My Lords, the Government's Statement says that close contacts of anyone who tests positive with a suspected case of the omicron variant must self-isolate for 10 days, regardless of whether they have been vaccinated. Can the Minister tell the House what specific scientific advice has been received in the recent past to support that? Or are the Government being excessively precautionary? If so, is this a permanent or a temporary provision?

Lord Kamall (Con): The Government have taken these measures as a precaution and we will constantly review them as we get more data. We have already committed to reviewing the measures after three weeks. If the data becomes available and we are clear about whether or not this is effective, we may well have an announcement before then, but we have committed to reviewing this within three weeks.

Lord Hope of Craighead (CB): My Lords, can the Minister say what steps will be taken to enforce the regulations being made? I ask the question because Transport for London has been saying for weeks that the wearing of masks is required on London transport. I am a regular passenger on the London Underground, and something like a quarter or even a third of passengers are not wearing masks. It is all very well making regulations, but they need to be enforced.

Lord Kamall (Con): The noble and learned Lord makes a valuable point. One of the points I made previously about enforcement on public transport is that it puts staff in a difficult position. We therefore have to be careful about how we do this. When giving advice, you assume that some people will not follow the advice, whatever you do. It has been found that most people will wait until it is mandated on public transport, sadly, rather than doing it of their own volition. The police and police community support officers can take measures if members of the public do not comply, and I am sure the noble and learned Lord will have seen a number of police and community officers.

We are clear that face coverings reduce the risk, and until now we have followed scientific advice. We are now adopting a precautionary approach and taking precautions. Some may argue that it is overly precautious, but we feel that it is the right balance. None of these things is binary, and we want to make sure we balance the steps we take with the data we receive.

Lord Oates (LD): My Lords, what signal does the Minister think it sends to the world about doing the right thing when the consequence of South Africa's excellent science and exemplary transparency is a total flight ban, with potentially devastating consequences for its economy and that of the region, with no apparent mitigating support package from the rich world? What conversations can he have with his friends in the Treasury so that they act to give some support to South Africa and the region?

Lord Kamall (Con): The noble Lord makes a valuable point: we should pay tribute to the openness of the South African Government, in real comparison with the openness of the Chinese Government at the beginning of the whole pandemic. It is clear that they have been transparent. It is important to recognise that one of the things about the WHO is that it relies on experts in certain countries to report early signs. I will have a conversation internally and see what can be done; otherwise, it almost acts as a disincentive to report to the WHO. We have to make sure we are not disincentivising others who may wish to report similar cases in future.

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): My Lords, the time allocated for supplementary questions has now been fulfilled.

Northern Ireland (Ministers, Elections and Petitions of Concern) Bill

Second Reading

7.33 pm

Moved by ***Lord Caine***

That the Bill be now read a second time.

The Parliamentary Under-Secretary of State, Northern Ireland Office (Lord Caine) (Con): My Lords, before I move to Bill itself, I first thank noble Lords from across the House for their good wishes on my appointment. I am pleased to see in the Chamber this evening a number of noble Lords with whom I go back many years.

It is also a great pleasure to stand across the Dispatch Box from the noble Baroness, Lady Smith of Basildon, and the noble Lord, Lord Coaker. The noble Baroness was a very popular and highly regarded Minister during a difficult period of direct rule in Northern Ireland, while the noble Lord served two distinguished terms as shadow Secretary of State. I look forward to working with them both, as I do the noble Lord, Lord Murphy of Torfaen, on his return to this House, and the noble Baroness, Lady Suttie, for the Liberal Democrats. Whatever differences we might occasionally have on points of detail, I am committed to maintaining a bipartisan approach, which has served Northern Ireland so well over many years and under successive Governments.

I also place on record both my own personal support and that of Her Majesty's Government as a whole for the 1998 Belfast agreement, the constitutional principles it enshrines, all the institutions it has established and the rights it guarantees across the whole community. I first became directly involved in the affairs of Northern Ireland some 33 years ago and well remember the misery, death and destruction caused by totally unjustified and unjustifiable terrorist campaigns, and of course the security response that they necessitated. I for one will always salute the heroic service and sacrifice of the men and women of the Royal Ulster Constabulary and our Armed Forces.

The fact that those dark days are now mercifully almost a quarter of a century behind us is in large part down to the success of the 1998 agreement and its successors. It has been the bedrock of the progress achieved in Northern Ireland over recent years, and protecting it must be at the heart of everything we do. This Government will not take any risks with the hard-gained relative peace and stability ushered in by an agreement that remains an inspiration for so many across these islands and the wider world.

While of course that agreement is not beyond change and improvement, as has occurred a number of times through successor agreements and with further changes in this Bill, its principles are enduring. Not least of those is the consent principle, which guarantees Northern Ireland's integral place within this United Kingdom for so long as that is the wish of a majority of those living there—a constitutional position that I, as a Conservative and a unionist, strongly support and on which I will never be neutral.

To strengthen the stability and effective functioning of the devolved institutions established by the 1998 agreement is the core purpose of the Bill before the House. It does so by implementing a number of the commitments made by Her Majesty's Government in the *New Decade, New Approach* document of January 2020: extending the period for the appointment of Ministers in the Northern Ireland Executive following an election; enabling Ministers to remain in office and carry out functions for a period after the First and Deputy First Minister have ceased to hold office or following an Assembly election; reforming the use of the petition of concern in the Assembly; and updating the code of conduct for Executive Ministers in accordance with a request from the Northern Ireland Executive and in line with the recommendations around transparency and accountability in *New Decade, New Approach*.

That document was, of course, arrived at in the weeks immediately following the decisive general election result of December 2019, in which voters in Northern Ireland made very clear their desire to see Stormont return. The document was instrumental in securing the restoration of devolved government in Northern Ireland. Yet the document itself was the product of almost three years of painstaking negotiations under three successive Secretaries of State following the resignation of Martin McGuinness in January 2017 and the subsequent collapse of the institutions. They were three years in which Northern Ireland was effectively left in a state of political limbo, with no functioning Executive or Assembly and with civil servants able to take only limited decisions.

I know from personal experience just how deeply frustrating a period it was, including many late nights, long hours and false starts. Many of the measures in *New Decade, New Approach*, and subsequently in this Bill, are designed to avoid a repeat of this. As a result,

the Bill is fairly narrow in scope, though I appreciate that noble Lords in this House with a vast wealth of experience in Northern Ireland might want to make some broader points that go beyond the confines of the legislation before us.

I turn to the clauses of this short Bill. Clause 1 amends Sections 16A and 16B of the Northern Ireland Act 1998 by extending the time available to appoint a First or Deputy First Minister following the resignation of either, or after the first meeting of the Assembly following an election. Currently, the period for ministerial appointments is only seven days after the First or Deputy First Minister ceases to hold office, or 14 days after an Assembly election, after which the Secretary of State is by law bound to set a date for another election within a reasonable timeframe.

The Bill extends the period for filling ministerial offices to a six-week period that is automatically renewed, unless the Assembly resolves otherwise on a cross-community vote, for a maximum of three times up to a total of 24 weeks. This is designed to allow more time for discussions between the parties and to facilitate a resolution of issues and avoid the need to rush headlong into another election. It will also give some parties the opportunity to reflect on whether they wish to be in the Executive at all or, alternatively, to go into opposition.

Clause 2 will enable existing Ministers to remain in post following an election until the end of the 24-week period for appointing new Ministers, rather than ceasing to hold office automatically on polling day as at present, or for a maximum of 48 weeks since a functioning Executive was in place. This is designed to provide for greater stability and sustainability of the devolved institutions and for continuity in decision-making, thus avoiding the scenario I have described following the effective collapse of the institutions in January 2017, when Northern Ireland was left with little or no governance.

Clause 3 amends Section 32 of the 1998 Act which currently requires the Secretary of State to propose a date for an Assembly election in two scenarios: first, where the Assembly resolves to dissolve itself by a two-thirds majority, and, secondly, where the existing period for appointing all Executive Ministers, including the First and Deputy First Ministers, expires without those offices being filled. This Bill places the Secretary of State under a duty to propose an election date as soon as is reasonably practical and within 12 weeks of either scenario having taken place. This provides greater legal certainty over the date of an election than at present. Clause 3 also allows the Secretary of State to certify or call an Assembly election at any point after the end of the first six-week period for appointing new Ministers if he considers that there is not sufficient representation among Ministers to secure cross-community confidence in the Assembly.

Clause 4 substitutes a revised ministerial code of conduct which sets out expectations for the behaviour of Ministers, including provisions around the treatment of the Northern Ireland Civil Service, public appointments, the use of resources and information management. This is an excepted matter and, as such, exclusively for Parliament, and follows a request from the former First Minister and Deputy First Minister, with Executive approval.

Clause 5 reforms the petition of concern in the Assembly to reduce its use and restore it to its original intention in the 1998 agreement. The Bill keeps the existing threshold for triggering the petition at 30 Assembly Members but introduces a requirement that they must be from two or more parties. Once lodged, any petition will have to be confirmed after a period of 14 days' reflection. The Bill limits the matters in which a petition can be lodged and prevents the Speaker and deputies from signing.

Finally, Clauses 6 to 9 deal with repeals, extent and commencement.

Nobody claims that the Bill will be a panacea should we again be in the unfortunate situation in which the devolved institutions come under severe political strain. It does, however, contain important safeguards against a situation arising in which one party can simply crash the institutions and leave Northern Ireland effectively with limited or no governance at all.

The Bill faithfully implements the commitments of the UK Government as set out in *New Decade, New Approach* to make the devolved institutions more resilient and more sustainable, so that they can continue to focus on delivering for the benefit of the whole community in Northern Ireland.

Successive surveys and the 2019 general election demonstrate—I think conclusively—that inclusive, power-sharing devolution within the United Kingdom is the preferred form of governance for most people in Northern Ireland. That is also the Government's preference, and we are determined to do whatever we can to make devolution work in order to build a brighter, stronger and more prosperous Northern Ireland—a Northern Ireland where politics works, the economy grows and society is more united. This short Bill takes a number of steps to help us on that course and, in that spirit, I commend it to the House.

7.43 pm

Baroness Smith of Basildon (Lab): My Lords, I thank the noble Lord, Lord Caine, and want to be the first in your Lordships' House to welcome him to his place at the Dispatch Box. We wish him well in his position and look forward to working with him. I thank him also for his kind and generous comments at the start of his speech, which were appreciated. I note that the noble Viscount, Lord Younger of Leckie, is with him today. We have welcomed him at the Dispatch Box and his answers to questions, but I think I speak for the whole House when I say that we really do appreciate having a dedicated Northern Ireland Minister in your Lordships' House. That has been lacking, and he is very welcome in that role.

I thank the noble Lord also for outlining the position and the clauses in the Bill. He is right: this is a short Bill—just nine clauses—but it is no less important or less valuable because of that. When it was introduced into the House of Commons, the Secretary of State described the objectives of the Bill as being to

"strengthen the democratic institutions of Northern Ireland and serve to build the people of Northern Ireland's faith in their locally elected representatives in the Northern Ireland Assembly."—[*Official Report*, Commons, 22/6/21; col. 774.]

Few could fail to agree with such an objective.

[Baroness Smith of Basildon]

Your Lordships' House will understand the pride and commitment of the Labour Party to the Belfast/Good Friday agreement, which led to the establishment of the Assembly. There is also pride from all those involved, across the political spectrum, that despite the challenges along the journey to reach the agreement, it was so overwhelmingly supported by those living in Northern Ireland.

When the stability of those institutions has been threatened, or when they have been suspended, it is a failure. It is a failure of politics and politicians, but it is most keenly and sadly felt by those who live and work in Northern Ireland. Whatever the intentions, it has proved easier to suspend the institutions than to reinstate them after suspension. I speak from experience, having been told on one occasion that I would be going there as a Northern Ireland Minister for three months but returning home three and a half years later.

We welcome the objectives of the legislation, which I think reflect commitments made in the *New Decade, New Approach* agreement—as the noble Lord said—to improve sustainability and to increase transparency and accountability. But following the debates in the other place, I was struck that even those supporting the legislation were disappointed. There was frustration over missed opportunities in the Bill to make progress on commitments which have been allowed to stall. There was frustration over a lack of progress on parts of the *New Decade, New Approach* agreement. There was also frustration, which I am sure he will understand, that it has taken so long to bring a Bill forward, when the *New Decade, New Approach* agreement was signed off in January 2020.

This is where I hope and think that there is an opportunity for the Minister to be a real asset to the Government, because—I am sure I am not alone in thinking this—too often it has appeared that Northern Ireland has been pretty low on the Government's list of priorities, and that decisions have been taken without recognising their full implications. I find it extraordinary that the Northern Ireland protocol was agreed, and continues to be discussed, without representatives from Northern Ireland being part of those discussions. I thought the Prime Minister was far too casual and, not unusually but unforgivably, uninformed about how Brexit and the protocol would impact Northern Ireland trade and Northern Ireland politics. So there is a direct read across from the Prime Minister's and the Government's casual approach to Northern Ireland—I am not implicating the Minister in this; I hope he can do something about it—and the instability we see in the institutions. Those cannot be separated, and the connections cannot be ignored.

The Government need a broader commitment that goes beyond the legislation. If we genuinely and deeply support stability, that commitment has to run through all actions and all policy-making, and it has to be total. Northern Ireland cannot be considered as an afterthought to policy-making or as a means just of holding on to government.

Turning to the provisions of the Bill, as my colleagues, the shadow Secretary of State Louise Haigh and Alex Davies-Jones, were clear during debates in the other place, there is room for improvement. I appreciate that, while taking on board suggestions, the Government resisted any changes for improving the legislation in the other place. However, this is where I am an optimist in life, as I always remain hopeful that Ministers—particularly a new Minister who has real knowledge of the situation in Northern Ireland, as the noble Lord, Lord Caine, does—may have reflected further on this.

One of our concerns about the cause of instability is when agreements are made but full implementation remains elusive. In the other place, we raised the issue of ensuring the full implementation of the NDNA agreement. We also raised parts of the Belfast/Good Friday agreement which have not been, or are currently not being, fulfilled, including the Bill of Rights and the Civic Forum. I do not know whether the Minister is able to give the House an update today on the Government's plans to legislate on the Irish language protections and cultural package which are part of that agreement. If not, I hope he will be able to do so during the course of the Bill's passage, or indeed write to noble Lords. The Government have previously made commitments to bring legislation forward if agreement or legislation was not achieved in Stormont by the end of September, but we have not had an update on next steps to date.

The Minister will be only too aware of the concerns raised over the delayed timing of the Bill. MPs were concerned that, after an already long delay, the Bill would not be out of Parliament before Christmas, and here we are, almost in December and just starting the Second Reading this evening.

I am sure the Minister is aware that, in the other place, there were helpful conversations about whether the two-month commencement period provided for in the Bill could be truncated or removed. It will be helpful if we can return to those discussions and conversations as the Bill progresses—and there are other issues we will want to seek clarification on or explore further with Ministers.

As the Minister outlined, the Bill provides that Ministers will no longer cease to hold office after the election of a new Assembly for two specified time periods, which certainly makes sense in terms of the stability and continuity of decision-making, and confidence in the institutions. We are all aware that, at times, civil servants have faced an almost impossible situation of having to operate without political direction or ministerial cover. There is nothing in the legislation about the extent of or limitations on the authority of so-called caretaker Ministers. Could it be the case that a Minister remains in office having not stood for election or, indeed, having lost their seat? Can the Minister say more about the limitations, guidance or instructions that will be in place?

My understanding from the answers given in the other place on this issue was that Ministers understood that this would be an unsatisfactory position but better than the alternative that currently exists. I would like to see greater clarity on that and, indeed, on whether we can do better. As a former direct rule Minister who was not elected by anybody in Northern Ireland, I understand and fully appreciate the difficulties here and support the principle of the Government's

approach, but we need to probe and seek a bit more information about how this is intended to work in practice.

On Clause 4, can the Minister confirm where responsibility lies in enforcing the Ministerial Code? He will know that in the UK Government it lies with the Prime Minister, and yet, when an independent investigation reported that a Minister had broken the code, the Prime Minister's judgment was that they had not, and it was the commissioner who left office, not the Minister. I do not advocate that any breach of the Ministerial Code should result in a ministerial resignation or sacking, and I have suggested changes to the code here to change that, but I am seeking information from the Minister as to where responsibility lies for the enforcement and implementation of the code. Also, does the Minister consider that Clause 4 can play an important role in the management of caretaker Ministers? Again, we will want to probe the operation and extent of the code on that.

On petitions of concern, the Government have been clear about the intention of the clause and it has our full support. It is a limited reform that seeks to return the mechanism to what was originally intended. However, the Minister will be aware of the other vetoes that have been used to block agenda items from even reaching the Executive or have prevented discussion on issues of cross-community concern. Is there any more he can say about this, even if he is not proposing to include anything in the Bill at this stage?

Finally, this is a very modest Bill, but it is significant. The Government could have been bolder, and there are issues that we will want to probe further in Committee, but we welcome the proposals that have been made and look forward to deliberating further and in detail.

7.53 pm

Lord Dodds of Duncairn (DUP): My Lords, it is a pleasure to follow the noble Baroness, Lady Smith of Basildon, and join her in welcoming the noble Lord, Lord, Lord Caine, to his place as a Minister in the Northern Ireland Office. He has a lot of experience; I am sure he did not need to read up much on his brief, given that he has written so many of them in the past for other Ministers. He is a truly dedicated Minister in the Northern Ireland Office. As has been said, it is good to have a Minister who is dedicated to Northern Ireland, not just in terms of being a specific Minister but a Minister who is truly, in his own right, dedicated to the best interests of Northern Ireland.

I warmly welcome what he has said this evening about his position and, indeed, that of the Conservative and Unionist Party on the union. Of course, we all join in his tribute to the members of the security forces, the RUC, the Army and the UDR, and all those who paid the ultimate sacrifice or suffered life-changing injuries and still live with the scars of the violence and the protection they gave to all the communities in Northern Ireland over the period of the Troubles.

I want to make a few general comments and raise a few issues on the specifics of the Bill. The first general comment is that we welcome the Bill in so far as it goes; there are improvements that could be made, as has been said, and we will look at those in Committee, but it does implement certain aspects of the *New Decade, New Approach* agreement that was made some three years ago. There are many other aspects of the NDNA agreement that will be for another day—other pieces of legislation both in the Assembly and here—but one thing that the people of Northern Ireland will be looking for is to ensure that all aspects of NDNA are progressed, that certain issues are not picked out for special treatment, and that everything is brought forward.

In that context, it would be remiss not to raise the commitment that was given by the UK Government in annexe A, paragraph 10, on the integrity of the UK internal market, which, as we know, has been breached by the Northern Ireland protocol. It is important that, as we see progress on aspects of NDNA, we also see progress on that commitment, and that the Northern Ireland protocol is addressed in a way which brings stability to the institutions in Northern Ireland; we have yet to see that happen. Of course, discussions are continuing and we are aware of those negotiations. People said that there could not be any renegotiation; effectively, that is what is happening. People said the original form of the protocol had to be rigorously implemented; we have seen that bypassed. That is all good—it is progress—but the current discussions cannot be strung out much longer. We know the time has almost run out for those discussions, and by the end of the year it will have run out completely.

Action will have to be taken, either in the form of an agreement between the European Union and the Government, addressing the issues that are outstanding in all aspects—both constitutional and economic—or in the form of UK action to fully restore Northern Ireland's position in the internal market and its constitutional integrity. The invocation of Article 16 may or may not be part of that, but it can be only part of it, because it is not a solution in itself.

If neither of those happens, unionists in the Executive will of course be in a completely untenable position, where the political processes and the political balance will not exist in terms of the institutions. That will have the inevitable consequence of making the institutions which we are debating here tonight inoperable. One thing is certain: it cannot be dragged out to the next election, or even to a time when this Bill may be a matter of law, because things will come to a head before that, and certainly by the end of the year.

I want to come on to another general point about the Bill and the context in which we find ourselves. The Government have said that they are legislating here for those parts that cannot be legislated for in the Northern Ireland Assembly. These are matters that are excepted, but the Government must be consistent in their approach, and it appears to many people in Northern Ireland that there has not been a consistent approach in terms of when and in what circumstances government here legislates in the devolved space. We see it in terms of the cultural package, for instance, where there is no agreement on the timing of its introduction for the reasons that I have mentioned—the protocol and so on—and yet the Government are proceeding without that cross-community agreement in an area which is exclusively devolved.

[Lord Dodds of Duncairn]

I gently ask the Minister to address the point about the inconsistency of the Government's à la carte attitude to legislating in the devolved area, where there does not appear to be a lot of logic and where talk about ensuring the stability of institutions can be at variance with some of the actions that are being taken in that regard.

Coming on to some aspects of the clauses in the Bill, the Minister has outlined the provisions in Clauses 1, 2 and 3, in relation to the appointment of Ministers in circumstances where Ministers can remain in post after an election and so on. In the other place, there was a lengthy discussion about the powers and competences of temporary Ministers who would be in place after an election or if the Executive had collapsed. I would be grateful if the Minister could outline in more detail how we will ensure that Ministers do not overstep the mark or that we do not end up in a situation where civil servants are effectively running the show again. It is a tricky balance—it is a difficult balance—but Northern Ireland went through a very difficult period over three years when the institutions were collapsed as a result of the resignation of Sinn Féin from the Executive, and we do not want to see a similar situation.

The Minister recalled the provisions where the Secretary of State can call an election after the first six-week period to give effect to the purpose of paragraph 3.15 of Annexe C of NDNA, as mentioned in the Explanatory Notes. Can he expand further on the precise circumstances in which that power would be used? The Secretary of State can call an election if two-thirds of the Assembly vote for one, or if the time limits have run out to form a Government. However, there is also this power, which is where they think that paragraph 3.15 of Annexe C of NDNA justifies it. I would be grateful for more explanation of that point.

The Ministerial Code had widespread agreement among the parties in Northern Ireland, but I would be grateful if the Minister could outline how it compares to the situation here in London in terms of the provisions and where it differs from the provisions governing Ministers' activities and behaviours here in Whitehall and the statutory basis that exists here for any enforcement or measures taken against a Minister for breach of the Ministerial Code.

On the petition of concern, again there was protracted debate among the parties about this. Of course, there has already been a change to the operation of the petition of concern because, when the numbers in the Assembly reduced from 108 to 90, the threshold for activating the petition of concern remained at 30, so that change has already made it more difficult to have a petition of concern by default. In recent years, people have ramped up the attacks on the petition of concern—notably, those parties who agreed, in the Belfast agreement and the original 1998 Act, to this whole structure of the petition of concern—and criticised its use, although it has been used by all parties, particularly in the welfare reform debate, where the SDLP and Sinn Féin used it quite a bit. Interestingly, this has only become a major theme as a result of the unionists in the Assembly having lost the majority due to the reduction in the number of seats per constituency. It is important that there are those safeguards.

The Minister referred to the original purposes of the petition of concern, but can he—or, indeed, other Members who will speak in this debate—point to a specific reference in the Good Friday agreement or the Northern Ireland Act to the actual purpose of the petition of concern? There is none. This is continually stated as a matter of fact, but there is no reference in the Good Friday agreement or the Northern Ireland Act to the specific purposes that have sometimes been ascribed to it by people who speak about the subject.

The reason why the petition of concern was brought in is because it was genuinely felt, on both sides of the community and among the political representatives at the time, that there should be some safeguard mechanism. Actually, when you think about it, when the withdrawal agreement and the agreement on the protocol were made, the first thing the Government did was strip away that safeguard. Instead, the vote on whether the protocol should continue to be implemented became a straight-majority vote in case it might have been defeated. The single vote of any real significance—possibly the only vote—that can happen in the Northern Ireland Assembly by a majority vote is one on the Northern Ireland protocol. Everything else is a cross-community vote or susceptible to being turned into one. That is not lost on the unionist community, I tell you, with them having been told for decades that majoritarianism and majority rule were unacceptable. So when we come to the petition of concern, we recognise that there is room for improvement, but there have been reforms and we need to bear in mind its original purpose.

This Bill is not all that controversial in itself and will, no doubt, be subject to changes, criticism and debate in Committee. However, it comes at a time when there are massive stresses and strains on the institutions in Northern Ireland as a result of the protocol; as I said earlier, they will have to be resolved before we go much further. No amount of legislation, whether it is this Bill or any other, will piece together things if they unravel. As the noble Baroness, Lady Smith of Basildon, rightly said, things are much harder to put together again after they unravel than they are to keep together as we try to work our way through all these problems. Time is short, and I hope that the Government will soon be able to bring forward proposals to deal with the issues with the protocol that underlie all our problems at the moment.

8.07 pm

Lord Godson (Con): My Lords, I wish to share in the pleasure in the appointment of my noble friend Lord Caine, whom I have known for many years. It is a welcome tribute to the continuing importance of genuine expertise and institutional memory that he should be standing here tonight introducing this Bill. I pay tribute to him for that and share in the pleasure of noble Lords and the noble Baroness.

On a sadder note, I think of someone known to many noble Lords here tonight: Sir John Chilcot, who died last month. He was, of course, one of the longest-serving Permanent Secretaries in the Northern Ireland Office, with service in relation to Northern Ireland from the earliest days of the Troubles when he was in

the Home Office. I mention him specifically because he once said something to me—and to many other noble Lords, no doubt. In the run-up to the Belfast agreement, as the peace progress was gaining momentum, he said, "We had a choice between good governance and peace—and we chose peace." After that gap of time, tonight's legislation constitutes something of an attempt to tidy this up and ensure that there is good governance. That is why I stand in support of this Second Reading along with other noble Lords.

One of the great might-have-beens of recent history in Northern Ireland is that, had this legislation been in place at the time of the collapse of the institutions back in early 2017, there would still have been a First Minister and Deputy First Minister in place later that year for the debates on the introduction of the Northern Ireland protocol. I think it is fair to say that the results might have been very different, had those institutions been working on a cross-community basis, because we would not have had a situation on the island of Ireland where only one entity there—the Government of the Irish Republic—had a say throughout the process and was able successfully to weaponise the protocol in that period against the UK Government. The Irish Government certainly were able to do that when they were able successfully to trash the UK Government's position paper in August 2017.

There would also have been a contesting voice from the unionist community the following month, when the EU stated its position on the UK Government's paper and on the provisions of the Belfast agreement. It was notable that this imbalance and asymmetry would not have taken place had the institutions been up and running and this legislation been in place at the time. That would have been a welcome development and we would have had greater balance in all that. In concluding, I note the words of the noble Lord, Lord Murphy of Torfaen, who spotted this at the time of the withdrawal agreement of 2018. He said

"had the Assembly been up and running and had the Executive been working, the nationalists and unionists would have had to come together to resolve the issues that currently"—[*Official Report*, 6/12/18; col. 1122.]

bedevil them. There is no better statement than that. It would also have been the case that the principle of equal citizenship across these islands would have had a greater level of surety had the legislation proposed tonight been in place then.

8.10 pm

Baroness Ritchie of Downpatrick (Lab): My Lords, it is a pleasure to follow the noble Lord, Lord Godson, and welcome the noble Lord, Lord Caine, to the Front Bench on Northern Ireland affairs. I have worked with the noble Lord, Lord Caine, on many occasions going back many years. Probably the first time that we worked together was on the visit of Sir Patrick Mayhew, then the Secretary of State for Northern Ireland, on 19 June 1994 to Loughinisland. He came to meet my predecessor MP, Eddie McGrady, and all the various families who had lost loved ones in a very untimely, brutal and callous way. That was a visit that they, and we, deeply appreciated. I wish the noble Lord well in his new position. I also welcome my noble friend Lady Smith of Basildon, who served as a Minister in the direct rule Administration, and my noble friend Lord Coaker, who was shadow Secretary of State, when they were in the other place.

The most important thing for me, as a democratic Irish nationalist, in coming to this debate is that we are particularly zealous about wanting to build that shared future, respect for political difference and parity of esteem. For me, that was encapsulated in the three sets of relationships embodied by my late friend and former leader John Hume, and became that noble agreement, the Good Friday agreement, on 8 April 1998. I never forget the sense of hope, expectancy and excitement on that day in Castle Buildings. That agreement was between the British and Irish Governments, as co-guarantors, along with my party, the Ulster Unionists and other parties. I know that some parties were not there because they had absented themselves, but the basic tenet and central to the core of the agreement was that infrastructure and architecture that provided the framework for people to work together with respect, mutual understanding, trust and confidence in each other.

We are in no doubt—I talk on behalf of my colleagues here on the Labour Front Bench and in the SDLP—that we want to see the fulfilment of that expectancy and to use the architecture of the Good Friday agreement to work together in partnership, reconciliation, parity of esteem and respect for difference. Those are the kernels we urgently need to build the political stability and resilience of government.

I welcome the legislation, but there are certain areas for improvement, and I have already spoken to the Minister about them. I agree with the noble Baroness, Lady Smith of Basildon, and others that the commencement date needs to be foreshortened and that the sense of urgency needs to be fed into this legislation to ensure that it is on the statute book fairly quickly—because in Northern Ireland we need that political stability.

Parties such as Sinn Féin and the DUP have talked about taking nuclear action to provide political stability. We had examples of that back in June, with Sinn Féin declaring that it might not nominate a deputy if it did not agree with the DUP's nominee first. We then had the DUP threatening—shall we say—institutions over the protocol. But, by trying to create political stability, they are in fact creating political instability. So I tell them: in the good interests of all the people of Northern Ireland, that is not the way forward.

The noble Lord, Lord Dodds, referred to the protocol. I support the protocol, but there is a need for mitigations—I am in no doubt about that—and the European Union has provided them in its papers to the UK Government. There is also a need to promote the benefits of the protocol: for example, in the survey that the Northern Ireland Chamber of Commerce and Industry carried out some days ago and that was published at the end of last week, 70% supported that. Queen's University Belfast takes this view in its recent poll, as does the Institute of Irish Studies at the University of Liverpool. That is part of the political context, so could the Minister provide us with an update on those negotiations between the UK and the EU? He—in his former state—and the noble Lords,

[Baroness Ritchie of Downpatrick]
Lord Empey, Lord Dodds and Lord Hain, were all members of the protocol sub-committee, and we agreed our first report and achieved consensus. But the important thing is that we arrive at a position that provides the very best for the people of Northern Ireland in trade, jobs and opportunity.

Other issues provide that political context. All the parties in Northern Ireland fundamentally disagree on the Government's proposals on legacy issues because we all believe that they need to be victim centred. Will the Government respect the wishes of the parties and remove the amnesty proposal? The Minister may disagree with the use of the word "amnesty", but, to us, that is the way it can be best characterised.

Other areas from *NDNA* are outstanding, and the Minister will be aware of them: the whole area of rights, language and identity proposals. I thought that, whenever the Northern Ireland Assembly and the Executive had not brought forward those proposals, the UK Government were to do so by October, but we still have not had any legislation in relation to that issue. There is information about the progress on the civic advisory panel and, of course, the Bill of Rights, which we have been talking about. On Friday, I met Amnesty International in Downpatrick, and it is active in this respect but anxious that there has not been a Bill of Rights. In Northern Ireland, all that we can do on many issues is talk about them—we are not good on the doing—so, if the Minister could pursue the Northern Ireland Executive in relation to those outstanding issues, that would be useful.

Generally, I support the Bill, but I felt that several areas could be built on. There is now an opportunity to move forward on the following areas and return to that vision in 1998 that created the infrastructure and architecture to manage differences and be able to realise a better shared future, based on partnership in Northern Ireland.

I go back to the position in 1998 about the appointment of Ministers and the purpose and intention of the GFA on the equalisation of titles: the joint election of First Ministers. I believe that there is some divergence from the concepts of the Good Friday agreement, on restoring the joint nature of the First Minister's office, which was changed by St Andrews and was a centrepiece of strand one. That is what parallel consent was about. I understand why things did not happen at St Andrews, such as the Assembly collectively nominating the First Ministers who would then be accountable to it. There is a three-Minister provision that is causing a logjam in the Executive office and prevents Ministers bringing forward productive and progressive legislation because it is thwarted by one of the bigger parties. That issue needs to be addressed as well.

The Good Friday agreement and the 1998 Act were destined to build reconciliation, partnership, equality and parity of esteem, but that was thwarted at the next stage at St Andrews. I feel that we need to revert to the original principles and purpose, and I hope, with colleagues, to bring forward amendments in Committee about the equalisation of titles and the joint election of the First Minister.

Political, economic and social stability and sustainability will ultimately not come from rules and procedures. Yes, they are required but, finally, they will come from people in Northern Ireland believing, understanding, having confidence in and accepting that sharing power with their neighbours is the right thing to do and does not negate or diminish their identity. We knew that as far back as 1973, with the first power-sharing Executive arrangement. I was 15 years of age at that stage, and I remember feeling a sense of excitement and hope. Sadly, that did not last all that long. I hope that the matters related to the protocol can be resolved and, while I accept the main provisions in the Bill, I would like to think that the Minister can look at the outstanding areas and work with the Northern Ireland Executive to bring about a resolution.

I return to what a political commentator said—this is my final comment—on journal.ie in February 2020. He said that *NDNA* was not short on political ambition. Many of us thought it was a document of aspiration, but then it comes back to the willingness of parties to implement it and to underpin the power-sharing parity of esteem to fulfil the needs of a modern, progressive society that has been hit by the outworkings of a hard Brexit and Covid. The people of Northern Ireland have been hit by Brexit, long waiting lists, Covid and the need to recover from the pandemic. When you meet people and talk to them, they want access to a hospital bed, surgery and investigations that lead to diagnosis. Those are the issues that matter to them most, but they want respect for political differences. I accept the provisions in the Bill. I believe that they can be built on by going back to the 1998 agreement to look at the principles of duality of collective responsibility in the election of joint Ministers.

8.24 pm

Lord Browne of Belmont (DUP): My Lords, first, I take this opportunity to welcome the Minister to his position. Having served for more than 30 years in the Northern Ireland Office, he is eminently qualified on these matters and has considerable understanding of the issues that the people of Northern Ireland face.

The Bill, though far from perfect, has my party's support, as it goes some way towards delivering on items agreed in the *New Decade, New Approach* agreement. Due to the nature of institutions at Stormont, decision-making can be a slow process; a conversation about reform will perhaps be a debate for another time. Any coalition Government made up of parties with diametrically opposed political ideologies will always be challenging. Ultimately, it is about people's willingness to get together to try to find a solution that works. In Northern Ireland agreements to date, consensus decision-making has been built in and seen as the priority over a simple majority system. In negotiations and in the daily operations of the Stormont institutions, consensus is essential in achieving successful outcomes.

On petitions of concern specifically, in the past there have been incidents where the mechanism has been misused. On other occasions, the tool has been used in a way that reflects the reality that on some key issues there is no consensus. In some instances where a petition of concern has been used, this is a clear

indication that an issue has been pushed forward without any real agreement. For this reason, I support the provisions proposed in the Bill—namely, the idea of a 14-day cooling-off period for petitions of concern. Stability is required, and the 14-day period in this Bill is welcome, as it would allow a period for people to find agreement and a way forward.

The main objective of devolution was to give the people of Northern Ireland a say on legislation that affects their lives; it allows them directly to elect their decision-makers and hold them accountable. When dealing with issues related to Northern Ireland, we must be mindful of this. If significant amendments or changes to agreements are planned, or new legislation is introduced, the people of Northern Ireland and their elected representatives must have a say. In our deliberations, we must seek to respect the devolution principle and the principle of consent which underpins it, rather than attempting to breach it.

We cannot discuss the real-time realities of Northern Ireland at this time without acknowledging the threats presented economically and constitutionally by the Northern Ireland protocol. Northern Ireland's representatives and the rights of the people they represent are being undermined by the protocol and the imposition of its Irish Sea border. With the latest comments from the CEO of Marks & Spencer, and previous comments from other leading supermarkets regarding trade in Northern Ireland, the negative effect on the import of goods from mainland Britain to Northern Ireland is there for all to see. Regrettably, policymakers in Brussels and elsewhere are either blind to or ignorant of this.

I hope for practical solutions, which would see the removal of the Irish Sea border and the integrity of the UK's internal market fully restored. However, inaction cannot be allowed to cripple businesses in Northern Ireland. Many small and medium-sized businesses rely on the supply chain from Great Britain to Northern Ireland, and the present uncertainty is destroying livelihoods in many instances. Those who support the protocol are not only calling for the long-term integrity of the UK internal market to be put into serious question but prioritising the 23% of Northern Ireland's trade that is with the EU over the 77% of the trade that is with the rest of the United Kingdom and elsewhere. The volume of domestic trade between all parts of the UK highlights the importance of finding a workable, long-term solution that protects everyone. What we have at present is unsustainable. The uncertainty caused by the protocol breeds instability, which in turn can unfortunately lead to hostility. The people of Northern Ireland have suffered enough.

When we discuss the institutions of government, we look at the agreements on which they are built. The most fundamental pillar of the Belfast agreement and subsequent peace agreements is the principle of consent; Northern Ireland's devolved settlement is based on that. However, the protocol has set that principle aside and undermined the very institutions that we are seeking to improve.

Many people in Northern Ireland feel that these regulations, which have been imposed upon them, run contrary to everything that they understand about democracy and the democratic principles that underpin Northern Ireland's society. The people of Northern Ireland did not consent to spending more for goods, waiting longer for medicines or becoming second-class citizens within this United Kingdom.

It is regrettable that after so much progress in our society, in our politics and in Northern Ireland's economic attractiveness on the global stage, this protocol risks taking us backwards. Does the Minister agree that we need to see a workable solution to this issue soon, and can he confirm whether it is the Government's intention to set a deadline for the end of these negotiations with the EU?

It is quite clear that invoking Article 16 is rapidly becoming a necessary response. I support the Bill and I trust that it will go some way towards achieving stability in Northern Ireland.

8.31 pm

Baroness Bennett of Manor Castle (GP): My Lords, I join others in welcoming the noble Lord, Lord Caine, to his new role.

When it comes to day-to-day politics, Northern Ireland, for all its particular issues, encounters many of the same problems as your Lordships' House and the other place. Last week the Green Member of the Legislative Assembly, Clare Bailey, joined many others in speaking out against the accelerated progress of a finance Bill without adequate scrutiny. Last week independent research discredited Edwin Poots's exaggerated figures about the costs of a cross-party net-zero climate change Bill, led by Clare Bailey, which rather reminded me of your Lordships' House hearing some exaggerated figures on sewage costs.

Our other Green Member of the Legislative Assembly, Rachel Woods, was meeting with the Northern Ireland Youth Forum, noting that far more needs to be done to ensure that the voices of young people are heard. Among the things that the youth forum has called for is votes at 16, something that young people in Scotland and Wales of course enjoy—a call that has been backed by the Northern Ireland Commissioner for Children and Young People.

So there are similarities, yet we also have some real contrasts here that I think are interesting and possibly have some broader lessons for us. The legislation before us is based on *New Decade, New Approach*, an attempt to address the issues of the functioning of the Northern Ireland Executive exposed by experience. This is looking at a constitution, seeing a crisis and producing a planned and thought-through response. What a contrast to Westminster. It should not need a crisis for us to look regularly at a constitution and consider ways in which it might be updated; the constitution here in Westminster has not been updated significantly since women got the vote. So that is a different way of approaching a constitution—or at least part of a way. If we look across the border at the Republic of Ireland, there we can see how citizens' assemblies and people's constitutional conventions showed a way in which participatory democracy can effectively deal with and settle difficult political issues, as it did on both abortion and equal marriage.

The noble Lord, Lord Browne, talked about the people being better consulted. The Library briefing on the Bill notes that the *New Decade, New Approach* deal

[Baroness Bennett of Manor Castle]
was agreed by the five main Northern Ireland political parties. It does not talk about consultation with the people. None the less, as the noble Baroness, Lady Smith of Basildon, said, we seem to have some progress here—not sufficient issues are being dealt with, but at least some are.

However, there are many things that the Bill cannot deal with. The Minister talked in his introduction about the need for the economy to meet the needs of society. The noble Baroness, Lady Ritchie of Downpatrick, talked about the hit from Brexit, as many other noble Lords have, along with NHS waiting lists and the level of NHS services.

I want to add to that a report out today: a truly, deeply, shocking report from Action for Children, which found that more than a quarter of working parents in Northern Ireland expect to take on extra work or forgo time off to pay for Christmas, and that most of them will miss at least one key family event in that process. This comes after last year's Christmas was cancelled by Covid.

Another report a week or so back showed that among the families hit by the £20 cut to universal credit in October, two-fifths are likely to cut back on heating and one-third are likely to skip meals, while 20% said that they expected to go to a food bank. I note that eight out of 18 parliamentary constituencies in Northern Ireland rank in the bottom third of the UK for children living in low-income households, and that the two-child limit for universal credit is felt particularly acutely in Northern Ireland.

We are tackling some constitutional issues here. But, as the Minister himself acknowledged, there are many other ways in which Westminster needs to provide more support to Northern Ireland to tackle the issues it faces, including constitutional ones.

8.36 pm

Lord Hain (Lab): My Lords, before I congratulate the noble Lord, Lord Caine, on his promotion as Minister, with his long service in Northern Ireland I hope he will be able to bring much greater understanding to the Northern Ireland Office, which I once had the privilege to lead with some of the finest-ever civil servants and advisers. As things stand under the stewardship of the present Secretary of State, I am sorry to say that it will certainly need that.

As a former Secretary of State I, along with other noble Lords across this House who worked for many years to establish stable political structures in Northern Ireland, will support efforts in this Bill to safeguard power sharing and improve the sustainability of the Executive and the Assembly. There were hard lessons to be learned following the collapse of the Executive in 2017, and during the three long years until their restoration with the *New Decade, New Approach* agreement at the beginning of 2020. In so far as the Bill represents a sensible evolution of the arrangements for the appointment of Ministers following an Assembly election, or in the event of the resignation of the First or Deputy First Minister and restores the original purpose of the petition of concern mechanism, it should command the support of the House.

My serious concern, however, is that the legislation which the Government agreed to implement nearly two years ago will come too late to deal with the political crisis that will inevitably ensue if the current leader of the DUP carries out his threat to bring down the Executive and Assembly over the entirely predictable outcome of the Brexit deal negotiated and agreed by this Government—namely, the Northern Ireland protocol to the withdrawal agreement. There is no shortage of ironies in this potentially disastrous scenario. The DUP would bring down the painfully hard-won Northern Ireland Executive and Assembly over Brexit, which is way beyond its competence to deal with, and the political representatives of the people most adversely impacted will be kept out of the room while the negotiator-in-chief who got them into this shambles in the first place has another go. This is not an oven-ready Brexit; it is an Eton mess.

There are other aspects of the *New Decade, New Approach* agreement, which the noble Lord, Lord Caine, helped to negotiate, that are yet to be implemented—one of which, we are told, will imminently be legislated for—which cause me great concern. The NDNA agreement promised that within 100 days from 9 January 2020 the Stormont House agreement of December 2014, which set out the structures to deal with the legacy of Northern Ireland's violent past, would be implemented.

Although noble Lords will have their views on the efficacy of the Stormont House agreement, it is an agreement not least between the UK and Irish Governments. On 18 March 2020, the Secretary of State for Northern Ireland announced in a two-page Written Ministerial Statement that the Government were unilaterally repudiating the agreement. There was no consultation with the victims and survivors sector in Northern Ireland, who are most directly affected, no consultation with the political parties in Northern Ireland, and no consultation with the Irish Government.

Fast-forward to July of this year, and the Government produced a Command Paper which in so many ways is the most shocking document I have come across in my 50 years in politics and in government. It proposes what is, in effect, a blanket amnesty which would include those who carried out some of the most unspeakable atrocities imaginable during what is still euphemistically called the Troubles. It would halt all court proceedings on crimes related to the Troubles, both criminal and civil. It would halt all inquests, even those currently listed for hearing. It would say to traumatised and still-grieving victims that what happened to their loved ones is no longer of any interest to the state, and it says to the perpetrators that what they did to those victims is no longer of any interest to the state—and this from a Government who purport to respect and uphold the rule of law. These proposals are legally dubious, constitutionally dangerous and morally corrupt, in my view. I am raising it here in an effort to get the Government to think again before the Bill is brought to Parliament.

On 24 October 1990, Patsy Gillespie, who worked as a civilian cook in an army base, was chained to the steering column of his van, which had a 1,200 lb bomb

placed in it. While his wife and young family were held at gunpoint, he was made to drive the van to an army post. He shouted a warning but, while he was still in the driver's seat, the bomb was detonated, killing Patsy and five soldiers. No one has been made accountable for this horrendous crime and, if the Government have their way, no one ever will be. The police in Northern Ireland are convinced that one of those responsible is today part of an active dissident republican group in Derry/Londonderry. If the legislation as currently proposed is enacted, who do you think will sleep easier in their beds: Patsy's wife, Kathleen, or the people who turned her husband into a human bomb? Could any of us look Kathleen in the eye and say: "I voted for a law that will offer succour and protection to the men who robbed you and your children of the love of your life"? I could not, and I urge the Government to think again before their Bill is presented to Parliament.

In our joint letter in September 2018, a cross-party group of Peers, each with direct ministerial or parliamentary experience in Northern Ireland, suggested another way forward. So does Operation Kenova, so ably headed by former Chief Constable Jon Boutcher; having observed how Kenova is working, my thinking on dealing with legacy issues has evolved. In essence, Kenova prioritises an information-recovery process rather than a prosecutorial process, but—and this is crucial—it leaves open prosecutions if the evidence uncovered sustains those.

Victims and survivors will be properly served only through a criminal justice process that is compliant with Article 2 of the European Convention on Human Rights. I urge the Secretary of State, through the Minister, to change his proposals and follow a Kenova-type model, or I predict his amnesty for some of the most terrible crimes will face certain defeat in your Lordships' House.

8.43 pm

Lord Empey (UUP): My Lords, like others, I am pleased to see my noble friend Lord Caine on the Front Bench. He has laboured long in the vineyard and it is long past time that recognition for that effort was given—I think we are all of one mind on that in this place. We are also delighted to see the noble Baroness, Lady Smith of Basildon, and the noble Lord, Lord Coaker, on the Labour Front Bench. The noble Baroness was an excellent Minister during her time there and, while the noble Lord did not manage to exercise power in Northern Ireland because he was appointed Admiral of the Fleet before he got that opportunity, we have nevertheless got a pretty good team, with plenty of experience.

This Bill, to be honest, is a bit of sticking plaster, along with many other pieces of legislation that come along. What we are actually doing is trying to fix holes in the bucket that have been created by people who just do not behave properly. We will go into a lot more detail in Committee, of course, but I want to make a couple of points.

The noble Baroness, Lady Smith, made the telling comment that commitments are made and then not delivered. That, unfortunately, is a feature and has been for some time, so it is important to know who makes these commitments. The noble Baroness, Lady Bennett of Manor Castle, pointed to the Library note, while page 2, paragraph 1 of the Explanatory Note says:

> "This Bill will deliver aspects of the New Decade, New Approach deal which was agreed by the five main Northern Ireland political parties".

That is not true. Paragraph 6 says that the five main parties, which it names, entered into a power-sharing Government

> "following their agreement to the New Decade, New Approach deal."

Again, that is not true. My party has never agreed to *New Decade, New Approach*.

In fact, on 16 January 2020, when my noble friend's predecessor, the noble Lord, Lord Duncan, was in post, I made that point to him. When he referred to it

> "as a basis to re-enter devolved government",—[*Official Report*, 16/1/20; col. 841.]

I said in response:

> "That is not true. This is not an agreement. It is a government Statement and a Statement of the British and Irish Governments collectively. It was shoved into our hands at 8.30 pm last Thursday."—[*Official Report*, 16/1/20; col. 850.]

That was 36 hours before the Executive was reformed. We took our positions in that Executive based on our rights under the Northern Ireland Act 1998, not under the *New Decade, New Approach* agreement. It is necessary to correct that because, with some of the commitments in *New Decade, New Approach*—for example, on cultural and language issues—the structures envisaged are basically grievance factories in the making.

The noble Lord, Lord Hain, referred to the legacy issues. We have never supported those; we never supported the Stormont House agreement either. It is important that we get our facts straight. We will obviously have an opportunity to tease out some of these issues in greater detail in Committee, but I thought it was important to say that.

The issues about petitions of concern and so on, as well as the commitment to keeping the institutions going, are driven by the fact that people just have not used common sense. Take the Assembly from 2011 to 2016: there were 115 exercises of the petition of concern; 86 of them were initiated by the DUP, 29 by the SDLP and Sinn Féin, and two by my party. That pattern extended to shielding Ministers from sanction even by departmental committees—come on, that is just out of control.

The Bill tries to patch up and fix abuses of the system. One can see why. If people walk out through the front door for political purposes and bring the institutions down, I can understand why it is necessary to try to build in some safeguards. But equally, if we say that somebody can be in office for 48 weeks—effectively a year—without clarity on what they can or cannot do, and indeed against any democratic principle, is it fair or reasonable to expect them to hold office under those circumstances? Can you imagine the situation here if we had that? I do not think it would go down terribly well. I understand that they are trying to keep things held together, but that is because they loosened the glue that held the agreement together in the first place—that is why we have the problems that we have.

[LORD EMPEY]

We will come to a lot of that detail again when we come to Committee, but it is important to recognise that any institution built on a diplomatic agreement and a diplomatic document will always be under stress. The point has been made about a coalition of five parties. It is not easy; those of us who have been in them for a number of years will know. We can imagine what it would be like if we put Bill Cash and the noble Lord, Lord Adonis, together in the one Government; multiply that by what we have to deal with and you get some sense of how difficult it is.

One has to have a different approach than simply implementing things à la Westminster. That is undoubtedly the case. As the noble Baroness, Lady Ritchie, rightly pointed out, you have to understand where we were coming from in the late 1990s and what had happened. The noble Lord, Lord Hain, gave us a very vivid example of the backdrop to how the agreement was finally put together. To those who have been saying that Brexit had to be implemented on the basis of a 52% to 48% vote, I remind people that 71.2% of the people supported the agreement. That is a big majority.

That leads neatly on to the comments made by a number of noble Lords about the protocol. People have exceptionally short memories. The protocol is the embodiment of the border in the Irish Sea. It is the legal framework to give effect to the border in the Irish Sea between Great Britain and Northern Ireland. We have to remember where that came from. That border in the Irish Sea was proposed by the Prime Minister on 2 October 2019 in his document. He proposed border inspection posts and that all goods coming into Northern Ireland from Great Britain would be subject to inspection and to EU rules. If that does not bring in the European court, I do not know what does. This is an entirely self-inflicted mess within our own United Kingdom. Sadly, the Prime Minister was not without endorsement for the proposal at the time. The fact is that that is the genesis of it. You cannot expect to fix it without going back to the fundamental points as to where it came from.

The noble Lord, Lord Browne, and others mentioned this legendary Article 16. Article 16 of the protocol, which is part of the withdrawal agreement, is a safeguarding mechanism for the protocol. It is a safety valve so that, where issues arise, renegotiation takes place on a very limited number of articles, Articles 5 to 10. The people who negotiated those are the same people sitting at the table today. I was given a Parliamentary Answer last week by the noble Lord, Lord Frost. It was only a one-liner, but it spelled it all out. He made it very clear that, even if Article 16 is triggered, the remainder of the protocol is unaffected.

Some unionists have latched on to Article 16 as some kind of a way out. Friends, it is not; it is a way to protect the protocol. The only way out is to have an amended treaty. We have to have a treaty because we have a trade treaty with the European Union, and the only way we can effectively deal with that problem is with a new or an amended treaty. Article 16 merely deals with mitigations, welcome though some of them may very well be.

That is a bit of background to the circumstances in which we find ourselves back in Northern Ireland right now. I hope we can make improvements to this legislation. A question for my noble friend is: when will the other piece of legislation we are anticipating come forward? I have no doubt at all that he will give us a chapter and verse on that when he comes to reply.

A number of people have said there are things they would like to see changed, and so on. Even though we may not be particularly agreeable to some of the proposals that are coming forward, we are duty bound to listen to what people are saying. If something is concerning them, we have to listen to what they are saying. If we are not prepared to do that, there is no point criticising everybody else, or criticising the Government for ignoring people or for shoving a piece of paper into your hand 36 hours before you are asked to put your hand up for it. That sort of negotiation does not work. We have to listen to people and to be prepared to negotiate in good faith—it does not mean you agree but at least people would get their opportunity to put their case and have it respected.

8.55 pm

Lord Hay of Ballyore (DUP): My Lords, I join other noble Lords in welcoming the Minister to the Dispatch Box. I have no doubt his experience working in the Northern Ireland Office will have prepared him well for his brief here. I wish him well in his new role.

I broadly support the Bill before us. It reflects what was agreed in *New Decade, New Approach*, where there was agreement on a wide range of issues. While there may be disagreement regarding some aspects of that agreement, the Bill presents an opportunity for us to strengthen the legislative framework—to make the institutions in Northern Ireland more workable and more stable. Equally, it is the case that the Northern Ireland Assembly is the place for discussion and debate of issues that relate directly to the daily lives of people in Northern Ireland.

If we are to continue to move forward in Northern Ireland, we must continue to try to do so with some form of consensus. We must not repeat some of the mistakes of the past, where decisions were rushed through without much local scrutiny. We must not adopt a half-in, half-out version of the devolved settlement, whereby this Parliament is seen to be changing agreements, passing new legislation or bypassing the sitting Northern Ireland Assembly altogether. Such an approach would lead only to mistrust, discontent and disillusionment and, in the longer term, would only undermine devolution in Northern Ireland.

The noble Lord, Lord Dodds, spoke about the petition of concern in Northern Ireland. As a former Speaker of the Northern Ireland Assembly, I can tell your Lordships that I saw that petition used by all the political parties in Northern Ireland. You would think from some party leaders now in Northern Ireland that they never used the petition of concern; it was only one or two parties. That certainly was not the case while I was Speaker of the Northern Ireland Assembly. It is true that in some instances this mechanism was not used properly, nor as it was originally intended,

but it would also be true to say that in many instances it was used purely because on some key issues cross-party consensus could not be found.

The Northern Ireland Assembly and the institutions of government, certainly since St Andrews, were built on the idea of consensus. It would also be true to say that there is certainly room for improvement in respect of this. As the noble Lord, Lord Browne, said, we must remember that the parties of government in Northern Ireland are different not just constitutionally speaking but in that they come from across the political spectrum, from left and right. Any manner of coalition government with parties so different will always be very challenging.

The only way of moving forward and progressing is by getting round the table and finding consensus. The answer is not found by legislating for one party's wish list, nor by bypassing the Northern Ireland Assembly altogether. The issue we have in Northern Ireland is that we have a party that does not believe in consensus but also believes that if it comes here, it will get what it wants anyway. That is the problem when we try to get consensus in Northern Ireland: we have a party that does not need to reach consensus because it gets what it wants here anyway.

I assure noble Lords that, where an opportunity presents itself to improve the scheme in a fair, balanced and appropriate way, we should take it. Where an opportunity presents itself to improve the quality of debate and discussion in a devolved setting, we should seek to take it. We want a devolved institution that works for all the people of Northern Ireland. We want a Stormont that offers good government to all the people of Northern Ireland.

The current situation, brought about by the Northern Ireland protocol arrangements, is, as ever, deeply regrettable. The protocol continues to damage Northern Ireland economically and constitutionally; I stress "constitutionally" although it has had a serious effect economically as well. The barrier to trade between parts of our United Kingdom damages internal business, lacks cross-community support and fundamentally undermines the core principles that underpin the democratic structures in Northern Ireland. We hold our discussions about changes to our institutions at a time when the future of those same institutions has been threatened by the ramifications of this flawed arrangement.

Only by fully restoring the integrity of the United Kingdom internal market will the political, economic and social stability of Northern Ireland be safeguarded. I say this to the House: do not underestimate the strong feeling that there is in the entire unionist community on the Northern Ireland protocol. We would be fools to try to write that situation off because there is strong unionist opposition to what is going on in Northern Ireland. If the EU insists on imposing a border in the Irish Sea, the Government must fulfil their commitments to protect Northern Ireland and its people. Triggering Article 16 is only a start, and needs to remain a real option. The people of Northern Ireland rightly expect the Government to act decisively on this. Does the Minister agree that the time has now come for decisive action to end the current uncertainty around the Northern Ireland protocol?

Baroness Hoey (Non-Afl): My Lords—oh, sorry, I did not see the noble Lord there.

9.02 pm

Lord Bew (CB): My Lords, I rise to support the Bill and to welcome the noble Lord, Lord Caine, to his position. It is wonderful to have in this House somebody with so much expertise on this subject and so much genuine, heartfelt concern for the people of Northern Ireland and their future prosperous development. I am also glad to see here tonight the noble Baroness, Lady Smith, and the noble Lord, Lord Coaker, who was such a distinguished representative for his party as shadow spokesman on Northern Ireland in the other place.

First, I support the Bill's basic principle: to provide further durability and flexibility to the institutions of the Northern Ireland Assembly. I have one particular concern. It relates to new paragraph 1(1)(c), as proposed by Clause 4—titled "Ministerial Code of Conduct"—and the reference to Ministers upholding the Nolan principles. There is a pre-history here. I do not expect the noble Lord, Lord Caine, to be able to resolve it tonight because it is rather messy but the pre-history is that, in 2011, the then Government decided that it was not desirable for the Committee on Standards in Public Life have a role in the devolved regions, particularly Northern Ireland—or Northern Ireland in particular in the context of this Bill. As it happens, I became the chairman of the committee a few months later, after that decision. Nobody in Northern Ireland noticed that Northern Ireland had been removed from the sway of the Committee on Standards in Public Life. Throughout 2013-14, Members of the Assembly constantly insisted that my committee play a role with respect to this or that issue—indeed, at one point, it gave evidence to a Select Committee in the Assembly on these issues—but we had in effect been removed.

There is one thought here. The issues that brought down the Assembly were in a sense Nolan principles issues. I completely agree with the observation made by the noble Lord, Lord Godson, earlier, reflecting on the remarks in this House of the noble Lord, Lord Murphy of Torfaen, on 6 December 2018. He said that the collapse of the Assembly contributed greatly to what he saw as the deep flaws in the 2018 withdrawal agreement. The overall problem is the way in which that agreement—and you can also argue this about the 2019 agreement—is an imposition from the top down on the people of Northern Ireland. That was the point made by the noble Lord, Lord Murphy. This is a dangerous and risky thing to do, and it was made much more possible by the absence of the Assembly in the years leading up to the 2018 agreement, and indeed the 2017 joint report that set in stone so much of what subsequently followed.

I cannot honestly claim that, if the committee on standards had had a role in Northern Ireland, it would have averted the collapse of the Assembly, because there is such a thing as the selfish strategic interest of a

[Lord Bew]
number of parties that helped to bring that about. However, I can say that it is now slightly airy and weak for there to be a reference in this document to the Nolan principles as being central to the functioning of Ministers, when the Committee on Standards in Public Life, the guardian of the Nolan principles, is not actually present in Northern Ireland.

I would like the Minister to inquire within government: is there any way this question can be looked at again? We seem to have lost something. We certainly lost something by the loss of the Assembly in the lead-up to the 2018 withdrawal agreement. That was the point made so powerfully that day by the noble Lord, Lord Murphy.

Before I conclude, I will make one point about the underlying principle of the Bill, which I strongly support, and one comment. The underlying principle shows that the UK Government are determined to achieve stability in Northern Ireland. Last Thursday I was speaking in Dublin at one of the Royal Irish Academy series of discourses, which started in the late 18th century. Afterwards I talked to a number of people involved in political and economic life in Dublin. What slightly surprised me was an idea in their minds that the UK Government were not committed to stability, that the current debate going on between the noble Lord, Lord Frost, and Maroš Šefčovič is not about real issues—well, I think they thought it was about real issues; everybody knows there are real issues, including medicines for Northern Ireland and so on—and that somehow there was no point in responding to the concerns of the United Kingdom Government because fundamentally they just liked and were addicted to having rows in and around these issues.

First of all, there are real issues and I do not think the UK Government are doing anything other than the correct thing in raising them. Indeed, the very fact that the EU has made substantial moves in response to the initiatives from the noble Lord, Lord Frost—moves that would not have been made absent his efforts—shows that there are real, substantive issues here.

The point I really want to make about the Bill is simple. It is coming from a Government who are much criticised but determined to defend the institutions of the Good Friday agreement. That is exactly how the Minister opened his speech tonight. It is about stability and maintaining the institutions in and around the Good Friday agreement. It sends out a clear signal that we do not wish or need to see these endless, difficult debates and threats to the institutions continue for ever. We want to see stability.

9.09 pm

Baroness Hoey (Non-Afl): My Lords, it is a genuine pleasure to follow the noble Lord, Lord Bew. I was getting rather ahead of myself. His knowledge of Northern Ireland is probably greater than anyone else's in your Lordships' House, so I apologise to him.

I welcome the noble Lord, Lord Caine. When I first came into the Lords last year, I was so surprised that there was no Minister for Northern Ireland. I absolutely welcome him and his remark at the beginning that he is a unionist and a pro-union Minister, and therefore, if there ever is a referendum while he is a Minister—I do not think that there will be one for a very long time, if ever—on Northern Ireland's position within the union, I am sure that he will be out campaigning for the union, because nothing in the Belfast agreement stops that happening, and I was very disappointed that the shadow Secretary of State of my old party said that she would have to be neutral.

As many people have said, the proposed changes in the Bill have been made by the Government to try to improve the stability of Northern Ireland institutions and to improve transparency and accountability. It is rather ironic that we are talking about accountability when we have had discussions over the past few months on the protocol, where there has been no accountability. Along with all the unionist, pro-union parties in Northern Ireland, I am involved in the Court of Appeal action, which started again today—we had the first day. It is absolutely fascinating, and it is worth telling your Lordships what the Government have said today: they have gone back on their assertion that the Acts of Union are subject to implicit repeal, as they argued in court at the first hearing. Instead, they have suggested that Section 7A(3) merely suspends the Acts of Union for as long as the protocol exists. What an incredible suggestion. It suggests that the very legal contract that is the union—the Acts of Union—can be suspended as a requirement of the protocol. The implication is that, while the protocol remains, Northern Ireland's position in the union is suspended. That is worth bringing to your Lordships' attention tonight. I do not expect the Minister to respond on it, because he is clear that this about one area of legislation.

But it is also important that, as has been pointed out, the *New Decade, New Approach* agreement of January 2020 has, first, never actually been voted on or even debated in the Assembly. However, it is there and it is the agreement that we are working to—but this is only one aspect of it. I join with other noble Lords who have said that they want to know when the rest of it—the bits that actually make a huge difference—will be brought in. Some of the parties have been pushing particular aspects of it. It is very important that the Government do not look at one area alone but at the whole thing. The question of internal trade between Great Britain and Northern Ireland in particular is absolutely crucial. We have to get that legislation very quickly.

The noble Lord, Lord Empey, said that this was a "sticking plaster". I am afraid that, in my view, the Bill is just a further distortion of democracy in Northern Ireland. Ministers will now be able to stay in office for up to a year after the Executive collapse or are not reformed, while no new election needs to be called in that time. As he has said, not a single Lord or Member of Parliament would allow that to happen in any other part of the United Kingdom, so let us not pretend that we have a real, genuine democracy in Northern Ireland: it makes old-style direct rule look almost more democratic.

The Bill has a huge flaw because, if a particular party removes its Ministers, the Executive will then become lopsided and unsustainable as they fail to cover both communities. Remember: everything in the Belfast/Good Friday agreement was about balance.

It also reminds us of the nearly unsayable truth that the Belfast agreement's reconstruction of Stormont is all about keeping republicans with the tent. It was Sinn Féin that pulled out for three years in 2017, leaving the Secretary of State in charge. That involved a new policy of punishing the citizens of Northern Ireland by refusing to make any changes or necessary reforms, thus requiring Westminster to legislate every six months to at least ensure the money supply. Will the Government give a commitment that, if this should ever happen again and the Executive were to collapse, this would not happen again—even if it does offend the Dublin Government?

Extending the purgatory just underscores the instability of the unworkable—in my view—system in Northern Ireland. It really is time to ask why this system is lurching from one crisis to another. We all know the answer, even if we do not want to admit it. It is very simple: Sinn Féin has a vested interest in instability. Why would it not? It does not want Northern Ireland to work. It does not want Northern Ireland to be successful. So we have the folly of a system that permits a Government only if a party that does not want Northern Ireland to work is at its heart—otherwise, there can be no Government. In my view, mandatory coalition does not work, cannot work and will not work. It is a recipe for perpetual, politically inspired instability.

Turning to the petition of concern, it was a safeguard to ensure that no one community could lord it over the other. The compulsory power-sharing arrangement that we have at Stormont could not operate without it, given that the previous majoritarian system has been deemed improper and inappropriate for Northern Ireland, unless the Government decide that it is useful, which is what they did with the protocol and the consent principle. So the petition has been used by both unionist and nationalist parties in legislation on the Floor of the Northern Ireland Assembly and, of course, it effectively stymies the Executive bringing forward reforms in many areas, since there is no advance cross-community agreement.

The case in February 2016, when the Assembly voted to remove the exception in fair employment law in relation to appointing schoolteachers, is a unique exemption from anti-discrimination law, applicable nowhere else in Europe—including no longer in the Republic of Ireland. The amendment, supported by the unionist and Alliance parties, passed, but a petition of concern was immediately invoked by the SDLP and Sinn Féin, and the reform was blocked. So let us not think, again as has been said earlier, that it is only one side that does petitions of concern.

However, concerns over the use of the petition of concern mask the reality that the Assembly can never legislate for reform. As a result, that task is almost exclusively exported to this Parliament. I instance past examples: welfare reform, abortion and gay marriage—in fact, all the gay reforms since initial decriminalisation in 1982 have come from here. Irish language and legacy legislation will be with us over the next year and inevitably many more will depend on Westminster finding the time to do what Stormont cannot or will not.

No matter the changes in this Bill, the basic difficulty remains: the two communities have different interests and often different ways of looking at things. A Bill of Rights is one such issue. It is worth reminding noble Lords that the Good Friday/Belfast agreement did not promise a Bill of Rights, and certainly not an all-singing, all-dancing one, as so many nationalists still demand. The agreement's terms were met when proposals from the Northern Ireland Human Rights Commission were forwarded in 2008 to Shaun Woodward, the then Secretary of State. They suggested 80 new statutory rights; he found that they were inoperable and inappropriate and had no cross-community support. The proposal duly fell and will not be revived via the Belfast agreement, no matter how many investigations are held in the Assembly.

So it is time for clarity and honesty. Your Lordships' House is the only assembly where Northern Ireland reforms are debated and perhaps amended. The other place is where the Government bring in their ready-cooked Northern Ireland Bills to Parliament, once they have decided what needs to be made law. I will just say briefly, on the case of legacy, which we are all going to have to talk about and discuss soon, and the Northern Ireland Office's July Command Paper, with its proposed statute of limitations—which is actually an end to the whole Troubles criminal investigations—that this is the final capping of a process in train for 25 years. We have had more than a dozen partial amnesties since the 1998 Good Friday agreement, starting with the early release of prisoners, those guilty of the grossest abuses of human rights. In the terrible case of Patsy Gillespie, which the noble Lord, Lord Hain, mentioned, if the person had been got for that at the time, probably now they would be out on a royal pardon or some other way in which those guilty of the grossest abuse of human rights—murder—have been let off.

Those many parts of amnesty have been advocated, proposed and agreed by the Irish and British Governments in the past, so I find it a little surprising that the Irish Government are getting so angry about this when, in the past, they have gone along with it and asked for it. We will have to discuss this legacy Bill at some stage, but I hope that people will look at the past and the history of it before they make their decision.

Finally, I hope that nobody in your Lordships' House will believe that the central problem of what is happening in Northern Ireland legislation, Stormont and the Assembly is resolved by this legislation. This House remains the legislature for Northern Ireland; that is the reality. Maybe it is time to recognise that those of us who were integrationists all those years ago may have had a point.

9.20 pm

Lord Rogan (UUP): My Lords, I will be brief and make just some general points about the Bill this evening. I, too, warmly welcome the Minister to the Dispatch Box and congratulate him on his well-deserved appointment. We from Northern Ireland are very aware of and appreciate his commitment to Northern Ireland over some 30-odd years. He is well acquainted with the hostelries in Hillsborough. I cannot think of any previous Minister, either here in your Lordships' House or in another place, who has taken up post in the

[Lord Rogan]
Northern Ireland Office with such a deep understanding of the brief and the Province of Northern Ireland. I wish him every success in his new role.

I support the Bill before us today which is, of course, a consequence of the *New Decade, New Approach* deal. However, I find it disheartening that, more than 23 years after the Belfast agreement was signed, most of the Bill's provisions are necessary. I well remember leaving Castle Buildings on Good Friday 1998 with a real sense of hope that, at long last, normal politics would be coming to Northern Ireland. Yes, everyone, certainly at a political level, appreciated that there would be teething problems. More people tragically lost their lives at the hands of terrorists—29 people died and 220 were injured in Omagh—just over four months after the agreement. Devolution itself was also suspended on several occasions in those early years when my noble friend Lord Trimble held the position of First Minister. But it was still hoped that serious political upheaval in Northern Ireland would soon join the Troubles in being consigned to history. Instead, we saw Sinn Féin/IRA collapse the Assembly in January 2020, depriving local people of devolved government for three full calendar years. For most of 2021, we have witnessed a never-ending series of threats from the DUP to bring down the institutions as a means of distracting from the fact that the Prime Minister had betrayed them on Brexit, including by imposing a loathsome regulatory border in the Irish Sea.

The vast majority of people in Northern Ireland want good government and want the Assembly to work. They have had enough of public skirmishes between Executive Ministers and the impression that too many decisions are made for party-political reasons rather than for the public good. I share the fear expressed by some, including my own party leader, Doug Beattie, that, should the institutions be brought down again in the coming months, they will not be coming back any time soon.

With the Assembly elections a little over five months away and with uncertainty growing over what Her Majesty's Government and the European Union may or may not do in relation to the protocol, we can be sure that more choppy waters lie ahead for Northern Ireland. However, should the institutions survive these challenges, and if a new Executive and Assembly can be established next year after those elections, I hope that MLAs and Ministers will choose to concentrate their energies on working together to deliver for all communities in Northern Ireland, with no more stunts, no more walkouts and no more need for legislation such as the Bill before us tonight.

9.24 pm

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, I welcome the noble Lord, Lord Caine, to his ministerial office and wish him well. I have no doubt concerning his unionist credentials and know that he will treat everyone in this House with respect and integrity.

Having listened carefully to the debate thus far, I wish to make a short intervention. The legislation before us today is to deliver some aspects of the *New Decade, New Approach* deal, which was agreed when the Executive was formed and the Assembly returned in January 2020. The *New Decade, New Approach* deal was to be a package of measures that were to be implemented simultaneously. However, it seems that the Government wish to cherry pick parts and cast aside others at their pleasure.

Devolution in Northern Ireland has been seriously undermined in recent months. Indeed, many view the devolution settlement as thrashed by actions in this House and the other place when very sensitive matters that were clearly devolved issues were legislated for, over the heads of the elected representatives of the Northern Ireland Assembly and the people of Northern Ireland. This was done on the first occasion under the disguise and pretence that the Northern Ireland Assembly was not functioning. Indeed, legislation was hastened through Westminster because the Assembly was about to be reconvened, and it was perceived that the legislation promised to appease Sinn Féin/IRA would not get through the Assembly's democratic process.

However, this was not the only time the devolution settlement was violated. It happened at the whim of the Government, aided and abetted by the opposition parties in this House and the other Chamber, to appease the republican demands of Sinn Féin. So much so that many in Northern Ireland, including the original architects of the Belfast agreement, now believe that it has been seriously breached, most recently under the protocol deal with Europe, a protocol that grievously undermines Northern Ireland's position within the United Kingdom.

The noble Lord, Lord Trimble, said that the protocol is not consistent with the principle of consent enshrined in the Belfast agreement. Indeed, he said the Irish Sea border demolishes the key premise of the 1998 Belfast agreement and rips the heart out of it. This is in spite of the assurances from Europe, London, America and so on, and even in this House, that nothing will or can be done to undermine the Belfast agreement. What they really mean is that nothing must be done to upset Sinn Féin, as its demands are of paramount importance. They are about to add to this with a cultural deal made over the heads of the people of Northern Ireland, once again taking away from the authority of the Northern Ireland Assembly. This is in spite of the Prime Minister's promises that

"nothing will affect the position of Northern Ireland as part of the United Kingdom. We will make sure that we uphold that."—[*Official Report*, Commons, 30/6/21; cols. 263-64.]

Time is running out for the Government to reverse the mistakes of the Northern Ireland protocol. The majority community within Northern Ireland are not willing to allow their constitutional rights to be scrapped to appease republican-leaning politicians in Europe. Under the Belfast agreement, the people of Northern Ireland were promised that they alone through the ballot box would have the final say concerning the constitutional position of Northern Ireland. In recent opinion polls, it is clearly evident that the vast majority right across the community cherish Northern Ireland's position within the United Kingdom, desire to remain a full and vibrant part of the United Kingdom and reject the republican vision of a united Ireland.

Yet under the protocol, this position is fundamentally changed. It is clear that the protocol is dismantling the union and the unionist majority are not willing to sit on the sidelines and permit this to happen. No unionist worth the name supports the protocol. It is time to take a stand. This Government had better listen to the will and wish of the people of Northern Ireland and remove the protocol, for it must go.

9.29 pm

Baroness Suttie (LD): My Lords, I too congratulate the Minister on his appointment to the Northern Ireland Office. He and I first met, I believe in the Red Lion on Whitehall, when I was a young researcher for the Liberal Democrats and he was working as a special adviser to the then Secretary of State for Northern Ireland, Sir Patrick Mayhew. Our paths then crossed again in 2010 when we were two of the more mature—indeed, probably the two oldest—spads in the coalition Government. I wish him well on his appointment at what I am certain will be both a challenging and hugely important time for politics in Northern Ireland. I hope that this will turn out to be a very positive chapter in the book which we all hope he is going to write.

Last night I was re-watching the documentary about the Blair-Brown years, and I was reminded that this delicate peace process in Northern Ireland requires leadership, bravery and commitment. It needs to be nurtured and based on trust and respect among the political players. This is something I believe the Minister truly understands, with his many years of experience. He will also understand that, right now, there are very real fears that in recent months the elasticity of trust in Northern Ireland has been stretched to its absolute limit.

From these Benches, we support the Bill but regret that it has taken so long to get to this point—a point made so powerfully by the noble Lords, Lord Godson and Lord Rogan, this evening. It is now nearly two years since *New Decade, New Approach* was agreed by the majority of but—as the noble Lord, Lord Empey, pointed out—not all of the parties in Northern Ireland. I accept that we have all faced unprecedented challenges with the global Covid pandemic but, none the less, those were two wasted years when so much could have been achieved to consolidate the peace process and move on from the past—two years when so much more could have been done to improve healthcare in Northern Ireland, strengthen the economy, move forwards on integrated education and begin to deal properly with the legacy of the past.

While the Bill is welcome in so far as it deals with the governance aspects of *New Decade, New Approach*, it does not yet cover legacy issues, as other noble Lords have said. It would be good to hear from the Minister in his concluding remarks when he expects the Government to publish their legislation on legacy. However, I should add, like the noble Lord, Lord Hain, that we on these Benches could not support the proposals as they currently stand.

In terms of the Bill before us this evening, I would like to concentrate my remaining short remarks on two aspects. The first relates to the commencement of the Bill, and here I agree with the noble Baronesses, Lady Smith and Lady Ritchie. My Alliance Party colleague Stephen Farry MP tabled an amendment in the House of Commons which aimed to accelerate the enactment of the Bill. Given the current febrile political context, does the Minister agree that it would be desirable to have these new governance measures in place as soon as possible?

The second area is that of designations. It is now more than 20 years since the Good Friday/Belfast agreement was signed. Life has changed hugely since 1998. Back then, it was understandable that governance structures were based on having designations for nationalist and unionist camps. The group of people who considered themselves to be "others" or non-sectarian then was really very small. But despite the current political tensions there, a 20 year-old in Northern Ireland today will have a very different world-view from people of that age back in 1998.

If politics in Northern Ireland is to move on to the next stage of its development, it is not unreasonable to begin to ask questions about how and when progress can be made towards a normalisation of democratic politics there. This Government's approach to Northern Ireland has all too frequently been characterised by carelessness, crises and reacting too late to events. I hope the Minister, with all his experience, will help to steer a more considered path, and I look forward to debating the Bill in more detail in the weeks to come.

9.34 pm

Lord Coaker (Lab): My Lords, it is a great privilege to follow the noble Baroness, Lady Suttie. It is good to hear the words that she had to say and the way in which she said them.

I join noble Lords across the House in welcoming the noble Lord, Lord Caine, to his position. It is not only about his experience and knowledge; people think of his personal interest and desire to do something. It makes a big difference when people believe that a particular noble Lord or Minister has integrity in what they are doing, and that is something that he will bring to this role. He will know that I have said on many occasions that the people of Northern Ireland—indeed, many of their representatives here, including noble Lords—have often felt that it is a neglected part of the discussions that take place here. I think there is some truth in that, but with him as a Minister here I think people can be reassured, and that will go a long way towards helping with this situation.

I thank many noble Lords for welcoming me to this position. At the moment, I am merely off the subs bench for my noble friend Lord Murphy—but you never know where that is going to go. It is a privilege for me to wind up this debate for Her Majesty's Opposition. As noble Lords will know, and as others have mentioned, I have had the privilege of the post of shadow Secretary of State twice over the years, first when Ed Miliband was leader of the Labour Party and then under Jeremy Corbyn—which was a challenge in itself.

I visited all the parliamentary constituencies in Northern Ireland—in fact, the constituencies of former Members of Parliament here. I did so not only to show a commitment but to try to gain a better understanding of the sorts of issues that we talk about here and to meet and talk to the people of Northern Ireland.

[Lord Coaker]
I hope that, as a result of that, I better understand the challenges that there still are but also the way in which the determination and work of so many people here has led to huge amounts of progress. In rereading the history and in the visits that I made, I have always been struck by the way in which so many people, including many people here, overcame huge difficulties and challenges, things that I could not possibly comprehend in my own life.

I was thinking about when I went to Stormont and met Peter Robinson as First Minister alongside Martin McGuinness as Deputy First Minister in a functioning Northern Ireland Government. I know that a couple of years later, in 2017, the Assembly collapsed and did not function for three years, but many noble Lords and others spent those three years trying to restore the Assembly according to the principles on which it had been based. In January 2020—notwithstanding the point that the noble Lord, Lord Empey, made about the facts of it; I take that point—an agreement was reached by the majority in the *New Decade, New Approach* document. It is the implementation of that which we have been discussing today, and which indeed was discussed in the other place.

The Minister will know that the Bill has much support in this place, as we want it used as a springboard to move forward to the promise of a better future for all in Northern Ireland. Quite rightly, though, as many noble Lords have stated in this debate, there are issues of concern that will quite rightly be raised in Committee, not as a way of opposing what the Government are doing but to try to improve the legislation and take it forward.

To go back to the point about the noble Lord, Lord Caine, being the Minister here, I think people believe that he will listen to the debate and try to act on it. Whether that changes the primary legislation, who knows? But people will know that in the discussions that he has with civil servants, with people and their representatives in Northern Ireland and with noble Lords in this House, there is someone who will take account of what is being said to him and try to influence it.

Without going through every contribution, let me highlight a couple of those issues. The contributions of the noble Lord, Lord Dodds, are customarily thoughtful, whether here or in the other place; he highlighted the protocol, which I want to ask the Minister about. The noble Lords, Lord Empey, Lord Godson, Lord Hay, Lord Browne, Lord McCrea, and my noble friend Lady Ritchie, all in different ways raised the protocol. It is of fundamental importance to the context in which this debate is taking place. It is almost beyond how we have got to this point. We are here and if we want this to move forward and for the Assembly to function, unionists, nationalists and those of all strands of opinion must come together to find a solution. As my noble friend Lady Smith said, you would have thought that representatives from Northern Ireland would be involved in those discussions. I find that deeply disappointing.

The noble Lord, Lord Frost, is leading the negotiations for the Government. Can the noble Lord, Lord Caine, with his knowledge and understanding of Northern Ireland, say anything about whether his appointment will make any difference to the way in which those negotiations are taking place? He may not want to answer that or may not be able to, but people are saying that this cannot just carry on without some acknowledgement of the difficulties that it is causing and how to overcome them without upsetting nationalist opinion or part of unionist opinion.

Can the Minister undertake to speak to the noble Lord, Lord Frost, to ensure that he is aware of the discussions and the points that have been made by so many noble Lords in this debate on the seriousness of the situation? I know that he understands the seriousness, but what will he do about it in representing Her Majesty's Government in negotiations that are taking place between the UK and the EU, and the impact that those negotiations have on Northern Ireland? To be fair, I do not expect the Minister to be able to say that he will do so, but can he undertake at least to talk to the noble Lord, Lord Frost, and emphasise the importance of this? That might provide some reassurance.

The noble Lord, Lord Bew, made a really important point about new paragraph 1(1)(c) in Clause 4 and how upholding the Nolan principles relates to the Committee on Standards not applying to the devolved Administrations. I am sure that the Minister will take that forward. I thank the noble Lord, Lord Godson, for his reference to my noble friend Lord Murphy, who is not well enough to be with us in person. He is taking the necessary precautions, but the quote from him that the noble Lord used shows the importance of establishing the Assembly and having it up and running. That would show the people of Northern Ireland, or their representatives, that the voice of Northern Ireland is properly heard wherever it needs to be.

I thank my noble friend Lady Ritchie for highlighting again the principles of the Belfast/Good Friday agreement and the subsequent agreements. Whenever particular issues arise in Northern Ireland, it is always something to read those documents and look at the brilliance of how they were negotiated. People overcame difficulties that nobody expected would be overcome.

I thank my noble friend Lord Hain for his contribution. He is right to point out the issue of legacy. I am sure that the Minister will say that it is not necessarily within the scope of this Bill and will have to be dealt with in other Bills, but it is an issue that must be dealt with.

These legacy issues impact on the context within which other legislation is discussed. If the Minister were able to say something about when we might expect some discussion of this and some legislation, people would find it reassuring, even if they disagreed with it, that the Government were coming forward with this. We would know where we were, and that would provide some context for all this.

This has been an important debate. There are issues around petitions of concern, what powers caretaker Ministers—however we want to describe them—will have, who will monitor them and who will hold them to account, what it means with respect to standards and so on. However, the Bill provides progress, but we need that progress to come quickly—and the commencement period is something the Minister will have to address. It is a pleasure and a privilege to be involved in a

Northern Ireland debate again, and I hope that the discussions we have had, and my contribution and that of my noble friend Lady Smith, help to inform the debate and that we get back to the place where we want to be: a functioning Northern Ireland Executive, with a functioning Northern Ireland Assembly, working with the UK Government to provide for the people of Northern Ireland.

9.46 pm

Lord Caine (Con): My Lords, I am incredibly grateful to all noble Lords who have contributed to such an excellent and well-informed debate this evening and, if I may say so, for giving a new Minister such a warm welcome—so much so that I was thinking of inviting the noble Lord, Lord Rogan, to do some of my PR in future. I am also grateful to the noble Baroness, Lady Suttie, for reminding me of some of my misspent years in the Red Lion public house during the 1990s. As part of my approach to this role, my door is always open to noble Lords on all sides of the House. Whatever concerns, issues or queries they have about Northern Ireland, however big, however small, they should always feel free to contact me and to come to see me and talk about matters.

The quality of the contributions this evening on all sides of the House is testimony to the expert knowledge and interest that so many Members of your Lordships' House have in the affairs of Northern Ireland. I am, of course, very grateful for the general welcome of the Bill and its provisions. I welcome many of the comments made and look forward to discussing a number of them in greater detail and at greater length, no doubt, in Committee and during the passage of the Bill through the House.

As we heard, the Bill implements a number of the commitments set out in the *New Decade, New Approach* deal/agreement/document—however you want to describe it—made in January last year. It will improve the sustainability of the devolved institutions. It is not just on legislative commitments that the Government have been delivering through *New Decade, New Approach*. There are other areas outside the scope of the Bill, which include the appointment of a Northern Ireland Veterans Commissioner for the first time, legislation to enshrine further the Armed Forces covenant in law, UK Government contributions to the creation of a new graduate-entry medical school in Londonderry/Derry and funding to promote Northern Ireland as a cybersecurity hub, which are all commitments in *New Decade, New Approach.*

The noble Baroness, Lady Bennett of Manor Castle, mentioned some of the economic issues in Northern Ireland. The Government are supporting the Northern Ireland economy through the levelling-up fund, the community renewal fund, the community ownership fund and, of course, the spending review that delivered the largest funding settlement for Northern Ireland since the start of devolution in 1998-99. Taken alongside the more than 360,000 jobs protected as a result of government schemes during the pandemic, this underlines to many noble Lords the strength and security that Northern Ireland gains as part of the world's fifth-largest economy.

Turning to the debate itself, most of the contributions fell into one of three categories: those relating directly to the narrow provisions of the Bill, those dealing with possible broader reforms of the devolved institutions—what might be deemed other strand 1 issues—and those more generally about the situation in Northern Ireland, notably, as the noble Lord, Lord Hain, talked about, legacy, and of course contributions from across the House that dealt with the Ireland/Northern Ireland protocol.

I shall try, in the time available, to respond to as many of these points as I can, beginning with a number of issues that were raised by the noble Baroness, Lady Smith of Basildon. She, along with many other noble Lords, highlighted the importance of the institutions established under the Belfast/Good Friday agreement. As I outlined in my opening speech, I remain very personally committed to those institutions. I have worked in the Northern Ireland Office during periods of direct rule, which I have to say were very unsatisfactory, as has the noble Baroness. Like her, I think that the institutions are far easier to collapse and dismantle than they are to bring back together. They were down between 2002 and 2007 for five long years, and we just experienced the lack of functioning institutions from 2017 to 2020, very much to the detriment of Northern Ireland.

I agreed with a number of the comments of the noble Baroness, Lady Ritchie of Downpatrick, about the beauty of the architecture of the agreement. For me, one key aspect of that is the way in which the agreement is able to accommodate difference, but in ways that allow us all to work together. I think that is terribly important.

A number of noble Lords referred to the commencement clauses in the Bill—I shall deal with those straightaway—and to the speed with which the Bill had been brought forward, or the lack thereof, in the view of the noble Baroness. The reality is that the provisions in the Bill were only ever intended to be made in relation to the next Assembly mandate—so never necessarily in the context of this Assembly—and the commencement date does follow the conventional "two months after Royal Assent". However, if the political situation changes dramatically, that is something that the Government will be prepared to look at during the passage of the Bill through your Lordships' House; noble Lords have my assurance on that.

A number of noble Lords raised what were described as unfulfilled commitments from *New Decade, New Approach* and from previous agreements. A Bill of rights is an issue that has obviously been around since the 1998 agreement. The agreement itself, as somebody pointed out, is actually quite ambiguous in its wording around a Bill of rights. The issue has always been around consensus, or lack thereof. *New Decade, New Approach* does contain provision for an ad hoc Assembly committee to look at this, and we look forward to seeing work on that.

On language, it is important to stress that what the Government are proposing to bring forward is not just around language, but a balanced package that covers identity culture and language, and we will do so as soon as parliamentary time allows.

[Lord Caine]

The noble Baroness, Lady Smith, and the noble Lord, Lord Dodds, referred to caretaker Ministers and the powers they would have. We would expect, as *New Decade, New Approach* sets out, that Ministers who are still in office would have regard to the Administration's previous programme for government. There would be constraints: cross-cutting issues would still have to go to an Executive for executive approval. If we were in a scenario where there was no First Minister and Deputy First Minister, the Executive could not meet, so those cross-cutting issues could not be agreed anyway.

There are clear limitations on which issues caretaker Ministers could take decisions on, but the principle that there is continuity of decision-making in Northern Ireland is very important. The alternative could well mean just going back to the situation that we endured between 2017 and 2020, which nobody found satisfactory and is one of the reasons for the Bill.

The noble Lord, Lord Dodds, talked about Clause 3 and sufficient representation in the Executive. *New Decade, New Approach* does not define what is meant by that, and the Bill essentially follows that document. As the noble Lord, with his long experience of Northern Ireland affairs, will know, there are some areas where it is sometimes advantageous to give the Secretary of State some leeway and discretion on these matters, which is why it is not defined more clearly in the legislation.

I am very pleased that my noble friend Lord Godson referred to Sir John Chilcot, who was my first Permanent Secretary when I walked through the door of the Northern Ireland Office 30 years ago next month and a very wise and good man. My noble friend made a number of important points about the lack of an Executive during the Brexit process and about the protocol. I commend the work of my noble friend and Policy Exchange, which has consistently taken an interest in this issue and put forward a number of suggestions on the protocol and so on. Those points were reinforced by the noble Lord, Lord Bew.

I think back to the summer of 2016, shortly after the referendum, when Arlene Foster and Martin McGuinness, as First Minister and Deputy First Minister, signed a joint letter setting out the priorities for the Northern Ireland Executive throughout the Brexit process. It is a great tragedy that, as a result of the collapse of the institutions in January 2017, the voice of the Northern Ireland Executive was simply not heard. That is something we should remember and not go back to. The Bill is designed to try to avoid that kind of collapse and political limbo.

The nobles Lord, Lord Hain and Lord Coaker, and the noble Baronesses, Lady Ritchie and Lady Suttie, all mentioned legacy. It was the main focus of the speech of the noble Lord, Lord Hain. Before I respond on legacy, I pay tribute to his work on victims' payments over the past couple of years. They are now open for application, and I know that he stays in very close touch with groups such as the WAVE Trauma Centre and our mutual former colleague, Dennis Godfrey.

Legacy is an issue that has eluded successive Governments ever since 1998. It was not part of the 1998 agreement. The Labour Government made efforts to deal with it through the Eames-Bradley commission. This time seven years ago, I was permanently based in Stormont House during the discussions that led to the Stormont House agreement, but that was seven years ago. For better or worse and for whatever reasons, the bodies envisaged in Stormont House have never seen the light of day.

The Government are committed to bringing forward legislation to try to deal with this subject, and I hope very soon. It will focus on providing better outcomes for victims and survivors, principally through looking at information recovery but also, importantly, ending the endless cycle of reinvestigations and possible prosecutions of former members of the Armed Forces. I cannot give a precise date for when this will be introduced, but I hope it will be very soon.

A large number of noble Lords mentioned the Northern Ireland protocol. I am slightly limited as to what I can say on that issue, but, in response to the noble Lord, Lord Coaker, I assure him that I will discuss these matters with my noble friend Lord Frost and keep in very close contact with him on this crucial subject.

The reality is that the construction and implementation of the protocol has increased burdens on businesses, disadvantaged consumers, diverted trade and contributed to some of the political instability we have seen in Northern Ireland over recent months. An agreement or protocol deemed to be essential for upholding and supporting the Belfast agreement has now had the unintended effect of undermining confidence in and support for that agreement. Therefore, it is very important that the Government iron out the difficulties that are apparent.

Our clear preference, as my noble friend Lord Frost has said many times from this Dispatch Box, is to resolve these issues through agreement and negotiation with the EU. That is very much our preference, but we cannot rule out having to take measures should that agreement not be forthcoming. I remember years ago John Major wringing his hands at a press conference and saying, "Like me or loathe me, don't bind my hands when it comes to negotiations with Europe." I think that is very sensible. My noble friend is continuing those important discussions. I agree with the comments of noble Lords behind me from the unionist Benches and elsewhere across the House: it is vital that we resolve this, to ensure that Northern Ireland's place within our United Kingdom and our internal market is absolutely secure.

The noble Lord, Lord Bew, referred to the code of conduct, the Nolan principles and the Committee on Standards in Public Life. It will not surprise him to hear that I am not completely across the detail of those decisions, but I undertake to go back to the department, look into that issue in some more detail and come back to him. On the code of conduct, I think the noble Baroness, Lady Smith, asked me a rather specific question about who polices the code. That would be the Commissioner for Standards in the Assembly, and the Assembly itself would look into breaches and bring forward whatever sanctions there are.

My noble friend Lord Dodds—he is my noble friend—referred to the petition of concern and where its original purpose is set out. My understanding is that

that is contained in strand one, section 5, under the heading "Safeguards", in the original Belfast agreement, but, not having a copy to hand, I will undertake to give him a fuller response in that respect.

I am conscious of time and the hour. I have endeavoured to deal with a number of the issues raised this evening. If I missed any glaringly obvious ones, I trust noble Lords will forgive me, on this my debut at the Dispatch Box, but I commit to follow up in writing any that I have missed. In the meantime, it just remains for me to thank noble Lords once again for their contributions. I look forward to working very closely with Peers from across the House during the remaining stages of the Bill. On that note, I comment the Bill to the House.

Bill read a second time and committed to a Grand Committee.

House adjourned at 10.05 pm.