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OFFICIAL REPORT

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

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind 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

Tuesday 30 November 2021

2.30 pm

Prayers—read by the Lord Bishop of Lincoln.

Outsourcing: DWP Telephone Services

Question

2.35 pm

Asked by ***Baroness Blower***

To ask Her Majesty's Government what assessment they have made of the efficacy and efficiency of outsourcing the telephone services provided by the Department for Work and Pensions.

Baroness Scott of Bybrook (Con): The DWP utilises suppliers to deliver some telephony services for an efficient and effective customer service. Decisions to outsource are subject to value for money assessments and ministerial approval processes for new contracts, alongside Cabinet Office approvals and HMT business case governance. Efficacy and efficiency are further assured through the DWP's effective contract management on an ongoing basis. The DWP's contracted suppliers for contact centre services have largely met their key performance indicators during the term of the contracts.

Baroness Blower (Lab): I thank the Minister for her response. However, the staff union PCS reports that outsourcing has led to excessive call times and to vulnerable claimants often getting questionable advice due to poorly trained private sector staff being unable to navigate the complex system, and that Serco-run services have routinely had to call on support from in-house staff due to Serco's inability to cope with call volumes. Can the Minister say what performance standards are in the Serco contract, particularly regarding call length, quality of advice and ability to cope with demand?

Baroness Scott of Bybrook (Con): The time taken to answer calls is checked, and the target is 90%. As I said, those key performance indicators have all more or less been adhered to. There is also a performance indicator to ensure the investment in infrastructure is there, which is very important. DWP has gone in to help contractors where there are issues—in particular, recently, with staffing.

Lord Davies of Brixton (Lab): The department is addicted to outsourcing. The Government have allocated nigh on £3 billion to the Restart collection scheme for universal credit claimants, to be delivered by private companies under payment by results. Will the Minister tell us how she will ensure that previous mistakes will not be repeated—with financial incentives leading to so called "parking" and cherry picking, and hard-to-help claimants, many of whom were most in need of help, receiving little or no support?

Baroness Scott of Bybrook (Con): My Lords, I do not see that picture within the DWP telephony services that are outsourced. The Government recognise that some public services are better delivered through private companies than directly through the public sector. It is a matter of looking at all services individually and deciding which are the best to outsource.

Baroness Janke (LD): My Lords, what steps have been taken to end the use of 200 premium-rate phonelines, admitted to by the DWP, when these cause those on the lowest incomes to pay up to 55p per minute for help and advice on claims?

Baroness Scott of Bybrook (Con): My Lords, not all DWP telephony lines are outsourced, as we know, but all DWP telephony lines are freephone 0800 numbers.

Baroness Fookes (Con): My Lords, given the importance of these services to the clients, can my noble friend tell us how often performance is reviewed, and with what result?

Baroness Scott of Bybrook (Con): Several reviews take place in the course of a contract to assess performance against key performance indicators. Performance is reported and monitored daily and reviewed monthly during formal business unit reviews. These are led by DWP contract management teams. Wider delivery considerations to inform efficiency and effectiveness are reviewed on an annual basis through financial management reviews and quarterly formal reviews.

Baroness Sherlock (Lab): My Lords, on 4 November, in a Written Answer, the Minister for Pensions gave figures for call-answering rates on DWP helplines from January to September. These suggest that helplines managed to answer 90% of calls to do with debt payments, but, every month, a quarter of calls on child maintenance and 40% of calls on state pension changes went unanswered. Does the Minister think that is acceptable?

Baroness Scott of Bybrook (Con): No—nothing below the performance indicators is acceptable. That is why we continually challenge the delivery of all our systems.

Baroness Altmann (Con): My Lords, clearly the lack of training seems to have led to many claimants receiving incorrect answers when, for example, querying their state pension. Could my noble friend explain to the House whether the department has done any mystery shopping of its externally sourced claim lines, and what happens if suppliers do not meet their key performance indicators?

Baroness Scott of Bybrook (Con): My noble friend brings up the very important issue of training. All staff working for outsourced companies get the same training as DWP, and they will continue to get that. If they are looking after particularly vulnerable clients at any time then they will get specialist training. As for

[Baroness Scott of Bybrook]
mystery shopping, yes we do: the DWP continues all the time to check out those call lines and make sure that they are being regularly performance managed.

Baroness Ritchie of Downpatrick (Lab): My Lords, in challenging the delivery of systems in order to get the proper performance indicators, how many times have penalty clauses been invoked and for what reasons? We all remember the debacle around Concentrix and HMRC several years ago.

Baroness Scott of Bybrook (Con): My Lords, I am not aware of any penalties as such, but if a supplier consistently fails to achieve performance levels then service credits will apply to our most important Civil Service levels. These are designed to be an incentive to deliver services rather than a financial penalty. That is the way that we perform those services.

Lord Holmes of Richmond (Con): My Lords, I declare my interest as set out in the register. Telephones aside, does my noble friend agree that there are real opportunities for DWP to deploy new technologies across all its activities? Is she aware of the proof of concept that the department ran of putting benefits in a tokenised form on a distributed ledger technology platform delivered through a smartphone device—cost out, empowerment in—for benefit recipients? Does she agree that it is time to run a pilot for that scheme and to run proofs of concept for new technologies right across all DWP's activities?

Baroness Scott of Bybrook (Con): My noble friend is right that we need to look at new technologies. The DWP is always exploring new solutions to support citizens who use our services. The department will be using advice from the National Cyber Security Centre, which published a White Paper in April 2021 on the use of DLT suggesting that further developments are needed. For now, there are alternative technologies that usually provide comparable or better solutions.

Lord Sikka (Lab): My Lords, the Government have handed public services to corporations such as Serco, which has a history of abuses, failures, overcharging and even a fine by the Serious Fraud Office. Will the Minister publish the DWP's cost-benefit analysis, and related correspondence, for outsourcing its telephone services so that we can all make an assessment of its diligence in dealing with failed providers?

Baroness Scott of Bybrook (Con): My Lords, the Government recognise that some public services are delivered better through private companies than directly through the public sector. A delivery model assessment methodology, as defined in the Cabinet Office *Sourcing Playbook*, helps to determine whether the public or private sector is the best placed to deliver a public service. Most of those issues will be on GOV.UK.

Lord Flight (Con): How much is paid to suppliers for delivering these telephony services?

Baroness Scott of Bybrook (Con): My noble friend asks a difficult question because telephony suppliers flex staffing resources up and down in line with volume expectations and are paid accordingly. The contracts are volume based and demand driven, and we pay on a basis of calls answered. The total contract price for the last contract, which is three years plus one, was £174 million over those four years.

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

Domestic Abuse: Older People

Question

2.46 pm

Asked by ***Baroness Gale***

To ask Her Majesty's Government what steps they are taking to ensure that older people (1) are aware that domestic abuse can include physical abuse, domestic violence, sexual abuse, psychological or emotional abuse, financial abuse, neglect, and coercive control, and (2) are informed about the sources of information and support available to those suffering such abuse.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the statutory definition of domestic abuse encompasses sexual, violent, coercive, controlling, psychological, emotional and economic abuse. The Domestic Abuse Act's wider provisions, accompanying guidance and our long-term action plan, alongside a dedicated strategy and funding to specialist services, including Hourglass, will further support legislative implementation. These transformative measures will bolster our response to domestic abuse, increasing awareness, information and support for victims, and providing greater protection for vulnerable groups, including older people.

Baroness Gale (Lab): I was a bit disappointed with the Minister's response. As she will know, domestic abuse as far as older people are concerned quite often takes a different form; it is quite often hidden away and not recognised. How much support can be given to victims that, in many cases, differ so much from the image of a young woman, for example, who suffers from domestic abuse? Would the Minister further agree with me that there is no government body in England, like we have in Wales with the Older People's Commissioner? Would she commit to at least look at the possibility of having a commissioner in England for older people, as this would go some way to helping the problem?

Baroness Williams of Trafford (Con): In the past I have spoken to the Welsh commissioner, and I commend the work she is doing. But I also commend the work our commissioner is doing. I know that she is dedicated to all aspects of domestic abuse across all ages and will be keeping a very close eye on the implementation of the Act.

The Lord Bishop of St Albans: My Lords, with increasing numbers of bank branches being closed on high streets and the impact of Covid, the elderly vulnerable are having to negotiate the choppy waters of online banking like everybody else, in an environment where there are large numbers of online scams and frauds. What are Her Majesty's Government doing to offer training and resources to try to protect the elderly vulnerable as they engage with online financial services?

Baroness Williams of Trafford (Con): The right reverend Prelate points to a real problem which particularly targets the vulnerable, never mind the elderly—who are obviously in that bracket. We have Action Fraud, which is trying to tackle the problem. Some information is also being put out to help to guard against people being scammed. I think every one of us has at some point had messages appearing on their email which appear to be genuinely from their bank but, in fact, are not.

Baroness Greengross (CB): Can the Minister update the House on the statutory guidance on detecting and preventing the abuse of older people which the Home Office was working on after the Domestic Abuse Act received Royal Assent? This statutory guidance was a commitment by the Government in response to the two amendments I put forward on Report of the Bill and is a much-needed tool to combat the abuse of vulnerable adults.

Baroness Williams of Trafford (Con): I am most grateful to the noble Baroness for the engagement that I had with her throughout the course of the Domestic Abuse Bill, which is now an Act. She is right that, to accompany it, draft statutory guidance has been developed to help provide an understanding of what might constitute domestic abuse and the impact on victims, including children, who will be recognised as victims in their own right. As required under Section 84 of the Act, the guidance has been subject to consultation, which began on 3 August and closed on 14 September. The responses are being analysed, and updates to the guidance are being made, taking into account the representations received, the content and the clarity.

Baroness Drake (Lab): Elderly victims may face barriers to getting help if they are dependent on their abuser, have a disability, lack access to digital services or are simply frightened or ashamed of going to the police—so healthcare practitioners very much need to look out for abuse. So can the Minister assure the House that plans are in place to, first, increase mandatory and ongoing training for practitioners in how to recognise an old person suffering abuse and, secondly, improve links between the NHS and the police so that they can distinguish between the impact of a condition such as dementia and the results of a pattern of abusive behaviour?

Baroness Williams of Trafford (Con): What the noble Baroness points to there is the sheer complexity of abuse, dependency and what the various different agencies need to look out for in identifying and dealing with this—and, yes, it is absolutely dependent on multi-agency working, co-operation and information sharing.

Baroness Jolly (LD): My Lords, we tend to think mainly of women being abused by their male partners. Could the Minister tell the House what research has been done on the abuse of older men by their female partners? Is she confident that support will be available as readily for those living in rural areas as it is for those in urban or city settings?

Baroness Williams of Trafford (Con): In the Crime Survey for England and Wales 2020, it is estimated that 4.4% of women aged 60 to 74 were victims of domestic abuse, as were an estimated 1.9% of men—so there is definitely evidence of men aged 60 to 74 being victims of domestic abuse. In a rural setting, it must be very isolating and frightening, and it is important that, through the Act that we have brought through Parliament, all victims are reached, whether they are rural or urban.

Baroness Thornton (Lab): My Lords, we know that the pandemic and lockdown have exacerbated the likelihood of domestic violence generally. We know that people over 61 are more likely to experience abuse than those under 61, and that 48% of those who do are disabled—and it may take them twice as long to seek help. So how much research have the Government done to highlight this prevalence? How much resource is being put into providing support and safe places that are dedicated to older victims of domestic abuse?

Baroness Williams of Trafford (Con): A significant amount of funding has been put in place, but the noble Baroness is right to point to research. We have had significant engagement with all parts of the support sector. As I said at the beginning, we are most grateful to Hourglass for the support that it provides.

Baroness Prashar (CB): My Lords, given that the abuse faced by older people is different, are the Government satisfied that they are providing targeted support, guidance and resources to local authorities to ensure that there is greater awareness, and do they have plans to actually monitor and assess the impact of the Domestic Abuse Act on the elderly?

Baroness Williams of Trafford (Con): The noble Baroness will know that all legislation that is put through and agreed in Parliament is monitored, reviewed and checked to see whether it is fit for purpose and whether gaps emerge in the fullness of time. She is absolutely right about monitoring the effects of the legislation, particularly on older people. These may be the same as or different from those experienced by younger people, as she said—but, certainly, it is a relatively recent phenomenon that this has come out.

Lord Dodds of Duncairn (DUP): Research from SafeLives indicates that up to half of all abuse against people in older life is perpetrated by members of their family, particularly acting together. We have seen increases in financial abuse in particular. What more can be done to educate older people to detect the signs of this kind of abuse, often very subtle in its application, and to seek outside support and help?

Baroness Williams of Trafford (Con): The noble Lord points to some terrible frailties that can emerge from a family member being relied on to be the carer of the person being abused, and the abused person being too frightened to complain about the carer. I have heard about many such cases, particularly where financial abuse is concerned. In bringing forward the Domestic Abuse Act we have not only gone some way in terms of the prosecution of offences but have significantly raised awareness, particularly among health-care professionals.

Baroness Primarolo (Lab): Will the Minister consider providing some special short-term funding to organisations that can tailor both the advice that they give and the support that they provide to elderly victims of domestic abuse, so that we can have a better understanding of exactly how services co-ordinating can support these vulnerable people?

Baroness Williams of Trafford (Con): I think that we probably need both long-term and short-term funding to provide support. I have talked about Hourglass, which received £50,000 of funding to support activity in 2020-21, and an additional £106,000 to further bolster its services as part of the response to the Covid crisis, which must have placed some vulnerable people at even greater risk.

Shipbuilding: Use of British Steel for Royal Navy

Question

2.57 pm

Asked by ***Lord West of Spithead***

To ask Her Majesty's Government what plans they have, if any, to require shipbuilders in the United Kingdom to use British steel in ships and submarines built for the Royal Navy; and what percentage of steel in the Dreadnought class submarines and Type 31 class frigates is expected to be provided by UK plants.

Viscount Younger of Leckie (Con): My Lords, sourcing steel is a matter for our prime contractors. The special steel required in the manufacture of submarine pressure hulls and the thin plate required for shipbuilding cannot be sourced in the UK. Nevertheless, we encourage the sourcing of UK steel wherever it is technically and commercially feasible and publish our future pipeline of steel requirements, enabling steel manufacturers better to plan and bid for government opportunities.

Lord West of Spithead (Lab): I thank the Minister for his answer. I have to say I am a little disappointed by that. There is a need for a sovereign capability to build ships, and part of that is the steel that is used to build them. It is disappointing that the refreshed shipbuilding strategy that we have been promised for a long time now is still not out, even though there has been the spending review, and we were told that it would come out shortly after that. I hope that, when it comes out, it will point out very clearly that ships such as the fleet solid support ship will have to be built in the UK, and that we have a whole rolling programme of shipbuilding, as that is essential for our ship programme.

The Minister mentioned that we are not able now to provide all the types of steel required for nuclear submarines, but only a few years ago we were ahead of everyone in the world in our ability to produce these types of steel. Is this an area that we are actually going to resolve so that we can provide the steel required for the nuclear submarine programme from steel within this country? Are we considering bringing forward the clean steel fund by some two years so we can actually produce clean steel in this country to meet all the green targets that we have been set?

Viscount Younger of Leckie (Con): There is quite a lot in the noble Lord's question, but I will start by saying that shipbuilding in this country is a good story. Investment will double over the life of this Parliament, rising to £1.7 billion a year, and this will allow us to increase the number of frigates and destroyers beyond the 19 that we currently have by the end of the decade. The noble Lord mentioned the FSS, or fleet solid support, and he will know that all three ships must be delivered by 2032. The date for the initial operating capability and in-service dates will not be determined until the full business case is submitted. That ties in with another question, which is on the refreshed strategy, which will be rolled out and published very soon.

Lord Haskel (Lab): Is the Minister aware that British steel producers are at a disadvantage because they pay a local carbon tax that is not paid by Chinese or Russian producers? We have been aware of this loophole for some time. To address this, will the Government introduce a carbon border tax? This is important not only for British jobs and British security but also to help address climate change.

Viscount Younger of Leckie (Con): The noble Lord makes a good point, and the Government recognise the vital role that the steel sector plays in our economy and across all areas of the UK. We continue to work through the steel council to support its decarbonisation, and it is a core part of our ambitious plan for the green industrial revolution. The net-zero strategy, which the noble Lord will be familiar with, published in October this year, reaffirms our commitment to work and to setting targets for ore-based steelmaking to reach near-zero emissions by 2035.

Baroness Smith of Newnham (LD): My Lords, I applaud the idea of supporting British steel, but British Steel as a company is owned by the Chinese Jingye Group, is it not? In which case, what on earth difference does it make whether we import our steel from China or it is produced here by a Chinese-owned company?

Viscount Younger of Leckie (Con): As I said earlier, this Government are committed to creating the right conditions in the UK for a competitive and sustainable steel industry. We publish our future pipeline for steel requirements, enabling UK steel manufacturers to better plan and bid for government contracts.

Lord Hannan of Kingsclere (Con): My Lords, a patriotic Government should want our armed services to have the best and aptest steel in the most economical way, so as to free up the rest of their budget for more kit and more materiel. Will my noble friend the Minister confirm that whether it is sourced from the UK, Germany, Turkey or the Netherlands, we will always endeavour to ensure that our service men and women get the best possible equipment?

Viscount Younger of Leckie (Con): My noble friend makes a very good point. In October 2020 the ONS published a report on UK steel procurement across government. It showed that the reported proportion of steel procured within the UK for public projects was 77%, up from 40% in the previous year.

Lord Boyce (CB): My Lords, can the Minister say how many countries have committed to acquiring the Type 26 and Type 31 frigates? How many ships are involved? Has this led to a drop in the unit price cost of those ships and will the foreign orders affect the in-service dates of the ships that are for the Royal Navy?

Viscount Younger of Leckie (Con): The Type 26 construction programme is sufficiently flexible. The noble Lord will know that there are some delays owing to the late delivery of the propulsion gearboxes. The cost of the contract awarded in 2017 to manufacture the first batch of three Type 26 frigates is £3.7 billion. On current plans, HMS "Glasgow" will be in the water by the end of 2022.

Lord Coaker (Lab): My Lords, is it not an appalling state of affairs that, with the Government spending billions of pounds on boosting our naval power, we have to go abroad for much of our steel, as the Minister has just told this Chamber? What people want to hear is what the Government are going to do about it. Rather than describing the problem, can he say how we are going to boost the British shipbuilding industry so that British naval ships are built with British steel?

Viscount Younger of Leckie (Con): Of course, the noble Lord makes a good point: it would be great if ships could be made from British steel. However, as I said earlier, the steel required for the ships being built—both the surface ships and submarines—is highly specialised. He will know that, for example, the fixed steel required for submarine hulls is made in France with Industeel. The steel for the surface ships is there for the UK steel industry, but at the moment it is sourced from abroad.

Lord Jones of Cheltenham (LD) [V]: Is the Minister aware of the issue of the procurement of steel for HS2, which was the subject of a Written Question I submitted recently? It appears that UK steelmakers were unable to supply the appropriate high-quality steel to the necessary timescale, so the order went to a French company. Are the Government confident that UK steelmakers have the capacity to fulfil orders for the steel needed for these vessels? What are they doing to promote joined-up thinking in government-sponsored projects such as these new ships and HS2?

Viscount Younger of Leckie (Con): This goes some way off the maritime sector, but I can say that we have established a joint industry and BEIS steel procurement task force, which launched on 12 March 2021. Its aim is to work with the sector to promote the unique selling points of UK steel and explore how best to support the industry and position it for success in forthcoming major public contracts. This surely plays into the noble Lord's question on HS2.

Lord Lancaster of Kimbolton (Con): What are the consequences of any further delay in the delivery of the Dreadnought-class submarines?

Viscount Younger of Leckie (Con): I hope I can reassure my noble friend that the Dreadnought submarine programme remains on track for the first of class, the eponymous HMS "Dreadnought", to enter service in the early 2030s. As this programme progresses, we continue to review life-extension options to ensure that the Vanguard-class submarines continue to operate safely during the phased transition from Vanguard to Dreadnought.

Baroness Stuart of Edgbaston (CB): I welcome the Minister's aspiration for us to have sufficient steel available to satisfy the needs of our shipbuilding industry, particularly for the Royal Navy. Is the Minister persuaded that we have the appropriate skills base to then build those ships? In particular, I urge him to take a good look at maritime shipyard welding apprenticeships, as there will be some real skills shortages affecting ability to deliver.

Viscount Younger of Leckie (Con): The noble Baroness makes a very good point about skills. This will certainly be a major part of our refresh strategy, which, as I said, will be published soon. Having our own skills in this country, particularly in digital and engineering, is extremely important so that we have the right skills to build the right ships faster, using the skills we have.

Baroness Jones of Moulsecoomb (GP): If the Government are not prepared to develop a border tax for all the carbon emissions coming into this country, which we do not account for—that is why we have all this false accounting about how we have reduced our carbon emissions—the very least they could do is to make sure they know the quantity of the carbon emissions coming in and start putting some sort of monetary amount on this, so that we know the cost of importing.

Viscount Younger of Leckie (Con): The noble Baroness makes a good point. The Government recognise the importance of research and development into the UK steel sector's transition to low-carbon steel production. She will know that we have provided over £600 million in relief to make electricity costs more competitive, and created the £315 million industrial energy transformation fund to support high energy use businesses. There is more I could go into, but the noble Baroness will know that we are on this.

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

Qatar: Football World Cup 2022

Question

3.08 pm

Asked by ***Lord Collins of Highbury***

To ask Her Majesty's Government what assessment they have made of preparations for the 2022 Qatar World Cup and their compatibility with (1) human rights, and (2) journalistic freedoms.

Lord Sharpe of Epsom (Con): My Lords, we continue to work with Qatar to support its delivery of a safe and secure World Cup. As with all tournaments, we will work closely with host authorities on the safety of British nationals attending, including fans, journalists and players. Our close ties with Qatar allow us to engage on a range of topics and we raise human rights issues whenever required, which includes in the context of the World Cup.

Lord Collins of Highbury (Lab): My Lords, eight years ago, the International Trade Union Confederation warned of Qatar's failure to collect statistics relating to deaths and injuries of migrant workers. It is a scandal that Qatar continues to hide the true picture. In its report published 10 days ago, the ILO identified gaps in the collection of data on work-related deaths and injuries and called for improvement, stressing that we must move with urgency as behind each statistic there is a worker and their family. What representations have the Government made to Qatar on the ILO report? Will the noble Lord come back to the House on progress made on its implementation, so that further injuries or deaths are prevented and the families of those killed or injured receive proper compensation?

Lord Sharpe of Epsom (Con): Everyone deserves the right to work safely and securely, whether that be in Qatar, the UK or elsewhere. Having engaged with the Qatari authorities, the International Labour Organization, as the noble Lord has just noted, published this month a comprehensive report containing recommendations for improving data collection and analysis on occupational injuries and fatalities. This is an important step, and we welcome that. It is also one of the key elements of Qatar's national policy on occupational safety and health. We therefore expect close collaboration between the Government of Qatar and the ILO during the second phase of their technical co-operation programme, which will run until the end of 2023. We also encourage continued co-operation with entities such as international trade unions. As the noble Lord has noted, the ILO report notes that it is not currently possible to safely present a categorical figure on the number of occupational injuries and fatalities in Qatar.

Viscount Colville of Culross (CB): I hear what the Minister has to say about the relationship between this Government and the Qatari Government. Recently, however, two western journalists covering the run-up to the World Cup in Qatar were arrested for filming a migrant camp. What assurances does the Minister have from the Qatari Government that the same fate will not befall other foreign journalists covering the World Cup who decide to report on controversial and sensitive issues in the emirate?

Lord Sharpe of Epsom (Con): We are aware of these cases and are closely monitoring developments. We understand that Qatari and Norwegian authorities, to whom the noble Lord refers, are in communication. The UK remains committed to media freedom and to the global media freedom campaign, launched in 2018. Obviously, a large cohort from the British press is expected to attend next year's tournament. As part of the FCDO's preparations, we will be working closely with the press community, providing advice on local laws and seeking assurances from FIFA and the Qatari authorities as required.

Lord Addington (LD): My Lords, I cannot be the only person who received an assurance from the embassy of Qatar, saying that things have improved dramatically, including the introduction of a minimum wage and the banning of exit visas. Can the Government use their authority, along with that of their allies, to make sure that FIFA agrees that such policies have to be in place before a country can bid for a major competition, not after it has been awarded, so that we will not have to go through this again?

Lord Sharpe of Epsom (Con): The noble Lord makes a very important point, and I will certainly take it back to my FCDO colleagues.

Lord Faulkner of Worcester (Lab): My Lords, I welcome the Minister to the Front Bench for his first Question. What advice is the FCDO giving to football fans from the LGBTQ community who are contemplating visiting Qatar for the World Cup in view of Article 296 of the Qatari legal code, which stipulates imprisonment of between one and three years for

"leading, instigating or seducing a male in any way to commit sodomy"?

Lord Sharpe of Epsom (Con): The UK is committed to the principle of non-discrimination on any grounds, including on the basis of sexual orientation and/or gender identity. We are committed to promoting and protecting the rights of LGBT people. They are not asking for special rights, merely to be accorded the same dignity, respect and rights as all other citizens. Qatari authorities have committed that everybody is welcome to the tournament, including LGBT visitors. We will continue to engage on this between now and next year's tournament, so that anyone of any background can go and enjoy themselves. We will continue to encourage the equal treatment and respect of individual rights and identify what action Qatar is taking to match those words.

Lord Dobbs (Con): My Lords, from this side of the House, I also welcome my noble friend to his new responsibilities; I wish him well. Do not all the very valid points that have been made during the course of this Question surely emphasise the need for ongoing and constructive engagement in conversations with countries such as Qatar? Can we also be brutally realistic and realise that nobody is going to rush to

listen to our sermons on democratic values and human rights in the Middle East when our policies for the last 20 years in Iraq, Libya, Syria and Afghanistan have pointed in entirely the wrong direction?

Lord Sharpe of Epsom (Con): My noble friend is right to raise the importance of constructive engagement. The UK has a strong history of promoting our values globally. We believe that the best approach is to engage with Governments and work with international partners and civil society organisations to promote and defend those universal freedoms. The relationship between the UK and countries of the Gulf Cooperation Council and the wider MENA region is historic and enduring. But we should also recognise that this is a region with distinct cultures and differing political systems.

Lord Bassam of Brighton (Lab): My Lords, like the noble Lord, Lord Addington, I have received the letter from the chargé d'affaires of the embassy of Qatar yesterday, claiming that Qatar

"leads the region on advancing labour rights protection"

and has made it clear that

"labour law and human rights violations will not be tolerated".

Does the Minister recognise that assessment as accurate, given the continued high level of construction-related injuries, with over 300 last year, and fatalities, with over 50 last year? Does he agree with the statement from the chargé d'affaires that Qatar's

"track record on media freedoms speaks for itself"?

What further action do the Government believe is necessary to improve human rights and end construction-related fatalities and injuries in Qatar state?

Lord Sharpe of Epsom (Con): I think that question was answered earlier, but I take the noble Lord's point. On media freedom, we continue to engage, as I also said earlier, regarding the number of fatalities. There is some disagreement and difficulty with data collection and precise numbers, but on all those matters, we continue to engage.

Lord Londesborough (CB): My Lords, while it was encouraging to see Qatar introduce labour reforms last year, described at the time as ground-breaking by FIFA—perhaps not the most objective of observers—these reforms appear to have had limited impact, as Amnesty and other groups have highlighted. Human rights groups estimate that more than 6,000 migrant workers have died in the course of building the World Cup infrastructure, whereas the tournament's chief executive claimed only last week that the real number was just three. What are our Government doing to encourage greater transparency?

Lord Sharpe of Epsom (Con): As I have said already, I am afraid that the ILO report notes that it is currently not possible to safely present a categorical figure on the number of occupational injuries and fatalities, but the Government continue to engage regularly with the International Labour Organization office in Doha and explore areas of its work where the UK can add value. We stand ready to assist further and support Qatari continued efforts to implement change.

Lord Triesman (Lab): My Lords, I draw attention to my interests as declared in the register. I am strongly in favour of engagement, but engagement guided by some kind of principles. If the Minister looks at the study done by the *Sunday Times* insight team—I am very willing to lend him the books—he will read a detailed account of industrial-scale corruption on the part of Qatar in achieving the status of a World Cup-hosting body. This is confirmed in other books, including the one which I have here—and am prepared to lend him: David Conn's book, which goes through it, detail by detail. Are the Government able to say that, in order to establish the principles alongside the engagement, there will be no associated royal, governmental or diplomatic visits which are likely to assist the sports-washing of regimes which are culpable for serious human rights abuses, wide-scale corruption and unsafe employment by any global standards? Are the Government prepared to guide sports bodies—we could have certainly done with that in 2009 and 2010—when competing with other international bids for these tournaments, to show that there is a proper way of dealing with competitor bidders who do not observe these principles at all?

Lord Sharpe of Epsom (Con): The noble Lord asks a long question, and unfortunately I am unable to give a long answer. I will take what he has said back to the Foreign, Commonwealth and Development Office. I appreciate the points he has made and would welcome the loan of his book.

Police, Crime, Sentencing and Courts Bill

Order of Consideration Motion

3.19 pm

Moved by ***Baroness Williams of Trafford***

That the amendments for the Report stage be marshalled and considered in the following order:

Clauses 1 to 10, Schedule 1, Clause 11, Schedule 2, Clauses 12 to 43, Schedule 3, Clauses 63 to 68, Schedule 7, Clauses 69 to 75, Schedule 8, Clause 76, Schedule 9, Clauses 77 to 99, Schedule 10, Clauses 100 to 102, Schedule 11, Clauses 103 to 129, Schedule 12, Clause 130, Schedule 13, Clause 131, Schedule 14, Clauses 132 to 136, Schedule 15, Clause 137, Schedule 16, Clauses 138 to 158, Schedule 17, Clauses 159 to 163, Schedule 18, Clauses 164 to 170, Schedule 19, Clauses 171 and 172, Clause 44, Schedule 4, Clauses 45 to 48, Schedule 5, Clauses 49 to 52, Schedule 6, Clauses 53 to 62, Clauses 173 and 174, Schedule 20, Clauses 175 to 179, Title.

Motion agreed.

Antique Firearms (Amendment) Regulations 2021

Motion to Approve

3.19 pm

Moved by ***Baroness Williams of Trafford***

That the draft Regulations laid before the House on 14 September be approved.

Considered in Grand Committee on 23 November.

Motion agreed.

Age of Criminal Responsibility (Scotland) Act 2019 (Consequential Provisions and Modifications) Order 2021

Motion to Approve

3.19 pm

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

That the draft Regulations laid before the House on 18 October be approved.

Considered in Grand Committee on 23 November.

Motion agreed.

Eggs (England) Regulations 2021

Motion to Approve

3.20 pm

Moved by ***Lord Benyon***

That the draft Regulations laid before the House on 19 October be approved.

Relevant document: 17th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 23 November.

Motion agreed.

Dissolution and Calling of Parliament Bill

Second Reading

3.20 pm

Moved by ***Lord True***

That the Bill be now read a second time.

Relevant documents: 8th Report from the Constitution Committee

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, if any noble Lords are concerned by the state of my voice, I should say that I have recently had a negative Covid test, but I have just had that cold which your Lordships will know all about. I would like to say how much I am looking forward to the contributions from everybody who is to speak, and congratulate my noble friend Lord Leicester, who was recently elected to this House, on making his maiden speech later; we all look forward to that.

It is a great privilege to open Second Reading on the Bill, which I trust will be welcomed by your Lordships' House. Repealing the Fixed-term Parliaments Act 2011 was a manifesto commitment both of the Government and of the Official Opposition. As the Labour Party manifesto put it, the Act

"has stifled democracy and propped up weak governments".

I agree, and look forward to unequivocal support from the Benches opposite today and in Committee—you always travel in hope in your Lordships' House.

The 2011 Act fostered uncertainty and stasis in our democratic arrangements. It led to paralysis when the country needed decisive action. It undermined the effectiveness and responsiveness of our democratic system overall. The flaws of the Fixed-term Parliaments Act are understood and have been analysed by many noble Lords, including your Lordships' Constitution Committee—I am pleased to see the name of the noble Baroness, Lady Taylor of Bolton, on the speakers' list today. I am grateful for the depth of expertise and knowledge that your Lordships' House has brought to bear on the scrutiny of the 2011 Act and that it will bring to bear on the scrutiny of this legislation.

The Bill seeks to return to the tried and tested position of the past over many centuries, replacing the 2011 Act with arrangements more in keeping with our best constitutional practices: delivering stable and effective government; upholding proper parliamentary accountability and public confidence in our democratic arrangements; and, above all, placing the British people at the heart of the resolution of any great national crisis.

The Bill will provide increased legal, constitutional and political certainty around the process for the Dissolution of Parliament and the calling of a new Parliament. I emphasise at the outset that the Bill focuses on the Dissolution and the calling of Parliament only, not any other part of the constitutional process. Ensuring that these arrangements are clear, stable and widely understood underpins the integrity of our constitution.

Your Lordships' Constitution Committee, in its report of December 2020, warned correctly that the "origins and content of" the 2011 Act

"owe more to short-term considerations than to a mature assessment of enduring constitutional principles or sustained public demand".

Indeed, the Act led to paralysis and uncertainty at a critical time for our country. An untenable situation arose in the last Parliament, when the Government were neither able to pass vital legislation through Parliament on their central policy nor call a new election and put the question to the people, who had already voted in a referendum for the very proposition Parliament was seeking to block. The result was deadlock and paralysis. The fact that Parliament had to introduce bespoke primary legislation in 2019 to bypass the Act in order to hold the necessary election was surely the final, damning indictment. In summary, the Fixed-term Parliaments Act is a political experiment that failed. It is neither credible nor effective and does not serve future Parliaments or Governments, whether they are majority or minority formations or coalitions.

I now turn to the details of the Bill. Before I begin, I reiterate my sincere thanks for the valuable work of Parliament, particularly your Lordships' Constitution Committee, chaired by the noble Baroness, Lady Taylor, the Public Administration and Constitutional Affairs Committee in the other place, and the Joint Committee chaired by my noble friend Lord McLoughlin, who I am also pleased to see here in his place today. I also add my thanks for the Constitution Committee's most recent report on the Bill, which was published on 19 November. The Government welcome its consideration of the Bill and I can give an assurance that they will respond to the report before this House goes into Committee. Its consideration of the 2011 Act and the Government's Bill has been valuable and has informed our approach, as will become evident.

The Bill is short; its purpose is clear and its objectives are known, because the British people lived with the previous system for centuries. It is a focused Bill of six clauses and one schedule. It restores the status quo ante, except in a few cases, particularly where practical changes to election arrangements made since 2011 have proven beneficial to the smooth running of elections—although I am certain that we will discuss that aspect of the Bill. It returns us to the tried and tested constitutional arrangements that have served successive Parliaments and Governments and that are a feature of our constitutional system.

Clause 1 repeals the Fixed-term Parliaments Act. Clause 2 makes express provision to revive the prerogative powers relating to the Dissolution of Parliament and the calling of a new Parliament that existed before the 2011 Act. This means that, once more, Parliament will be dissolved by the sovereign at the request of the Prime Minister. Within the life of a Parliament, Prime Ministers will once more be able to call a general election. That is a tried and tested approach that throughout our history has served successive Governments of different configurations.

By returning us to the status quo ante, the Bill will enable the link between confidence and Dissolution to be restored so that critical votes in the other place can once more be designated as matters of confidence, which, if lost, would trigger an early election—circumstances which many of us well remember from 1979. The other place will therefore continue to play its expected and key role in holding Governments to account and demonstrating whether they have the confidence of the elected House.

This is the status quo ante that we are all familiar with and understand. Under that system, our nation weathered many a constitutional crisis and accomplished enormous social change and social improvement without conflict, revolution or civil strife. That is the position the general public understand and under which our liberties have long been guaranteed.

Clause 3 restates the long-standing position that the prerogative powers to dissolve and call Parliament are non-justiciable. I understand that some noble Lords question why this clause is necessary at all and say that, after all, these prerogative powers are recognised as outside the purview of the courts. Let me explain: Clause 3 is drafted with careful regard to developments in case law. As noble Lords will be aware, since the GCHQ case, some prerogative powers that were previously considered to be non-justiciable have been reviewed by the courts.

The recent independent review of administrative law, which was chaired by my noble friend Lord Faulks, noted that

"the direction of travel in favour of regarding more and more prerogative powers as reviewable in principle is undeniable and has existed for many years".

This culminated in the decision of the Supreme Court in Miller/Cherry 2 in relation to Prorogation. So, with respect to those noble Lords who say that there is no risk of the courts reviewing a decision to dissolve Parliament, I cannot simply say that the case law would suggest that this risk can be discounted, and recent events, in particular, have underlined this.

Clause 3 has been drafted with great care, taking on board the position of the courts that the most clear and explicit words are needed. It provides that any decisions relating to the revived powers to dissolve one Parliament and call another are non-justiciable, as well as the exercise of the powers themselves. This is to ensure that any preliminary steps leading to the exercise of these powers, including any request to the sovereign to dissolve Parliament and any related advice, cannot be reviewed by a court or tribunal.

Clause 3 further provides that a court or tribunal cannot consider the exercise of those revived prerogative powers or any related decisions, even if the court considers they are invalid or, in the language used by the Bill, "purported". Nor may a court consider the limits or extent of those powers. Again, taking into account the case law, this is to make as clear as possible the position that all elements of the process relating to the Dissolution and calling of Parliament are covered by Clause 3 and are not a matter for the courts.

Let me be clear: there would be no change to the involvement of the courts, as the Dissolution and calling of Parliament is not an issue that has, so far, ever been considered reviewable. This clause simply confirms that position, preserves it for the future and protects the judiciary from being drawn into political matters.

Ultimately, judgment on the Government's actions in calling an election is a matter for the electorate at the polling booth. I remember well the wise words of the noble Lord, Lord Grocott, on this subject at Second Reading of the original Bill, that it is not axiomatic that the timing of an election serves the incumbent Prime Minister. As the Joint Committee affirmed,

"it is appropriate for Parliament to make clear where it thinks the constitutional boundaries lie".

This clause was unamended in the other place, and while I recognise that your Lordships will have questions, we do, I think, mostly agree that the prerogative power for Dissolution is, and should, remain non-justiciable.

Lord Rooker (Lab): Before the Minister leaves Clause 3—I am not a lawyer—will he explain the use of the word "purported" in two of the items? He has spent a lot of time on Clause 3, so I presume he is briefed on this to explain why "purported exercise" is also covered.

Lord True (Con): My Lords, I always seek to be brief, but one always aspires to be better briefed in your Lordships' House. I anticipate that this will be the subject of some discussion in Committee, and I wanted to make some progress in this speech, but to answer the noble Lord, which is my duty, purported exercises of power or decisions refer to things that would be considered by a court to be invalid or a nullity and therefore not a real exercise of power or decision because they have been done on the basis of an error of law. The courts have noted that this could arise where, for example, a decision is made outside the limits of relevant power or without taking into account a relevant consideration.

The reference has been included to make it clear that all elements of the Dissolution and calling of Parliament process fall to the political and not the judicial sphere. The drafting takes account of previous

[LORD TRUE]
judicial decisions, which I have no doubt we will discuss at some length in Committee. In particular in the case of Privacy International, the Supreme Court said that those drafting legislation should make clear whether such purported decisions are intended to be outside the jurisdiction of the courts. I am grateful to the noble Lord for his intervention, and I look forward to discussing this matter at some length—I hope not at some length—and I have no doubt that we will have a lively discussion in Committee, so I would like to make some progress, if I may.

Clause 4 provides a maximum parliamentary term of five years, calculated from the date of the first meeting of Parliament. This will ensure that elections are held at regular intervals by providing a longstop of five years, a maximum term which is of course still guaranteed by your Lordships through an explicit exception in the Parliament Acts. By reviving the prerogative powers, the Government could call an election either to resolve political deadlock, to seek a fresh mandate from the electorate or after a defeat on a major policy issue.

As I have set out, a Prime Minister will take a number of factors into account when choosing to call a general election. But of course, this would include—I can offer reassurance here—scheduled elections to the devolved legislatures. We recognise the practical administrative challenges of holding elections which are conducted under different arrangements simultaneously or in close proximity. A Prime Minister choosing to call an election would undoubtedly wish to take these matters into account.

Clause 5 introduces the Schedule, which sets out minor and consequential amendments. Clause 6 confirms that the territorial extent of the Bill is the UK, except for a very small number of amendments in the Schedule where the extent is more limited. The Schedule contains a number of minor and consequential changes, including to the parliamentary elections rules in the Representation of the People Acts 1983 and 1985, concerned also with the demise of the Crown and the Recall of MPs Act 2015. I would be happy to explain any of these in detail if your Lordships wished between now and Committee.

The Bill has undergone pre-legislative scrutiny. The Government are indebted to the work of the Joint Committee on the Fixed-term Parliaments Act. We have carefully considered the committee's findings and amended the Bill in two respects, the first being the Title of the Bill. This small but significant change ensures the purpose and effect of the Bill is clear, reflecting its precise remit and its constitutional significance. Secondly, having reflected on the Joint Committee's report, the Government agree that the trigger for the election process should be the Dissolution of Parliament. This amendment will give legal certainty that the election period will automatically follow on from Dissolution, providing a clear timetable leading to a defined polling date.

Let me conclude with the conventions which provide the flesh on the bones of the Bill. In restoring the status quo ante, conventions will once more govern the operation of the revived prerogative powers. Conventions can operate effectively only where there is shared understanding of them. That is why the Government published in draft their understanding of those conventions alongside the Bill for scrutiny—not only by the Joint Committee but by Parliament as a whole. We set out in that document:

"The circumstances in which a Prime Minister might seek a dissolution are underpinned by two core constitutional principles."

First:

"The Prime Minister holds that position by virtue of their ability to command the confidence of the House of Commons and will normally be the accepted leader of the political party that commands the majority of the House of Commons."

Secondly:

"The Sovereign should not be drawn into party politics, and it is the responsibility of those involved in the political process to ensure that remains the case. As the Crown's principal adviser this responsibility falls particularly on the incumbent Prime Minister."

We recognise that the conventions on Dissolution are part of an interlocking picture. Therefore, in our response to the Joint Committee, we have provided fuller explanations of the conventions on confidence Motions, Dissolution and Government formation. It is intended to provide the basis for discussion and debate among parliamentarians, building our shared understanding in and across both Houses and all those represented in them.

The value of conventions is not that they should cover every single hypothetical scenario but that they provide guiding principles and are an effective deterrent—in particular, the imperative not to involve the sovereign in politics. We welcome further discussion in your Lordships' House on the conventions. That is the best way to develop our shared understanding.

This Bill will deliver increased legal, constitutional and political certainty around the processes for the dissolution and calling of Parliament. It will restore tried-and-tested constitutional arrangements which have been understood by the electorate for generations and are underpinned by the core constitutional principle that the Government of the day draw their authority by commanding the confidence of the elected House.

I hope these constitutional arrangements that have served us well in the past will continue to serve future Parliaments and Governments of all parties, whatever they may be. The ability of a Prime Minister to call a general election for reasons of political or public necessity, to turn to the people to give their judgment, is an essential feature of our democracy. The Fixed-term Parliaments Act disrupted that relationship. This Bill, we submit, will restore the proper balance to our constitutional arrangements.

I look forward to a constructive debate on not only the Bill but the conventions. I commend the Bill to the House.

3.40 pm

Baroness Smith of Basildon (Lab): My Lords, I thank the Minister for his contribution and his endurance in getting through it—I have some cough sweets if they would be any use to him. I know how he feels; I once took a Bill through Committee while recovering from flu, with a lot of Lucozade under my desk. Given that he is not very well, I thank him for his contribution today. This is a relatively short Bill—six clauses and one schedule of what the Government describe as minor and consequential amendments. It is significant none the less, despite its brevity.

I was talking to a colleague the other day who described your Lordships' House as the "custodians of the constitution". That may sound a little pompous, but I think we take the constitutional responsibilities of Parliament very seriously. With that, I entirely concur with the Minister's comments about the committees of both Houses, which have provided ample information and a very helpful backdrop to today's debate.

Looking at the list of speakers in today's debate, we have those who have served in government and at the highest levels of the Civil Service, colleagues from the law and constitutional experts. Some of our newer colleagues will contribute as well; I welcome and look forward to the maiden speech of the noble Earl, Lord Leicester. When he came to your Lordships' House, he described it as

"the most effective reforming chamber in the … world."

I hope we can live up to his expectations. I look forward to his contribution.

The Minister outlined this already, but I really think this Bill reinforces the traditional saying, "Legislate in haste, repent at leisure". I am not staking any claim for the moral high ground for myself or my party, but it is essential when considering constitutional changes that there is a proper process of investigation, analysis and consideration. Otherwise, it is impossible to predict and fully understand all the implications of the changes proposed. There is an onus on parliamentarians from both Houses, from all parties and none, to ensure that any constitutional change stands the test of time. The answer to addressing such issues is pretty straightforward. Probably quite boringly, it is about having a process to ensure that all the relevant issues and consequences, intended and unintended, are fully understood.

As the noble Lord said, there is now little doubt that the Fixed-term Parliaments Act is badly drafted legislation. It is also rather ineffective, possibly because of its starting point. Despite the principle being discussed often—as he said, even in party manifestos—there had been very little detailed consideration. When the Bill was introduced, it was clearly designed for a specific purpose at a specific time: to protect the coalition Government from instability. That was understandable, given that we have little experience of coalition governments in our system, but it is an unavoidable irony that the coalition for which it was designed was clearly more robust than the Conservative Governments that followed, as ways then had to be found to circumvent the legislation. There is little disagreement that it is flawed and needs to be replaced. The question that remains is how to go about it.

When reading through the debates in the other place, I found it interesting how often ministerial comments and opinions were asserted as facts. If I were being generous, I would probably describe them as optimistic assertions. At Third Reading in the other place the Minister, Chloe Smith, stated:

"The Bill therefore repeals the 2011 Act and returns us to the tried and tested system whereby Parliament will automatically dissolve after five years, if it has not been dissolved earlier by the sovereign exercising that prerogative power at the request of the Prime Minister."

She then asserted that the Bill will

"reset the clock back to the pre-2011 position with as much clarity as possible",

but does it really do that? First, the Joint Committee that the Minister here referred to identified ways in which the then draft Bill did not do that, including through the inclusion of Clause 3 in the Bill before us today. This is the ouster clause that puts in statute that the decision to hold an election is outside any legal jurisdiction. If the "factory settings" were being restored to 2011, then surely such a clause would not be required. I heard what the Minister said but it did not really bring the clarity that we are looking for.

In the debate in the other place, the Minister then also declared that the Lascelles principles—through which a monarch has a constitutional power under the prerogative to refuse an election in three very limited circumstances—were ones that the Government "acknowledged" as a historical fact and that

"now is the time for the underpinning conventions of the prerogative power to be debated and, indeed, restated."—[*Official Report*, Commons, Dissolution and Calling Of Parliament Bill Committee, 13/9/21; cols. 721-22.]

However, I am unconvinced that any of this provides the clarity we need for the legislation before us.

The key question is whether the prerogative can be restored by statute and, therefore, whether the Bill restores the prerogative powers as they previously existed, including the principles by which a monarch can refuse an election. If it is the Government's view that that is the effect of the Bill, why is Clause 3—the ouster clause that would prevent any decision being judicially challenged—so essential? That is a very specific question, and it is important because Clause 3 implies that the Government consider that by seeking to revert to what they describe as the previous position by statute, the decision to call an election could be legally challenged.

When our own Select Committee on the Constitution, chaired by my noble friend Lady Taylor, examined this issue last year—albeit without the benefit of seeing the legislation now before us—it said:

"The possibility of legal challenge to the prime minister's advice to the Monarch, or the Monarch's decision to dissolve Parliament, must be avoided."

I accept that, and I understand why the Government remain scarred by the attempt at an unlawful Prorogation that was successfully legally challenged in 2019. The Minister will recall that so great was my concern and that of the noble Lord, Lord Newby, that we refused to take part in the Prorogation ceremony, which was later in effect declared void.

As the Minister and I have discussed, there is a clear difference between Prorogation and Dissolution, but the wider and perhaps more relevant question is whether the way the legislation is drafted is the correct way to address the issue. There was a difference of opinion in the Joint Committee, yet even those who supported the Government's approach in principle were concerned at how Clause 3 had been drafted—that is, its extent and future use as defined in Clause 3. My noble friend Lord Rooker picked up that issue and the Minister is right that it will have to be debated—perhaps for longer than he would like, although hopefully not too long. Still, it will have to be ironed out in Committee.

The use of the word "purported" has caused considerable concern because it appears that, in effect, Parliament is giving the Executive the power to do

[Baroness Smith of Basildon]
something that is not within their power, and there would be no legal redress whatsoever. I am not a lawyer—it probably shows—but from reading through the various reports and evidence to the Joint Committee and the Constitution Committee, it was obvious that if you ask two lawyers the same question, you get at least three opinions. Some said that they thought the ouster clause was clear, while some thought there was the potential for abuse. Others, including constitutional experts, considered that the courts would then seek to interpret the clause. I suspect that the potential for the latter two outcomes is undesirable and certainly not what the Government intended—so Clause 3, the ouster clause, may not even do what the Government intend.

So, what are the alternatives? I suggest that there are two options that we could consider and draw out in Committee. First, as invited by the Joint Committee, the Government could consider whether a more limited but clearer and more precise approach could be more effective. However, in the initial response to that invitation, the Government appeared to both agree and disagree. They accepted that clarity was necessary but disagreed that they needed to change anything.

An alternative approach would be for the House of Commons to continue to have a vote on the issue. Given that the power has been with Parliament since the Fixed-term Parliaments Act 2011, it would not be a huge leap to consider that that position should continue. Otherwise, the effect of the changes proposed by the Government will not be just to set the clock back to 2011 but to increase the power of the Prime Minister not just beyond the current position but beyond what existed prior to 2011.

Let us face it: this Prime Minister has not exactly established himself as someone who could be constrained, or even guided, by the normal conventions of Parliament. Whether because of the unlawful Prorogation, for example, or his lack of support for the Ministerial Code, there are many who consider that the Prime Minister wants to find ways around the usual and normal ways of working rather than follow the rules. But, as we have already seen, he is not alone in the Government in appearing to consider the normal processes of checks and balances in our system as something of an inconvenience. Legislation has to be considered for all situations, not just one particular Prime Minister.

I am sure that most noble Lords in this House would agree that Parliament and the governance of our country work best when there is a balance between the Executive and Parliament, not when the Prime Minister thinks that they are one and the same. If the Government consider that the Lascelles principles still apply—and I am not convinced that they do—the monarch could, in future, again be placed in a difficult position: having to make a decision to either accept an inappropriate request for Dissolution or refuse the advice of a Prime Minister for an election. However, the ouster clause is a heavy-handed, inappropriate way of dealing with the issue.

A point made by Professor Andrew Blick of King's College, London, is one that we would do well to heed, and perhaps look at in more detail in Committee. In his evidence, Professor Blick considered that maintaining a vote in the House of Commons would help to insulate the monarch from being put at the centre of a political and constitutional controversy. Many of us remain very concerned at the way the Leaders of both Houses went to Balmoral to ask the Queen to call for the Prorogation. So I favour this approach, but we will get into that in more detail in Committee.

There are other issues in the Bill, such as the number of days needed for a general election, that we may also want to probe further. I look forward to today's debate, with the expertise and information we have in this House, and to our deliberations in Committee.

3.53 pm

Lord Newby (LD): My Lords, I too offer my sympathies to the Minister for having to take forward this Bill under the duress of a heavy cold. I hope that my comments will not add too much to his coughing and spluttering.

This is an exceptionally short Bill but still a very significant one. The Act that it replaces was said by David Cameron to be

"the biggest transfer of powers from the Executive in centuries."

If we accept his judgment, it follows that the repeal of the Act to return to the position that preceded its passage marks a major transfer of powers back to the Executive. So the key question before us is whether such a transfer is justified. On these Benches, we believe that it is not.

The purpose of the Fixed-term Parliaments Act was to provide a stable framework within which the coalition Government formed in 2010 could operate. In his Second Reading speech in another place, even Michael Gove accepted that it had been successful in achieving this and had prevented the Tories "collapsing the Government" early to gain a political advantage.

The reason we have this Bill before us today is that the previous minority Conservative Government were frustrated in calling an election because they did not have a parliamentary majority. Yet, even with the Act in place, Theresa May was able to call an election, having had a revelation while up a mountain, and Boris Johnson was able to call an election three years early in the wholly exceptional circumstances of 2019.

The advantages of having a fixed term are clear. It brings some certainty and reduces the advantage the Prime Minister has in choosing an election date that maximises his or her chance of victory. Research in the UK by Schleicher and Belu shows that, where elections have been called opportunistically before the statutory end point of a Parliament, it has given the incumbents an average increase in vote share of 3.5% over what might otherwise have been expected, which has translated into an 11% seat advantage. In circumstances where no party has a majority in the Commons—a highly likely scenario for the UK in the future—it gives the largest party a massive advantage.

Fixed terms also provide the parties with a more level playing field on electoral expenditure.

Lord Cormack (Con): I am most grateful. What was the massive advantage in 2017?

Lord Newby (LD): My Lords, the massive advantage was perceived in the mind of the Prime Minister. The massive disadvantage was her judgment, not that she

did not have the opportunity to exercise that judgment. We think the exercise of that judgment, on what was by any accounts if not a whim then a very short period of decision-making, is a bad idea for democracy.

As I was saying, fixed terms provide parties with a more level playing field on electoral expenditure. If the Government can plan for an early election, they can ratchet up spending in the year before the planned, but unannounced, date. Opposition parties will typically be unable to take the risk of planning and spending on the basis of an early election date. For these reasons, a fixed-term Parliament is the international norm. Some three-quarters of the world's major democracies have a fixed term. So do the Scottish, Welsh and Northern Ireland legislatures. No doubt that is why Labour was so enthusiastically in favour of introducing a fixed-term Parliament in Gordon Brown's manifesto in 2010. I am not arguing that every single aspect of the current Act is incapable of improvement, but I am seeking to defend the principle which lies behind it.

So if we are to reverse the biggest transfer of executive power from the Executive in centuries and hand it back to the Prime Minister, you would hope that there would be a compelling reason for doing so. In moving Second Reading in another place, Michael Gove said that this compelling reason was that

"it gives power to the people."—[*Official Report*, Commons, 6/7/21; col. 788.]

This is pure doublespeak. It does not give power to the people; it gives it to the Prime Minster, pure and simple.

I suspect that this Prime Minster will not follow the precedent of his predecessor by having a revelation during a long mountain walk, but he might have it on the roundabout at Peppa Pig World and come back the next day and simply call an election. How do the people have any say in that decision? They clearly do not. They do have the power to vote the Prime Minister back or not at the subsequent election, but, if you really wanted to give power to the people, surely a Prime Minister would follow the public mood and, when it was supportive of an early election, call one. But that is exactly the time when a Prime Minister is least likely to call an election, because the people want elections when they want to change the Government, not retain them. So the democratic argument for prime ministerial discretion on calling an early election is entirely bogus.

This Bill seeks to put the clock back and reinstate prime ministerial powers over Parliament. But it goes further than that. With Clause 3, it seeks to increase prime ministerial power further by removing the power of the court to adjudicate on the way in which that power is exercised. As we saw in 2019, judicial oversight is not just a theoretical possibility but, as the noble Lord, Lord True, said, an actual possibility, and the Prime Minister simply wants to cut out this possibility in future.

If that is his aim, there is a much more satisfactory and democratic way of doing this, which is to make the calling of an election before the end of the full allotted span of a Parliament subject to a vote in the Commons. This reins in the executive power that the Bill seeks to give the Prime Minister, without unduly hobbling his or her ability to call an election—because, at the very least, the Prime Minister would have to consult Cabinet colleagues and persuade their party to vote for such an election.

In practice, it is unlikely that the Prime Minister will be denied an election by Parliament—by the Commons. Oppositions nearly always want elections and, if the Prime Minister is able to persuade neither their colleagues nor the Opposition to vote for one, the likelihood is that it would not be in the national interest. We will therefore support an amendment in Committee to make the premature calling of an election subject to a vote by the Commons. By doing so, we would remove the problem of the ouster clause and restrain prime ministerial power but allow MPs to decide whether it is in the national interest to have an election when the Prime Minister wants to call one. My colleagues will raise other aspects of the Bill both today and in subsequent stages, but, if the Lords can persuade the Commons to take back some control of the electoral process, I believe that it will have fulfilled its constitutional role.

To return to first principles, the British public do not elect a Government; they elect a Parliament, and an Executive are then drawn from that Parliament. Parliament is the servant of the people, and Parliament, not the Executive, should have the decisive vote on when the people should have their say.

4.01 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, I support the Bill. While it appears that no one really wants to keep the Fixed-term Parliaments Act, there are obviously differing views about what should replace it. There seem to me to be three basic suggestions: first, that the Commons should have a vote; secondly, that the Prime Minister should decide, subject to the courts' supervisory jurisdiction; and, thirdly, that the Prime Minister should decide but do so under a non-reviewable prerogative, which is what the Bill proposes. As I said, I favour the latter.

To clear the ground—the noble Lord, Lord Newby, has just done this—obviously, the three alternatives, if you can have three, are mutually exclusive. If the Commons has a vote, that decision is plainly unreviewable: Article 9 of the Bill of Rights plainly puts that out of court. It should further be noted that there is disagreement among lawyers as to whether, given that the FTPA earlier replaced the prerogative, the prerogative—certainly in an unreviewable form—can now be restored. My own clear view is that it can, and that is certainly the view of Lord Sumption and Mark Elliott, the leading Cambridge professor of public law, who advises the Constitution Committee and who supported the decision in Miller II.

With Clause 3 in the Bill, I simply cannot see any court, and certainly not the Supreme Court—now under new management, with a new president—contemplating reviewing the prerogative of the Prime Minister. Indeed, even without Clause 3, I do not think that it would have done so, but it is there for the avoidance of doubt. Indeed, one reason for having it there is to relieve the court of the embarrassment of being drawn reluctantly—believe me—into this rather sensitive area.

[Lord Brown of Eaton-under-Heywood]

Let me explain now why I see no basic objection to an unreviewable prerogative here—it is, or would be, exercisable by Her Majesty not on the advice but at the request of the Prime Minister—and then I must explain why I do not think that the House of Commons should have a vote. As to an unreviewable prerogative power, I gather that there are those who worry that that could place Her Majesty in an invidious position if, for example, the Prime Minister did not like the result of a general election and thought he could get a better majority with an immediate further election. That sort of thing, besides being flatly contrary to the conventions set out and agreed on all sides, is really a purely theoretical risk. Any Prime Minister has to have regard to the obvious general good sense of the electorate, and we all know that electorates can see through that sort of thing extremely readily. Certainly, it does not to my mind suggest for a moment that the Prime Minister could be mad enough to reach a decision that would actually embarrass Her Majesty.

As to the Commons having a vote, I object to that because it would leave wide open the possibility that we could return to the selfsame intolerable position that arose under the Fixed-term Parliaments Act back in the late summer of 2019. Paragraph 86 of the report of March this year from the Joint Committee on that Act said:

"It would be possible to replace the Fixed-term Parliaments Act with a provision requiring a vote in the Commons before Parliament was dissolved. A minority of the Committee argues this would be the simplest and most obvious way of protecting the Monarch from being dragged into party political debate. The majority considers it a change which would only have a practical effect in a gridlocked Parliament, which could mean denying an election to a Government which was unable to function effectively, and which might therefore be counter to the public interest."

In a letter dated 12 August, the Minister gave a well-judged response to the suggestion from the Public Administration and Constitutional Affairs Committee for a convention that there should be a Commons vote. The letter said:

"To establish a convention that a resolution of the House must proceed an early dissolution would not be compatible with a return to the tried and tested arrangements for calling an election. Indeed, to create such an expectation would potentially only lead to a repeat of the circumstances of 2019 which this Bill seeks to avoid in repealing the 2011 Act and reviving the dissolution prerogative."

The imperative, in my respectful suggestion, is to avoid any risk of returning to the position that arose then. In speaking in a debate on 5 September of that year, 2019, I deplored the situation brought about by the Kinnock Bill, an Opposition Bill to ensure that Boris Johnson could not pursue his essential policy of securing Brexit, even if necessary on a no-deal basis. Although I was certainly no supporter of the Prime Minister or of Brexit, and still less of a no-deal Brexit, I suggested that the Bill compelled the Prime Minister to go to Brussels cap in hand, not merely to seek but to obtain a further extension to that process. A little later, I said that

"those promoting this Bill are at one and the same time intent on compelling the deep abasement of our sitting Prime Minister and yet refusing the Government the opportunity by general election to reinforce its right to govern, which we generally take for granted."—[*Official Report*, 5/9/19; col. 1177.]

The imperative of this Bill is that we do not allow that to recur. Let us return to the safe and sound position we used to have—let us pass this Bill.

4.10 pm

Lord Grocott (Lab): My Lords, the House might allow me to mention that, in June 2014, a Labour Back-Bencher introduced the Fixed-term Parliaments Act 2011 (Repeal) Bill. I happen to have a copy of it with me here. Modesty prevents me mentioning the name of the person who introduced the Bill, but it got nowhere; the Government ignored it. Had they not, we would have saved ourselves an awful lot of time and trouble. At least this allows me to deploy my favourite parliamentary phrase: "I told you so". The intentions of the Bill before us are clear: first, to scrap the Fixed-term Parliaments Act 2011 and, secondly, to return to the system of dissolving Parliament which existed prior to the Act. I very much agree with the first objective, but some significant improvement is needed to the second.

The Fixed-term Parliaments Act 2011 was a bad piece of legislation. It was a major constitutional Bill presented in haste, with no attempt at reaching consensus and no pre-legislative scrutiny. Perhaps most damning of all, the Bill was drafted in cynicism between two political parties, the Tories and the Liberal Democrats, that did not trust each other and wanted a mechanism that would keep them in office for a full five-year term. David Laws, in his book *22 Days in May*, says it all:

"William Hague and George Osborne indicated that we needed a mechanism to build confidence in each other … That pointed to fixed-term parliaments".

So much for David Cameron's quote that it was a major transfer of power from the Government to the legislature. I was amazed that the noble Lord, Lord Newby, quoted that approvingly when, quite clearly and unarguably, the whole purpose of the Bill was to guarantee the Executive a five-year term. That is no way to make constitutional change. I would like to hear from the Minister on this; perhaps he could apologise on behalf of the Conservative Government at the time that this Bill was ever introduced, and say that no major constitutional change will be introduced without full cross-party debate and pre-legislative scrutiny as long as this Government are in office.

The 2011 Act led to serious damage to the way in which our democracy works. This was particularly evident during what I can describe only as the poisonous Parliament between 2017 and 2019. There were at least two deeply damaging episodes for which the Act was directly responsible. The first was in January 2019 when we had the first of the so-called meaningful votes on Brexit. The Government lost that vote by 432 votes to 203, with a majority against them of over 220. Prior to the Fixed-term Parliaments Act and the conventions that existed at the time, there is no conceivable way that a Government could have survived a defeat like that without either an immediate vote of confidence or by calling a general election.

An even more damaging consequence of the Act was in autumn 2019. This was when the Government had unarguably lost the confidence of the Commons, again on their European policy. Three times they tried to call an election to settle the matter and three times

failed to achieve the two-thirds majority required by the Act. This meant that in our cherished parliamentary democracy, whose foundational building block is that Governments govern on the basis of the confidence of Parliament, we faced a situation in which a Government remained in office despite clearly having lost Parliament's confidence. They could not pass their legislation nor enable the British people to vote in a general election. No wonder it is such a discredited Parliament.

What should we put in the Act's place? I was privileged to be a member of the Joint Committee that examined the current Bill. There were two related issues that we must have spent half our time discussing. The first concerned the role of the monarch and the need to keep the Queen out of politics. The second was about the so-called Dissolution principles. These issues are fundamental to our democracy. They are, after all, questions about the circumstances in which the British people can exercise their most fundamental democratic right—the right to vote.

The Government's answer to these questions is, on the surface, a very simple one. It is to return to the system exactly as it was before the Fixed-term Parliaments Act. This meant that, apart from in a very restricted number of conventions, a general election could take place whenever a Prime Minister requested that the monarch dissolve Parliament. But herein lies the rub: as we know, a request, as opposed to advice, from a Prime Minister means that the monarch still has discretion about whether to accept the request. Then inevitably you hit a serious problem. If you consider it essential to keep the monarch out of politics—I do—how on earth can you allow even the possibility of her deciding whether she can refuse a request from a Prime Minister for a general election? Such a decision would be a major constitutional crisis. There could hardly be a more politically charged subject.

There is a solution, which has been touched on by previous speakers. In my view it is a very simple one, and it is that a general election should be held not just when a Prime Minister goes to the monarch and requests one, but when a Prime Minister goes to the monarch armed with a House of Commons resolution and advises her to hold one. Remember that, in our constitution, advice from the Prime Minister is something that the monarch would accept. This simple requirement of a majority in the Commons solves every problem at a stroke. The Government get what they want because a Prime Minister—who of course would not be Prime Minister unless he or she enjoyed the confidence of the Commons—would get the necessary majority on such a fundamental issue. There would be no need for endless debates about Dissolution principles as the authority of Parliament is the only principle that you need. The Queen is kept completely out of politics; she is simply abiding by the supreme authority of a parliamentary majority.

There are other advantages. First, a resolution of Parliament would not be challenged by the courts, so the judiciary would be kept out of politics. Secondly, we would avoid the bizarre embarrassment of the Bill as drafted, which hands back power from Parliament to the monarch. The whole history of our democracy involves the steady transfer of prerogative powers from the monarch to Parliament. This Bill effectively says, "No, we don't want these powers so please can the hereditary monarch take them back?" By the way, if the Minister when replying says that the whole purpose of the Bill is to give the power of Dissolution back to the Prime Minister to avoid the chaos of the last Parliament, the answer is simply this: on the three occasions when Boris Johnson wanted a general election, he would have got one under my proposal because a majority of MPs said yes. It was simply the requirement of a two-thirds majority that caused the chaos.

I also say to those who object to the idea of a simple majority of government-supporting MPs being able to call an election when it suits them, they can do that already. The Early Parliamentary General Election Act 2019 did just that with a simple majority. I am suggesting a solution that keeps both the monarch and the courts out of politics. It enables a Prime Minister with a majority in the Commons to secure a general election, just as Prime Ministers have been able to do in the past. It solves at a stroke all the problems of having to define Dissolution principles. All that is needed is to include in the Bill a provision that a Dissolution will take place when the Prime Minister arrives at the palace armed with a House of Commons resolution, which would then be granted automatically. I very much hope that the Minister can see that case when he winds up, and I look forward to his reply.

4.20 pm

Lord Strathclyde (Con): My Lords, that must have been a very satisfying speech for the noble Lord, Lord Grocott, to make—I can see that he enjoyed it. It might have been shorter if he had simply stood up and said, "I told you so."

I support the support the Bill as well. Our lives would of course be considerably easier if all Bills were introduced like this, largely supported by the Opposition and unamended in the House of Commons. It puts a wrong right and takes us back to where we were before. It is admirably clear in its intention and impact. While I accept that there are some aspects of detail that are controversial, I hope that the Government will not be swayed from their course of action.

As part of the good will that existed at that heady time of excitement at the creation of the coalition, post the general election of 2010, I was persuaded that the Liberal Democrats had some ideas that needed to be tested by experience, and so the Fixed-term Parliaments Act was created. It was something that I supported, despite my earlier scepticism. However, the events of 2017 and 2019 showed that the Act was insufficiently flexible to meet our constitutional arrangements. It gave power to the courts and to the House of Commons, it created a muddle and it was also unnecessary. This Bill returns us to the clarity that we previously enjoyed. In this House, I believe that one of our overriding objectives should be to provide that kind of clarity and simplicity.

Of course, there will be those who urge conditions on the workings of the Bill through the House of Commons—in the way that the noble Lord, Lord Grocott, has—and indeed the courts. I urge the Minister to ignore their blandishments, however elegantly they are made.

[LORD STRATHCLYDE]

The Bill deals with the whole question of when elections are called. I believe that we should do nothing to put hurdles in the way of people using their vote. "Trust the people" might sound like a cheap political slogan, but it is the cornerstone on which our constitution is built. The noble Lord, Lord Grocott, put it very well when he said that there was a fundamental right to vote, but I part company with him after that.

We should do everything to make sure that our system of dissolving Parliament and calling an election is very clear and well understood by the people of this country. This Bill does just that and should be supported.

4.22 pm

Lord Beith (LD): My Lords, it is no surprise that the noble Lord supports the Bill even though he had to offer an explanation for having supported the Fixed-term Parliaments Act in the first place. I am a supporter of the principle of fixed-term parliaments, but I served on the Joint Committee on the Bill and on this House's Constitution Committee when it considered the Bill as then proposed. I pay tribute to my colleagues on both committees for their very careful consideration of the issues.

I was in the Commons at the time of the Fixed-term Parliaments Act, but, more significantly, I was in the Commons in 1974, when the old system was tested. We had elections in February and October of that year, and I had fought a by-election in November of the previous year, making it three elections in 11 months, with a majority still in two figures at the end of that process. The question that this raises is this: was Harold Wilson advised that to seek an immediate election after the outcome of the February 1974 election would be unreasonable? There was a decent interval of eight months before the next election took place—something that emerged from the process. We still do not know, and I look forward to someday finding the answer to that question.

Fixed-term parliaments are normal in most democracies. We are the exception. Fixed-term parliaments preclude, or limit, the ability of the Prime Minister to time elections to gain advantage or, worse, to create short-term policy inducements in order to secure a majority. That is essentially what Harold Wilson did in 1974. Fixed-term parliaments avoid the further problem that frequent elections and short Parliaments disrupt parliamentary scrutiny of the Executive. It is not always realised that a general election closes down the Select Committee system not only for the duration of the election but for what can be several months after the election. Back-Bench Members who succeed in the ballot for Bills lose their chance of getting their legislation through, and the threat of an early election is one of the devices that Government Whips use as they seek the votes of unwilling Back-Benchers in marginal seats. We might see more of that in this Parliament.

For Liberal Democrats—and, indeed, for Labour, until it changed its position—fixed-term Parliaments were a manifesto policy. A key factor in the coming into effect of the Fixed-term Parliaments Act was the need to maintain the coalition. As the Joint Committee points out, a future coalition may well make similar provision. It is misguided to assume that the so-called gridlock of 2019 was primarily caused by the Act or would be likely to occur again if the Act remained in force. It was a unique set of circumstances in which the majority in Parliament were opposed to the policy outcome of a no-deal Brexit that the Government favoured and could bring into effect by the mere calling of an election—not by the outcome of an election but by the mere calling of an election—during the timetable, before the clock reached midnight. By closing down Parliament for that period of the election the policy outcome of a no-deal Brexit could be secured. It is hard to imagine that set of circumstances happening again.

I recognise that both the Conservative and Labour parties went into the most recent general election committed to repealing the Fixed-term Parliaments Act, and I was therefore willing to be involved in detailed committee scrutiny of the Bill to ensure that it did not damage essential constitutional principles. I welcome the Government's engagement with both committees and their willingness to make some modest, but not insignificant, changes, including the title, but also, more significantly, the language Ministers use to refer to the Prime Minister's ability to request a Dissolution, rather than advise. The advice would be binding upon the sovereign; the request is not.

In order to return to the status quo ante, the ability of the monarch to refuse a Dissolution needs to be retained. There are very rare circumstances in which it might be used—for example, when a Prime Minister seeks a quick rerun of an election in the hope of getting a larger majority. But the essence of the matter is that the Prime Minister would be advised that he should not put forward such a request because it would be drawing the sovereign into political controversy. A power can be significant even when it is never directly used. That is the significance that I sought to draw from the 1974 experience.

The Joint Committee was very concerned, as noble Lords have been today, about Clause 3—the ouster clause—and particularly its wide drafting. There is general agreement, not just in politics but in the courts as well, that the calling of elections is not a matter in which it would be desirable for the courts to intervene, but inclusion of a "purported exercise" of those powers in the ouster is a worrying precedent, asserting that the Minister's powers are what the Minister says they are, not what the law says.

Some Ministers, including the current Justice Secretary, appear to have declared war on judicial review, which is a very important restraint on a powerful Executive. This clause looks a bit like a trial run for ouster clauses on other matters. In this case, it is not necessary, as several have said this afternoon. A House of Commons vote in support of a Dissolution request would be proof against judicial review under the Bill of Rights. A minority of us on the Joint Committee favoured that provision being included in the Bill.

I will make one final point, which is drawn from the summary of the Commons Public Administration and Constitutional Affairs Committee's report. It says:

> "A mix of statute and convention remains the best way for this area to be governed, but requires the actors involved to act in ways which engender trust."

Recent events underline the importance of those words. It is difficult to sustain trust when it appears that the Prime Minister and some of those around him easily forget that rules and long-established conventions apply to them and not just to the rest of us.

4.29 pm

Lord Butler of Brockwell (CB): My Lords, I regret that I am going to share the self-satisfaction of the noble Lord, Lord Grocott. I believed from the outset that the 2011 Bill was misconceived. Partly through the not inconsiderable intervention of my noble friend Lord Pannick, who regrets that he cannot be here today, your Lordships' House was twice persuaded to send the Bill back to the House of Commons for reconsideration. The concession eventually obtained was that the operation of the Act should be reviewed in 2020 by a Joint Committee. That was conducted under the chairmanship of the noble Lord, Lord McLoughlin, who I think I am right in saying should be congratulated on his birthday today.

The stated intention of the Fixed-term Parliaments Act was, as the noble Lord, Lord Newby, said, to ensure that the 2010 coalition lasted a full five years. But, with respect to the noble Lord, the Bill was not even sufficiently effective to do that. If either of the coalition parties had wanted to end the Parliament early, it is highly likely that, with the support of the Official Opposition, the necessary two-thirds majority in the Commons to bring the Parliament to an end would have been available.

A second aim of the Act was to remove from the Prime Minister the alleged advantage of being able to choose the timing of a general election. In my experience, the flexibility that Prime Ministers have is very limited in practice. No Prime Minister is likely to choose to put their Commons majority at risk before the last year of a Parliament unless they judge it essential in order to get their Government's programme through. Experience also shows that, if the electorate sense that the Government are putting them to the trouble of a general election for opportunist reasons, they punish the party severely through the ballot box, as the intervention by the noble Lord, Lord Cormack, made clear. That is what Mrs May found in 2017.

I believe that the traditional arrangement by which the Prime Minister can ask the Queen to dissolve Parliament so that the Executive can seek a new mandate, in circumstances where they cannot rely on getting their programme through Parliament, is in the national interest. I therefore support this Bill. However, I greatly regret the inclusion of Clause 3. The noble Lord has argued that the Dissolution of Parliament is a matter properly dealt with by the electorate rather than the judiciary, but in my submission, this is a false argument. By the time the electorate have any say, Parliament will have been dissolved, the power will have been used and the Queen will have had to assent to it.

If the Bill gave a role to Parliament in the Prime Minister's request for Dissolution, it would, as others have said, be a different matter. But the Bill does not allow any involvement by Parliament. Under the Bill, Dissolution is not something done by Parliament; like Prorogation, it is something done by the Executive to Parliament. Parliament does not authorise it or have any role in it. If the Executive misuse their power, in my view the exercise of that power should be subject to review by the courts.

But in this case, as has already been pointed out, there is an even more fundamental objection. Let us suppose that the Government do misuse the prerogative power in some way. All commentators agree that, at least in theory, such a situation could happen. What protection would exist if the courts cannot intervene? There is only one source of protection in that circumstance: the sovereign. The sovereign would have to refuse the Prime Minister's request for Dissolution. That would require the sovereign to do what everyone agrees she should be protected from doing: intervening in party politics, and in the most contentious of circumstances. If it is necessary to have protection against the Prime Minister's abuse of the power in this Bill, in my view it should be provided either by Parliament or the courts, not by the sovereign.

I end with a more general point. A recent article in the *New Statesman*, under the heading "Democracy's Last Stand", discussed how ex-President Trump's attempt to subvert the result of a democratic election was thwarted by the courts. The article also pointed out how rapidly Hungary, Turkey and Brazil have seen their democracies strong-armed by repressive Governments. The article asked whether the United Kingdom's constitutional safeguards are sufficient to prevent a slide in a similar direction. It reminded readers of the politically motivated Prorogation, the demonising of the courts and the BBC, and the attempts to override the findings of independent standards and appointments bodies. One could add the use of the Henry VIII powers to bypass Parliament's scrutiny, highlighted by two Committees in your Lordships' House last week, and now, the ouster clause in this Bill.

I suggest that those of us who value our democratic traditions must stand up against the Government's attempts to remove oversight of their actions by Parliament and the courts. If Clause 3 is not amended, I shall vote against its inclusion in the Bill.

4.36 pm

Earl Leicester (Con) (Maiden Speech): My Lords, it is an honour to make my maiden speech in your Lordships' House. I will not dwell on the six generations of the Coke family who, in 162 years of taking their seat—or not—in this House, only mustered three speeches, two of them by my father, concerning the railways, in 1998 and 1999. As you can see, my family, who have the obstinate habit of spelling our name "Coke" and not, as it is pronounced, "Cook", have not been over-talkative in this House.

An earlier antecedent, Sir Edward Coke, was a Member of Parliament and ultimately rose to become Lord Chief Justice to King James I. He is immortalised in one of the 12 bronze relief panels on the doors of the Supreme Court in Washington DC, where he is seen barring the King from entering Parliament. He defended common law against the divine right of the monarchy. This and other ideas of Coke's were important to a fledgling republic; indeed, a number of them were written into the US constitution. In the English Civil War our family were, not unnaturally, Parliamentarians.

[Earl Leicester]

Perhaps my family was distracted from your Lordships' House by the business of managing a large estate in Norfolk and seeing that proper use was made of its resources. We are still the custodians of that estate at Holkham, managing it sustainably and to sustain the myriad families that work there and rely on it. I have been up there for nearly three decades and have been wholly responsible for it for the last 15 years. Its prime activities are my main interests: the environment, agriculture, heritage and tourism.

In 2012 we resumed management of the Holkham National Nature Reserve from Natural England. It is arguably the most important NNR in the country. Through positive conservation and effective predator control, it yields large numbers of fledglings that survive to adulthood, and it outperforms many other sites. The greatest success has been the natural colonisation and fledging of more than 435 spoonbills, a species which became extinct in this country 400 years ago. The breeding population has doubled in the last two years. Our population of lapwings, a species that has seen a 57% decline across the UK, is back to what it was 20 years ago. This is all because of subtle management changes, trying different things and not sticking to rigid prescriptions.

While the Government have an ambition to halt declines, Holkham is reversing them. On the farm, the principles of regenerative agriculture have been put into practice this last decade. We are not organic, and probably will not ever be, though I have challenged the farm team to farm without artificial inputs by 2030. This year was the first that no insecticides were used. Nitrogen input on the potatoes was reduced by 22%, having been reduced by 10% in each of the previous two years, but they still, importantly, yielded good yields. With cattle extensively grazing the nature reserve and sheep grazing the cover crops in a six-course rotation, we are relearning the lessons that Coke of Norfolk espoused during the agricultural revolution.

I fervently believe that regenerative agriculture provides one of the main solutions for combating climate change. It is a shame that COP 26 appeared to miss the opportunity to focus on it. The woodland is actively managed for profit, amenity and increased biodiversity, using the principles of continuous cover forestry. One of my passions these last 25 years has been renewable energy. We have invested in ground source heat pumps, air source heat pumps, biomass boilers, solar and a large, 2.5-megawatt anaerobic digester that pumps gas directly into the national grid. We have not invested in wind power, principally for aesthetic reasons; anyway, there are plenty more effective wind turbines 15 miles off the Norfolk coast.

Living in Holkham Hall, one of the 10 treasure houses of England, still replete with a full and much-cherished collection from the Grand Tour, I hope to speak authoritatively on heritage matters. My degree at the University of Manchester was in history of art. After university, I spent six years in the Army. We still retain a great number of cottages, and for these we operate an ethical housing policy, letting to local people and key workers only as we attempt to retain social cohesion and village life in a popular holiday destination. The estate has embraced tourism and leisure in the last 25 years and operates a holiday park—the recipient of the David Bellamy gold award for over 20 years—and a small hotel, the Victoria Inn. We run events and cafes. I have worked in nearly all of them.

I am president of Visit East of England and a board member of ALVA, chaired by the noble Baroness, Lady Wheatcroft. None of this would be possible without the wonderful team we employ. They are our greatest asset—well trained, welcoming, espousing great values, employed for their attitude and empowered to make decisions. We have been a real living wage employer since 2017, with 290 employees on the payroll at the end of October. Personally, I tend towards a contrarian view and generally support the underdog, hence my dogged support of Norwich City Football Club. I like to challenge, and I often ask, "Why?"—perhaps too many times.

I apologise for the digression from the Bill we are discussing. I welcome the revival of the prerogative power to dissolve and call a new Parliament. This returns us to the best constitutional practices. Prerogative powers and constitutional conventions are a particular feature of our constitution. They provide the necessary flexibility and agility for our parliamentary democracy. The events of the 2017-19 Parliament demonstrated the negative impact the 2011 Act had on our parliamentary democracy and it led to paralysis. In these circumstances, the Government were unable to secure their business or return the issue to the electorate to break the deadlock because Parliament was unwilling to withdraw confidence or support an election. This meant bespoke legislation was needed in 2019 to have another election. The Bill seeks to put in place arrangements that deliver increased legal, constitutional and political certainty around the process for the Dissolution of Parliament and the calling of a new Parliament.

I am hugely grateful for the warm and kind welcome I have received from all quarters of this House, regardless of political hue. I thank the staff of the House, who have been without fail all hugely helpful to me, from the discretion of the doorkeepers to the forbearance of the dining room staff when I had forgotten to pay for my dinner. I thank all those who enabled me to be here today—my family and wife in particular, and the team I leave managing Holkham—as we strive to enact our vision to make it the most pioneering and sustainable rural estate in the UK. I hope your Lordships will approve that a Coke, after 174 years of near-total silence, should once again try to stir the broth of public debate in this House.

4.45 pm

Lord Taylor of Holbeach (Con): My Lords, some speeches come more easily than others and following my noble friend Lord Leicester's maiden speech, I feel I have only one principal task and that is to congratulate him on his excellent first speech to this House and tell him how welcome he is here. Not even the arguments of the coming Friday debate can take away the sense that this House, and our Benches in particular, have gained by the active membership of the noble Earl. Those of us who live nearby know the impact that he has made on Holkham Hall and its estate. For 30 years, as he said, he has been a director of Coke Estates and for the past 15 years he has been very much in control

of what is a real community asset for those in Norfolk and beyond. His hands-on approach to the great house and the estate means that we have a real expert who is able to speak with experience and authority about the responsibility that we have to the past of maintaining buildings in the best condition and at the same time making them relevant to the present and the future. Perhaps I can illustrate that by referring to the work he has done on one of the finest houses in England and on the Victoria, which he referred to in his speech, maintaining its function but creating one of the best restaurants with rooms in the country. We would expect the president of the Caravan and Motorhome Club to provide facilities for them together with the cottages and holiday facilities he talked of. Holkham is the model of how to restore and engineer amenity and of how to combine modern farming with nature conservation, and we have a chance to learn from a man who has done it and knows how to do it. Not for nothing is he president of Visit East of England. As chairman of the Midlands Engine APPG Visitor Economy subgroup, I share that interest in a key economic sector.

Perhaps I should now turn to the Bill. My first reaction was to go to the Library of the House, a source of great strength to all of us who find ourselves faced with legislation we know too little about. I was particularly interested to explore further the Second Reading of the Fixed-term Parliaments Bill, which I thought might be useful, for at the time I was the Whip in this House responsible for Cabinet Office matters and I thought I might find that I had words for eating—it can happen in politics, can it not, particularly if you have ministerial responsibilities? As it turned out, that role was left not to the noble Lord, Lord Wallace of Saltaire, who is in his place, but to the noble and learned Lord, Lord Wallace of Tankerness, who took the Bill through the House.

The principle of this Bill is to repeal that Fixed-term Parliaments Act and restore the prerogative procedure. I think that we are all agreed about that. However, I sense that Clause 3 is going to lead to considerable debate on how that procedure should be resolved. I am not entirely sure that I can agree with noble Lords who feel that just leaving it to the Commons to vote on the matter is to restore the constitutional convention to the status quo ante, but I believe that we have an opportunity in the Bill at least to discuss these matters, and it is good that we have noble Lords here who have experience of them from all different aspects.

Prerogative powers and constitutional conventions are a particular part of our constitution. They provide the necessary flexibility and agility for its delivery. We in this House have a welcome role in discussing the Bill, and I hope that the debates on it in Committee and further on will provide an opportunity for the interesting notions that have been presented to the House today to be further discussed and resolved. This House has a particular role to play on the shared understanding of the convention and I hope it continues to do so.

4.50 pm

Lord Sikka (Lab): My Lords, I congratulate the noble Earl, Lord Leicester, on his excellent speech and welcome him to the House. I look forward to his insights on many worldly matters.

I am not a constitutional expert or a lawyer; nor am I a seasoned parliamentarian, as many others on the speakers' list are. In many ways, I am an outsider and I offer an outsider's perspective on the Bill. I believe that many of the concerns I will express may be shared by many lay people outside.

There is a broad public perception that Governments pass laws for their own convenience. The Bill ferments those concerns and reinforces them in many people's minds. It does not enhance the power of the elected Chamber or the people. Possibly, it is all about enabling the Government to make a dash for an election before the glow of the coronavirus vaccine wears off and the consequences of their disastrous management of the economy and Brexit catch up with them.

The Minister referred to a desire to return to some glorious past. Perhaps that past was never really that glorious at all; if we look at the history, we see Governments cutting loose and seeking electoral advantage regardless of whether it was good for the country or not. We all know that the Fixed-term Parliaments Act 2011 was part of the coalition Government's strategy to remain in office; there was nothing else to it really. The Minister kindly referred to the Labour Party manifesto, so I remind him of the Conservative Party's 2015 manifesto, which referred to the FTPA as

"an unprecedented transfer of Executive power."

Presumably now we have an executive grab for power, because all other centres of power are being weakened.

The key factor in the FTPA was that the House of Commons determined the timing of the Dissolution of Parliament. The Bill takes that away and gives the Prime Minister unconstrained power over when to call an election. If a Prime Minister can unlawfully prorogue Parliament, he can also abuse the Dissolution powers. Are there any safeguards in the Bill? It is hard to see any, especially when the courts are excluded and people cannot go to them for any help.

Under the Bill, Parliament can be dissolved by a Prime Minister who is shoehorned into office—in other words, not the leader at the general election and therefore not subject to an earlier verdict of the people. Parliament can also be dissolved by a Prime Minister whose party does not have a working majority in the Commons.

What if the Prime Minister chooses not to dissolve Parliament and to go over five years? Are there sufficient safeguards? I could not really see anything in there to assure me. At least a vote in the House of Commons offered some safeguards against abusive Dissolutions, but all that is swept away. There is nothing to prevent Prime Ministers from behaving as they did in the past: pass a very favourable Budget, bribe the people, and call a general election. We are really talking about returning to the days of electoral bribery without any consideration of the consequences for the economy or the country as a whole, which in itself is an abuse of the Prime Minister's office.

The Explanatory Notes accompanying the Bill say that

"the Sovereign dissolved Parliament only when requested to do so by the Prime Minister, and in certain exceptional circumstances, the Sovereign could refuse to grant a dissolution."

[Lord Sikka]

I hope that the Minister will tell the public at large what the "exceptional circumstances" are in which a Dissolution may be refused. When did the sovereign last override the Prime Minister's advice? The Prime Minister basically seems to be in control. We have an adversarial political system, but which representative of the people will be called on to advise the sovereign on whether the circumstances are "exceptional" and therefore the Prime Minister's request ought to be denied? Without suggesting democratic arrangements, the Bill leaves the sovereign open to a potential charge of political bias and subject to public opprobrium.

Clause 3, as many have referred to, is highly troublesome. It seeks to deny people access to the courts to rule on abusive Dissolutions. The inclusion of the clause suggests that the Government are concerned that people may challenge the Prime Minister's decision, and that the Government are out to disempower the people. We live in a country where people have access to law and adjudication by the courts on most things, but on the vital issue of the Dissolution of Parliament and Prorogation the people will have no such right. Why are they being denied that right? The Minister referred earlier to elections being verdicts, but it has already been pointed out that the election comes some time after the event of Dissolution; the abuse has already taken place.

If the courts are precluded from adjudicating on the prerogative power of Dissolution, the only check on a rogue Prime Minister is the monarch. However, the Bill does not legislate on the monarch's powers or offer any transparency or clarity on how those powers might be exercised. The only way to protect the sovereign from party politics and a charge of bias is really to empower the people to go to the courts and to empower the courts to intervene.

Overall, the Bill is part of a worrying trend of centralising power in the hands of the Executive and weakening the powers of Parliament, the courts and the people.

4.58 pm

Lord Rennard (LD): My Lords, the Bill gives more power to Boris Johnson and less to Parliament. It is therefore in my view a Bill that Parliament should oppose, and I remain surprised that it has so much support from the Labour Benches. When Labour left government in 2010, the Labour Party manifesto of that year was committed to the principle of fixed-term Parliaments. Labour's opposition to the 2011 Fixed-term Parliaments Bill was clearly tactical, and the argument that it then made against it was that the proposed term should have been four years, not five.

No athlete in a race would be expected to fire the starting gun. The power to fire such a gun in the race to win seats in a general election is, I believe, a strong one. While criticising aspects of the 2011 Act, the Institute for Government said that

"for all its faults, the FTPA does stop an incumbent government from timing an election for maximum partisan advantage, resulting in a fairer contest."

Those of us on either side of the debates on the Fixed-term Parliaments Act in 2011 were proved to be wrong in certain respects. Some of us thought that it would mean that Parliaments would generally last for five years in future. Others thought that Parliament would not be able to provide for early elections. But the general elections of 2017 and 2019 proved that we were both wrong. But I believe that the principle should remain that Parliament should decide whether there is to be an election outside an agreed regular timescale, and that a significant majority should be required for it to happen.

In our debates this afternoon, we have considered at some length issues of electoral advantage. I have great respect for the noble Lord, Lord Butler of Brockwell, and his experience as Cabinet Secretary, but, as I understand the political system, it was never the role of the Cabinet Secretary to run a party's election campaign. Those of us who have run them would say that control over the timing of the election confers a very significant advantage to that party, and those of us who have run election campaigns with very limited war chests would say that you are at a very considerable disadvantage if you do not have control or knowledge of when the election will take place.

The principles introduced in the Fixed-term Parliaments Act have actually proved practical for the Parliaments and Assemblies in Scotland, Wales, Northern Ireland and London. I should point out that they were legislated for by the Labour Government after 1997. These principles also proved to be effective for every single local authority in the United Kingdom. The Parliament that agreed them for the governance of these places should agree them for itself.

The 2011 Act was not without faults, of course. As it was initially proposed, the 55% threshold for immediate Dissolution was a short-term fix to suit the coalition at the time—and I said so. It would have been better to have followed, straightaway, the rules that Parliament had previously set in Scotland and Wales, which require a two-thirds majority for an immediate Dissolution. Those rules have proved effective there, and the Fixed-term Parliaments Bill was changed before it become an Act.

Another problem with it was the lack of clarity over what would happen in the fortnight after a Government lost confidence when there was not a two-thirds majority for an immediate Dissolution. Again, the principle of elected Members electing the Prime Minister should have been adopted, as it was agreed by this Parliament under a Labour Government for the Parliaments of Scotland and Wales. This power might allow our Parliament to remove an incumbent Prime Minister. It might allow another Prime Minister from the same or another party to serve in their place.

I am sorry that the noble and learned Lord, Lord Clarke of Nottingham, is not in his place; were he here, I would have pointed out to him that, had we had such a rule in 2019, perhaps he might have achieved his childhood ambition and become Prime Minister. He might have been chosen by the Members of the House of Commons at that time. Perhaps it might have been possible for people in Britain to be offered the choice in a referendum of the reality of Brexit, as opposed to the glossy packaging that suggested that there were no downsides to it. As in Scotland and Wales, where the elected Members choose the First Minister, such an arrangement would, in my view, avoid the potential of dragging the monarchy into

politics in an unfortunate way. Instead, we had a general election in 2019 on an entirely false prospectus—namely, that there was an "oven-ready" deal.

Another problem that we later identified with the 2011 Act was that it left in place the very short timetable of 17 working days for the conduct of an election campaign. This was no longer practical in the era of widespread postal voting, including from abroad, and with many people still needing to register to vote once a general election was called. This problem with the election timetable was eventually addressed in the Electoral Registration and Administration Act 2013, which introduced a timetable of 25 working days, and I am pleased that the Government recently accepted that this timetable must stay in place.

There were attempts in the other place to revert to the previous 17 working day timetable for general elections. Huge concerns were expressed by the bodies representing electoral registration officers and the suppliers of electoral materials such as ballot papers about a potential change to allow fewer than 25 working days to conduct general election campaigns. The Electoral Commission in its briefing on the Bill chose to highlight why a minimum of 25 working days is needed for general election campaigns. Postal voting has become much more widespread since it became an option for everyone in 2000. Many people need time to apply to vote by post, and virtually no local authorities accept electronic applications to do so. Time is needed for applications to vote by post, for postal vote packages to be sent out, and for them to be returned by polling day. This is especially true for UK voters living overseas, including members of our Armed Forces serving abroad.

A final reason why the longer timetable is needed is that, as the Electoral Commission has pointed out, 9 million people in the UK are not registered to vote and should be, or are incorrectly registered. Some 60% of people think that voter registration is automatic. They are wrong, but electoral registration should be automatic, as the right to vote is not something that you should have to apply for. Were we to introduce such a system, the calling of such elections and the fairness of them would be greatly improved.

5.06 pm

Lord Hope of Craighead (CB): My Lords, I will concentrate my remarks on Clause 3, the so-called ouster provisions. The clause is deceptively short and simple. There are three provisions here, as the Minister explained, and they had the support of the majority of the Joint Committee on the Fixed-term Parliaments Act, to which reference has already been made. But the chair of the Public Administration and Constitutional Affairs Committee in the other place described them as "legally unnecessary and constitutionally unwise."

The Joint Committee's commentary tells us that first two provisions are there to confirm that the exercise or purported exercise of the powers relating to the Dissolution and calling of Parliament set out in Clause 2 are not to be questioned by any court. These two provisions may well be seen to be unnecessary, because that is the provision already. In the Council of Civil Service Unions case to which the commentary refers, Lord Roskill said that the prerogative power relating to the Dissolution of Parliament was not amenable to the judicial review process. As he put it, the courts are not the place to determine whether Parliament should be dissolved on one date rather than another. But in view of doubts as to whether prerogative powers can be revived, to which the noble Baroness, Lady Smith of Basildon, referred, the protection that the prerogative afforded may possibly not be available, because we would be dealing here with powers conferred by statute. So I can see that there is a case for providing the protection as to their exercise that a statutory power might not otherwise have. It is right that there should be no room for doubt on this matter, for the reason given by Lord Roskill.

The third provision in the clause is an entirely different matter. It seeks to extend the protection of non-justiciability to the "limits or extent" of those powers. As the commentary explains, it is designed to address the distinction drawn by the Supreme Court in Miller v the Prime Minister as regards the court's role in reviewing the scope or extent of a prerogative power as opposed to its exercise. It seeks, as the commentary put it, "to clarify" that neither is justiciable in the context of decisions relating to Dissolution. This is the provision that was described by the chair of the Constitutional Affairs Committee, in what I would regard as a carefully worded understatement, as "constitutionally unwise."

In its report, the Select Committee of this House on the constitution, of which I am a member, said that

> "judicial review should provide a backstop against exceptional use of an executive power which significantly erodes a fundamental principle of the UK constitution."

It went on to say:

> "There is a risk that a Prime Minister might abuse the power of dissolution if the courts are unable to exercise control over the limits and extent of this power, particularly in exceptional circumstances."

I think that is what the chair of that committee was referring to.

I have no doubt that the Prime Minister felt aggrieved by what the Supreme Court did in Miller. So too, in a way, did I. As it happens, I was a member of the Commission that took part in the Prorogation ceremony. I felt that it was my duty, as convenor, to support the Lord Speaker's decision to take part in the ceremony in response to Her Majesty's command, while respecting absolutely the decision of the leaders of the opposition parties—the noble Baroness, Lady Smith of Basildon, and the noble Lord, Lord Newby—not to do so. So it was a bit of a shock to the system to be told by the court of which I was previously the deputy president that the proceeding in which I took part was unlawful, null and of no effect. I did not see that coming.

The decision in that case was, of course, controversial. I will refrain from any comment one way or the other as to how the court applied the law to the facts that were before it and especially the remedy it chose. However, I have no doubts at all about its analysis of the law. Two fundamental principles of our constitutional law were at play in that case. The first was the principle of parliamentary sovereignty; the second was the role that the courts play in protecting parliamentary sovereignty from threats posed to it by the use of prerogative powers by the Executive. The court was entirely right to point out that the sovereignty of Parliament would

[Lord Hope of Craighead]
be undermined, as the fundamental principle of our constitution, if the Executive could, through the use of the prerogative, prevent Parliament exercising its legislative authority for as long as it pleased. If parliamentary sovereignty is to play its role, particularly in extreme circumstances, it needs that protection.

That is what the case of Miller was all about. The crux of that decision was whether "the limits or extent"—those are the words of the third provision in the clause—of the prerogative power had been exceeded. It was not about whether, if it was within those limits, the prerogative power had been properly exercised. The commentary on this provision says that it "seeks to clarify" this point. Not at all—all the clarification one needs is to be found in Miller. What this provision seeks to do is remove that protection altogether. That is why it is not only unwise but dangerous.

I hope that I may be forgiven for quoting, as so many people do, the words of Dick the Butcher in "Henry VI, Part 2". He said:

"The first thing we do, let's kill all the lawyers."

He did not like the idea that a few words scribbled by a lawyer on a parchment could undo a man's reputation. That was just a throwaway line, perhaps in jest, but it serves as a warning about the risks to which democracies may expose themselves if they react in this way against decisions by the judges that they do not like.

I too read the article in the *New Statesman* to which my noble friend Lord Butler of Brockwell referred; it is well worth reading. There is a spectrum, as it put it, along which countries can move, gradually or suddenly, as the protections on which democracy itself depends are eroded, one by one. I agree with the noble Lord that gradual erosion is what seems to be going on here. Removing the protection that the courts provide in this context may seem relatively unimportant to those in this Government who would say that it is not needed anyway: "So let's keep the judges out of it", they are telling us. But the sovereignty of Parliament is fundamental to our democracy. Just as fundamental is the need for it to be protected against the Executive's misuse of the prerogative, whatever it may be and whomsoever it may come from. Maintaining that protection is what the courts have been doing for centuries. We deprive them of that role at our peril. That is why I believe that the third provision in this clause should be removed from the Bill.

5.14 pm

Lord Norton of Louth (Con): My Lords, as we have heard, the Bill is designed to repeal the Fixed-term Parliaments Act and put the constitutional position back to what it was before September 2011. The Fixed-term Parliaments Act was, as we have heard, designed as a short-term political fix but with significant constitutional consequences. As the Constitution Committee observed, the policy behind the Bill shows little sign of being developed with constitutional principles in mind. Instead of a "fixed-term parliament Act", we ended up with a semi-Fixed-term Parliaments Act.

The Act has provisions which are constitutionally problematic and not well understood. Section 2(1)(b) of the 2011 Act confers, in effect, a veto power on the Opposition over the calling of an early election, as demonstrated in 2019, whereas Section 2(3)(b) potentially gives the Government a let-out provision in the event of losing a vote of confidence—something not possible under the convention on confidence that existed before 2011. Confusion as to its provisions has itself been part of the problem.

I turn to the provisions of the Bill before us. Let me begin by addressing what I shall term the silence of the Bill—that is, what it omits—before turning to the need for the omission to be extended. It is a short Bill, but it should be even shorter.

A Government rests for their continuance in office on the confidence of the House of Commons. That is not peculiar to the United Kingdom; it is a feature of parliamentary systems of government. The silence of this Bill on confidence motions enables the convention that prevailed before 2011 to be restored fully. The convention was not displaced by the 2011 Act, but parts of it disappeared.

Prior to 2011, the convention was that, if the Government lost the confidence of the House, they either resigned or requested the Dissolution of Parliament. A lack of confidence could be expressed by the House passing a vote of no confidence, by defeating a vote of confidence sought by the Government, or by defeating a Motion to which the Government had attached confidence. The 2011 Act cut off the capacity for the Prime Minister to request Dissolution in the event of defeat on the last two. The Prime Minister can still designate a Motion as one of confidence and, if defeated, tender the Government's resignation, but cannot unilaterally trigger Dissolution.

The Joint Committee on the Fixed-term Parliaments Act recommended that the principles and conventions it set out should be adopted as the basis

"for creating a new shared understanding of conventions and practices."

The understanding would certainly be new, as the report stated that a lack of confidence could be expressed by

"Defeating the Government on the Second or Third reading of the annual Finance Bill, or in the course of the Supply and Estimates process".

The problem with this is that defeats in the course of the supply and estimates process occurred in the 20th century without the Government treating them as confidence issues. The Joint Committee's interpretation would thus not only enshrine the concept of implicit votes of confidence but expand what fell within it.

It is a relief that the Bill does not seek to follow the Scotland Act 2016 in seeking to put a convention in statute. The 2016 Act included what purported to be a convention, the Sewel convention, thus creating a contradiction in terms—a nonsense recognised by the Supreme Court. The confidence convention is a convention. It has some fuzzy contours, but its defining principle is clear. The House of Commons can remove the Government by withdrawing its confidence. If the Government fail to recognise a vote as entailing confidence, it is open to the leader of the Opposition to move an explicitly worded vote of no confidence.

Should the silence of the Bill be extended? Given that the intention is to put the situation back to what it was prior to September 2011, do we need to include provisions governing the prerogative and the exclusion of the courts from any decision to seek Dissolution?

I can see the argument for the first, but not the second. As Professor Mark Elliott has noted, nothing in the 2011 Act demonstrates that it sought to abolish the prerogative of Dissolution. The prerogative may be deemed to be in abeyance and, with the provisions of the Act removed, it comes back into play. Clause 2 seeks to remove doubt as to its existence but, by the very act of doing so, creates the question of whether it is now not a prerogative power but a statutory one.

In practice, the result either way is that the power of Dissolution rests with the Crown and is a personal prerogative. The sovereign retains the power to refuse a request for Dissolution. The Joint Committee felt that the Government should consider how best to articulate the role of the monarch in the process of granting or refusing a request for Dissolution. That, I contend, is more appropriately undertaken by bodies other than the Government. The Lascelles principles came from the source most appropriate for articulating them.

The Joint Committee also heard evidence that the Lascelles principles or related constitutional conventions should be referenced in statute. In my view, that would fall foul of my earlier observations. They would cease to be conventions and would be subject to judicial interpretation unless, as with the Sewel convention in the Scotland Act, the courts deemed them non-justiciable. The relevant convention here is that Ministers act in such a way as to not bring the sovereign within the realms of partisan controversy.

As we have already heard, Clause 3 is the most contentious provision and conflicts with the Government's goal of restoring the position before 2011. The ouster clause is designed to ensure that Clause 2 does not fall within the scope of judicial review. This is constitutionally objectionable, especially in Clause 3(c) in respect of limits and extent, for the reason just given by the noble and learned Lord, Lord Hope of Craighead.

I recall the late Lord Simon of Glaisdale arguing against a provision designed for the removal of doubt on the grounds that there was no doubt to be removed. There are shades of that in this provision. In what circumstances does my noble friend Lord True envisage that the court could conceivably intervene in the granting of a request for the electorate to exercise their power to choose a new House of Commons?

These are all matters for Committee. The Bill is a manifesto commitment and the principle has been approved by the other place. Our task is one of detailed and critical scrutiny.

5.23 pm

Lord Mackay of Clashfern (Con): My Lords, I very much subscribe to the last observation of my noble friend Lord Norton. The detail of what should happen in the event of the previous Act being repealed is an extremely complicated matter. Clause 2 seeks to set out what should happen, but the question about whether a prerogative can be set up again once it has been destroyed is interesting and possibly important. If there are attempts to set this up as a statutory power from then on, it may have different effects from being merely a prerogative power. For one thing, it may contain more restrictions on its exercise than would be the case in a straightforward prerogative. There is a question to answer here about that, if one wants to go back to the situation which existed before the Act we are now seeking to repeal was passed. There is no doubt at all in my mind that, once that Act was passed, the prerogative power was certainly restricted, if not completely destroyed.

The option of going to a fixed Parliament apart from this situation is sealed, in a way, by the provision in Clause 4 that terminates a Parliament after five years. There is a fixed-term Parliament in that sense as it cannot be extended beyond five years. On the other hand, it can be reduced in length by the exercise of what was prerogative power. This is best discussed in detail in Committee because it seems to me essential that something fairly detailed is understood to be the purpose of Clause 2.

Of course, that brings me immediately to Clause 3. If anything requires discussion in Committee, this certainly merits it because it has profound effects. For one thing, it is a new phraseology which, so far, I think has not been the subject of a judicial decision. There is a certain amount of talk in a case suggesting that something of the kind may be necessary if you are going to get a real ouster clause. I think the great effect of the Anisminic judgment is that it really makes it impossible to set up a protection for a decision that is not in accordance with a statutory provision in statutory cases and, of course, something of the kind may be necessary in prerogative cases as well. That sort of principle is an extremely difficult one to get round. When I was Lord Chancellor, I was of the view that it was not possible to devise a completely sacrosanct ouster clause because it was always possible to get round it by the Anisminic principle. People have sought to devise more of them since then and they may or may not be successful, but that matter really requires to be discussed fairly fully in Committee.

Therefore, it seems to me that at present the precise result of what we—certainly the Official Opposition and the Government—are agreed on is that the Fixed-term Parliaments Act should be repealed, without any desire to keep it partly in place. What replaces it and how it should be replaced is really the question. The detail that requires to be considered is such that we should prefer to do that in Committee, rather than trying to do it at Second Reading when it is the principle of the Bill that is in issue. The principle of the Bill is mainly concerned with the repeal of the Fixed-term Parliaments Act. I thoroughly agree with that. I have never understood fully how it was supposed to work. Maybe it is unnecessary to consider that further, so long as one agrees that it should no longer have effect. Precisely how to replace it is a difficult matter and would be best left, in accordance with our procedures, to Committee.

5.29 pm

Lord Rooker (Lab): My Lords, my theme will essentially follow the closing remarks of the noble Lord, Lord Butler. I want to start with a quote:

"the government has moved to cement its grip on power. It's taking action against the courts, shrinking their ability to hold the ruling party to account, curbing citizens' right to protest and imposing new rules that would gag whistleblowers and … restrict freedom of the press. It's also moving against election monitors while changing voting rules, which observers say will hurt … opposition groups".

[Lord Rooker]

That is how Jonathan Freedland, in early October, thought the BBC World Service might describe—if it was not us—the antics of Viktor Orbán's Hungary: but it was us. Now, with this Bill restoring the unfettered right of the Prime Minister to fix the election date, it is part of a pattern, open and in front of our eyes. The reform of judicial review to stop the courts overturning unlawful decisions; the new powers for Ministers to suppress almost any protest; the widening of the scope of the Official Secrets Act; the removal of the public interest defence for journalists and sources; taking powers over the elections referee; giving Ministers powers to order the Electoral Commission to impose penalties on campaigning groups; and the open attempts to control the media via Ofcom—all are out of the Trump playbook.

In his Shirley Williams Memorial Lecture, Lord Puttnam added to the list

"an Education Bill that seeks to reduce … academic freedoms in the area of Teacher Training".

Interestingly, in the early 1970s he recorded his conversations with Albert Speer, who had been Hitler's architect and Armaments Minister and served 20 years in Spandau. Lord Puttnam came to understand

"'the fascist play book'—the way democracy can be corrupted and overturned by a few malevolent but persuasive politicians, those who are prepared to exploit divisions in society with simple populist messages."

There are many criticisms of the failure of our Prime Minister, but Johnson is clearly not out of his depth when it comes to taking a harder line on making it difficult for his Government to lose power. Now comes the personal power to fix the election date, dressed up as prerogative powers, and ruling out powers of scrutiny by the courts, under Clause 3. I am not a lawyer, but I am told that this is a super ouster—beyond an ouster clause. It even covers Ministers acting in bad faith; they cannot be challenged when acting in bad faith. So, continual vigilance is required, and this House has a major role to play. Indeed, Speer told Lord Puttnam that there is a need to develop a form of

"'moral vigilance' required to recognise … evil for what it is."

Are we willing to see the pattern created by the Johnson Government to frustrate the bodies designed to keep a check on government, ignoring and overturning long-operated conventions, all to tighten his grip on power? Because that is what is happening. This pattern is formed of tiny bits, each of which, on its own, can be made to look quite reasonable, dressed up in simple slogans. Of course, nobody will admit there is a plan. All we get is a smile, deliberately tousled hair and soft tones. But there is a plan and others have seen and discussed the framework. Well, I am not buying it.

I was always in favour of fixed-term Parliaments, even when we had Mrs Thatcher in government. It seemed sensible; other countries do it with checks and balances. I freely admit, and I share some of the views of my noble friend Lord Grocott on this, that it did not work in practice. That does not mean you scrub the system; it means you change what you think has gone wrong, in the light of experience. Other nations with a decently run constitution with checks and balances can cope with fixed dates for elections. The real problem is that we are losing our checks and balances, and the unwritten nature of our constitution is being abused in front of our eyes.

This Bill is an abuse of the electoral system, designed to help rig membership of the elected House. I cannot think of a nobler cause than for this House to say that it is a step too far and we are not having it: we will change the Bill and send it back. I hope that if they send it back to us, we will send it back again, because this is a step too far and part of a pattern. It is no good saying, "Oh well, it's only this Bill; the other things don't matter". The other things are coming this way, and we have to see them as part of a pattern.

Before I sit down, I want briefly to congratulate the noble Earl, Lord Leicester, on his maiden speech. I have to say, he sounded too good to be true. I freely accept what he said, but as I say, it sounded too good to be true. I welcomed his speech, and I think the House did too. He was followed by the noble Lord, who congratulated him on his practical knowledge of what happens in Cambridgeshire and the Norfolk area.

5.35 pm

Lord Thomas of Gresford (LD): My Lords, what a pleasure it is to follow the noble Lord, Lord Rooker, with all his passion, and to hear from him that he will, like us, push this Bill back over and over again until it is gone.

I had always understood that once a prerogative power of the Crown is lost, it is lost for ever. This Bill asserts a highly controversial and novel proposition that, by Act of Parliament, it can be declared that a previous Act of Parliament never existed; that we return to the status quo ante. Rather than enact new legislation that could not avoid the scrutiny of the courts, government policy is to obliterate the Fixed-term Parliaments Act: it never was; it never existed; Carthago delenda est. I occasionally like to speak a language that the Prime Minister might understand.

We have heard today from the noble and learned Lords, Lord Hope and Lord Mackay, about the considerable conflict among lawyers and academics over whether you can revive a prerogative power. That will lead to inevitable litigation unless, by Act of Parliament, you can exclude the courts from considering it at all. The Government exercise the prerogative powers of the Crown, but not in an absolute way. All prerogative power is subject to the law; that is part of the common law of this country. The constitutional settlement of this country is that the Executive are subject to the law, that the power to make and unmake the law is exercised through Parliament, not the Executive, and that it is the exclusive right of the judiciary to determine what is the law. That is what is called a liberal democracy. Since the civil war, this country has not been an absolutist country where the Executive pass whatever laws they wish.

In a liberal democracy, there are two overriding principles: the separation of powers and the rule of law. They have proved to be an effective protection of the safety, dignity and human rights of the people of this country. A view was expressed by a majority in the Joint Committee on the Fixed-term Parliaments Act,

which considered these proposals in 2021, that Parliament should be able to designate certain matters as ones which are to be resolved in the political sphere, rather than the judicial sphere, so that Parliament should be able to restrict, and, in rare cases, entirely to exclude, the jurisdiction of the courts. This challenges fundamentally those two principles—the separation of powers and the rule of law. Noble Lords will note the committee's view that

"Parliament should be able to designate"

which side of the line it falls. Parliament should be able to set the boundaries of what is and is not within the political sphere.

If a Prime Minister abuses the power of Dissolution, as this Prime Minister abused the power of Prorogation, the Bill seeks to ensure that the courts would be unable to exercise any control over his or her action. Clause 3(c) prevents a court examining even the "limits or extent" of the powers of Dissolution. As the Explanatory Notes say in terms:

"This is to address the distinction drawn by the Supreme Court in *Miller* … as regards the court's role in reviewing the scope of a prerogative power, as opposed to its exercise."

In other words, it would prevent a court finding that the Prime Minister had exceeded his powers in requesting a Dissolution, or in any related advice that he had acted ultra vires. This tries to get rid of any control at all over the Prime Minister.

Why do the Government want to revive the status quo? In his evidence to the Joint Committee, the Minister, the noble Lord, Lord True, said:

"The long-standing position is that the exercise of the prerogative power to dissolve is not reviewable by the courts and that had been the understood position since the Bill of Rights. And obviously judgments on any Government's action should then lie with the people rather than with anybody else".

That is an impressive statement, but what is the "understood position" based on? I am not aware of any precedent, ever, where the point at which the Dissolution cannot be reviewed by the courts ever came up. There was no precedent for the actions of the Prime Minister when he prorogued Parliament, yet the courts did intervene and held his action to be unlawful. If the purpose of this Bill is to return to the status quo ante, that status did not anywhere justify the Minister's assertions to the Joint Committee that it has been

"the understood position since the Bill of Rights"—

it has never been discussed.

The Constitution Committee said in its report on the Bill:

"The use of ouster clauses to restrict or exclude judicial review of executive decisions touches the bedrock of the constitution, particularly the precise balance between the rule of law, the separation of powers and the sovereignty of Parliament."

There is a school of legal jurisprudence called legal positivism, which claims that law is a human construct with no connection to morality or even justice. If the legislature, however it is elected, has passed a law, it must be obeyed. That is so if it is unjust, unwise or immoral. That is the positivist approach. It may be a bad law by some standard, but if it was added to the system by a legitimate authority, it is still a law. I am glad to see that the noble and learned Lord, Lord Etherton, is in his place, because his lecture at Gray's Inn—the Birkenhead Lecture—pointed out that it was the defence of German judges in the Nuremberg trials that they were only applying the laws passed by their leader as the embodiment of the executive; he had of course abolished the president, the legislature and judicial review.

The common law, under which we enjoy our freedoms, derives from the traditions of natural law, as exemplified in the Bill of Rights, the American Bill of Rights, the UN convention and many other laws and human rights conventions. I was very pleased to hear the noble Earl, Lord Leicester, refer to his ancestor, Sir Edward—whom we must always call "Coke" hereafter, as I understand it—because he was one of the founders of our view of the common law.

We said we would never look back. Statutory power is what we want, clearly defined, and the consent of Parliament to its Dissolution—and that can be put before the Queen, without ever involving her in political controversy.

5.44 pm

Lord Lisvane (CB): My Lords, I congratulate the noble Lord, Lord McLoughlin, on his chairing of the Joint Committee and the magisterial report that it produced. It was a pleasure to give oral evidence to that committee, and also, with my noble friend Lord Butler of Brockwell, to the Constitution Committee and the Public Administration and Constitutional Affairs Committee in the House of Commons.

The Bill now before us lays the FTPA to an unregretted rest. It also seeks to restore the status quo ante by what might be called a willing suspension of disbelief—whether that will be successful is another issue. But I suggest that, in its short life, the FTPA may have damaged constitutional expectations in a way that may not be easy to repair. This was explored in some detail in the excellent speech by the noble Lord, Lord Norton of Louth.

The expectation of what might be a matter of confidence used to be fairly wide: a Government that lost the Queen's Speech in the Commons, or lost on an amendment central to the Speech or a Second Reading of a Finance Bill, would either have to secure a demonstrative vote of confidence or ask Her Majesty for a Dissolution—and of course the official Opposition could of course take the initiative. But under the FTPA, the agreement by two-thirds that there should be an early general election immediately relegated the big confidence issues to the second division. A Government could suffer a severe defeat, but unless the FTPA was engaged, or they lost the formal Motion of confidence envisaged in the Act, they could shake the defeat off.

My concern is that the FTPA has reset expectations on what is a matter of confidence in a way that cannot now be fully restored. The Minister said in opening the debate that of course a Prime Minister can designate an issue as being a matter of confidence, and Mr Gove said something similar in the Second Reading debate in the House of Commons, but it is not quite the same thing.

I have no doubt that the applicability of the Lascelles principles will figure in Committee, and indeed we have heard something of those this afternoon. Those who are uneasy about replacing the Commons' statutory power under the FTPA with a purported revival of

[LORD LISVANE]
prerogative power will no doubt argue for a Dissolution to be triggered only by a vote in the House of Commons —with, no doubt, a simple majority, rather than the baneful two-thirds majority. Without, at this stage, expressing a view, might I offer a word of caution? If your Lordships decide that the decision should rest with the House of Commons rather than with the monarch upon an unconstrained request from the Prime Minister, it will be essential to specify the words to which the Commons must agree.

When in my former life I saw an early draft of the Bill for the FTPA, I was horrified. It said that only defeat on a Motion of confidence should be the electoral trigger. But how was a Motion of confidence to be defined? If it carried conditions, would it still be a Motion of confidence? I could see no more certain way of inviting judicial interpretation of whether a statutory requirement had been fulfilled, Article 9 or no Article 9. For that to happen in the charged circumstances of a looming general election would be disastrous.

I am glad to say that that problem was cured during the passage of the Bill, but it follows that, should your Lordships see fit to put the finger of the House of Commons on the trigger, there must be an explicit form of words in the Bill, with nothing left to interpretation. If your Lordships do wish to empower the House of Commons in that way, I suggest that the provision must be capable of doing two things: first, a check on a Prime Minister who is inappropriately seeking a Dissolution; and, secondly, a means of getting Parliament out of a situation where the Government of the day are simply treading water.

There is widespread unease about Clause 3 of the Bill, in respect not only of its intent but whether, as a matter of law, it can achieve exactly what it says. I do not see how a resilient argument can be made that a prerogative power, removed by statute and then restored by statute, can be a prerogative power of exactly the same character as the abolished power. I will study my noble and learned friend's views on that very closely indeed.

It seems from proceedings in the House of Commons that the parliamentary authorities have taken the view that the matter of Prorogation is outside the scope of the Bill. That view was expressed by the Deputy Speaker in the chair on 13 September last year, and it meant that Mr Chris Bryant had to move for an instruction to the Committee of the whole House in order to discuss a new clause on that subject—on which proposal he was unsuccessful.

Having spent a while as one of those authorities, I was a little surprised at that view. Scope, or relevance, as noble Lords will know, does not depend on the Long Title of a Bill; it depends on what is in the Bill and what is very closely associated with what is in the Bill. I make no criticism whatever of the learned minds who came to that view—it is always tiresome to have the old and bold trying to second-guess you—but it seems to me that there are two factors that bring Prorogation very close to this Bill. The first is that in the FTPA, which of course was an Act about Dissolution, it was nevertheless thought necessary to include in Section 6(1) a saving for Prorogation. If the Bill now before us is resetting the clock, for Prorogation to be out of scope may thus be thought curious. I should say to noble Lords that I have no cunning plan for Committee or Report on how Prorogation might be covered by the Bill, but it seems to me that this is something which needs exploring a little further.

The second factor is that in normal times—if any of us now has a clear recollection of what normal times were like—it was not unusual to prorogue Parliament and then dissolve during the period of Prorogation, so the two processes were intimately related. This may indeed be something to explore further, and I much look forward to Committee on the Bill.

5.51 pm

Lord Young of Cookham (Con): My Lords, it was a real pleasure for me to listen to the noble Lord, Lord Lisvane, reversing the pattern of some 40 years in the other place when he had to sit and listen in silence to me. While I support this legislation, I confess I do so with mixed feelings. As Leader of the House in the other place in the 2010 Parliament, I had hoped to leave behind an important legacy of constitutional reform with three pieces of legislation. The first was reform of your Lordships' House, which secured a large majority on Second Reading but bit the dust when the Labour Party refused to agree to a programme Motion. The second was reducing the number of MPs and equalising the constituency boundaries, which was scuppered by the Liberal Democrats when they broke the coalition agreement. The third and final piece of my legacy was the Fixed-term Parliaments Act, now being repealed by my own party. So when my grandchildren ask what I did in that Parliament, the answer will now be "Very little".

In agreeing with repeal, I think it important to put the Act in a slightly different context from that which we have heard so far in this debate—at times a rather cynical context. I think there is common ground that, over recent years, the Executive have claimed for themselves more and more power at the expense of Parliament with the extensive use of Henry VIII clauses, the introduction of guillotines, programme Motions and deferred Divisions in the other place and the extensive use of patronage—a theme developed by the noble Lord, Lord Rooker, in his excellent speech, although I got off his train before it arrived at the destination.

In 2010, we tried to redress the balance and shift the terms of trade away from the Executive and back to Parliament. We introduced elections for the chairmen of Select Committees, breaking the grip of the Whips, we introduced a Back-Bench Business Committee, breaking the monopoly of the Government on the business of the House, and, as part of that package of restoring power to Parliament, we took away the right of the Prime Minister to dissolve and gave it to Members of Parliament. I prefer to put the Act in that context, assigning slightly better motives than the more cynical ones perhaps ascribed by the noble Lord, Lord Grocott.

The Fixed-term Parliaments Act had other advantages. It enabled me, speaking purely selfishly as Leader of the House, to plan a package of Bills over a five-year Parliament, rather than, as previously happened, finding that in year three of four, half way through, the Prime Minister would dissolve and a whole series of Bills

would be lost. In 1983, I had to introduce the same Bill twice because Parliament was dissolved half way through. The fixed-term Parliament was popular in financial circles—they do not like uncertainty—and, as has been said, it brought us into line with other democracies. However, as noble Lords have explained, it clearly has not worked. At the foot of the bed of the 2107 Parliament was a notice saying "Please Do Not Resuscitate" —but the Fixed-term Parliaments Act officiously kept it alive. So I accept that we should repeal the Act, but I put that plea of mitigation in context.

However, I paused when I reached the ouster clause in the Bill which, to use an economist's phrase, hit me right on my indifference curve. On the one hand, I understand why the Government are concerned about judicial activism. The Minister mentioned the direction of travel of legislation and the Supreme Court decision in Miller, and I see why my noble friend and the Government want to insure themselves against such intrusion when it comes to this Bill. I see from the helpful report from the Joint Committee ably chaired by my noble friend Lord McLoughlin that the Government's view has support from, for example, the former First Parliamentary Counsel, Sir Stephen Laws.

But there are a number of arguments to the contrary, which we have heard, and I shall mention just two. First, as the report says, non-justiciability is determined by the courts themselves and is not imposed by statute. As the noble Lord, Lord Lisvane, and Sir Malcolm Jack pointed out in their evidence,

"the courts will themselves interpret clause 3 of the draft Bill."

So to that extent it seems to be self-defeating.

Secondly, on judicial activism and the Miller case, Prorogation could not be more different from Dissolution. The Executive's decision to prorogue a sitting Parliament against its will so that the Executive could not be held to account during a critical time in the nation's history was outrageous—so outrageous that it obliged me for the first time in 23 years as a Minister to leave the Government, and I had swallowed quite a lot of indigestible stuff before. The Supreme Court rightly held the action to be illegal, and it was an affront to democracy—but that is totally different from a decision to dissolve Parliament so that Parliament can be refreshed by the electorate. Indeed, what could be more democratic than such a decision? I am not a lawyer, but the noble and learned Lord, Lord Brown, is and he said it would be inconceivable for the courts to intervene. Far from being an affront to democracy, as in Prorogation, it would be the very assertion of democracy.

So, while I am supportive of the Bill, the Minister will have some work to do to persuade me of the necessity of Clause 3.

5.57 pm

Lord Hayward (Con): My Lords, I am late in the speaking order today, and I have therefore decided that I shall fillet the comments that I was going to make, because many of them have already been made—but I will identify those whose comments I particularly agree with.

First, I observe that it would appear that it is a good idea to distribute a magazine free of charge to all Members of the House, because I have rarely heard the *New Statesman* quoted so often by so many speakers.

Briefly before I come to the crux of my observations, I will return to the comments made by the noble Lord, Lord Rennard, in relation to shortening or not shortening an election period. In paragraph 2.15 the Joint Committee said:

"We would like to see a significant reduction in the election timetable, insofar as this is compatible with ensuring the register is up to date and proxy and postal votes are possible".

I share the concerns of the noble Lord, Lord Rennard, about any form of shortening of the timetable unless there are substantial changes to election law as it currently stands—and I do not see that happening, as he did not either.

I return to the other part of the main thread of the debate: Clause 3, the ouster clause. I should of course favour this legislation. Removal of the Fixed-term Parliaments Act will allow a certain Lord Hayward to appear on radio and television any number of times, guessing what the election will result in in terms of a majority for whom and in whatever form—so it is great to abolish this legislation. What I do not understand in relation to Clause 3 is that, in the autumn of 2019 and in December 2019, had there been an election without the Supreme Court decision, the Government would not have secured a majority of the size they did, because they were able to achieve a deal and therefore were in a very different position. Therefore, why Clause 3 should be there saying "Well actually, we want to penalise the judiciary for having taken action which produced—in my mind—a larger Conservative majority" makes no sense whatever.

More importantly, as other Members of this House have said this afternoon, it seems to be bad law to set about saying, "We are going to say that these things cannot be considered by the judiciary." As has been pointed out, it is downright difficult to achieve that phraseology anyway, but I am afraid that I agree with the vast majority of noble Lords who have spoken, including the noble and learned Lord, Lord Hope, my noble friend Lord Norton, the noble Lord, Lord Lisvane, and, albeit using different phraseology, the noble Lord, Lord Rooker, that it is unacceptable for us to try to go down that route. One of the pillars of the British democracy is the strength of our judiciary working alongside Parliament. Long may it continue to be so.

6 pm

Lord Bridges of Headley (Con): My Lords, I congratulate my noble friend Lord Leicester on his excellent maiden speech and what he has done at Holkham. I have spent many happy times there. Well, they were sort of happy. I was with my 13 year-old son trying to spot lapwings. I am not a bird-watcher and it was very cold, but it was very enjoyable—apart from us not seeing anything at that point.

If anyone wants to know why constitutional reform matters, one has only to listen to this debate and consider the rather miserable history of the Fixed-term Parliaments Act 2011. I am sorry to tread on the toes of my noble friend Lord Young but I share a belief in what he may see as a slightly cynical rationale behind this, which others have spoken of. For proof of that, one need only consider how and where this Act was born. It was conceived in the heat of the rose garden romance, and it was born in the political back room of

[Lord Bridges of Headley]

the deal that was done around the coalition. Sir Oliver Letwin, the midwife of that coalition, has testified that the Act

"was to enable the coalition to be formed. One of the principal demands of the Liberal Democrat side of the coalition, when we came to discuss the whole proposition, was that there should be no ability for the larger of the two parties—the Conservative Party—within a coalition Government to spot the moment when it would be convenient to ditch the coalition by seeking a dissolution."

With due respect to my noble friend, I see that deal as a dark day for our Conservative Party, which I thought would not treat the constitution as a bargaining chip in political horse-trading.

Of course, some tried to give the Act more credibility, as others have today, by dressing it up in the clothes of constitutional theory. The best example of this was Mr Nick Clegg, former representative of the hard-working people of Sheffield Hallam, now representing the billionaires of Silicon Valley. It is worth reminding ourselves of what he said when he presented the then Fixed-term Parliaments Bill at Second Reading:

"There will be no more feverish speculation over the date of the next election, distracting politicians from getting on with running the country. Instead everyone will know how long a Parliament can be expected to last, bringing much greater stability to our political system. Crucially, if, for some reason, there is a need for Parliament to dissolve early, that will be up to the House of Commons to decide. Everyone knows the damage that is done when a Prime Minister dithers and hesitates over the election date, keeping the country guessing. We were subjected to that pantomime in 2007. All that happens is that the political parties end up in perpetual campaign mode, making it very difficult for Parliament to function effectively. The only way to stop that ever happening again is by the reforms contained in the Bill."—[*Official Report*, Commons, 13/9/10; col. 621.]

I only hope that Mr Clegg gives Mr Mark Zuckerberg better predictions, for we all know what happened two years later: feverish speculation over the date of the election, distracted politicians unable to get on with running the country, and no one sure how long the Parliament would last. What was the reason for that parliamentary gridlock? As others have said, before the Fixed-term Parliaments Act reared its head we had a simple system, which my noble friend Lord Norton set out. In essence, when a Prime Minister lost the confidence of the other place, there would be a general election and, if the Prime Minister chose to call a general election, we would have one. Those two simple thoughts fuse into one big point, which my noble friend Lord Strathclyde made: trust the people. If the people's representatives lose confidence in the Government, or if the Prime Minister wishes to renew the Government's mandate, it is the people who are put back in control. No faction in Parliament or judge in a court could prevent that from happening.

That was the system which we had before. Therefore, it is entirely right that we should go back to it. I agree that trying to turn the clock back—or, perhaps more aptly in this case, trying to put the toothpaste back in the tube—obviously raises all manner of legal questions which I know set racing the pulses of noble Lords, and especially noble and learned Lords. On a matter as important as this, of course it is right that we kick the tyres of what is proposed. At first, I was quite queasy, as others are, when I read of the ouster clause. However, the more I read—not as a lawyer—the more I sensed that this is an exceptional issue on which an ouster makes sense.

I hear the points about Article 9 of the Bill of Rights, but in this case, we should leave it beyond all doubt that the courts cannot thwart an election. To achieve that aim, I have yet to hear any credible alternatives to the ouster clause as written in the Bill, so I would keep it as it is. Sir Stephen Laws told the Joint Committee:

"It would be nice to have neatly focused ouster clauses that you could justify in relation to what they actually apply to. But that is not a thing that is possible anymore, because if you try and draw some distinction as to where the ouster clause will or will not apply, you will end up with the courts using that distinction in order to circumvent the ouster you are intending to create."

The *Dissolution Principles* document strikes me as also obviously necessary, and I was pleased that the Government have accepted that the Prime Minister requests a Dissolution. The document's simplicity is critical. Trying to enshrine the Lascelles principles, or codify what is to happen in a multitude of scenarios, would create complexity and uncertainty, and could do what we all wish to avoid: drag the monarch into politics.

Let me end where I began. A previous Government ran headlong into constitutional reform, riding roughshod over processes and conventions that may have had flaws but maintained that clear link between Parliament and people. The sooner we get back to the previous system and restore that link, the better.

6.07 pm

Lord Lansley (Con): My Lords, I am very glad to follow my noble friend and like him, of necessity, I come to bury the Fixed-term Parliaments Act, not revive it. It has been a privilege to listen to so many excellent speeches this afternoon, not least the maiden speech of my noble friend Lord Leicester. As a fellow East Anglian, I too have much enjoyed visiting the Holkham estate in years past. We look forward to his contributions here as well.

As we get towards the latter stages of this debate, I have reached three hesitant conclusions for Second Reading, which should take us towards thinking about the Bill further in Committee. If the Government believed that the prerogative was in abeyance, they should simply have repealed the Fixed-term Parliaments Act. Lo and behold, the personal prerogative of the sovereign would be revived in the way that it existed previously. Clearly, they did not believe that, which is why we have the legislation in the form that it is rather than a simple repeal. Therefore, we must conclude that we are seeking to set statutory provisions around a defined personal prerogative of the sovereign. We all want the personal prerogative of the sovereign to be responsible for the Dissolution of Parliament and to be untrammelled and not interfered with, but equally we want it to be so precisely delineated that the sovereign is not drawn into political controversy as a consequence.

My reason for participating in this debate is that we looked at the question of the prerogative at length during debates on the Trade Act. The position I come to it from is this: every time Parliament comes into contact with the prerogative in statute, we should not necessarily abolish it because, as with the Trade Act, we may think it quite right for there to be an executive responsibility, but we then have to make it accountable. So my second conclusion is that, here we are, putting a

statute in place to govern the exercise of a prerogative—particularly the exercise of it by the Prime Minister, of course, rather than the monarch—and we should hold the Prime Minister accountable to Parliament, because that is where the authority comes from. We have to defend the sovereignty of Parliament.

Therefore, what does that accountability look like? It ought to be a simple majority of the House of Commons. We can dispense with some of the more unhelpful arguments about the Fixed-term Parliaments Act and the supermajority. We will not go back to gridlock as a consequence of that because there is no supermajority. A simple majority gets us to precisely the position that we want—namely, where a Prime Minister who has a majority in the House of Commons will get his or her way, and that should be the case. However, we also have to say that if a Prime Minister has not got a simple majority in the House of Commons, they should not necessarily get their own way. Therefore, my third conclusion is that we should put such a simple majority into the Bill.

I encourage noble Lords not to think about the last coalition, which I think history will treat more kindly than it has so far, but to think forward to the next one. Let us imagine a day when there is a coalition where the Prime Minister comes from a party that has significantly less than a majority in the House of Commons but has created a coalition. Should that Prime Minister be able to go to the palace and ask for a Dissolution without any scrutiny whatever? Would this not be an abuse? Is it not essential that any such coalition in the future—we have to anticipate that there may be such a thing—would have to re-enter exactly this territory? Would we not future-proof the Bill if we put a simple majority in the House of Commons into it? Would we not create the constitutional environment in which a coalition could be formed if needed? Coalitions ought to be about exactly that kind of situation; otherwise, I do not think that we have properly done our job in anticipating the circumstances that this legislation may pertain to and preparing it for that possibility.

6.13 pm

Baroness Noakes (Con): My Lords, in my time in your Lordships' House, two periods stand out as painful memories, and both are addressed by the Bill. The first is of the period of coalition government between 2010 and 2015. While these Benches rejoiced at the end of the period of Labour rule, many of us found it hard to support the coalition wholeheartedly. In particular, the coalition agenda had a disproportionate focus on constitutional reform, which inevitably sapped energy away from more important things. I was very sorry to hear my noble friend Lord Young of Cookham, who is leaving his place at the moment, claiming some credit for that. Of course, there was Nick Clegg's futile attempt to reform the House of Lords, which fortunately ran into the sand and never got past a Second Reading in the other place. The time of both Parliament and the country as a whole was wasted on a referendum on the alternative vote system. The wheels came off that when the British public had their say.

At the time, the Fixed-term Parliaments Act did not seem to be the worst of the constitutional measures that sailed under the convenience flag of the coalition, but its weaknesses emerged over time. As we have heard, it has produced only one five-year fixed-term Parliament, and that was in order to hard-wire the coalition in. Whether or not that was, on balance, a good thing for the country is a moot point at best. After 2015, we had two elections in less than five years—so the Act failed in its initial purpose.

The 2017 election was an act of self-harm by my own party—I freely admit that—but the second, in 2019, is the source of my second painful memory. Its final result, when it was finally called, was a triumph for democracy and the good sense of the British people, whose message was clear, and that included getting Brexit done. But the journey to that election was truly painful and laid bare the flaws of the Fixed-term Parliaments Act.

The requirement for a supermajority and the narrow path laid out for a no confidence Motion in the other place before an election could be called led to chaos in Parliament in 2019. The Government could not get their business through, could not call a general election and were harried at every turn by both Houses of Parliament, set on defying the outcome of the 2016 referendum. I still bear the scars of what happened in your Lordships' House, as I am sure my noble friend the Minister does, and I certainly hope never to experience its like again in my remaining time here. For these reasons, the Bill has my wholehearted support. We must never again risk the mayhem of late 2019. That is why I fully support Clause 1, which removes the Fixed-term Parliaments Act from the statute book—it can be written out of our history.

The logical next step is to reinstate the status quo ante. As we have heard, Clause 2 does this through the revival of the royal prerogative. I believe that anything that diverts from that straightforward aim, including fettering the royal prerogative with parliamentary processes, runs the risk of unintended consequences. It is conceivable that a Government might not have a majority, could not get a vote through the other place and could be held to ransom, as they were in 2019, by a Parliament set on thwarting their will. That year showed us that the unthinkable can indeed happen. The previous system worked well for Governments of all parties, and I am confident that it will work well again. We should simply revive the royal prerogative and not invent something else around it.

I also support Clause 3 of the Bill, which expressly provides for non-justiciability. I do not believe that it should be seen as an ouster clause, because it is generally accepted that the likelihood of the courts challenging the monarch's personal prerogative is very small. There should be nothing to oust. But a small likelihood is not a zero possibility, and recent judgments should make us wary of where the courts might want to go in future—we clearly cannot rule out future judicial activism. I believe that we should put that question beyond any doubt by enacting Clause 3.

The other place has already expressed its clear view on this short and simple Bill. When it debated it, it did so in the light of all the relevant issues that were surfaced by the excellent Joint Committee on the Fixed-term Parliaments Act, its report and the Government's response. It also did so in the light of the points raised by the Public Administration and Constitutional Affairs

[Baroness Noakes]
Committee in the other place, and I do not believe that any new issues have been raised by your Lordships' Constitution Committee in its recent report, although I look forward to hearing the noble Baroness, Lady Taylor of Bolton, in due course.

Your Lordships' House is always entitled to ask the other place to think again, but I suggest very gently to noble Lords that doing so when the result is not likely to change is not a good use of your Lordships' time. I hope that this House will not impede the Bill's journey to Royal Assent.

6.19 pm

Lord Cormack (Con): My Lords, I always enjoy following my noble friend Lady Noakes. I frequently disagree with her, and I am afraid I will disagree on certain issues this afternoon, but she is a meticulous parliamentarian and we are very fortunate to have her with us.

I speak with a certain sense of nostalgia. I made my maiden speech in your Lordships' House on the Fixed-term Parliaments Bill. I damned it with faint praise, but of course, as a new Conservative Back-Bencher, always anxious to be compliant, I gave it my support.

No Parliament can ever bind its successor. What we are doing is not in any sense without precedent and it is entirely acceptable that we should seek to take this unhelpful legislation off the statute book. I would have preferred a straightforward repeal. That I could have supported without any real reservations. After all, in the 2010 general election, all parties but the Conservative Party pledged themselves to fixed-term Parliaments and even the Conservative Party was not outright hostile to them. In 2019, both the major parties —Conservative and Labour—pledged themselves to repeal. That would have been good.

Of course, in the old system which we are seeking to return to, there was no magic wand for any Prime Minister. I intervened on the noble Lord, Lord Newby, to remind him that 2017 was not exactly a resounding success for our party. I have vivid memories of 28 February 1974, which was the first election at which I had to defend the seat I had won in 1970. If noble Lords remember, there was great controversy as to whether that election should take place. I remember attending and speaking at two heated meetings of the 1922 Committee in another place. In the first meeting, everybody seemed to want a general election on 14 February, apart from Sir Stephen McAdden and me. At the next meeting, we had withdrawn our opposition, knowing we had lost, and the election was called for the 28th. The Prime Minister of the day was roundly criticised for his slogan, "Who governs the country?". "You do", he was told, "That is what you were elected to do on 18 June 1970." We all know what happened: an inconclusive election but a real defeat for Edward Heath, who never came back as Prime Minister.

While in this context I can accept this Bill and give it my support as far as the abolition of fixed-term Parliaments is concerned, unlike my noble friend Lord Bridges of Headley, whose speech I listened to with fascination and much approval, I cannot support Clause 3. William Wragg, the chairman in another place of the Public Administration and Constitutional Affairs Committee, had it right that this is unnecessary. To me, it smacks of the naughty schoolboy who has been rapped on the knuckles by his teacher then pulling the teacher's chair away so that he falls to the ground. It is an act of spitefulness at worst, humorous revenge at best, but constitutionally, it is unacceptable and wrong. I was glad to hear my noble friend Lord Lisvane—I deliberately call him that—in his excellent speech make some very powerful points in this context.

If this clause remains in the Bill unamended, like the noble Lord, Lord Butler, I will not support it, because it has dangerous precedence. The reason why I think that is in effect summed up by three reports published by your Lordships' committees in the last 10 days. I here associate myself very much with some of the sentiments of the noble Lord, Lord Rooker. There is the report from the Constitution Committee, about which the noble Baroness, Lady Taylor, will speak later, on the Dissolution and Calling of Parliament Bill. However, the title of the report from the Secondary Legislation Scrutiny Committee says it all: *Government by Diktat: A Call to Return Power to Parliament*, as does the report from the Delegated Powers and Regulatory Reform Committee: *Democracy Denied? The Urgent Need to Rebalance Power between Parliament and the Executive*. We are at a dangerous crossroads. There is a real danger of Parliament becoming the creature of government. The noble Lord, Lord Thomas of Gresford, talked in his very interesting speech about the separation of powers. We do not have separation of powers such as they have in the United States; here the Executive are drawn from the legislature. Therefore, there is in every parliamentarian's thinking, "Do I go against my Government? Do I break ranks with the Official Opposition?" The most troubling development of my 51 years in Parliament has been that what was a vocation to public service has become a job. Far too many entering Parliament do so feeling that they will fail if they do not get on to the Government Front Bench. There is that dichotomy and tension. In that tension, it is easy for a Government to try to use Parliament rather than be accountable to it. There is an enormous difference between those two states.

We should never forget, in the immortal words of Edmund Burke, that the price of liberty is eternal vigilance. We in Parliament have a duty to be eternally vigilant, to hold the Government to account. We in this House, quite rightly, have very limited powers; we can seek only to ask people to think again. However, while I accept the basic premise of this Bill without opposition, Clause 3 is fraught with danger. When we come to Committee, we must ask the other place to reflect on it and what it implies, and to think again.

6.28 pm

Baroness Bennett of Manor Castle (GP): My Lords, like the noble Lord, Lord Lansley, I have noted the mood of the House that we have genuinely come together today to bury the Fixed-term Parliaments Act, not to praise it. Many noble Lords tell your Lordships' House that they support this Bill and the burial of the Act in the interests of democracy. I am sure that they are honourable men and women, who support the status quo in our society and say they want to restore things to just the way they were.

That is not my position. Like the noble Lord, Lord Newby, I know that the good is being buried with the bad with the abolition of the Fixed-term Parliaments Act. As the noble Lord said, the majority of the world's democracies have fixed-term Parliaments—countries with modern, functional, democratic constitutions. None of those adjectives can be applied to the UK constitution, with or without the Fixed-term Parliaments Act. A Prime Minister who can call an election, with or without the support of a parliamentary majority that put him or her in place, has the advantage. As the noble Lord, Lord Hayward, said, shortening the election period would only magnify that advantage.

Of course that advantage can be lost, as the noble Lord, Lord Cormack, pointed out to the noble Lord, Lord Newby. But it is usually significant and often decisive and gives great benefits, particularly in fundraising, which is so important to the outcome of our elections—the country gets the politics that the few people pay for—and in planning, given the costs to opposition parties, which must plan just in case without the clarity of a known timetable. My political memory goes back to Gordon Brown's election that wasn't, and a living room filled to the ceiling with paper that was bought in case of the need for freepost leaflets that were never used for that purpose. That is the practical politics of a growing challenger party.

None the less, I am not going to go further down the route of arguing against the sense of set election times; that is not an argument I am going to win today. I will turn instead, as many noble Lords from all sides of your Lordships' House have, to focus on Clause 3. Many expert legal minds have chewed over the detail and will continue to do so. I want to focus more on the principle. Why are the Government so concerned about their behaviour being judged against the standard of law? Surely that is what the rule of law is all about. The noble and learned Lord, Lord Brown of Eaton-under-Heywood, said that Clause 3 would ensure that the courts were relieved of the embarrassment of being drawn into a sensitive area. Surely protecting the people, the constitution and the country from unlawful decisions is the role of the courts; we do not need them for the easy stuff. That they have become, as some see it, more active is, I suggest, because of the law-breaking at the centre of government becoming more extreme, the Executive chafing against the limits of control from the rights won by the people over centuries of campaigning—human rights that the Government are keen to destroy. This is not judicial activism but judicial defence of the law.

The noble Lord, Lord Grocott, noted that it was the poisonous distrust among the coalition partners that created the Act that we are working today to abolish. I do not need to quote the opinion polls. It is a well-known fact that poisonous distrust is also the people's attitude towards our politics and politicians—a distrust that led to the desperate desire to "take back control" in 2016, a desire very clearly continually being frustrated by the lack of a democratic constitution and the concentration of power and money in Westminster. Unlike the noble Lord, Lord Thomas of Gresford, I do not regard "novelty" as a negative term. I desperately want the novelty of democracy in the UK.

Why are our politics so poisonous? I draw your Lordships' attention to the recent coalition negotiations in Germany, where three parties from very different ideological starting points negotiated the formation of a Government and a platform for it. Yes, it took a little while. Talks proceeded and talks were concluded. I note the important comments of the noble Lord, Lord Lansley, about how British politics might look different—a little more like Germany's in future—without even a change of electoral system. Around the country, there are 13 local councils where Greens are part of what are known as rainbow coalitions, the very kinds of structures that he was imagining. That is functional, grown-up, democratic politics—not something we have much experience of here in Westminster. Here we have a see-saw from one side to the other, and parties seeking power without principles or policies attached to them.

It is tempting to blame individuals—I promise you that I do—but this culture has persisted over many years. My thesis is that the problem is the system. The checks and balances in the UK are deliberately weak, because we have a feudal monarchy with occasional bits of democracy bolted on, scraps that were thrown to the people when the pressure became too great over centuries. The whole Bill is an attempt to knock off a bit of that bolted-on democracy and to test how far the Government can get away with taking back power from Parliament, the courts and the rule of law. The noble Baroness, Lady Noakes, rather gave the game away when she spoke about the events of the past—about Parliament defying the will of the Government.

The Minister acknowledged that it was only after pre-legislative scrutiny that it was ensured that the law provided that Dissolution was an automatic trigger for a defined polling date. But what happens if there is an emergency, real or created, such as a pandemic or a war? What if it is said that an election cannot be held in these emergency conditions—which are all too likely to be real, or easily created, in this age of shocks? Maybe this would be an act of obvious bad faith. But then redress against actions in bad faith is explicitly excluded by Clause 3. I can sense the scoffing, although my comments very much take the direction of those of the noble Lord, Lord Rooker. But would it be so surprising from a Prime Minister who advised the monarch to unlawfully suspend Parliament; from a Prime Minister who planned to break international law, and was stopped from doing that only by this unelected Chamber; and from a Prime Minister looking in the policing Bill to end the right to protest, in the Elections Bill to take over the Electoral Commission and suppress the votes of his opponents, and in a promised judicial review Bill to further reduce the rule of law?

The Turkish thinker Ece Temelkuran, speaking about the West, said that,

"some … choose to believe that their mature democracy and strong state institutions will protect them"

from dictatorship. She warns of "dark dawns", such as Turkey has experienced, being experienced possibly anywhere. We do not have a mature democracy, we do not have strong state institutions and we are not protected, and, if Clause 3 remains in the Bill, we will be even more vulnerable.

6.36 pm

Baroness Pidding (Con): My Lords, the government Bill before us today restores the democratic nature of how our parliamentary system works and how elections can be called. We are the custodians of democracy, and elections are pivotal to this. The Bill makes provision for the Dissolution prerogative to be revived and, in doing so, ensures legal, constitutional and political certainty around the process for dissolving Parliament in future. It is a return to the tried and tested traditions that worked so well in the past, before the Fixed-term Parliaments Act.

The process of dissolving Parliament and calling a new Parliament was changed in 2011 to help make the coalition Government more resilient. It was brought in under specific circumstances, providing us with relative political stability at a time when the country was facing economic uncertainty. However, over the past decade, the political and economic landscape has changed significantly and has rendered the Act unfit for purpose and redundant. We must not risk the future return of a zombie Parliament such as we saw between 2017 and 2019, which caused exasperation in the general public. If there is gridlock in the other place, it is only right that the question is taken back to the people, ensuring that the country is not once again held in a state of paralysis by a few hundred individuals.

The Fixed-term Parliaments Act served its purpose. However, politics and time have moved on. As there was no sunset clause included in that Act, it is only right that we take steps to repeal it. It is for this reason that I welcome the return to a robust system.

I understand that some are concerned about the powers that the Bill returns to the Prime Minister, theoretically allowing the Prime Minister of the day to call elections when it is most politically convenient to them. On this I have two points. First, the Bill limits Parliament to five-year terms, so places a time restraint on the Government. Secondly, I remind noble Lords of the outcome of the 2017 general election, which some on this side of the House will remember with a shudder, while I suspect others may have fonder memories. Elections are risky endeavours and should not be taken lightly, and the Bill does not change that. The Bill strengthens our democracy, making both Parliament and the Government more—not less—accountable to the British public.

There is another consideration that I wish to raise. The Bill was part of the Government's manifesto. The 2019 general election gave the Prime Minister the mandate to deliver on his promise to the British people that their express instruction would never again be perversely frustrated by factionalism within Parliament. The mandate given to the Government to deliver on their pledge of repealing the Fixed-term Parliaments Act is unassailable. Given the swift passage of the Bill through the other place by those who will be directly affected by it once it is given Royal Assent, I hope that others here will share my view that it is not for us to frustrate it.

We enjoy a privileged position that we should endeavour to use in the pursuit of strengthening and safeguarding our democracy. The Government's Bill gives us an opportunity to do so and I will therefore be supporting it.

6.40 pm

Baroness Taylor of Bolton (Lab): My Lords, I very much welcome the Bill. I was never a fan of the Fixed-term Parliaments Act and, indeed, never a fan of fixed terms, whatever the manifesto said at any particular time.

We should start by reminding ourselves of how we got that legislation in the first place. It was a simple, blatant political fix between the Conservatives and the Liberals, between Cameron and Clegg—I do not know how many other people were consulted. As a former Chief Whip I have no problems with a political fix, but please do not dress it up as some constitutional principle because it was never that in the first place.

The Constitution Committee, which I currently chair, was very temperate in its language at the time. It said, as the Minister reminded us, that the Fixed-term Parliaments Bill

"owed more to short-term political considerations than an assessment of constitutional principles."

I think that is the polite way of saying "a political fix". Clearly, the committee was quite right in assessing the longevity of that legislation. As we have seen, it was proven that it was possible for a Government—for a Prime Minister—to get around the provision, so the Minister was quite correct when he said it was a political experiment that failed.

So, here we have the withdrawal of that legislation and, as I say, I welcome that. However, the repeal is the easy part—we can all agree that that is simple; we are now entering new territory. In the Constitution Committee's report we say that it

"touches the bedrock of the constitution, particularly the precise balance between the rule of law, the separation of powers and the sovereignty of Parliament."

Before I go into the conflict and the details, particularly Clause 3, I say at the outset that we should all welcome the clarity of a five-year term for any Parliament; I think most of us will be happier with that. In respect of other parts of the Bill, it is not a case of being happy with them so much as hoping that they are workable.

There has been a lot of discussion about whether it is possible to return to the pre-Fixed-term Parliaments Act provision. Can a prerogative that has been abolished be reinstated? In some respects the Government have adopted a belt-and-braces attitude: they have a statutory provision and the ouster clause. That aspect of Clause 3 is clearly causing not just academic concern but concern on all sides of this House, and it will have to be addressed in Committee.

I think we all agree that we need to keep the Monarch out of all the potential political considerations. I remind the House what the Constitution Committee said about Clause 3, because it is extremely relevant to the discussions we will have later:

"The use of ouster clauses to restrict or exclude judicial review of executive decisions touches the bedrock of the constitution, particularly the precise balance between the rule of law, the separation of powers and the sovereignty of Parliament. On the one hand ouster clauses should provide legal clarity about the ability of the executive to make decisions which may be considered more appropriate to political rather than judicial deliberations. On the other hand, judicial review"—

this is important—

"should provide a backstop against exceptional use of an executive power which significantly erodes a fundamental principle of the UK constitution."

We go on to say:

"There is a risk that a Prime Minister might abuse the power of dissolution if the courts are unable to exercise control over the limits and extent of this power, particularly in exceptional circumstances."

To build on what the noble Lord, Lord Butler, was saying, the experience of the last few years tells us that exceptional circumstances and events are not as exceptional as we might have expected. We need to consider how to make sure that the balance that is required is maintained and workable. There are dangers there. They have been highlighted in the debate today, and they will be looked at in great detail in Committee.

There are just three other points that I want to make. The most important concerns the issue raised by my noble friend Lord Grocott. I was very surprised that the House of Commons gave up any say whatever in the calling of an election. As I say, I did not like the Fixed-term Parliaments Act but it did give MPs that power and that say—although not to the extent that many people suggested—so I was surprised that the House of Commons did not reinstate at least some kind of confirmatory vote in the House, should the Prime Minister decide to call an election. I am not sure how much difference it would have made, but in the exceptional circumstances that we can all perhaps envisage, it could have been possible.

Secondly, I welcome what the Minister said about taking on board the concerns of the Scottish and Welsh Governments about possible clashes of election dates. That needs restating and underpinning in some way because it could create some significant problems.

Thirdly, in early September the Constitution Committee published a report on the need to review and update the *Cabinet Manual*. The Minister indicated when he will respond to our report on the Bill, but he has not yet responded to that report. The Government's response is significantly overdue, and I hope we can get some indication of when that review will take place. But it is also important that we get an acknowledgment that Parliament and parliamentary committees should have some say on the content of the *Cabinet Manual*. It is important that the Dissolution principles we have been discussing on the fringes of this debate are part of that, that they can be discussed by Parliament and that Parliament can have some influence there.

Finally, I remind the House that the Constitution Committee has long emphasised that constitutional change should be able to stand the test of time. The Fixed-term Parliaments Act did not do that. I hope this House can make sure that this Bill is in a fit state to pass that test.

6.49 pm

Baroness Stowell of Beeston (Con): My Lords, as the final Back-Bench speaker, I cannot help wondering whether I have been so placed because I supported the Fixed-term Parliaments Act when the Bill came through your Lordships' House. While it may have been a political convenience for the coalition Government, as some have argued in this debate today, I believed in it, and I spoke up for it at every stage, as a Back-Bencher and a new Member of your Lordships' House. I did that not because I particularly favoured fixed-term Parliaments—I do not. I supported the Bill because I saw that it was one of the few structural changes that we could make to our political system to show the public that we were serious about putting their interests before our own. This was, in my view, essential following the financial crash of 2008, the expenses scandals of 2009 and the crises in public confidence across all aspects of politics and institutions that are meant to serve the public interest. Indeed, I was not alone: fixed-term Parliaments featured in the Labour and Lib Dem 2010 general election manifestos, broadly for the same reasons—although it seemed to me that, once the Bill arrived in your Lordships' House, the Labour Party seemed less convinced about them by then.

To me, alongside behavioural changes, we politicians needed to identify some meaningful structural changes that would favour the public interest, even though, from the perspective of parliamentarians, they were not broken—and I say that again. I made it clear during the passage of the fixed-term Parliaments legislation that the system for calling elections that we had before was not broken; the reason to change it was to give up some power for the benefit of the electorate.

All that said, I am not going to argue against the Government's decision to repeal the Act. It has not worked, and I think that it needs to go. However, if we are not to perpetuate the problem which fixed-term Parliaments were meant to help solve—at least according to my view and that in the Labour and Lib Dem 2010 manifestos—we must make sure we understand why it did not work and learn the correct lessons.

I pay tribute to my noble friend Lord McLoughlin and the Joint Committee, which considered this matter in detail, as well as the other committees of your Lordships' House, particularly the Constitution Committee, chaired by the noble Baroness, Lady Taylor of Bolton. But even with the benefit of those committees' work and all the constitutional experts and lawyers in your Lordships' House who have spoken today, our biggest risk is failing to see the bigger picture. We must not lose sight of that as we scrutinise this Bill in detail.

As the final Back-Bench speaker, allow me to paint with some broad brushes. The value to the voters of fixed-term Parliaments was some certainty that the Government and political parties would not be distracted by a general election, at least for a while, and certainty that the Government of the day and all political parties would have to face the electorate on a predetermined date, whatever the political conditions at that time—something that has already been said by other noble Lords today. Although fixed-term Parliaments meant certainty for the electorate in principle, in practice, as we have heard, the legislation meant the Prime Minister relinquishing power to Parliament—or, more specifically, to Members of the Commons—to decide when it would be in the public interest to undo that certainty to achieve greater clarity from the voters. Once enacted, MPs were given the power to override what the electorate had determined at the general election by way of a vote of no confidence or a two-thirds majority in favour of an early election.

[Baroness Stowell of Beeston]

The basic safeguard was our assumption, I guess, that in order not to scupper voters' impending support via the ballot box, MPs would not seek to force a general election unless it made sense to the electorate that they did so—in other words, if there was a problem which was preventing effective governance of the country which could not be resolved without clarity from the electorate. That principle seemed to work okay in 2017, when Theresa May, as Prime Minister, could see that getting the necessary legislation through Parliament to enable Brexit would be near-on impossible. The opposition parties might not have agreed with her intentions about Brexit but, in line with all expectations and like all opposition parties throughout the ages, they did not give up the opportunity of an election when it was offered to them by the Prime Minister.

As we all know, things did not work out quite as Theresa May planned. I believe that that was not because, as some have argued already, she was opportunistic but because during the campaign the voters were left uncertain and unsure about the various party leaders and what they offered, and delivered a result that was even less clear than before. That lack of clarity from the voters was a message to the political class to sort ourselves out, but instead, we all turned inwards: Parliament and the Executive engaged in battle, and parliamentary gridlock ensued. Whatever anyone thought of Mrs May's Government or her attempts to secure Parliament's agreement to her Brexit deal, I think she was vindicated in her belief that, without a clear majority, Parliament would not deliver the will of the people.

By the time Boris Johnson succeeded her in 2019, normal parliamentary rules and political conventions had collapsed. It was clear that a general election was needed, but Parliament refused. Whatever noble Lords think about Boris Johnson's tactics when he succeeded Mrs May, his efforts to force a general election were rewarded with clarity from the electorate.

Unlike most other noble Lords who have spoken, the reason why I think the Fixed-term Parliaments Act needs to be repealed is not that there is anything wrong with the legislation in principle, although I am sure that some points of detail could have been improved, but, sadly, that Parliament sought to use the legislation to its own advantage when it was out of step with the majority of the electorate—not just those who had voted to leave the European Union but the many other voters who just wanted Brexit to be dealt with, so they could move on. That is a dreadful indictment on us all, and it is the lesson that I think we need to show that we have learned.

As much as I regret the demise of a structural change to our system which I believed was in part a response to voters' lack of confidence in Parliament, I think the only way forward now is to go back to what we had before and concentrate on behavioural changes which show how we are motivated by serving the public interest. That is why I hope very much that noble Lords, however well intentioned, do not bring forward amendments during the passage of this Bill to give the House of Commons the power to decide whether a Prime Minister can dissolve Parliament and call a general election. In my mind, that would not improve matters of public confidence in Parliament; it would make matters worse, because it would appear that this House is driven by its opinion of the current Prime Minister, not by what best serves the long-term interests of the public at large.

6.57 pm

Lord Wallace of Saltaire (LD): My Lords, I take issue with the repetition of the phrase "tried and tested" by the Minister and others to defend prerogative power. The British people, the Minister declared, lived with the previous system for centuries. For several of those centuries, this country was at best semi-democratic. In the 17th century, as the noble Earl, Lord Leicester, reminded us, Chief Justice Coke stoutly defended the rule of law against the royal prerogative. Parliament's resistance to the royal prerogative led to civil war and the execution of the king, followed 40 years later by the expulsion of his second successor and the invitation to his Dutch son-in-law to become king instead. Our 18th century political system was highly corrupt, with bribery and patronage underpinning government. I hope that that is not a tried and tested system to which anyone would like to return us.

Reform in the 19th century made for higher standards and greater democracy, almost always against the entrenched resistance of the Tory party. Throughout the past 400 years, as the noble Lord, Lord Grocott, remarked, the whole history of Parliament has been the transfer of powers from the monarch to Parliament. I challenge the Minister to list for the House the occasions on which Parliament has legislated to restore prerogative powers.

Two new reports from committees of this House have expressed deep concerns relevant to this debate. The Delegated Powers Committee last Thursday published a report called *Democracy Denied? The Urgent Need to Rebalance Power Between Parliament and the Executive*. It said that parliamentary democracy is

"founded on the principles of … parliamentary sovereignty, the rule of law and the accountability of the executive to Parliament … The shift of power from Parliament to the executive must stop."

The report of the Secondary Legislation Scrutiny Committee, in parallel, is entitled *Government by Diktat: a Call to Return Power to Parliament.* It declares:

"A critical moment has now been reached when that balance"—

between Parliament and the Executive—

"must be re-set: not restored to how things were immediately before these exceptional recent events"—

by which it means Brexit and Covid—

"but re-set afresh".

Both of these committees remind us that limited government—or liberal democracy—depends on checks and balances among three constitutional actors: Parliament, elected and representing the people; the judiciary, safeguarding the rule of law; and government, wielding executive power.

In the exceptional circumstances of 2017 to 2019, both Theresa May and Boris Johnson claimed to represent the will of the people against Parliament: direct democracy, with the leader speaking for the masses against the elites. The noble Lord, Lord True, has faithfully repeated their claim, adding on several occasions that the December 2019 election showed

decisively that the Government do speak for the people—if necessary, against Parliament—having won 43.5% of the popular vote.

Lord Hailsham many years ago warned that the UK's constitutional arrangements allowed for an effective "electoral dictatorship" between elections, with executive power escaping parliamentary scrutiny and judicial oversight. What we have glimpsed in the past four years is the shadow of authoritarian populism breaking through the conventions of our unwritten constitution. Michael Gove argued in the Commons Second Reading debate on this Bill that Parliament in 2019 was

"frustrating the will of the people"—[*Official Report*, Commons, 6/7/2021; col. 789.]

which he believed a new Prime Minister—who had scarcely appeared before Parliament since taking office—nevertheless authentically represented. The will of the people is the cry of populist demagogues, not of constitutional democrats.

I re-read last week the 2019 report by the noble Lord, Lord Hennessy, for the Constitution Society: *Good Chaps No More?* It denounces the willingness of our current Prime Minister to break the rules and misrepresent evidence in his first months in office. He says:

"A key characteristic of the British constitution is the degree to which the good governance of the United Kingdom has relied on the self-restraint of those who carry it out … If general standards of good behaviour among senior UK politicians can no longer be taken for granted, then neither can the sustenance of key constitutional principles."

Sadly, good behaviour by senior politicians cannot be taken for granted, so I say to the noble Lord, Lord Bridges, that codification is therefore needed. As the Secondary Legislation Scrutiny Committee has just put it, we now need a reset, not a restoration of the previous status quo.

The noble Lord, Lord True, has defended the Government's abandonment of their manifesto promise of a broader approach to reform through a constitutional commission. He told the House the other week that he also opposed piecemeal reform. So now he is supporting a piecemeal reactionary Bill—a Bill that restores prerogative power and weakens the judiciary. I look forward to hearing how he manages to defend that.

The Select Committee on the Constitution reminded us that

"prerogative powers are an exception to the sovereignty of Parliament."

Successive reports from committees of both Houses over the last 20 years have noted that the direction of travel has been to reduce the extent of prerogative powers, and to extend parliamentary oversight. This Bill would reverse that direction.

We will therefore attempt to amend this Bill. We will support the replacement of Clause 3 by a requirement for an affirmative vote in the Commons before the Prime Minister requests a Dissolution. We will also seek to include a parallel requirement for this before Prorogation. Moving the Second Reading in the Commons, Michael Gove made it entirely clear that Clause 3 had been included because of the Supreme Court's decision on Prorogation in 2019. Lord Sumption indicated in his evidence to the Joint Committee that the Prime Minister

"was effectively attempting to rule without Parliament"

for as long as possible. That surely brings the issue of Prorogation within the scope of this Bill.

We will wish to gain assurances from the Government—and here I strongly agree with the noble Baroness, Lady Taylor of Bolton—that a draft revised version of the *Cabinet Manual* will be published before this Bill becomes an Act, and will be presented to the appropriate committees of both Houses for review, as has been strongly recommended by her Select Committee. The *Cabinet Manual* provides a directory of our constitutional conventions—if you like, a shadow constitutional document.

We will also wish for assurances on a revised version of the *Dissolution Principles*, which should also appropriately cover the process of government formation. The draft principles and conventions on confidence, Dissolution and Government formation on pages 61 to 65 of the Joint Committee report are far better and fuller than the one-page sketch that the Government provided.

The Joint Committee draft also wisely deals with the issue of Government formation in the event that an election does not produce a single-party majority. Opinion polls over the past six to nine months have consistently shown between 25% and 30% of voters supporting parties other than the Conservatives or Labour. This suggests that the result of the next election might well be again a Parliament without a single-party majority. Any form of future proofing, as others have said, would therefore need to take this into account. I recognise that the Conservatives will attempt in the Elections Bill to bias our electoral system further to their advantage, but it is still possible, despite their huge advantages in funding and office, that they will not retain power.

We have just witnessed a well-managed change of government in Germany, during which the outgoing Government stayed in office for eight weeks after the election, while three parties carefully negotiated a detailed agreement as the basis for a stable coalition. We may need to develop a similar approach here and should anticipate the likelihood of its occurrence.

Since we are discussing some fundamental issues of democracy, I will add a further question for the Minister. In 10 days' time, the President of our most important democratic ally, the United States, is convening a virtual summit of democracies to discuss the challenges and dangers that they now face, to which several noble Lords have referred. The UK sees itself as one of the world's oldest democracies, yet the Government have so far said nothing about this summit: whether they plan to take part, which Minister will lead, and what we might contribute. Will the Minister provide this House, before 9 December, with a Statement on what part, if any, the Government plan to play in President Biden's summit of democracies? We should never take democracy for granted: it needs to be defended.

7.08 pm

Lord True (Con): My Lords, indeed we should never take democracy for granted—although I have noticed over the years, with advancing age, that whenever the party on those Benches is resoundingly defeated at any election, whether by the Labour Party or the party on these Benches, it cries "Populism!", "Foul!", "Unfair!". We have just heard an extraordinary suggestion that an ideal constitution would involve months and months of negotiation, presumably involving the Liberal

[LORD TRUE]

Democrats, probably on a statutory basis. I have to say that I do not think that that is a way forward that would commend itself to many in this House.

It has been an outstanding debate, and, of course, I must congratulate my noble friend Lord Leicester on his outstanding maiden speech. All of the House found it entrancing: it was deeply rooted in history, traditions and a sense of place, cherishing the best of our past and showing a love and knowledge of the environment. It was also so forward-looking in embracing new technologies and ideas for the future. My noble friend said he liked a challenge. Well, I think we will all relish the challenge that he set out, based on the charm and wisdom that he displayed. By the way, at the age of four I wanted to see a spoonbill and I still never have seen one. That is not a request for an invitation, but I congratulate him on bringing those birds back to these shores.

Also in preamble, I was asked by somebody, possibly the noble Lord, Lord Rooker, to apologise for the 2011 Act. Actually, like my noble friend Lady Noakes with whose speech I much agreed, I was no enthusiast for the 2011 Act. Indeed, I remember coming out of a victorious local election campaign in Richmond in 2010—I will not say who the defeated party were—to be telephoned by my noble friend Lord Strathclyde, who said that he had been summoned to a meeting of the Shadow Cabinet to approve negotiations for coalition, which included some of the ideas that we have heard today. I was not entirely enamoured of that. In fact, if you look in the Division lists on the ping-pong on that Bill, you will not find my name. I was a very new Member of the House, but that was my first mini revolt; I rather fear that one or two others followed. I do not commend that behaviour to my noble friend Lord Leicester, but I will not apologise for the 2011 Act, because, I repeat, it was a political experiment. Some, like the noble Baroness, Lady Taylor, have said that it was a political expediency. That is correct; hopefully your Lordships will accept that it should be gone and gone swiftly.

We have had a very informed debate on an important constitutional Bill. As I had expected, we have had a large number of insightful speeches based on your Lordships' varied expertise and experience. I will try to answer as many points as I can. I was sorry that one or two of the speeches suggested that there was an authoritarian approach behind this Bill—I think I even heard the word "fascist" at one point, which is not a helpful word to play at political opponents. That was certainly not the Government's intention or an approach that I would ever commend from this Dispatch Box. On the other hand, I have been very grateful for the support of many of my noble friends; for example, my noble friends Lord Strathclyde, Lord Taylor of Holbeach, Lady Pidding and others.

I was slightly discouraged by the noble Lord, Lord Lisvane, casting a fly over the House on the matter of Prorogation. In my humble submission—I used to look at Bills to see how I could amend them to cause trouble for the party opposite over many years—it does not look to me from the Long Title that Prorogation should come into this Bill. I emphasise that the Bill is not, and was never intended to be, about Prorogation. The Government made it clear at the time that they were disappointed with the judgment on Prorogation but, in the event, the Supreme Court noted that its decision rested on the case's exceptional facts. What we have in this Bill is not in relation to that Prorogation issue, and the Government will not support attempts to bring that procedure into scope. We should concentrate on the matters before us.

I was asked by the noble Lord, Lord Rennard, and my noble friend Lord Hayward about the 25-day election period. It has not been the main subject of debate, but I know that it is a matter of concern to many. I can say that the Government wish to retain the 25-day working period. This was acknowledged; we have made that clear. We believe that any reduction would have adverse effects on all those involved in elections: political parties, electoral administrators and, most importantly, the electors. As both noble Lords said, modern elections are complex operations, including postal and overseas voting. The Government's position is that we should retain the current system. I hope that we will not detain ourselves too long on that question in this Bill as, obviously, we will have a larger Bill on elections coming forward.

Many referred to the constitutional conventions and principles that lie alongside the Bill. My noble friends Lord Norton of Louth and Lord Bridges of Headley were wise to advise against too much codification; in that, I disagree with the noble Lord, Lord Wallace of Saltaire. I note the point made by the noble Baroness, Lady Taylor, about the *Cabinet Manual*, which I will take away. I can offer her no specific response in advance beyond what I have said to your Lordships before.

Conventions are important. If the Bill revives the prerogative powers to dissolve one Parliament and call another, as we believe, then prerogative powers will once more be governed by convention. As I said in my opening speech, it is critical that there is a common understanding of how they will operate. I have no doubt that we will have valuable discussions on those matters.

I was asked to address a question about whether the prerogative can be revived—a point raised, from different perspectives, by a number of noble Lords, including the noble Lord, Lord Lisvane; indeed, the noble Lord, Lord Wallace of Saltaire, asked for an example. I do not particularly want to go back to the 17th century. The centuries that I was referring to were rather more recent, but I would think that 1660 was a fairly significant example of the royal prerogative being revived.

The Government are confident that the prerogative powers can be revived but, as was said by a number of noble Lords, to make express provision to do so is the intent and effect of Clause 2. The Government believe there is a sound legal basis for this position. The courts have said that a revival of prerogative powers is possible. For example, the Supreme Court said in the first Miller case:

> "If prerogative powers are curtailed by legislation, they may sometimes be reinstated by the repeal of that legislation, depending on the construction of the statutes in question."

That was put more strongly in the case of Burmah Oil when Lord Pearce in 1965 observed that, if a statute that restricts the prerogative is repealed, then

> "the prerogative power would apparently re-emerge as it existed before the statute".

This would be subject to words in the repealing statute, as was referred to in the GCHQ case.

As the noble Baroness, Lady Taylor, reminded us, the Joint Committee reserved its position on this question but concluded that the Bill is sufficiently clear to give effect to the Government's intention of returning to the prior constitutional position. As the former First Parliamentary Counsel Sir Stephen Laws said in evidence to the Joint Committee, this academic debate is a "red herring". He said that it

"is perfectly plain that the intention of the Act is to restore the situation to what it was before the 2011 Act, and therefore the law will then be indistinguishable from what it was before".

Of course, many noble Lords on all sides, as I readily anticipated, raised important points about Clause 3. I will address them briefly, although my noble and learned friend Lord Mackay of Clashfern was quite right to say that these matters will need to be probed and discussed in depth in Committee. I think there is general consensus in the House on that, to which I accede, and I look forward to those discussions.

We believe that the clause is necessary and proportionate, for the avoidance of doubt, and will preserve what I still contend, with respect to the noble Lord, Lord Thomas of Gresford, is the long-standing position that the prerogative powers to dissolve one Parliament and call another are non-justiciable. Prerogative powers to dissolve are inherently political in nature and, as such, we maintain, are not suitable for review by the courts. Certainly, that was the view as expressed by Lord Roskill in the GCHQ case in 1985, as the noble and learned Lord, Lord Hope of Craighead, reminded us. The courts are not the place to determine whether Parliament should be dissolved on one date or other.

This clause seeks to underline that position. The *Independent Review of Administrative Law* in March noted that Clause 3 can be regarded as a "codifying clause", which

"simply restates the position that everyone understood obtained before the Fixed-term Parliaments Act 2011 was passed".

Several noble Lords questioned why the clause is necessary at all, if the recognised position is that prerogative powers are non-justiciable. I hope that what happened to my noble friend Lord Young of Cookham does not happen to me in my ministerial career: finding that everything I do is reversed, although that has happened to me in other contexts. I hope that I will be able to reassure him that, in our judgment, the clause is necessary to take account of the direction of travel in case law, and has been drafted carefully in recognition of, and to address, that fact.

Over the years since the GCHQ case, some other prerogative powers previously considered non-justiciable have been held by the courts to be justiciable. So, the purpose of this clause in this case is to be as clear as possible about the no-go sign around the Dissolution and calling of Parliament. It is carefully drafted, respecting the message from the courts in Cart that only

"the most clear and explicit words"

can exclude their jurisdiction. Therefore, while the Government agree that the revived powers of Dissolution are non-justiciable, we are making provision to confirm and preserve this position for the future.

Noble Lords, including the noble and learned Lord, Lord Hope of Craighead, made reference to the judgment of the Supreme Court in respect of the review of the scope of prerogative power to dissolve Parliament. The Government have drafted Clause 3 with regard to case law, including Miller II. It is a proportionate response that seeks to put beyond doubt that Dissolution is not a matter for the courts. The independent review on administrative law noted this judgment, and the distinction it draws creates the potential for the courts to circumvent no-go signs currently mounted around the exercise of prerogative powers. The Clause seeks to make it clear that, in the context of the Dissolution and calling of Parliament, the no-go signs should not be subverted in this way. The democratically elected House of Commons is constituted as a clear expression of the will and judgment of the public, and the ability of the electorate to judge the record of the Government and their decision to call an election as well. That is the continued safeguard which protects Parliament.

Some noble Lords spoke of a concept of an improper Dissolution or an abuse of Dissolution. That concern is misplaced. There are a number of sufficient and appropriate restraints in our constitutional arrangements. First is the convention that the sovereign should be kept out of politics; this in itself is a powerful deterrent to making any improper request. Nevertheless, the sovereign may in exceptional circumstances refuse a request to dissolve Parliament. The noble Lord, Lord Beith, had some important and interesting reflections on this point. I too would like to know the answer to his question about 1974.

That is not all. In response to the report by the FTPA Joint Committee, we have amended the Bill so that the statutory election period will be triggered automatically by the Dissolution of Parliament. This will ensure that the theoretical possibility of a Dissolution without an ensuing election period is eliminated. The Government of the day must be able to command the confidence of the elected House. Unduly and unnecessarily delaying the calling of a new Parliament would negatively impact on the authority of the Government. Control by the Commons of tax and expenditure is a further compelling necessity for any new Government to call a new Parliament as soon as possible. One final test is the common sense of the electorate. Any attempt by a Government to manipulate the system would be clear to the electorate, and that Government would be punished in an election.

Many noble Lords—the noble Baroness opposite, the noble Lords, Lord Newby, Lord Grocott, and Lord Thomas of Gresford, my noble friend Lord Lansley, the noble Baroness, Lady Taylor, and many others—suggested that there should be a role for the House of Commons in approving a Dissolution. I anticipate that we will discuss this issue at some length in Committee. The noble Lord, Lord Lisvane, with his great experience, offered important cautionary notes here. I found the analysis of the noble and learned Lord, Lord Brown of Eaton-under-Heywood, as clear as it was compelling, and I agreed with his analysis. The Government disagree with that approach: reviving the flexibility of the previous system undermines the entire purpose of the Bill. The creation of prescriptive

[LORD TRUE]

statutory arrangements represented a significant departure from our previous constitutional arrangements, eroding the flexibility that is an essential part of our democracy.

The evidence is before us. My noble friend Lady Stowell set this out very clearly: we have to see the broad picture. The experience of the 2011 Act demonstrates that statutory systems can perpetuate political instability. The reality was skated over by the noble Lord, Lord Grocott, in his speech. He said that under the model he proposes, the Prime Minister in 2019 could have had an election three times and had a majority. He forgets the reality of those times. I hope he is never the man with the three cards on Westminster Bridge. The reality is that the Labour Party did not want an election at the time. They could avoid it by simply sitting on their hands, which would not have been possible. The Labour Party could still have avoided an election, even under his proposal.

When the 2011 Act is repealed, it will be vital that the link between confidence and Dissolution is restored in order that critical votes can again be designated as matters of confidence which, if lost, would trigger an early election. Therefore, the House of Commons will continue to play a key role. The claim by the noble Lord, Lord Rooker, that this debate was a battle to prevent the rigging of the membership of the Commons was a very odd characterisation of the Bill's central intent, which is to prevent interference with the remittance of great political questions to the people—to allow them to choose their elected representatives. I remind noble Lords that the Joint Committee gave this matter detailed consideration and a majority—I respect the alternative opinions—concluded that the House of Commons should not retain a say over Dissolution. Finally, as my noble friend Lady Pidding reminded us, the other place considered and dismissed amendments to enable it to retain a statutory role. I very much hope that your Lordships will not "go there", as they say, but I suspect I may be disappointed.

Noble Lords have suggested that the Bill limits the accountability of the Prime Minister. I must agree to disagree with that too. There have been and will remain two vital checks, which again have been widely forgotten by many who have spoken in this debate: the House of Commons and the electorate. It was not the case that under the prerogative system, the Commons was unable to hold the Executive to account. The Bill restores the position whereby a Government hold office by the virtue of their ability to command the confidence of the House of Commons. In that respect, the House of Commons will continue to play a key role. Yes, a Prime Minister will once again be able to call an election at a time of his or her choosing, but elections are an expression of democracy. I believe in democracy. As the Joint Committee put it,

"ultimately elections ensure the electorate—the ultimate authority in a democratic system—has the opportunity to exercise its judgment."

Again, any attempt by a Government to manipulate the system, as we have seen in recent history, would be likely to be punished.

I thank all those who have spoken for their valuable contributions. I will read *Hansard* extremely carefully and reflect on the many important and challenging things that have been said. I am pleased we have had such a stimulating debate, which has attracted so many of your Lordships. I look forward to being at the service of your Lordships in the period between now and Committee, and indeed, through the whole passage of the Bill. When we are here, my door will always be open. I met a large number of Members prior to today's debate, and I look forward to further opportunities to engage and, I hope, persuade. I am sure we will continue to have lively and robust discussions as we take this important Bill through its remaining stages. I believe there is broad consensus for repeal of the Fixed-term Parliaments Act, and I commend this Bill and the way it is accomplished to the House. I beg to move.

Bill read a second time and committed to a Committee of the Whole House.

House adjourned at 7.30 pm.

Grand Committee

Tuesday 30 November 2021

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Lord McNicol of West Kilbride): My Lords, Members are encouraged to leave some distance between themselves and others and to wear a face covering when not speaking. If there is a Division in the Chamber while we are sitting, this Committee will adjourn for 10 minutes.

Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021

Considered in Grand Committee

3.46 pm

Moved by ***Lord Agnew of Oulton***

That the Grand Committee do consider the Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021.

The Minister of State, Cabinet Office and the Treasury (Lord Agnew of Oulton) (Con): My Lords, the Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 among other things support the implementation of the remaining Basel III standards and the investment firms prudential regime, the IFPR.

As I am sure noble Lords will recall, the Government legislated, through the Financial Services Act 2021, to enable the Prudential Regulation Authority to update the UK's capital requirements regime to implement the remaining Basel accords. These standards were developed following the 2008 financial crisis, which highlighted major deficiencies in international financial regulation.

Now that the UK has left the EU, we must implement many of these standards domestically for the first time. Parliament has approved the implementation of these standards by expert independent regulators, alongside an overarching accountability framework. In September, this House approved the Capital Requirements Regulation (Amendment) Regulations 2021, made under the Financial Services Act, which revoked the provisions in the UK capital requirements regulation, or UK CRR, necessary for the PRA to make these updates. The Financial Services Act 2021 also enabled the Financial Conduct Authority to introduce the investment firms prudential regime, or IFPR, which is the UK's new tailored prudential regime for FCA investment firms. This regime carves FCA investment firms out of the UK CRR. The combination of these two prudential packages requires consequential changes to the statute book. This instrument ensures that these changes mesh appropriately and provide a complete, functioning legal regime for firms.

I now turn to the instrument in detail, first in respect to changes that implement the Basel standards. Many of the measures contained in this instrument update references in existing legislation to the UK CRR, so that they now relate to the new rules made by the PRA, known as the CRR rules. In addition, this instrument revokes the reporting and disclosure requirements for the leverage ratio. I remind noble Lords that the leverage ratio is a capital backstop that prevents banks from becoming excessively leveraged. I reassure noble Lords that the PRA was already able to set leverage-based capital requirements through PRA rules. The UK leverage ratio framework has been, and continues to be, set by the Financial Policy Committee, which has indeed reviewed it in its entirety recently.

This instrument also removes a legacy equivalence determination on Article 132 that was tied to an equivalence regime that was revoked as part of the Capital Requirements Regulation (Amendment) Regulations 2021 earlier this year. This is therefore a tidying up. This instrument ensures that firms do not have to reapply for permissions where the relevant article of the UK CRR is revoked and replaced with PRA rules.

I turn to the changes in relation to the implementation of IFPR. Some of these changes are straightforward—for example, removing now defunct terminology due to changes stemming from IFPR. Two others are more substantive. First, this instrument extends the Securitisation Regulation's due diligence requirements to all FCA investment firms. This ensures that all FCA investment firms buying securitisations must conduct due diligence, thereby helping to safeguard the integrity of the UK securitisation market. The second removes FCA investment firms from the UK resolution regime. This reflects the Government's view that the FCA's existing toolkit, along with the measures the FCA will implement in future through IFPR and the investment bank special administration regime, are more appropriate ways of managing such firms' failure. FCA investment firms currently use existing rules and go into insolvency proceedings anyway, rather than going into resolution. Therefore, keeping them within the resolution regime only serves to create administrative cost for these firms for no benefit.

This instrument contains a savings provision and a transitional provision for the IFPR. It enables the FCA to continue to modify, revoke or amend IFPR-relevant technical standards. It provides for transitional provisions that support the functioning of the UK securitisation market by extending the existing risk retention requirements for one year to allow time for firms to transition their approach. The risk retention requirement ensures that firms retain an economic interest in a portion of the risk that is being sold on to investors.

Finally, this instrument addresses a small number of deficiencies arising from the withdrawal of the UK from the EU which have been identified during the process of making these Basel and IFPR amendments.

In conclusion, the Treasury has worked closely with the Bank of England, the PRA, FCA, industry and, in relation to the resolution change, the Banking Liaison Panel in the drafting of this instrument.

I hope that noble Lords have found my explanation helpful. In short, this instrument plays an important functional part in preparing UK legislation for the

[Lord Agnew of Oulton]
important Basel III implementation and IFPR packages. I would like to inform noble Lords that a correction slip has been issued in relation to a typographical error in this draft instrument. There is an incorrect cross-reference in the title of Regulation 38. The operative provisions in that regulation are correct. As a result, the error has no legal effect, and noble Lords can be assured that this change is minor. I beg to move.

Lord Naseby (Con): My Lords, I declare a possible interest as a trustee of the Parliamentary Contributory Pension Fund. I want to put this on the record, as we are getting wide briefings at the moment. I also have some experience of the friendly society movement as a former chairman of the Tunbridge Wells Equitable Friendly Society and two Invesco investment trusts.

I particularly draw attention to paragraph 7.8 of the Explanatory Memorandum, which is key. It says that

"the framework in its current form does not appropriately cater for the differences between credit institutions and investment firms and can be disproportionate"

and "burdensome", et cetera. That seems crucial. It then goes on to mention the consultation that has been carried out. When my noble friend winds up, could he make it clear whether all parts of Part 9C rules have been produced and circulated to the interested parties, or not? Certainly, implementation on 1 January 2022 does not fill me with enthusiasm. It is after Christmas and less than a month away, so I hope he will say that they have been produced, and when.

I am sure that my noble friend and all noble Lords would feel that there are some deficiencies in UK-retained law. I seek reassurance that we are confident that those deficiencies have been removed.

The other dimension I raise relates to paragraph 12.3. It will not surprise my noble friends that, once again, I feel very strongly about impact assessments and statements from Her Majesty's Treasury that it considers that the net impact will be less than £5 million and very limited. Paragraph 14.1 says that

"the number of small businesses in scope is low."

They may be small businesses, but they are important businesses to whoever is running them—and we are talking about financial firms.

It is always helpful to have a review of any legislation, particularly legislation relating to our coming out of the EU. That may not be proportionate in the judgment of the Treasury, but I do not know how many firms we are talking about. If my noble friend has that information, that will be helpful. I suppose that if we are talking of only three or four, that may be right, but I do not believe that that is the number—from my experience in the City, from some of the presentations we have recently had and, indeed, from some of the publicity about what is happening in the financial sector at the moment.

Is my noble friend absolutely confident that those firms do not want the SI reviewed after a period? If they all say no—that they do not want a review and are comfortable—fine, but my judgment is that, in life, it is helpful to have a review at some point.

Baroness Kramer (LD): My Lords, obviously I will not oppose this statutory instrument, but it raises a number of issues which need to be explored, and I shall look forward to the Minister's response to our concerns. We raised these concerns during the passage of the Financial Services Act 2021, but they have not been alleviated.

The Act and this SI transfer significant power to set the UK rules on Basel III standards to the financial regulators accompanied by minimal parliamentary oversight. It is a crucial process and has a fundamental impact on financial stability, as it sets the capital and risk management requirements for banks and other financial institutions. The PRA and the FCA are expected to consult on their decisions, and parliamentarians can contribute to those consultations, but as no more than ordinary consultees, despite their responsibilities to the public, and can at best hope for a few comments on their points as part of the general response.

Committees of Parliament can question the PRA and FCA and undertake reports but, in practice, on only a handful of issues each year, so they are likely to be visited exceedingly rarely and probably only at a time of crisis, which is rather too late. Even the SIs offer no meaningful accountability, because they cannot be amended. This SI, with the powers it gives the regulators, will mean that the issues of Basel III, so crucial to our financial structure, will probably never again come before either this House or the other place, except through that committee arrangement, which is, as I said, pretty minimal. Perhaps the Minister will confirm that.

When we were members of the EU—I know mentioning that is not popular with the Government—basic Basel standards were implemented through EU law, where the process was open and accountable and as different as day from night from our current circumstance. Before the EU Commission proposed draft legislation, it held many conferences and public meetings involving parliamentarians; parliamentarians were engaged in briefings, expert evidence sessions and discussions with a wide range of relevant regulators and supervisory authorities; and the Economic and Monetary Affairs Committee would be involved in scrutinising the main directive and regulations by way of co-decision. With Brexit, the power has transferred from the EU, but the Government have chosen to do it in a way that essentially removes any meaningful democratic accountability. I should like to hear for the record why the Minister has chosen such a route.

4 pm

I want to raise two narrow issues that are hanging loose. As part of setting Basel III standards, the PRA will determine MREL—the minimum requirement for own funds and eligible liabilities—and it will do so without any democratic oversight. MREL seeks to ensure that any bank failure can be resolved because the bank either has a very high level of capital or can bail in bonds to restore its capital position. Big banks can easily access the market for bail-in bonds, but mid-tier banks cannot, except at the most extortionate prices. The Bank of England has historically applied MREL to mid-tier banks, unlike its EU and US counterparts; that has been very much a UK decision. Late last year, the Bank of England started a review of MREL; I think it finally became aware that it was going to create major problems in the mid-tier market.

Can the Minister please update us on what has happened with this review and where we now stand with MREL, particularly as regards mid-tier banks?

Lastly, during the passage of the Act that lies behind this SI, my noble friend Lord Oates and I moved amendments to get the PRA to seriously consider recognising the financial risk associated with stranded fossil fuel assets and to adjust capital requirements for the banks to reflect that risk. We were dismissed very casually. Now the PRA seems to be shifting its stance in its paper *Climate-Related Financial Risk Management and the Role of Capital Requirements*. Will the Minister please update us, as we have no other way of getting information? As I said, the effect of the Act and the SI is to remove any direct oversight of such issues from Parliament, except through the weak consultation and committee processes. As the one last opportunity, perhaps the Minister would inform us of where the status is today.

Lord Tunnicliffe (Lab): My Lords, I am grateful, as ever, to the Minister for introducing this latest set of Treasury regulations. These are not the first changes to arise from the Financial Services Act 2021, but this SI represents the biggest amendments to and revocation of the capital requirements regulation—the CRR—since that parent legislation passed. Many of the changes are to facilitate the implementation of certain Basel III standards from 1 January 2022. As the Minister and the Explanatory Memorandum noted, the UK played an active role in negotiating this reform package.

As we discussed at length during the passage of the parent Act, the Prudential Regulation Authority—the PRA—has taken responsibility for updating parts of the CRR through its regulatory rules. That such changes are being made at arm's length might still rankle with some—the noble Baroness, Lady Kramer, reinforced that point—but that was the Treasury's determination and it is the framework that we must operate under.

Other changes made by the instrument are designed to facilitate the implementation of the investment firms prudential regime—the IFPR—by the Financial Conduct Authority. That new system will ensure tailored regulation of non-systemic investment firms outside the scope of the CRR. The Explanatory Memorandum notes that although the FCA has introduced most of its IFPR rules, some more are required before the regime goes live on 1 January 2022. Can the Minister confirm whether these additional rules have been finalised and published since the SI and EM were laid? If not, does the FCA have an estimate of when they will emerge?

Could the Minister also outline what parliamentary engagement has been undertaken on the CRR and the IFPR reforms? Given the highly technical nature of these regulations and the various regulatory rules that must be read alongside them, is the Minister confident that everything is present and correct? This might at first glance feel like a trivial question but, as a veteran of dozens of EU exit SIs, it is vital that we have confidence in this process.

Moving on, the Treasury has, in its Explanatory Memorandum, pointed to the existence of accountability frameworks for the PRA and the FCA. However, in doing so, it neglected to mention the unease that has been expressed about this by several colleagues across your Lordships' House. At the time, it was suggested that concerned colleagues may find comfort in the ongoing future regulatory framework review process. Some has indeed been found in the proposals outlined in measures 6 and 7 of Command Paper 548 to introduce statutory requirements for the PRA and FCA to notify relevant parliamentary committees of their consultations and provide written responses to any representations made. If adopted, these steps would mirror several of the key asks in our previous amendments. Nevertheless, as always, the devil will be in the detail. While it may not be strictly relevant to this SI, can the Minister outline the anticipated timescale for the review? When is the Treasury likely to come forward with the resulting legislation?

Another concern around CRR and IFPR rule-making was the extent to which the regulators would have regard to the steps needed to tackle the climate crisis. The Government eventually conceded that the PRA and the FCA should have regard to the 2050 net-zero target, but this requirement takes effect only on 1 January —that is, after most of the rules have been published and at the same time as they enter into force. Can the Minister outline what steps, if any, have been taken by the regulators to ensure that green issues have been considered as part of the current exercise, in so far as it is possible within the Basel III framework? Can he also explain how he envisages the new duty operating in practice? What kinds of regulatory changes would he expect to see as a result of that concession having been made?

There is a perception—I have outlined my concerns before—that while the Chancellor likes to talk green, he is somewhat less keen on acting accordingly. Many firms in the financial sector are cognisant of the need to make their business practices more sustainable. Some have acted as outriders, setting ambitious targets and creating interesting schemes for change. However, more needs to be done. A voluntary approach to things such as investment in fossil fuels will get us only so far. Some will do the right thing but others may see opportunities to gain competitive advantage. If, by the time we get to the next financial services Bill, these kinds of issues have not been adequately addressed by the PRA and FCA, can the Minister commit the Treasury to taking action?

Implementing Basel III and IFPR is one thing, and we do not oppose these regulations' small part in delivering those reforms. However, meeting the challenges of the future is another matter and it is not yet clear that we are on the right course.

Lord Agnew of Oulton (Con): I thank noble Lords for their contributions today. Some important points have been raised during the debate. I will attempt to answer them but there may be one or two where I will have to write.

To start, my noble friend Lord Naseby asked about impact assessments. A de minimis impact assessment has been published alongside the instrument. As the equivalent annual net direct cost is less than £5 million, the only direct costs to businesses in scope of the instrument will be approximately £900,000. This is for provisions relating to the securitisation regulation.

[Lord Agnew of Oulton]

Regarding the amendment to Article 2(12)(g) of the securitisation regulation, including all the FCA investment firms in scope of due diligence requirements, the net impact to firms is expected to be £900,000 per annum, based on the relevant firms investing in 20 securitisation positions per year. This figure represents the aggregate compliant costs for firms that are being brought within the scope of the due diligence requirements. This figure has been calculated from information provided by the FCA and industry; the calculation is based on the type of investment firms on which the amendment has an impact, the estimated number of such firms and the estimated cost of complying with the due diligence requirements.

The noble Baroness, Lady Kramer, asked about future regulatory reform and parliamentary oversight. The Government and the regulators are committed to ensuring that Parliament has the opportunities it needs to scrutinise the PRA's rules and respond to anything raised. The Government consider that Parliament has a wide range of powers to request information and conduct effective scrutiny of the regulators, including through the Select Committee system. To support this work, the Government have proposed formalising through statute the mechanisms through which the regulators provide information to Parliament to ensure that it has the information it needs to undertake this scrutiny.

The noble Lord, Lord Tunnicliffe, asked me to outline what parliamentary engagement has been undertaken on both the CRR and IFPR reforms. Ultimately, it is Parliament that sets the regulators' objectives. It is of course right that Parliament has an appropriate opportunity to scrutinise the work of the regulators and their effectiveness in delivering the objectives that Parliament has set them. The regulators committed to sending their consultations and draft rules on Basel and the IFPR to Parliament during the passage of the Financial Services Act earlier this year.

Consultation on these changes started in December 2020, so there has been plenty of time for Parliament to review and report on it, including through the Select Committee process. The PRA and the FCA also published their near-final rules over the summer to provide ample time for familiarisation well in advance of this debate. As part of the ongoing future regulatory reform, as I have mentioned, we have proposed formalising through statute the mechanism through which regulators provide information.

The noble Lord, Lord Tunnicliffe, and my noble friend Lord Naseby asked whether the detail of this instrument and the accompanying rules set by the regulators are present and correct. The answer is yes. Treasury officials have worked extensively with their counterparts at the regulators to ensure that the changes mesh and make a cohesive whole. Where appropriate, both the Treasury and the regulators have consulted on the measures implemented through this statutory instrument. The noble Lord and my noble friend also asked whether the IFPR rules have been finalised and published since the SI and EM were laid. I can confirm that the FCA has now published all the IFPR rules, including the final outstanding set of rules, which were published on 26 November.

I thank the noble Lord, Lord Tunnicliffe, for his assertion that two of the measures in the recent financial future regulatory framework review consultation provided him with some comfort on the question of the regulators' accountability to Parliament. He also asked about the timescales of the review. The Government published their consultation on 9 November, with a closing date for responses of 9 February next year. We will bring forward further detail on our approach to implementing the proposals in the review in due course.

The noble Lord asked me to outline what steps, if any, have been taken by regulators to ensure that green issues have been considered as part of their rule-making processes. He is of course correct to say that the Financial Services Bill 2021—now an Act—was amended to include

"have regard to the net-zero carbon target",

which will apply after 1 January next year. This means that the PRA does not need to have regard to climate change considerations in making the Basel III rules, nor the FCA in making the IFPR rules, for 1 January. This was done to ensure that there is no delay in implementing the Basel III and IFPR reforms. It will be for regulators to determine how the new duty will operate in practice. The Government anticipate that it will function in much the same way as other similar obligations did during the PRA's implementation of the Basel III standards, such as the need to have regard to the ability of firms

"to continue to provide finance to businesses and consumers in the UK".

The PRA and the FCA are aware of the need to respond to the potential risks posed by climate change. For example, on 28 October, the PRA published its second climate change adaptation report, finding that under the existing regulatory capital framework there is scope to use capital requirements to address certain aspects of climate-related financial risks. This and future work will no doubt feed into how the PRA sets its rule from 1 January 2022.

4.15 pm

I assure the Committee that the Government are prioritising tackling climate change. In October, we published *Greening Finance: A Roadmap to Sustainable Investing*, setting out our long-term ambition to green the financial system and align it with the UK's world-leading net-zero commitment. Among other things, the road map outlines measures that we are taking to tackle greenwashing and to implement a new green taxonomy.

I remind noble Lords of this instrument's key purpose. In short, it enables the implementation of the Basel III standards, regulation that is key to the UK's international standing. It also updates the new IFPR definitions and takes FCA investment firms out of scope of the UK resolution regime. Finally, it irons out some of the wrinkles of existing EU regulation. I shall write to the noble Baroness, Lady Kramer, with a copy for the House, on some technical questions that she raised. Together, these measures will give UK firms certainty over the final elements of the Basel III standards and the IFPR regimes. I commend this instrument to the Committee.

Motion agreed.

Terrorism Prevention and Investigation Measures Act 2011 (Continuation) Order 2021

Considered in Grand Committee

4.17 pm

Moved by ***Baroness Williams of Trafford***

That the Grand Committee do consider the Terrorism Prevention and Investigation Measures Act 2011 (Continuation) Order 2021.

Relevant document: 19th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I beg to move that the order, which provides for the continuation of the Secretary of State's TPIM powers, or terrorism prevention and investigation measures, for a period of five years, be approved.

The Government take all necessary steps to protect the public. The threat we face from individuals and groups who wish us harm is significant and enduring. It is vital that we have the tools necessary to keep this country safe. It is right that our first response to terrorism-related activity should be to prosecute or deport those involved, but it is not always possible. That is why we continue to require the powers conferred on the office of the Home Secretary within the Terrorism Prevention and Investigation Measures Act 2011. Section 21(1) of the Act states that the Secretary of State's TPIM powers will expire at the end of five years from the date the Act was passed. Due to the continuing threat to the UK from terrorism, and following consultation with the Independent Reviewer of Terrorism Legislation, the Investigatory Powers Commissioner and the director-general of the Security Service, there can be no doubt that TPIMs remain an essential component of our toolkit to manage the threat from terrorism.

The Act provides the Secretary of State with powers to impose a TPIM notice on an individual if the conditions set out in Section 3 of the Act are assessed by the Secretary of State to have been met: namely, that she reasonably believes that the individual is, or has been, involved in terrorism-related activity, and reasonably considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, to impose the measures on the individual.

In addition to the power to impose a TPIM notice, the Secretary of State has powers to extend and vary a TPIM notice that is in force, and to revive a TPIM notice that has been revoked. Since the introduction of the Act in 2011, 24 TPIMs have been imposed. As of the last published set of figures on 21 October, five TPIMs were in force. If the TPIM powers are not extended, these five dangerous individuals will be at large without any measures in place to reduce the risk they pose to the public. TPIMs are imposed as a tool of last resort, when the Security Service judges that there are no other means, or that a TPIM notice is the only satisfactory means, to manage that risk.

I shall now outline some of the background to TPIM powers for the Committee. TPIMs are civil preventive measures designed to manage the threat posed by individuals who cannot be prosecuted for a terrorism-related offence, or deported in the case of foreign nationals. There is no question that TPIMs are extraordinary measures. That is why the 2011 Act provides for broad judicial oversight, including a requirement for High Court permission to impose the measures, except in urgent cases where the notice must be immediately referred to the court for confirmation; an automatic review hearing in each case, unless the individual requests that the hearing be discontinued; and rights of appeal for the individual against the refusal of a request to revoke or vary a measure.

The TPIM legislation also places a duty on the Secretary of State to consult on the prospects of prosecuting an individual before measures may be imposed, and a duty to keep the necessity of measures under review while they are in force. The Counter-Terrorism and Sentencing Act 2021, which amended existing measures and introduced new TPIM measures, also reintroduced a requirement on the Independent Reviewer of Terrorism Legislation to publicly report on the operation of the TPIM Act.

The TPIM Act has been extended once, in 2016, by this House. Unless a new order is made under Section 21(2)(c), the powers in the Act will expire at midnight on 13 December this year. Just as was the case five years ago, it is absolutely essential that we have all the necessary powers to protect the public from terrorism-related activity. Having consulted as required by the Act, the Home Secretary has decided, due to the significant terrorist threat facing this country, to make this statutory instrument to provide for the continuation of TPIM powers for a further five-year period, which is the maximum allowable in the legislation.

It is essential that our counterterrorism strategy enables us to tackle the full spectrum of activity. TPIMs have been endorsed by the courts and successive Independent Reviewers of Terrorism Legislation, while the police and the Security Service believe that they have been effective in reducing the national security risk posed by those subject to the measures.

Our message is clear: we remain steadfast in our determination to defeat terrorism and we will take every necessary action to counter the threat from those who hate the values that we cherish. The safety and security of the public is our number one priority, and I commend the order to the Committee.

Baroness Jones of Moulsecoomb (GP): My Lords, here we are again: the five-yearly renewal of the TPIM scheme, which has been in place since 2006. I oppose these restrictive measures, which are an extrajudicial way of interfering with the rights and liberties of people who cannot be convicted of any crime.

I am curious to know whether the Home Office has explained to the Prime Minister that it is doing this. I ask because, while MP for Henley in 2005, Boris Johnson wrote of the Act in his *Telegraph* article of 10 March:

"It is a cynical attempt to pander to the many who"—

forgive my language here—

"think the world would be a better place if dangerous folk with dusky skins were just slammed away, and never mind a judicial proceeding; and, given the strength of this belief among good Tory folk, it is heroic of the Tories to oppose the Bill. We do so because the removal of this ancient freedom is not only unnecessary, but it is also a victory for terror."

[Baroness Jones of Moulsecoomb]

I hope that the Minister will at least pass this back to the Home Office to make sure that the Prime Minister is happy with this renewal. It must be so difficult for Ministers to do anything without Boris Johnson having opposed it somewhere at some point in the past; there is always an article somewhere that one can track down. Our Prime Minister is so very often so wrong, but on this rare occasion he was so right: it is heroic to oppose these measures, and the Greens in your Lordships' House will register their opposition every five years when this continuation order comes round. I actually hope this will be the last time.

Lord Anderson of Ipswich (CB): As Independent Reviewer of Terrorism Legislation in 2016, I had no hesitation in recommending the second renewal of TPIMs in that year. I share the Government's view that TPIMs, although they involve a particularly severe deprivation of liberty and intrusion into private life, may be an appropriate tool for dealing with a small number of individuals who are believed to endanger the public but whom it is feasible neither to prosecute nor to deport.

However, close scrutiny of TPIMs is important, all the more so since the maximum duration of a TPIM was significantly increased by the Counter-Terrorism and Sentencing Act 2021. I am here to raise with the Minister one concerning development that has arisen since my time as independent reviewer: the refusal of legal aid to TPIM suspects who cannot afford to progress the automatic review of each TPIM that is provided for in Section 9 of the TPIM Act 2011.

Jonathan Hall QC, the current independent reviewer, reported to the Government in November 2020 that, in the previous year, three subjects of so-called light-touch TPIMs, known as JD, HB and HC, requested the court to discontinue the reviews in their cases and that "the absence of funding was a factor".

In each case, they had been refused legal aid. The independent reviewer's report, published in March 2021, recommended that, subject of course to means, legal funding should swiftly be made available to TPIM subjects for the purpose of participating in Section 9 review hearings. Mr Hall informed me this afternoon that, more than eight months after publication, there has still been no response from the Home Office to this recommendation. Can the Minister say when a response will be provided?

In the hope that it may influence the substance of any response, which, I might add, I do not expect today, I shall make four points. First, on 12 October 2020, the Government wrote to the UN High Commissioner for Human Rights, defending the TPIM regime on the basis that, among other things,

"all TPIM subjects have an automatic right to have a court review the imposition of their TPIM and each of the measures imposed. This hearing also provides an opportunity for the subject to hear the national security case against them."

I assume that in the last sentence the reference is to the gist of the national security case, which is now provided to the TPIM subject. It is plain from what I have said, and from what the independent reviewer has said, that there is, in reality, no automatic right to review and that there will be no such right for as long as legal aid is refused to TPIM subjects on grounds other than means.

Secondly, it would be unacceptable if funding were to be denied because of a misapprehension that a Section 9 review is a form of challenge that requires a TPIM subject to establish reasonable prospects of success. As the independent reviewer explains in his report, Section 9 review was designed not as an add-on but as an integral part of every TPIM. Furthermore, it is not feasible to apply a merits criterion to the grant of legal aid, because the requirements of national security mean that TPIM subjects do not know, and will never be told, the full reasons for the Secretary of State's decision to impose a TPIM.

Thirdly, if the aim is to save money or a desire to avoid giving money to lawyers for suspected terrorists, that aim is not only misguided but likely to be counterproductive. The legal aid issue affects very few cases—just three in 2019, as I indicated—but is bound eventually to lead to prolonged litigation about the fairness of proceedings.

4.30 pm

Fourthly, and finally, I ask the Minister to reflect that judicial consideration of TPIMs, and in particular light-touch TPIMs, can help MI5, CT policing and the Home Office to work out when future TPIMs will be proportionate and how much evidence will be required to support them. The courts have generally been very supportive of TPIMs, but if light-touch TPIMs, which I welcome in principle, are to go unreviewed because funding for review is not available, it will be more difficult to calibrate the effort that is required to achieve the measures that are judged appropriate. Light-touch TPIMs may, for example, impose a lower burden on the Government in exculpatory review, disclosure and witness evidence. Without review in the courts, we will never know.

The independent reviewer recorded in his last report that steps were being taken by Home Office, which is not itself responsible for funding decisions, to understand the reasons for the Legal Aid Agency's decision-making. I hope that these steps have been fruitful and that the Home Office will soon be in a position to respond positively to the highly pertinent points made by the independent reviewer—points that illustrate not only the quality of the current reviewer but the considerable value of independent review in this area.

Lord Paddick (LD): My Lords, I thank the Minister for introducing this statutory instrument. As she explained, the sunset clause means that every five years the TPIM powers need to be reviewed. I say in response to the noble Baroness, Lady Jones of Moulsecoomb, that we support the measures because they are necessary. I think she said that they are extrajudicial. Yes, there is no criminal trial in the way somebody who is deprived of their liberty would normally be subject to a criminal trial, but these proceedings are not extrajudicial in that they still have to be approved by the court; there is some sort of judicial involvement.

We support the measures, but it is essential that there are safeguards. As the noble Lord, Lord Anderson of Ipswich, said, the Government are, when challenged, citing defences of TPIMs that do not appear to be completely the case. If three subjects have abandoned their review, citing lack of funding for legal aid, clearly some of the safeguards are not being upheld.

The other issue is that, if the Government are citing to the UN body the fact that TPIM subjects will hear what the national security case is against them in those court proceedings, clearly that is not true either. TPIMs are usually for cases where the security services have intelligence on an individual but do not have evidence that they can present in open court, so it is very unlikely that a TPIM subject will hear what the national security case is against them. On the face of it, it sounds as if the Government are misrepresenting the safeguards that should be part and parcel of the TPIM process.

What worried me about the noble Baroness's comments, which were very similar to those made by the Minister in the other place this morning, was that TPIMs are cited as being for cases where people cannot be prosecuted or deported. My understanding is that these terrorism prevention and investigation measures were intended as a stopgap while evidence was collected in order to prosecute the individual, not as a permanent replacement for prosecution.

There is a continual refrain: "Well, if we can't deport or prosecute somebody then we'll deprive them of their liberty on an almost permanent basis through TPIMs." That strikes me as going against the sort of rights and freedoms that the noble Baroness said we need to protect through combating terrorism. We are almost taking away people's rights and freedoms by the use of TPIMs in that way.

We have heard about some worrying developments from the noble Lord, Lord Anderson of Ipswich, about reviews, a crucial safeguard as part of TPIM measures, and we have heard about the apparent misrepresentation by the Government of what the safeguards are and how what the Government appear now to be using TPIMs for goes beyond what they were intended for when they were initially envisaged. We are clearly concerned about the safeguards, but not to the extent that we feel that TPIMs are not necessary in exceptional cases as a temporary measure. Bearing in mind that the Investigatory Powers Commissioner, the security services and the independent reviewer have been consulted and are content with the renewal of the use of this power for another five years, and despite those reservations, we support the continuation of TPIMs.

Lord Ponsonby of Shulbrede (Lab): My Lords, I, too, thank the noble Baroness for introducing this statutory instrument, which has vital implications for our national security. It keeps our citizens, their families and our communities safe. We will not oppose the instrument, which renews the Secretary of State's powers to impose, extend, vary and, where elapsed, revive a TPIM notice. This is a technical measure and is required every five years by the 2011 Act. It would be incomprehensible to let these powers elapse on 13 December.

TPIMs are a tool in an arsenal to combat terrorism. The TPIM system needs to be agile and robust to respond to the ever-changing terrorist threat. Individuals with no criminal conviction can have these exceptional measures applied against them. It follows that there need to be strong safeguards to balance the protection of our citizens with the rights of an individual to be treated within the law and in a human rights compliant manner.

Does the Minister believe that TPIMs are effective? As she said, there are five TPIMs in force as of this October. Does she believe that the resources necessary to properly administer them are in place? What impact have the recent changes had operationally? We have seen the impact of so-called lone-wolf terrorism tragically recently. The Labour Party has called on the Government to look at this specifically and to publish a review. How does a TPIM combat this type of lone-wolf terrorist threat?

I also ask the Minister about funding for community counterextremism projects and the recommendations of the Government's own commission of experts, in particular the ISC proposals on precursor chemicals for explosives. My honourable friend Conor McGinn in the other place referred to the Government not following the recommendations of their own experts. I will widen the question: can the Minister say something about their use of experts? How do the Government believe outside experts can be best used to develop and implement a strategy to combat terrorism?

Today's SI deals with the renewal of TPIM powers, but can the Minister say something about the Prevent scheme? It is concerning that referrals to the scheme have dropped to just below 5,000, which I understand is a 22% drop and a record low. What is the status of the independent review of Prevent and when does she expect it to be published?

I will pick up some of the points that noble Lords have made in this short debate. The noble Baroness, Lady Jones, quoted from an article by the Prime Minister in the *Telegraph*. She went on to express her hope that this is the last such debate. I agree with that sentiment. We all know that the Prime Minister sometimes uses colourful language to make strong points, but she agreed—I see that she is nodding her head—as I do, with what the Prime Minister said in that article. But I am not driven to the same conclusion as the noble Baroness. We need these measures and we need them now, which is why we support a renewal of this SI.

The noble Lord, Lord Anderson, is undoubtedly the most expert among us today. He raised four questions and I would be interested to hear the response to them, because I thought that they were very pertinent.

The noble Lord, Lord Paddick, put his questions succinctly and I will reiterate a couple of his points. My understanding of TPIMs agrees with his: they were not seen as a permanent replacement but as an intermediary step before prosecution, yet we see people being kept on this type of regime for long periods. The noble Lord, Lord Paddick, essentially also made the same point as that of the noble Lord, Lord Anderson, about the safeguards not being properly funded, so that, for example, it is not possible for people to take advantage of legal aid to review the TPIMs on them. I thought that the questions from the two noble Lords were important and the Government need to answer them.

Baroness Williams of Trafford (Con): My Lords, I thank all Members of the Committee who have spoken in today's debate. First, I will correct the noble Baroness, Lady Jones of Moulsecoomb: the TPIMs have been in place not since 2006 but since 2011, I understand, so this is their 10-year anniversary. But I will certainly pass the noble Baroness's point to the Home Office.

[Baroness Williams of Trafford]

The noble Lord, Lord Anderson, asked me a few questions, but his main thrust was on legal aid. He outlined the opinion of Jonathan Hall QC on this. I can confirm that he has raised those concerns and that the Government will respond to both the 2019 and the 2020 reports shortly. It is for the Legal Aid Agency to assess any application for legal aid for a TPIM review and its decisions are made independently of government, in accordance with the legislative framework, but I do not think that that was the noble Lord's point—I will get on to that. It is right that both means and merits tests are applied to all applicants for TPIM reviews to ensure that the legal aid scheme meets its dual objective of targeting funding at those who need it most and providing value for money for the taxpayer.

To that end, the noble Lord, Lord Anderson, asked a specific question on people who do not know what the case against them is—therefore, how can they respond? The merits test is a key part of the legal aid scheme. The Legal Aid Agency applies the merits criteria on the open evidence alone and there are provisions to help applicants where it is difficult to establish prospects, so closed evidence should not disadvantage applicants from satisfying the merits test.

The Home Office keeps the prospects of prosecution under review and each case is regularly reviewed. TPIMs can be imposed for a set time period only and people are not kept on them indefinitely.

Lord Ponsonby of Shulbrede (Lab): On that specific point, when the Minister says that TPIMs are regularly reviewed with a view to prosecution, how often is that? Is it once a year or once every six months? How often are they reviewed?

4.45 pm

Baroness Williams of Trafford (Con): It is quarterly. I turn to the review of Prevent. Sorry, I did not quite finish the previous point. As to the effectiveness of resources, clearly, I cannot comment on individual cases. I can, however, assure the Committee that they have the support of the police and of the Security Service. Successive courts have ruled that TPIMs are lawful and effective tools for managing individuals engaged in terrorism. The Home Office is confident that the TPIM regime is fully resourced to manage any number of TPIMs, although they are few in number. The review of Prevent will be laid in the Houses of Parliament by 31 December.

I thought the question from the noble Lord, Lord Ponsonby, about lone wolf terrorism was very pertinent. We are seeing increasing numbers of lone actors. How can TPIMs help? If a lone actor is not on the radar, it is very difficult to pre-empt what that person will do. The intelligence that our various agencies have is there to help identify people who may be vulnerable to such acts. The TPIM is threat-agnostic, and goes across a range of threats.

How can we best use external experts? I have spoken to a number in the field not just of counterterrorism but of counterextremism. The noble Lord was pointing towards this. Our current independent reviewer of Prevent is clearly an expert in his field. We are lucky to have the experts we do, giving advice to the Home Office and the Government. I think I have answered all questions.

Lord Paddick (LD): I am grateful to the Minister. The noble Lord, Lord Anderson of Ipswich, raised a couple of issues. He suggested that the Government had justified the TPIM regime on two bases. The first is that reviews take place. Whether this is an independent decision by the Legal Aid Agency or not, we have heard that people are abandoning their reviews because they are not being funded for legal representation. Presumably they feel it is a waste of time unless they have representation. Secondly, they say that these hearings give the subject the opportunity to hear the national security case against them. Clearly, the TPIM subject does not hear the national security case in court. Perhaps there is a hint of what might lie behind it, but they do not hear the case. The Minister did not answer those particular questions. Perhaps she could write to noble Lords.

Baroness Williams of Trafford (Con): I partly answered them, but I am happy to clarify in writing. I beg to move.

Motion agreed.

Coronavirus Act 2020 (Early Expiry) (No. 2) Regulations 2021

Considered in Grand Committee

4.51 pm

Moved by ***Lord Kamall***

That the Grand Committee do consider the Coronavirus Act 2020 (Early Expiry) (No. 2) Regulations 2021.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): Before I call the Minister, I must inform the Committee that the noble Baroness, Lady Brinton, will take part remotely so I will call the Lib Dem response at the appropriate time.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): My Lords, the Coronavirus Act has been a central part of the Government's response to Covid-19. It includes powers to bolster the health and social care workforce through the temporary registration of practitioners. More than 13,000 social workers and 28,000 nurses, midwives, paramedics, operating department practitioners, radiographers and other professionals have joined the temporary registers. This continues to provide extra resilience for our health and social care sector during these uncertain times. It also demonstrates the commitment and determination of our fantastic health and social care professionals.

The Act includes powers to ensure that critical functions in society are able to continue throughout the pandemic. For example, it has allowed virtual court hearings to take place in a wider range of circumstances. The Government plan to secure some of these powers in alternative primary legislation. The Act also includes powers that have enabled the Government to provide vital support to people and businesses, including provisions for statutory sick pay for Covid-19-related absences;

the Coronavirus Job Retention Scheme, which has supported 11.7 million jobs; and the Self-employment Income Support Scheme, which supported almost 3 million self-employed individuals.

The Coronavirus Act has been a critical part of the Government's response to the pandemic, but I acknowledge that some noble Lords are concerned about some of the powers in it. I assure them that the Government have sought to use the powers in an appropriate and proportionate way. There are arrangements in place to ensure accountability, including regular opportunities for parliamentary scrutiny; this accountability is vital. I am grateful to noble Lords, my honourable friends in the other place and the Joint Committee on Statutory Instruments, whose welcome review of our draft instruments continues to ensure their accuracy.

We will continue to review the powers in the Act and are committed to ensuring that emergency powers remain in place for only as long as they are necessary. The most recent six-month review of the Act in September identified seven provisions, and parts of an eighth, that could be expired. Once approved, Parliament will have expired half of the original 40 temporary, non-devolved powers in the Act ahead of schedule.

The regulations that we are debating today expire some of the most controversial provisions in the Act, including the powers under Schedule 21, relating to potentially infectious persons, and Schedule 22, giving powers "to issue directions relating to events, gatherings and premises". The regulations also expire other powers that are no longer needed, such as those under Section 23 enabling the variation of "Time limits in relation to urgent warrants" under the Investigatory Powers Act and Section 56 powers related to "Live links in magistrates' court appeals" in certain situations, as well as powers under Section 37 and parts of Section 38 relating to the education and childcare sectors. We are also expiring Sections 77 and 78, which were time-limited powers in the Act, and a further provision on behalf of Northern Ireland.

Expiring these provisions is an important milestone. It is possible only because of the significant progress that we have made so far in our fight against the virus, but we have continued to be clear that the pandemic is not yet over. The Government believe that the remaining provisions in the Act are important to continue to support the response to Covid- 19 over the coming months. Everyone should continue to do their bit to keep themselves and others safe as we tackle the winter months ahead, so let us encourage everyone to get their first, second and booster doses, when eligible. It is not too late for those who have not yet received their first or second doses to get them and we urge them to come forward. We also urge everyone to continue to wash their hands, to ventilate indoor spaces, to wear masks where mandated—but even where not mandated, if appropriate—and to stay home when they feel unwell.

We are conscious of how hard the pandemic has been for so many people and we are grateful to everyone who has made sacrifices. We are grateful for the dedication and determination of individuals and communities across our great nation and to all those who have worked so hard in the fight against Covid-19.

Baroness McIntosh of Pickering (Con): My Lords, I welcome the opportunity to debate the provisions in the regulations before us and I congratulate my noble friend on bringing them forward. I thank him for the meeting that I had in the last 10 days with him and his team, which was most useful. I endorse enthusiastically his invitation for those who have not yet been vaccinated to come forward. This would be an opportunity to ask where we are, particularly with those under 18. Have they had their second vaccinations and at what age will the vaccine programme be rolled out?

I remind the Committee of my interest as an adviser to the Dispensing Doctors' Association, which may or may not pertain to the comments that I make this afternoon. I seek my noble friend's guidance on whether one area that I am particularly interested in, as I know are all general practitioners, is covered in the provisions before us. If it is not, can he write to me? I understand that one of the reasons why GPs are unable to have as many face-to-face appointments as they would wish is that they have been constrained by the regulations passed by both Houses of Parliament. I cannot remember whether the provision was in the original Act or in supplementary regulations in the form of statutory instruments that we have adopted. However, I understand that specific regulations regarding the square footage or meterage of a waiting room were set out at the beginning of the pandemic, limiting the number of patients who could be accommodated in person in a waiting room during the pandemic. I think that it was the same for dental practices.

Are these provisions still in place? If they are not part of these regulations, I would be grateful if my noble friend could write to me. It could be extremely important to advise the public that that is why doctors are not able to see as many patients physically as they would wish to do. I am sure that the regulations were brought in for good reasons—that we should not be mixing and should be masking and that we should respect the ventilation to which my noble friend referred, while self-distancing—but it is important that patients understand the constraints under which general practitioners have to operate.

To turn to the specific remit of the regulations before us, my noble friend just stated, and I think that it is on page 5 of the Explanatory Memorandum, that the Government are minded to expire and lift the regulations relating to the power in Schedule 22

"to provide powers to issue directions relating to events, gatherings and premises in England and Northern Ireland respectively."

With the greatest respect, mindful of the fact that we might have difficulties once we know more about the omicron variant, is this the right time to be lifting those restrictions? Can my noble friend put my mind at rest that powers exist elsewhere, either in subsequent regulations or still in the original Act? It seems a little premature to be expiring those provisions at this time.

5 pm

Regulation 3 is on the operation of the working tax credits, as on page 5 of the EM, and I am delighted that that was addressed by the Chancellor of the Exchequer in the Budget and spending review. However, it would be helpful to know whether the figures that

[Baroness McIntosh of Pickering]
the Chancellor announced then will amount to a similar amount to what would have been received as a £20 top-up to those claimants of universal credit. Is it the same amount that can be claimed? Will they have to apply for it separately? What concerned a lot of colleagues both in your Lordships' House and the other place was the neatness: that it was universally applied to all those on universal credit whereas, if I understand it correctly, what was announced by the Chancellor has to be applied for separately. Therefore, it is not automatic and not universal to those in receipt of universal credit.

My final point relates to Regulation 5, as on page 6 of the EM, which concerns local authority meetings. I think that it refers to Section 78 in the original Act. It states that the provision

"enabled all local authority meetings held before 7 May"

to be held remotely, but that was time-limited and no longer operable. It has been put to me by a friend who is a councillor in North Yorkshire that there may be instances where councils may wish to continue to meet remotely. I think in particular of the weather conditions —we still have no power in a great many parts of North Yorkshire, which is unbelievable, but obviously due to Storm Arwen. Is my understanding correct that they can continue to meet remotely if they wish and that that power will remain, so I can advise my friend and councillor in North Yorkshire, and others who are concerned, that that is the case? If so, it would be helpful to know under what authority they can continue to meet remotely. It just seems common sense that we keep that power in place. With those few remarks, I welcome the regulations.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): My Lords, the noble Baroness, Lady Brinton, is taking part remotely. Can we beam her in?

Baroness Brinton (LD) [V]: My Lords, this is beginning to have the feeling of "Star Trek", which is certainly not my intention. Thank you, Deputy Chairman. I declare my interest as a vice-president of the Local Government Association.

From these Benches, we will not oppose the expiry of these 12 provisions, although we have some comments on them. It was really good to hear the Minister outline the "hands, face, space" guidance, readopted in the past couple of days. Will there be a public communications campaign to reinforce it because, sadly, I suspect that not many people will have heard it in Grand Committee today in Parliament, let alone in the outside world?

Yesterday, in the Statement repeat, we debated masks and self-isolation; we will do so again tomorrow when we look at the SIs. On vaccination, it was good to hear the Prime Minister and the Secretary of State refer to the clinically extremely vulnerable in this afternoon's press conference. I promise the Minister that I will not repeat all the questions I asked him yesterday, but not one of them has yet been answered. Delivering either the fourth, or a booster, jab for 3.7 million clinically extremely vulnerable people will not work effectively without clearer information systems on exactly who the CEV are and which jab they should get; there is still a lot of uncertainty there. I thank the Minister for his offer of a meeting during yesterday's Statement. With today's announcement, vaccination is becoming urgent; I look forward to hearing from him shortly about when it can happen.

From these Benches, we want to make a brief comment on the assessments for local authority care and support. I note that the Explanatory Memorandum says that only

"eight local authorities used these powers between April 2020 and June 2020. No local authorities in England have used them after 29 June 2020."

That is good to hear, but it is evident that assessments are still happening very slowly. It is one of the problems that hospital trusts across the country are facing, with people in beds awaiting an assessment. Some of that is much more about workforce availability, both in the NHS and in the local authority system, than about the arrangements to reduce these assessments.

Reference has already been made to local authorities having virtual meetings. Members from these Benches and others objected when the Secretary of State decided that all local authority meetings had to cease being virtual in January this year. It has meant that a number of councillors have been unable to attend their council meetings through no fault of their own. If the Lords can have a handful of people contributing virtually, and with cases going up and certain areas having problems, is it possible to return to virtual meetings and leave the matter as a choice for the local authority concerned?

I note that the Explanatory Memorandum says:

"This instrument does not relate to withdrawal from the European Union/trigger the statement requirements under the European Union (Withdrawal) Act 2018."

However, it is only fair to point out that Section 25 gives early expiration to the power to require information relating to food supply chains to avoid serious disruption. In principle, we do not have a problem with that as a provision during the pandemic, but I say to the Minister: that statement may be true in treaty and UK legislation terms but, as we face this Christmas, there are increasing concerns about disruption to food supply chains, for three reasons.

One is a direct consequence of Brexit. European providers of food and many other products have significantly reduced or stopped exporting to the UK because of the complex, slow and, for both exporter and importer, expensive costs now that we are outside the European Union. Since Brexit, the reduction in the number of EU abattoir workers—as they leave the UK—has meant, this week and for the past month, thousands of pigs and other livestock being culled but not brought into the food chain. Worse, the increase in avian flu cases and the restrictions placed on all poultry farms mean that there are concerns about the supply of birds for the Christmas dinner table. Thirdly, there is a delay in foods and other goods coming in from around the world as a result of the pandemic. This is what one might describe as a perfect storm. Is the Minister confident that, given all these factors as well as trying to manage omicron in its early stages, it is appropriate to expire this particular provision?

We accept the expiry of emergency volunteering leave and compensation for emergency volunteers, although I do want to comment on the problems with the Bring Back Staff scheme, especially for doctors

and some nurses. It was absolutely fine in principle, until it hit human resources in trusts. I know of two doctors who had recently retired and were kept hanging around for five months. One was a doctor teaching trainee doctors; however, she was unable to be used because the system just made it impossible for her. If there is any cause to reintroduce this particular provision, will the Minister ensure that we do not gold-plate the complex HR arrangements, making it impossible for staff, former staff or those who might come back on a temporary basis to do so?

We do not believe that the extension of time limits for retention of fingerprints and DNA should remain. We objected to that a year ago, when it was brought in.

Finally, I wrote to the Minister earlier today with real concerns about the problems that some returning international travellers are facing, following the new regulations that came into force at 4 am today, arising from concern over omicron. This is a logistical problem with the change from lateral flow to PCR tests and the passenger locator form. As of this morning, it was still possible to put only the details of your lateral flow test on to the passenger locator form, not the arrangements for the PCR test. One cruise company has 700 people coming into a UK port tomorrow and, despite talking to officials, it cannot get a sense of how the passengers will be able to get off if their details are not on the passenger locator form. I hope another method has been found, otherwise this may be a bit of a problem.

It is right that the Government made the provisions we face today, even if we do not agree with all of them. But I say to the Minister that, as with other statutory instruments, holding on to some of these provisions for a little longer, even if unused, might be useful in case the pandemic takes us down a course that not one of us wants, as the Government and other public services might need to call on them at short notice.

Baroness Merron (Lab): My Lords, I thank the Minister for his most helpful introduction to these regulations, which we will not be opposing. As he acknowledged, when the original Act came into force, we were in extraordinary times and they required unprecedented legislation. However, as time moves on and experience and circumstances change, it is right that we seek to remove powers that are no longer needed. The move to do so today is welcome because, in those circumstances, such provisions should not remain in statute.

Examples of those include Section 56 and Schedule 26 powers relating to magistrates' courts; Part 1 of Schedule 16, which provides for the temporary closure of education and childcare settings, and was not used; and Section 78 powers around local authority meetings, which need to go because the provisions are simply out of date. On this, I add my voice to a point I made previously in Grand Committee: as the Minister has heard from noble Lords today, surely how a local authority meeting is conducted must be the responsibility of the local authority itself. In the case of these regulations, I accept that the provision is out of date, but perhaps the Minister will apply his consideration to that more general point. The provision of powers to detain infectious people was particularly controversial and it is right that it is removed, having been used only 10 times, the last being October last year.

I will raise a few points with the Minister and I first emphasise the need for clarity of communication from the Government. With that in mind, I refer to the comments of Dr Jenny Harries, the head of the UK Health Security Agency, which she made on BBC Radio 4's "Today" programme. She said:

> "If we all decrease our social contacts a little bit, actually that helps to keep the variant at bay".

However, a spokesperson for Prime Minister Boris Johnson said that he does not share her view. I understand that the Government have sought to reassure the public that they have no plans to tell people to limit their social contacts with others, which is in direct contrast to the view of this leading medical expert. I would be extremely grateful if the Minister could clear this up for us today.

5.15 pm

Secondly, it does not seem so long ago that we were discussing the very matter of face masks in Grand Committee—I know it has come up many times in the Chamber. From these Benches we have repeatedly said that we are of the view that mask wearing should be continued and enforced, so it is welcome to see changes now in this regard, but why are shops and transport the only areas where we, the public, are required to wear face masks? One can be in a theatre, for example, a conference or some other large social gathering in even greater numbers and closer together than one might ever be in a shop or on transport, so I find myself once again seeking some advice from the Minister. I ask him to review this because, as we know, mask wearing is a major contributor to protecting everybody. Further on this point, how will it be enforced and how will compliance be encouraged?

The third area I would like to raise with the Minister is the end of the uprating of working tax credits and disregards corresponding to the universal credit £20 uplift. Does the Minister appreciate the financial pressures that many households live with, as reflected in the increasing use of food banks? Further to this, I note that there is no impact assessment. What assessment has been made of the number of households that will be affected by taking away the uplift of universal credit? What assessment has been made of the financial extent to which those households will be affected? What effect will that change have on levelling up—or, as appears to be the case here, levelling down?

The Explanatory Note suggests that the uprating of benefits was linked to supporting people at a time of unprecedented circumstances. However, one thing that the pandemic highlighted is that those most in need are struggling with incomes that are simply too low, pandemic or no, and it is this that needs addressing. The regulations may turn off the power to increase levels of benefit payment, but they cannot turn off the reality that many will go back to being unable to make ends meet, with all the inequalities that follow from that. I look forward to the Minister's response to these points.

Lord Kamall (Con): I start by thanking all noble Lords for their contributions to this important debate and for continuing to ask questions to hold us to account. The Coronavirus Act has been fundamental to facilitating the Government's response to the pandemic,

[Lord Kamall]
supporting individuals, our healthcare, our public services and our businesses. We see expiring a further seven provisions of the Act as a significant milestone towards winding down the emergency powers. To be clear, the Government retain only those powers seen as critical to the ongoing response and recovery, and I thank noble Lords for their general support for that principle, but we will continue to review every aspect of coronavirus legislation.

I now turn to some of the points made by noble Lords this afternoon. First, why are we making some of these changes now, given what happened over the weekend? In reality, a thorough, in-depth review of all the provisions was conducted in September. The provisions we expire today are seen as no longer needed, as we have explained. The provisions that give the Secretary of State the power to prohibit or restrict events and gatherings have been dropped, but most legal restrictions to date have been achieved under the Public Health (Control of Disease) Act 1984. Some of these additional powers are not required because the Government assess them as appropriate to expire, but they can also respond under that Act to increase our vigilance and restrictions in response to coronavirus and any possible variants.

A number of noble Lords raised concerns about the expiry of Section 77 on the uprating of working tax credits. Throughout the crisis, the Government have sought to protect people's jobs and livelihoods, and to support businesses and public services. The Government have always been clear that the £20 increase was a temporary measure to support the households most affected, that it was time-limited and that it can no longer be used because it related to the 2020-21 tax year.

During the recent Budget, the Chancellor announced that, since the restrictions have been lifted, economic growth has exceeded expectations and the labour market is recovering strongly. The Government are now focusing on supporting people to move into and progress back to work, including the Plan for Jobs to help people move into employment so that they can get a regular wage. Also, workers leaving the furlough scheme and unemployed people over the age of 50 will be helped back into work as part of the more than £500 million expansion of the Government's Plan for Jobs. Those on the lowest wages will also be helped to progress their careers, and existing schemes targeting young people will be extended into next year. On balance, it was considered appropriate to try to help those who genuinely want to get back to work.

Also, one of the struggles for any temporary government measure is, as I think Ronald Reagan once said, that there is nothing more permanent than a temporary government measure. We have to be aware that, whatever you do temporarily, there will be concerns when a temporary measure comes to an end. Frankly, I expect we will see that in a couple of years' time when we reassign the uplift back to social care, given that we have given it to the NHS temporarily to help tackle the backlog. I imagine that in a few years' time the Government will be accused of making cuts, even though we made it clear that it was temporary to help the backlog. We want to focus it mostly on social care.

A number of noble Lords raised points about Covid-19 vaccines. As many noble Lords will recognise, we stepped up yesterday in response to the variant. So far, the NHS has administered more than 17.5 million booster or third doses in the UK. Almost 51 million over-12s in the UK have now received at least one vaccine dose and 46 million have had at least two doses. The line that we continue to say is that it is important that people get jabbed.

Yesterday, the Joint Committee on Vaccination and Immunisation updated its guidance, which the Government accepted, that booster vaccination eligibility should be extended to all adults aged 18 to 39 years, as well as to severely immunosuppressed individuals who have received three primary doses. We will continue to ask and to campaign. The general campaign reaches lots of the people who have already had their vaccines, but we are looking at more targeted ways to make sure that people recognise that it is never too late. If you have not had your first or second jab, do not think that it is too late. You can still do so. There is plenty of opportunity to do so. Do not feel that you have been ignored. We are also working with a number of civil society organisations at a local community level. I thank noble Lords across the Committee who have given advice on how we can reach some of those hard- to-reach demographics. In some ways, it is a more targeted approach to spend that effort making sure that people are vaccinated, rather than on a message that reaches lots of people, many of whom say, "Why is that aimed at me? I've already been vaccinated and I've told my family".

Local authority meetings were raised by a number of noble Lords. The Department for Levelling Up, Housing and Communities launched a call for evidence on 25 March to gather views and inform a longer-term decision about whether to make express provision for councils to meet remotely on a permanent basis. That consultation has closed and the department is considering responses to it. I hear and understand the point very strongly that these decisions really should be left to local authorities. I will definitely take that back, because it is important when we are talking about devolving power to the most local level. I hear that message strongly and understand the concerns.

There are many other meetings which are not main meetings where councillors have been able to participate virtually as well as in person. Not all decisions are taken in full council or in local authority committees. A lot are delegated. The problem is that any permanent change would require primary legislation. The Department for Levelling Up, Housing and Communities is looking at this.

I was asked why the changes are expiring now, given what happened over the weekend. We think that the powers that have been retained are sufficient to ensure that we can respond, for example, to omicron and other variants. Some civil libertarians would say that these powers are still too much. The other powers which are expiring are not necessary for us to be able to continue to respond.

I thank the noble Baroness, Lady Brinton, for giving me notice of her question about people who are waiting for lateral flow tests to come back. I immediately raised that in my department. I have been trying to get an answer as quickly as possible. I had hoped to have it

in time for this afternoon's debate. I apologise that I do not have it yet. I will write to the noble Baroness on that specific issue. As she said, it is urgent to get this information as quickly as possible. I have impressed that on my department.

The noble Baroness also raised the issue of doctors who are kept hanging around for months. I note what she said and will raise it within my department. It is always helpful when noble Lords raise issues with me. They enable me to take them back to the department. If noble Lords raise an issue that has previously been raised, it emphasises its importance.

There were a number of questions about face coverings. Many noble Lords clearly feel that they make a difference. I wear one, partly because I think we should be sending this message anyway, but also because it is not too much of an imposition. It is not too much to ask. I do not see that my individual liberties are being impinged or affected by wearing a face mask in public. The advice we receive from a range of scientists balances political, social and economic needs with health care. With some of the restrictions we introduced previously, there have been concerns about their impact on mental health. We always try to keep a balance. We listen to a range of experts. I have listed a number of them in the past, including the UKHSA and others. Some have chosen to express their own view, but we have always been clear that we listen to a range of views.

There are issues about masks in indoor spaces. It is quite right that they should be worn on public transport and in shops. I asked a few experts today about why they should not be worn in restaurants. The answer was that, in a restaurant, you are continually taking off and putting on your mask. There was a concern that, touching it and having breathed on it, it could lead to a greater chance of transmission. In a shop, the situation is fairly constant. You go in with the mask on, keep it on and come out. In a restaurant, you are taking it off and putting it on. One of the other concerns was about balancing social mixing and economic impact. It is still up to individual establishments. Noble Lords will be aware that some establishments have decided that they will continue to insist that their customers wear masks. Frankly, in some ways, that is an appropriate level. It is about property rights. It is up to them whom they let in. It is a difficult balance. Given that some people think that continually taking a mask on and off and walking around may make things worse, on balance, it has been decided not to extend mask-wearing to restaurants. We continue to review all the advice.

I know noble Lords were asking for more restrictions and for face masks to be used more earlier on. We never ruled that out; what we said was that there was sufficient evidence to suggest it, or there was sufficient consensus among all our advisers, we would move that way. There is clearly quite a lot of consensus on face masks in shops and on public transport, but not yet in other places. This is why we have been clear.

I am trying to think if I have missed any of the questions. If I have, I apologise to noble Lords. I will make sure that we go through the transcript—

5.30 pm

Baroness Merron (Lab): That was an invitation I could not refuse to assist the Minister.

Lord Kamall (Con): Thank you. I appreciate it.

Baroness Merron (Lab): Before we go off the issue of face masks, I appreciate the explanation about restaurants, but my question was about large gatherings—for example, cinemas, theatres and conferences, to name but a few. The explanation about restaurants does not apply there. I hope the Minister will take this back as it is simply a question of where is the logic regarding the venue. It seems to make no difference; it is about the fact of there being a number of people.

The real point I would re-put to the Minister, which links with that, is my question about the comments of Dr Jenny Harries on Radio 4. She said that we should decrease our social contacts, whereas the spokesperson for the Prime Minister says that we will not be doing that. I am very concerned about mixed messaging, as I am sure the Minister is—I know he is from what he has said. It would be extremely helpful to put on the record where we are on whether decreasing social contact makes a difference.

Lord Kamall (Con): I apologise if I was not clearer before. I thank the noble Baroness for taking advantage of the opportunity to ask that question and finding the urge to do so irresistible. On theatres and cinemas, one of the things that was put to us was that in a restaurant, you are constantly taking a mask on and off, whereas in a cinema or theatre you are not really eating that much. Okay, you might well go to buy your ice cream—I do not know whether they still sell ice cream and jelly babies in theatres, or whatever it used to be; this will look very odd in *Hansard* when someone reads it—but you are not constantly doing and you are more or less constantly wearing your mask. However, I will take that back. It is a fair point, and one thing that I do when I am being briefed is to challenge because I know that noble Lords will rightly challenge me on this issue.

In response to the comments by Jenny Harries, I hope I have been clear that we take advice from a range of advisers and there is not yet consensus, but we have been relying not just on making mask mandatory when necessary as a precaution, but at the same time on people's individual behaviour and them acting responsibly. It is about getting that balance right. We listen to Dr Jenny Harries, but she is one of a number of experts whom we listen to. We weigh up the different views; it is as simple as that. As we have been clear, there is no one trigger for any of these measures. We always consider a range of measures, including capacity in the NHS, the trends et cetera. I have listed them in previous debates. It is not one person whom we listen to. We listen to a range of experts.

Baroness McIntosh of Pickering (Con): Will my noble friend undertake to write to me about waiting facilities in GP waiting rooms? That would be helpful. I am also prompted by a question that I do not think he responded to from the noble Baroness, Lady Brinton, on the welfare aspects of staff shortages in meat-processing plants and the massive cull of pigs. While I appreciate it might not be the direct responsibility of his department, this is an animal welfare disaster about to happen.

One thing that I did not like to raise—I am sure it will go no further than the Grand Committee, which is why I feel confident to raise it now—is that my noble

[Baroness McIntosh of Pickering]
friend will be aware that there is PPE equipment which was deemed not fit for use, but it is in the system and is, to a certain extent, clogging up the supply chain by taking space which should be used for other goods. Will he undertake to use his good offices to look into this? Perhaps we could have a word about it afterwards because it is contributing to shortages and delays in the supply chain, particularly in storage terms.

Lord Kamall (Con): First, I apologise for missing that point earlier. Regarding the supply chain provision, an SI was laid under the draft affirmative procedure on 21 April 2021. It was debated and approved by both Houses, came into force on 16 July and expired the provision. As the noble Baroness rightly acknowledged, some of her questioning was not within the scope of these regulations. However, given that she has asked a question, I will endeavour to find out the answer. Clearly, that will include going across departments, so I hope that she will be patient as I try to get that answer as quickly as possible.

On GP access, we recognise the pressure that general practitioners are under, especially in the upcoming and challenging winter period. We are investing £250 million in the winter access fund to improve GPs' practice capacity. I will take the noble Baroness's specific question about square metres and areas back to be answered; I hope she understands that I do not have those facts to mind.

The issue of measures was also raised. We must remember that one of the counterpoints put is that the country is in a very different position to the one it was in last year, due to the vaccination programme. Some of the restrictions that might have seemed appropriate last year are not as appropriate this year because we have reduced the link between cases and hospitalisations, as well as between hospitalisations and deaths. Clearly, we have the vaccine. I am sorry if I sound like a broken record but we continue to push the vaccine because it helps to break that link; it is part of the reason why we will not have to go back to some of the restrictions—those similar to last year's—that many noble Lords are pushing for.

All I will say is that the Government's autumn and winter plan set out how we will sustain and strengthen some of the progress made so far. We all know that winter will be a challenging period, but more so over the next few months. We all have a role to play in fighting the virus. There is much that government can do but sometimes, even when we mandate things, we know that there will be people who do not obey, so we must get the balance right and decide how to get the appropriate enforcement. Together, we believe that we can protect the progress that we have made, protect the NHS in the months ahead and help friends, loved ones and ourselves by being vaccinated against Covid-19, getting a flu jab if eligible and sticking to the advice on how to keep safe.

I thank noble Lords for their contributions to this debate and previous ones on the Coronavirus Act; I also thank them in advance for future contributions. I welcome noble Lords' expertise and contributions, and I commend the regulations to the Committee.

Motion agreed.

Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2021

Considered in Grand Committee

5.38 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2021.

Relevant document: 19th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, I beg to move that these draft regulations, which were laid before the House on 28 October 2021, be approved. These regulations will amend the Companies Act 2006 to require certain publicly quoted and large private companies to include disclosures in their annual reports of climate change-related risks and opportunities material to them, aligned with the international framework of the Task Force on Climate-related Financial Disclosures; I shall refer to it as the TCFD in future.

This TCFD SI will help to deliver on the Government's commitment to make climate-related financial disclosures mandatory across the economy by 2025, with a significant portion of those mandatory requirements in place by 2023. This commitment was set out in the Government's paper, *A Roadmap towards Mandatory Climate-Related Disclosures*, published in November last year. The Government have made it clear that we view action to address climate change as a priority. Internationally, we are taking a leading role to promote action through our presidency of the Conference of the Parties to the UN Framework Convention on Climate Change—or COP.

Domestically, we are working to ensure that the UK achieves net-zero greenhouse gas emissions by 2050. The Government have published our net-zero strategy, setting out the measures to transition to a green and sustainable future. Transparency from businesses about climate risks and opportunities is key to delivering our net-zero ambition. Without an accurate assessment of climate risk by companies, it will be impossible for them to assess what action is needed to address this. That is why this instrument will require the UK's largest companies to assess, disclose and take actions to manage climate-related risks and opportunities. This information should be a key part of all investment decisions and be taken into account in the strategy of every business.

Some large UK companies are, of course, already reporting on climate risks. However, to date, these disclosures have been variable in quality and quantity. This inconsistency makes it incredibly difficult for investors to compare investment opportunities and risks across companies, let alone across different markets. Many organisations are also not making the fuller disclosures needed to inform business risk and investment decisions.

The Government have already introduced regulations to require climate disclosures from occupational pension schemes through the Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations

2021, which were approved by both Houses and entered into force on 1 October this year. The Financial Conduct Authority has introduced TCFD-aligned disclosures for premium listed companies and recently conducted a consultation on extending this to standard listed companies.

Let me take a moment to talk through what these regulations actually do. The instrument will require companies in scope to assess and make specific climate-related disclosures in respect of governance, strategy, risk management, and metrics and targets. These headings broadly reflect the TCFD's four-pillar approach to reporting. These requirements will apply to all PIEs—public interest entities—and companies traded on the Alternative Investment Market of the London Stock Exchange with over 500 employees. They will also apply to private companies with over 500 employees and over £500 million of turnover. The disclosure requirements will commence for accounting periods starting on or after 6 April 2022. My department will prepare non-binding guidance to help companies that fall into scope. This will provide additional information to help companies understand the requirements and improve disclosures.

The Government consulted on the policy in these regulations between March and May this year. The consultation generated 137 responses from a range of companies, financial institutions, civil society organisations, trade associations and accountancy firms. Officials also participated in three online events to try to engage wider audiences. Overall, the policy proposals received wide support.

The consultation led to two policy changes in response to the feedback that was received. First, to simplify reporting for those companies that are also subject to FCA rules, the regulations' wording is now more closely aligned to that of the climate-related financial disclosures within the TCFD's framework. Secondly, respondents to the consultation called for companies to be required to analyse their risks against specific climate-change scenarios. As such, these regulations include the requirement for companies to assess their climate risks against different scenarios and report this on a qualitative basis.

The draft regulations will require climate disclosures in the annual reports from just over 1,300 of the largest companies in the United Kingdom. Companies are of course at different stages of their journey towards net zero and producing robust climate-related disclosures. Our guidance will help companies in that journey and signpost some further sources of information, which can be drawn on according to their particular needs. In parallel, we also encourage the market-led evolution of good practices on disclosures.

The Government want to ensure that companies and investors can make the most of the opportunities created as we transition the economy to net zero and sustainability. To do this, we need companies to understand the risks and opportunities and to report transparently on them. I therefore commend these regulations to the House.

5.45 pm

Lord Vaux of Harrowden (CB): My Lords, I understand and welcome the principle of the regulations—to ensure that large companies state what they are doing about climate risks and opportunities—but I have one concern. Companies' financial statements are becoming ever fuller of environmental, social and governance information. There is a danger that, in doing this, we render the accounts more difficult to follow. It becomes hard to see the wood from the trees.

We have only to look at US listed company financial statements to see how that can go. You have to wade through hundreds of pages of risk and other ESG analysis. Most of it consists of standard-form, boilerplate statements that do not change year to year and, in reality, add little or nothing to the understanding of the reader. Indeed, it can make the accounts almost unreadable and very hard to make an informed decision about the position of the company.

I fear there is a danger that we may be starting to follow that trend, so I am very pleased that Part 3 of the regulations requires a review to be carried out, but that is not until 6 April 2027. I suspect that it will become clear much more quickly than that whether they are having the desired effect or are just adding more meaningless boilerplate to the accounts. I urge the Minister to keep that under constant review, rather than waiting until 2027, and to take action much more quickly if it becomes clear that the regulations are really not doing what is intended.

Lord Lennie (Lab): We shall see, my Lords. We debate these regulations on the back of the most important summit the UK has ever held—a summit which future generations will look back on as when we either met the moment or missed the opportunity. It is increasingly clear that progress at COP 26 was modest and, too often, action will come too late. The Climate Action Tracker has stated that Glasgow commitments mean that, rather than limiting warming to the target 1.5 degrees, we are on track for a devastating 2.4-degree rise.

This is the backdrop to which we debate these regulations, which I hope have not come too late, as they will play an essential part in reaching net zero by 2050, as well as ensuring businesses both mitigate the risks of climate change and seize opportunities.

Today's instrument introduces new reporting obligations for certain UK registered companies, as the Minister explained, including certain listed companies and companies with more than 500 employees and a turnover of more than £500 million, which require them to report climate-related financial information as part of their strategic report. This is in line with the recommendations of the task force on climate-related financial disclosures—a framework which includes 11 recommendations forming, as we have heard, four pillars: governance, strategy, risk management, and metrics and targets.

Support has been coalescing around these recommendations. The TCFD's latest annual status report states that the number of organisations endorsing the task force's recommendations has increased to more than 2,600—an annual increase of 70%.

We should remember that, regardless of the serious impact on migration, security and hunger, climate chaos is also costly. The Intergovernmental Panel on Climate Change estimates $69 trillion in global financial losses by 2100 from a 2-degree warming scenario.

[Lord Lennie]

Getting to this point has taken a while, and climate delay has been a repeated issue with this Government. The task force on climate-related financial disclosures published its recommendations back in 2017. Then the UK Government's green finance strategy set out an expectation that all listed companies and large asset owners should disclose in line with the TCFD's recommendations back in 2019, but did not hold a consultation on the proposals until earlier this year. As we have heard, these new requirements are to come into force next April, 2022—five years after the task force on climate-related financial disclosures published its recommendations.

According to BEIS, regulatory action is necessary because the current voluntary approach

"is unlikely to be effective … current levels of disclosure across the economy are low and reporting quality varies significantly."

If we look in detail at the impact assessment, this is clear. Looking at the central scenario for additional groups having to comply with reporting requirements, it reveals that only 34% of the 1,350 companies in scope have already aligned with governance, 24% with risk management and only 14% with scenario analysis. The impact assessment estimates that 1,350 companies are in scope of the regulations. Can the Minister tell us what percentage of the UK economy this covers?

The impact assessment states that

"When a UK group is in scope, all the subsidiaries (UK and overseas) belonging to the same UK group, would be expected to hold some degree of reporting burden."

What does "some degree" mean? These regulations also focus on companies producing mandatory qualitative scenario analysis. The impact assessment states that the Government

"understand that while some companies might decide to go beyond these requirements … there will be some companies that lack the expertise, resources and capabilities to undertake quantitative scenario analysis by the time these regulations come into force."

How many companies are predicted to produce quantitative analysis as well? What will be done to encourage both qualitative and quantitative analysis to be produced? When does the Minister expect quantification to be phased in?

It is regrettable that, first, we are unable to study the non-binding guidance alongside these regulations and, secondly, that the LLPs regulations have not been laid at the same time as this SI, due to their interlinking nature. The Secondary Legislation Scrutiny Committee flagged this SI as an instrument of interest:

"We note that the Department will produce guidance on the new reporting requirements which, according to the Impact Assessment, will be around 125 pages long. This suggests a considerable degree of complexity. In the absence of the actual guidance, it is difficult to form a view of the nature and extent of the new reporting requirements, and how robust the Department's assessment of the impact on businesses is."

Does the Minister agree that there will be a "considerable degree of complexity"? Why is the guidance not ready for today's debate? In the consultation stage impact assessment, the Government had assumed that guidance would be about 75 pages long. Why has this increased by 50 pages according to the Secondary Legislation Scrutiny Committee's report?

The Government state that the combined impact on business of these regulations and those which apply to LLPs is £145.3 million. The impact assessment states that costs result from companies needing

"to get familiar with BEIS Guidance, TCFD Guidance and other companies' disclosures before producing their own report",

as well as ongoing costs which include collecting and processing information, strategy and risk management. How are the Government communicating to and supporting businesses with this additional cost?

I would like some clarification from the Minister on enforcement. The impact assessment states that:

"We also expect there to be an additional ongoing cost of monitoring, supervision and enforcement to the Financial Reporting Council (FRC) as the appropriate regulating body for disclosures",

but is the FRC properly resourced to take on this additional burden? Can the Minister explain how the Government will work closely with the Financial Conduct Authority and the Financial Reporting Council to ensure monitoring and enforcement frameworks operate in a coherent and complementary way? What happens if these companies fail to follow these obligations or publish substandard information? Will there be fines? The impact assessment states that "reporting quality varies significantly", as the Minister said, so can these regulations ensure that this does not continue to be the case? A review before 6 April 2027 is welcome, but the impact assessment states that there will be "a light touch review" in 2023. What will this consist of?

I end by speaking about small and medium-sized enterprises. As the impact assessment states,

"Climate change poses significant risks to businesses,"

and we have to include SMEs within that statement. The cost implication of these risks means that SMEs can be even more exposed to the risks and to being squeezed out of the opportunities of climate change. Does the Minister see these obligations being extended to SMEs soon? The impact assessment states,

"disclosure can have cascade effects through the supply chain".

Can the Minister confirm they are not just relying on trickle-down climate economics to see a change in reporting behaviour for SMEs? The cost implications for SMEs make it essential that the Government have a strategy to support them.

To conclude, these regulations are welcome, but they represent only a small part of the picture of how the Government need to help businesses respond to the risks and opportunities of climate change.

Lord Callanan (Con): I thank both noble Lords. I know that they had some questions, which I will come on to shortly, but both their contributions emphasised how much support there is for these regulations. Although people have concerns about the detail, I think that we are at one in terms of general principles. That reflects the fairly broad support we have for introducing them.

The Government appreciate that these regulations will entail some additional costs to the UK's largest companies, but we think that the legal targets we have make it essential for us to act if we are to achieve net-zero greenhouse gas emissions by 2050. The process of preparing the disclosures required by these regulations will help businesses to understand their climate-related risks and opportunities, and will bring a greater focus

on how to manage them. The increased transparency will enable investors to make better-informed decisions about where to allocate capital in a consistent and climate-positive manner.

The proposals take account of business capabilities and business readiness. For instance, the introduction of qualitative scenario analysis allows companies to use this important tool to manage climate risks in a way that encourages capabilities to grow over time.

The noble Lord, Lord Vaux, raised the concern that annual reports and accounts are becoming more and more full of ESG information, such that it is sometimes hard to see the wood from the trees. He asked whether my department could commit to keeping the regulations under review in the interim. I can tell him that the Government will indeed review the effectiveness of these provisions. If we see that they are not working, we will certainly look at taking further measures. We will conduct a statutory review of the regulations after five years, as is normal.

In response to the noble Lord, Lord Lennie, I can tell him that we are publishing non-binding Q&A style guidance targeted to help companies making the disclosures. It provides clarification on the disclosures against each of these specific requirements. There is, in fact, already significant background material on how to disclose according to TCFD, which itself has recommendations and guidance available online. There is also, by way of background material, the existing guidance from the Financial Conduct Authority on the climate-disclosure provisions in the UK listing rules, and indeed from the Department for Work and Pensions on the disclosure requirements that exist for pension funds.

The department assumed to model costs that companies might read 125 pages for familiarisation before making the appropriate climate disclosures. We hope and anticipate that BEIS's Q&A guidance on the regulations, which explains their legal requirements and desirable outcomes, will be well short of that page total. However, companies might want to consult wider background material and information to familiarise themselves with the disclosures. Accordingly, we made that assumption in our cost modelling to ensure that our impact assessment did not underestimate the true cost of these regulations to business. As I said, we appreciate that there will be a cost to implementing them.

On the point the noble Lord raised about monitoring and enforcement, the FRC will take on the monitoring of the climate-related disclosures alongside the other contents of the strategic report. The Government consulted earlier this year on reforms to the FRC. We will publish a response to that White Paper and our plans to create ARGA very shortly.

The responses to the consultation showed that many respondents considered that scenario analysis is important for meaningful climate disclosures. However, they also recognised that it is one of the most challenging and costly aspects of the TCFD to implement. We believe that requiring qualitative disclosures strikes an appropriate balance between, on the one hand, requiring companies to consider this important element in business planning, and, on the other, recognising that this is an emerging area of competence and one that will be new to many businesses and companies. So, although some companies are already doing quantitative scenario analysis to produce excellent disclosures, we did not believe that all companies within scope would be able to produce such analysis at this time; therefore, the regulations take a proportionate approach to enable businesses to grow their capabilities.

6 pm

On extending the regime to SMEs, we will of course keep this matter under review once the largest companies in the UK have become familiar with the disclosure and capabilities in this area have increased. However, in my view, we need to be extremely careful before we impose undue burdens on SMEs in this country. We have a very good, vibrant and active SME sector that employs many hundreds of thousands of people; we do not want to overburden it with regulations.

The Government are intent on delivering a UK economy that is greener, more sustainable and more resilient. In my view, the implementation of the TCFD, aligned to disclosures across our economy, will support those aims. I therefore commend this draft instrument to the Committee.

Motion agreed.

Regulatory Enforcement and Sanctions Act 2008 (Amendment to Schedule 3) (England) Order 2021

Considered in Grand Committee

6.02 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Regulatory Enforcement and Sanctions Act 2008 (Amendment to Schedule 3) (England) Order 2021.

Relevant document: 19th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, I beg to move that the draft Regulatory Enforcement and Sanctions Act 2008 (Amendment to Schedule 3) (England) Order 2021, which was laid before the House on 1 November 2021, be approved.

This instrument will add Part 2A of the of the Public Health (Control of Disease) Act 1984, as it applies to England, to Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008. The reason for adding Part 2A to Schedule 3 to RESA is that it brings Part 2A and regulations made under it within the scope of the primary authority scheme as it applies in England. From now on, I will refer to Part 2A of the Public Health (Control of Disease) Act 1984 simply as "Part 2A". I will also refer to the Regulatory Enforcement and Sanctions Act 2008 as "RESA", and to the primary authority scheme as "the scheme".

As I am sure noble Lords will recognise, businesses operating in the UK need to comply with a wide range of legislation, much of which is enforced by local

[Lord Callanan]
authorities. The scheme has been developed to assist businesses and allow them to receive tailored support in relation to one or more specific areas of law. With a dedicated team, a primary authority partnership makes it easier for businesses to comply with the law, reducing the costs of compliance without reducing regulatory protections. Businesses can invest in products, practices and procedures, knowing that the resources they devote to compliance are recognisable throughout the country across local authority boundaries, resulting in a consistent approach.

Advice provided by the primary authority carries legal weight and provides assurance for the business when dealing with other local authorities that regulate it. The area of law that we are concerned with today is public health regulation. Bringing Part 2A within the scheme will ensure that businesses in England can received assured advice, referred to as "primary authority advice", on complying with public health regulations made under Part 2A, including in the context of a future pandemic.

Let me now address each of these areas in more detail. I will start with an explanation of Part 2A and its addition to Schedule 3 of RESA, before providing more detail about the scheme. I will also briefly outline the support that the order has already received.

First, Part 2A enables action to be taken to deal with cases of infection or contamination presenting significant harm to human health, if and when they arise. Under Part 2A, a local authority can, where necessary, apply to a magistrate for a range of orders to reduce or remove risks arising from persons, things or premises that are or may be infectious or contaminated and which could present significant harm to health and a risk that others might be infected or contaminated. This is known as a Part 2A order. It is intended to be used as a last resort when other interventions by the local authority have either failed or are not suitable. A magistrate may grant a Part 2A order to a local authority if they are satisfied that the criteria set out in the Health Protection Regulations 2010 are met. Part 2A also provides powers for regulations to be made in an emergency to address a serious and imminent threat to public health.

Secondly, I will explain why Part 2A, as it applies in England, needs to be added to Schedule 3 to RESA. As noble Lords have heard, the order effects the inclusion of Part 2A in the primary authority scheme. To be within scope of the scheme, legislation must be listed in Schedule 3 to RESA, or be made under legislation listed in Schedule 3, or under Section 2(2) of the European Communities Act 1972. It must relate to certain specified matters and be enforced by local authorities. RESA requires any amendments to Schedule 3 to be made using the draft affirmative procedure for statutory instruments.

If Part 2A is not added to Schedule 3 of RESA, it would be necessary to amend Schedule 3 on an individual basis to bring each regulation made under Part 2A within scope of the scheme. This would delay the provision of primary authority advice at the time of a public health emergency. In contrast, by bringing Part 2A and regulations made under it within the scope of the scheme, businesses in England will be able to obtain primary authority advice on compliance with public health regulations from the outset of a public health emergency.

Thirdly, I will briefly describe the primary authority scheme. This was established under RESA and has been in operation since 2009. It was created in response to the Hampton report of 2005, which noted widespread inconsistencies of regulatory interpretation between different local authorities. RESA establishes a statutory framework for a business to form a partnership with a local authority—which becomes the primary authority—for it to receive support from that primary authority in respect of complying with regulations introduced under a relevant enactment. Once a partnership has been nominated by the Secretary of State, the primary authority can issue tailored advice to the business on compliance with legislation in scope of the scheme. The receipt of primary authority advice enables businesses to avoid the cost and regulatory burden associated with inconsistent interpretation and application of the law by different local authorities in respect of the same regulatory requirements.

Where a local authority is proposing to take enforcement action against a business, the primary authority will review the proposed action and consider whether it is consistent with previous primary authority advice. In the event of any disagreement between the primary authority and a local authority over whether the proposed enforcement action is consistent with the original primary authority advice, the Secretary of State is empowered to make a determination.

There are many benefits to the scheme. Primary authority partnerships facilitate a more productive and proactive regulatory relationship between businesses and local authorities. The public also benefit when businesses properly comply with regulations. There are benefits for local authorities as well. If one local authority—the primary authority—provides a business with robust, reliable and consistent advice, it will allow other local authorities to target their resources more effectively, thereby avoiding duplication. Transparency is maintained via a central register through which local authorities can search for primary authority advice. Finally, the scheme gives regulators greater clarity as to where responsibility lies. It improves the consistency of local regulation and supports local economic growth through stronger business relationships.

Finally, let me highlight that there has been strong support among business stakeholders, local authorities and trade associations for the addition of Part 2A to Schedule 3 to RESA. The challenges that local authorities recently experienced in interpreting, at pace, regulations made under Part 2A to reduce the impact of the Covid-19 pandemic, and the associated burdens experienced by businesses in trying to comply with these differing interpretations, led to calls for Part 2A to be brought within scope of the scheme. For example, in November 2020 the British Retail Consortium, which represents over 170 major retailers, wrote to the then Business Secretary, Alok Sharma, requesting that Part 2A be brought within scope. This was in the context that in 2020 approximately 46,000 businesses with an existing primary authority partnership received informal advice on coronavirus regulations made under Part 2A.

In conclusion, we are introducing this order to bring Part 2A, as it applies in England, within scope of the scheme. As I have said, the aim is to ensure that businesses in England will be able to obtain primary authority advice on compliance with regulations made under Part 2A from the outset of any future public health emergency. Due to the Covid-19 pandemic, which is unfortunately unlikely to be the last public health emergency this country will face, there is strong recognition among business stakeholders, local authorities and trade associations of the benefit of bringing Part 2A within scope of the scheme. I therefore commend this order to the Committee.

Lord Lennie (Lab): My Lords, as we have heard, these regulations extend the scope of the primary authority scheme, as provided under the Regulatory Enforcement and Sanctions Act 2008, to include regulations made under the Public Health (Control of Disease) Act 1984 that deal with public health protection. The Government have said that this will have the effect of enabling businesses to form primary authority partnerships with local authorities in England in relation to public health protection, including in the context of a future pandemic.

The Explanatory Memorandum reveals quite a startling statistic: there is a 5% likelihood, in any given year, of a pandemic. It also states that it is estimated that a severe pandemic, of high mortality, will occur at a 2% rate per year and a less severe pandemic, of low mortality, will occur at a 3% rate per year. Can the Minister explain whether this likelihood has increased due to the Covid pandemic we are experiencing? With the knowledge of the 5% figure, can he also explain why the Government are dragging their feet over launching the public inquiry into Covid-19?

We must surely learn the lessons of this pandemic as soon as possible, given the scenario predicting a 5% likelihood of pandemics in any future year. This change is clearly taking place in response to the role that business and the private sector have played during the Covid pandemic. What the Government have asked from business and the wider private sector during it is unprecedented in peacetime. We must thank businesses for stepping up when we needed them to do so most.

The Explanatory Memorandum reveals that in 2020, approximately 46,000 businesses with an existing partnership under the primary authority scheme were receiving informal advice on regulations made under the Public Health (Control of Disease) Act 1984. The Government have stated that this change will enable these businesses to access consistent and reliable advice on compliance and that business stakeholders, local authorities and trade associations in England have requested this change. Can the Minister repeat how many there were—I am not sure that he told us—and did they include organisations representing small and medium-sized enterprises? Can he also confirm that businesses have struggled to get any reliable advice during the pandemic, and whether there have been any serious consequences from not being able to do so?

The Welsh Government have apparently decided not to apply this statutory instrument to Wales. The First Minister of Wales declined to consent to the amendment in July 2021. Can the Minister explain why, and what type of engagement took place with the Welsh Minister?

The Explanatory Memorandum revealed this:

"The impact on business, charities or voluntary bodies is an expected net benefit to business in England of approximately £20.9 m over 2021 to 2030."

Can the Minister provide some clarity on how that benefit is expected to be shared between large businesses, SMEs and charities? I look forward to his reply.

6.15 pm

Lord Callanan (Con): I thank the noble Lord, Lord Lennie, for his contribution. As I said initially, the order will ensure that businesses can receive consistent and reliable advice in respect of regulations brought in to deal with the public health emergency, thereby reducing the burdens on businesses and providing benefits more widely to local authorities and the public. It does that by adding Part 2A to Schedule 3 to RESA, thereby bringing Part 2A and any regulations made under it within the scope of the scheme as it applies in England.

Our experience of the coronavirus pandemic has shown how important it is for businesses to receive clear regulatory guidance. With another pandemic likely to happen—possibly—in our lifetime, it is important to be well prepared. So, in response to the questions asked by the noble Lord, Lord Lennie, the 5% that he mentioned includes the current pandemic and is based on the outbreak of pandemics over the past 100 years. However, as I am sure he appreciates, the provision of the new Covid regulations and any inquiry into the Government's response to the Covid-19 pandemic are outside the scope of this statutory instrument debate. As soon as I have more information on those points, I will be sure to share it with the noble Lord.

The noble Lord also asked how many businesses are in the scheme. The de minimis self-certification assessment noted that, in December 2020, there were around 106,000 businesses in the primary authority scheme. Based on an estimated annual flat and natural growth rate of 2,500, this means that, between 2021 and 2030, approximately 109,000 to 131,000 businesses will be in the primary authority scheme.

The noble Lord made an important point about why Welsh Ministers did not consent to the order applying in Wales. The UK Government believe that there are benefits to businesses in England from receiving consistent public authority advice on legislation brought in during a public health emergency, and that the order should be brought in so that those benefits are realised. My understanding is that the position of the Welsh First Minister, Mark Drakeford, is that the context is different in Wales. His view is that local authorities already can and do capitalise on close working relationships to reach a common approach to guidance and enforcement of health protection regulations, and therefore do not need to provide for this formally. It is of course within his lawful discretion to decline consent to this order as this is a devolved matter; as always, we will continue to engage with Welsh Ministers on devolved matters within the scope of the primary authority regime.

The noble Lord asked for clarity on the benefit between large and small businesses. All businesses receive consistent, assured advice, and SMEs do not have to pay for costly legal interpretations. Small businesses may also join a co-ordinated partnership

[Lord Callanan]
and receive the benefits of primary authority advice in that way. The primary authority scheme is voluntary; obviously, businesses will participate only if they consider that doing so will benefit them.

In supporting this order, we support businesses being in a better position to understand and comply with regulations enacted during a public health emergency. With thanks to the noble Lord, Lord Lennie, for the sole contribution, I commend this order to the Committee.

Motion agreed.

Electric Vehicles (Smart Charge Points) Regulations 2021

Considered in Grand Committee

6.19 pm

Moved by ***Baroness Vere of Norbiton***

That the Grand Committee do consider the Electric Vehicles (Smart Charge Points) Regulations 2021.

Relevant document: 18th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, these draft regulations will be made under the powers provided by the Automated and Electric Vehicles Act 2018. They will mandate that most new private electric vehicle charge points sold in Great Britain be capable of smart charging and meet minimum device-level requirements. They will play an important role in helping us meet our transport decarbonisation targets.

As announced by the Prime Minister as part of the world-leading 10-point plan for a green industrial revolution, the Government are going further and faster to decarbonise transport by phasing out the sale of new petrol and diesel cars and vans by 2030, and, from 2035, all new cars and vans must be 100% zero emission at the tailpipe. Cars and vans represent one-fifth of UK domestic carbon dioxide emissions and accounted for 71% of domestic UK transport emissions in 2019. Ending the sale of new conventional petrol and diesel cars and vans is a key part of the answer to our long-term transport air quality and greenhouse gas emissions.

Electric vehicles present not only a huge opportunity to decarbonise transport but an important opportunity for consumers to contribute to the efficient management of electricity and to share the benefits of doing so. Smart charging will enable this. It enables consumers to shift their electric vehicle charging to times when electricity is cheaper and demand is low. It is a win-win, both reducing the need for costly network reinforcement and saving consumers money on their energy bills.

These regulations are essential to drive the uptake of this important technology and to enable the transition to electric vehicles while minimising cost to consumers. This instrument could deliver up to £1.1 billion of savings to the power system by 2050. Through it, the Government will deliver four key objectives for smart charging policy by driving consumer uptake, delivering consumer protections, helping ensure the stability of the electricity grid and supporting innovation.

The key provisions in the instrument are as follows. First, these regulations mandate that most domestic and workplace charge points sold in Great Britain will have the capability to smart charge, so that consumers can benefit from the savings this offers. Many home charge points already have smart functionality, so this instrument will work with the grain of the market and consumer behaviour to drive significant uptake of this technology and reduce the cost of the electric vehicle transition.

It is important to note that the instrument maintains consumer choice. It mandates that charge points must have the functionality to support smart charging, but consumers will still be in control of when they charge. They will continue to be able to choose the energy tariff that suits their needs and decide whether to subscribe to smart charging services. Some consumers may not engage with smart charging so, to encourage them to charge at times of low electricity demand, the instrument ensures that charge points are preset not to charge at peak times. However, and importantly, the instrument mandates that consumers must be informed and asked to confirm this setting during first use, and they must be able to edit it at any point in the future.

Secondly, these regulations establish new cybersecurity and grid protection requirements. The instrument embeds new and more robust cyber hygiene standards into smart charge points to help mitigate the risk that charge points are hacked and controlled to the detriment of individual consumers and the electricity system. It also requires a randomised delay function to prevent the synchronised switching on or off of large numbers of charge points—for example, in response to a drop in electricity prices. This will help ensure that smart charge points support the integration of electric vehicles into the electricity system and do not destabilise it.

Thirdly, the regulations set new requirements on how charge points monitor and record electricity consumption. This will help consumers to engage with their energy bills and usage, and ensure that a charge point is capable of supporting smart services. Many requirements, such as cybersecurity, electricity monitoring and the randomised delay function, align with standards developed with industry, mainly the British Standard for energy smart appliances, PAS 1878.

Finally, we are mandating that, in the event that a consumer switches their electricity supplier, their charge point must retain its smart functionality. This will ensure that consumers are not locked into a specific electricity supplier by their choice of charge point.

Noble Lords will note that the Government take an outcome-focused approach throughout the instrument and do not prescribe specific technical implementations. This approach will support ongoing innovation within the charge point market and help to maintain our position as world leaders in smart technology.

These regulations are essential to ensuring the successful uptake of smart charging technology to support the electricity grid and consumers in the transition to electric vehicles. I commend the regulations to the Committee.

Earl Cathcart (Con): My Lords, I support these regulations. As my noble friend the Minister explained, they apply to charge points intended for use by vans and cars in a domestic or workplace setting. When will we get charge points at our workplace setting, the Palace

of Westminster? It would be good for us to lead by example. I looked at electric cars a few months ago but, when fully charged, it might have got me here—just—but not home again, so I had to buy a hybrid car, which was a pity.

Baroness Randerson (LD): I thank the Minister for her explanation. This SI certainly concentrates on one part of the EV charging market—the issue of smart charging and its interface with grid capacity—but there are considerable questions about the picture as a whole. I shall raise the issues of vans and of long journeys.

First, why does the SI exclude rapid charging points? They would be a reasonable investment for companies with small fleets of vans, for example, and those that come in at various times of the day needing to recharge. As the noble Earl pointed out, there is not a very long range on all the vehicles concerned. Recharging during the day in a half-hour window is therefore essential for many companies. I have sat in a queue at a motorway services where a van has used a rapid charging point. That was obviously essential to that person's working day; he was using a van because that was his business—it was clearly a small company.

There is a lot of detail in this instrument on how exactly the provisions will operate. I was pleased to hear the noble Baroness talk about being able to change the settings and so on. I would like her assurance that it will be simple to change the settings, because it does not take too much thought to imagine a household where, for example, a district nurse works a day shift one weekend and a nightshift the next, so obviously in one week she will charge at night and the next she will charge during the day—and, on some of those shifts, she cannot pay attention to the cheapest rate for electricity.

I also want reassurance about the circumstances in which people find themselves. I have an electric vehicle, as the noble Baroness knows. I have solar panels. I have virtually no mobile phone signal in my house and very poor wi-fi on occasions—although they were digging up the road this week, so I have hope for an improvement there. My point is that we charge during the day, when the sun is out—or is at least up in the sky behind the clouds. It is easy for people to adjust in the light of their personal circumstances.

6.30 pm

Paragraph 7.12 in the Explanatory Memorandum refers to cybersecurity, which clearly worries the Government, although I have not thought too much about it myself in this context, so I should be grateful for some more detail there. Paragraph 7.14 refers to Regulation 5, which invests the Secretary of State with enforcement powers and investigatory powers, including powers of entry and inspection. I welcome clarification. Is this only for companies selling and installing charging points, or is it something to which companies that have installed charging points may find themselves subject? It occurs to me that the technology of charging points is probably beyond many who have them installed, and therefore one could find oneself with a charging point that is not acting as it should without being at all aware of it. I am concerned about that.

Fundamental to all of this is the issue of grid capacity. National Grid came up some years ago with the figure of aiming that one should never be more than 25 miles from a charge point. Is that still its aim, because, if so, it is woefully inadequate? I invite your Lordships to substitute in your mind the idea that we should never be more than 25 miles from a fuel station for you to see that it is not sensible in anything other than, perhaps, the Highlands of Scotland. Clearly, we need far more charge points than that. That is the background to the current set of regulations.

The SI excludes public charging, as well as rapid charging. Because of the crossover between private households, small businesses and the need for access to public charging, I am interested in why they are excluded. The importance of having adequate numbers of specific charge points for commercial vans is something that the Government need to look at. Unless we enlist the positive support and co-operation of the commercial sector, both large and small, none of this will work as intended.

Finally, I turn to the next steps. We need something equally detailed for all the rest of the charge points which have been excluded from the SI. There are key issues, especially for people on long-distance routes. Are the Government convinced that the grid capacity at our motorway service stations is adequate to have banks of charging points? Motorway service stations are often in rural or semirural areas, where grid capacity is low.

The issue of disabled access has not been raised. The current design of charging points in public places is absolutely woeful for people with disabilities, either physical ones in terms of movement or visual disability.

When can we expect there to be more electric charge points? The latest figures from the SMMT show that just one EV charging point is being installed for every 52 new EVs registered. That is completely inadequate and there will not be the expansion of the sector we need unless that improves.

London has as many charging points as the whole of the rest of the UK. This really requires a strong steer from the Government if we are to get over the psychological problem that the noble Lord exemplified perfectly just before I spoke. We find where our local charge points are and very quickly work out how to use them. We work how our own vehicles operate and how best to maximise the range. We manage all that, but you talk to any EV owner and the first thing they mention is the range for long journeys. Until we can be comfortable with that, we are not going to encourage people to go for EVs in the large numbers that we need to.

Lord Rosser (Lab): As background, the impact assessment states in paragraph 1 that:

"In 2019, road transport accounted for 24% of all UK"

greenhouse gas

"emissions with cars and light commercial vehicles … accounting for 79% of this total,"

and that greenhouse gas

"emissions from transport have remained largely unchanged since 1990."

The impact assessment then says in paragraph 1, as it does on a number of occasions elsewhere, "Error! Bookmark not defined" in bold letters. I would just like to ask what that means in paragraph 1 of the impact assessment I have and, indeed, in other parts of it. I take it that is an error but I would like to check what it means. Does it mean anything I need to be aware of or is it just a mistake?

[Lord Rosser]

With the ending of the sale of new petrol and diesel cars in the UK scheduled for 2030, the Department for Transport regards the transition to electric vehicles as crucial to achieving net-zero greenhouse gas emissions by 2050, with the electricity system having to be able to meet the increased demand that that will generate. Can the Minister say what the Government estimate the additional greenhouse emissions will be that will be generated by the increased demand for electricity arising from the transition to electric vehicles? This will have to be set against the reduction in such emissions arising from the phasing out of petrol and diesel vehicles?

As has already been said—and indeed is in the Explanatory Memorandum—most electric vehicles are expected to be charged at home, but the Department for Transport expects that without smart charging, this is most likely to happen during electricity system peak times when people arrive home from work. This would require, the EM says, "significant … additional investment" in the electricity networks and electricity generation capacity. Smart charging is intended to address this issue. Can the Government say in their response what the saving will be in these additional investment costs if there is a successful move to smart charging and what percentage of investment each year in electricity networks and electricity generation capacity that savings figure in additional investment represents?

With smart motorways and now smart charging, it is clear the Department for Transport has taken a fancy to the use of the word "smart", but I would have to say that it did not figure greatly in the recent announcement on the backtracking on the northern powerhouse rail and eastern leg of HS2 commitments. As well as introducing a requirement for all domestic and workplace charging points to include smart functionality or charging, the regulations set out certain standards and requirements that smart charging points must meet. They also require a statement of compliance to go with every smart charging point sold, with penalties for selling a non-compliant charging point.

The Government estimate that 87% of private charging points sold or installed in this country currently have smart functionality. There is, however, the issue of accessibility of charging points for those who are unable to install a private charging point, not least those who do not have their own dedicated parking space at their place of residence. Could the Minister say how the Government intend to address this aspect of the issue of accessibility, and within what timescale?

Paragraph 7.6 of the Explanatory Memorandum says on interoperability that:

> "The ability of consumers to freely switch energy supplier is a fundamental principle in the energy market. This instrument makes clear that a charge point should not introduce a new barrier to switching by being designed to lose its smart functionality when its owner changes supplier."

What does not appear in the Explanatory Memorandum, as far as I can see, is an unambiguous statement that the instrument includes a requirement for all charging points to be interoperable. Could the Minister say in her response whether the wording in the Explanatory Memorandum to which I referred constitutes in reality a requirement for all charging points to be interoperable? I think the answer is that it does not, but I should be grateful for clarification on that point.

Paragraph 10.6 of the Explanatory Memorandum says that the Government have

> "chosen not to mandate device-level requirements"

relating to demand side response interoperability

> "at this time … because the smart charging market remains nascent, and because delivering interoperability would require broader powers than those set out in the AEVA"—

the Automated and Electric Vehicle Act 2018. That is despite the fact the Explanatory Memorandum states that:

> "The ability of consumers to freely switch energy supplier is a fundamental principle in the energy market."

The Government also say in paragraph 10.6 that:

> "The Department intend instead to consider how best to deliver interoperability as part of a second phase of legislation, by looking at placing wider requirements on the entities … which could deliver DSR through charge points. Government aims to consult on this second phase of policy measures in 2022."

That is a somewhat vague timescale, which contains no target date for actually legislating. Could the Government be more specific in their response today?

I also have a comment on the benefits and costs. Paragraph 12.3 of the Explanatory Memorandum says on impact that:

> "The overall monetised benefits are estimated at £300m - £1.1bn up to 2050, primarily derived from reduced electricity system costs. The cost to industry of this instrument is estimated at £10 - £260m up to 2050"—

is that figure of £10 right, or is there an "m" missing after the 10? It continues that the cost is

> "primarily related to product development costs to meet the requirements. The costs to industry are significantly outweighed by the benefits to the energy system and consumers, and this instrument has a Net Present Value of £0 - £1.1bn up to 2050, with a central estimate of £500m."

As I understand it from these figures, there is in reality a very little gap between the highest cost figure to industry and the lowest monetised benefit figure. Perhaps the Minister could say whether she agrees or disagrees with that statement, but it seems to me to be the difference between £260 million and £300 million, looking at those two figures.

6.45 pm

Paragraph 10 of the EM, on consultation, also says:

> "The majority of respondents supported the Government's overall aims and objectives for EV smart charging".

Of course, it is not clear what "the majority of respondents" means. What did the minority—it could be up to 49%, by the way—say did not constitute support for "the Government's overall aims and objectives", bearing in mind that paragraph 10 says:

> "Three material changes have been made to the original proposals as a result of the consultation"?

Finally, I want to comment on reviews. Paragraph 14.2 of the EM says:

> "An interim process evaluation … will establish if these regulations are being implemented as intended followed by a separate impact evaluation in 2024-5 to assess how effectively the policy is meeting its objectives."

When will that interim process evaluation be undertaken? Will it be published? Apparently, there is also a statutory review clause, with the first report being published by the Secretary of State before five years are up from the

date these regulations come into force, which, as I understand it, is at the end of June next year. The Automated and Electric Vehicles Act 2018 also requires the Secretary of State to prepare a report every 12 months. That is quite a few reports; at least, it appears to be quite a few. Who will actually produce these various reports? Will their work be co-ordinated or conducted in separate silos?

Baroness Vere of Norbiton (Con): My Lords, I thank the noble Baroness, Lady Randerson, for her consideration and the noble Lord, Lord Rosser, for his thoughts on the statutory instrument before the Committee. First, I apologise wholeheartedly for what was clearly an error in the IA, where it says, "Error! Bookmark not defined". This should not happen; it will not happen again. It is deeply disappointing and I regret it enormously.

It is always good to be on the receiving end of some excellent questions from both noble Lords. I know now that I cannot possibly answer some of them, but I will write to answer all questions asked today.

We know that there could be a potentially significant impact on the grid. Current estimates are that, by 2030, EVs could account for approximately 10% of total electricity consumption, up from less than 1% today—so, well over 10 times where we are at the moment. This could increase the total energy demand by 2030 by 30 terawatt hours and by between 65 and 100 terawatt hours in 2050. So we know that there is a significant electricity requirement coming down the track. What this SI does, by introducing the smart charging concept and legislating for it, is enable the demand to be managed in a much better way.

Obviously, we need to ensure that electricity networks have sufficient capacity. This is the responsibility of the electricity network operators; they are incentivised to do so through the regulatory framework set out by Ofgem. However, let us be frank: if they need more capacity, it will end up being the citizen who somehow pays for it. Therefore, the extent to which we can manage demand is hugely beneficial. The noble Lord noted some of the savings that could be coming down the track.

The noble Lord, Lord Rosser, also asked about the impact of energy generation from non-renewable sources. I do not have those figures to hand but I will write to him. The Government have been quite successful in shifting our energy generation to renewable sources, which is a bonus and, indeed, a prerequisite of what we are trying to do to decarbonise our transport system.

We should be able to get some very significant benefits from smart charging by shifting demand. We estimate that we would need 60 gigawatts of flexible capacity to enable the net-zero electricity system. This could include more than 30 gigawatts of either short-term storage or appliances such as electric vehicles using energy in a smart way. So smart-charging EVs will likely play a very integral role in the future.

The noble Lord, Lord Rosser, mentioned consultation. I do not have the details about why people were unhappy, but it is the case that we have been working very closely with the industry and consumer groups as we have brought forward these regulations, so it does not surprise me at all that they have changed. We will continue to work with them as we continue to introduce regulations, particularly around interoperability.

Looking at the costs and benefits of these regulations, the noble Lord has pointed out that the range is wide, but I believe that we can safely say that this is a very beneficial piece of legislation. The impact on industry is a £130-million cost up to 2050; that is primarily related to product development costs to meet the requirements.

We are very much working with the grain with industry at the moment, so we expect that the cost of complying will vary depending on whether a manufacturer already offers smart devices or needs to upgrade non-smart models. However, given the rate of change, significant developments are expected to come down the track, allowing charge points to be produced on a far more economic basis.

Turning to the actual amenity and the people who will install these charge points in either their homes or their workplaces, I take the noble Baroness's point about district nurses and different people with different shift patterns; they would need to understand this fully. Let me be absolutely clear: we are committed to educating consumers to make sure that they remain in control. As with anything, when you get a sophisticated piece of technology, you must read the instructions—unless you are a man—so she and I would clearly read the instructions and would know what to do. Of course we want to make it as easy as possible; there should be no barriers between setting up charge points exactly as they need to be set up, depending on your work or lifestyle. This is really important, and it is top of mind for us.

The noble Baroness, Lady Randerson, asked about cybersecurity. Right now, charge points are subject to general product safety requirements, but government does not regulate the cybersecurity requirements. We are aware that some charge points have cybersecurity vulnerabilities, so these regulations will improve the standard of the security of private charge points to give confidence to consumers that their charge points follow current cybersecurity best practice. These requirements align with the best-practice requirements set out in a globally applicable cybersecurity standard and DCMS's code of practice for "internet of things" devices. However, we also know that cybersecurity risks will continue to evolve; we will of course monitor them and think about how we can intervene in the longer term.

I turn briefly to the intervention from my noble friend Lord Cathcart. My department is in dialogue with the Palace of Westminster about access to charge points. I have written letters to the powers that be in the Palace about them. I am reassured that, apparently, they are coming, but of course this is not a government decision. I agree with my noble friend that we should set an example, and I will continue to press for charge points in the Palace of Westminster.

Moving on, assurance is essential for enforcement and consumer confidence. These regulations require that a statement of compliance and a technical file be available to explain how charge points meet these requirements. They must be provided to the enforcement authority and the consumer upon request. These requirements are intended to deliver appropriate assurance without imposing unnecessary or disproportionate burdens on

[Baroness Vere of Norbiton]
businesses. The Government have appointed the Office for Product Safety & Standards as the enforcement authority, and will ensure that it has the funding to promote and ensure compliance with the regulations. The OPSS is an established regulator with significant expertise as a national product regulator. The legislation includes a range of proportionate enforcement tools to support effective compliance, including civil penalties.

The noble Lord, Lord Rosser, made an important point about public charging points and accessibility. We are absolutely committed to ensuring that we have an accessible electric vehicle charging network and that inclusively designed charge points are available for all consumers. Obviously, work continues: we are working closely with the national disability charity Motability to commission the British Standards Institution to develop accessibility standards for public EV charge points.

I turn briefly to what is included and excluded. The regulations exclude public charge points. Domestic and workplace charge points account for the highest proportion of EV charging by far, and smart charging works best in those settings due to their long plug-in times. You therefore get flexibility in making use of the smartness of the charging point. However, we are separately exploring the potential for smart charging at public charge points—particularly, for example, where vehicles might be parked on the street overnight.

We have excluded rapid charge points because this is about shifting demand and making sure that electricity can be drawn down at cheaper times and when there is less demand on the grid. Of course, as the noble Baroness pointed out regarding her friend in a van, if you use a rapid charge point then you need to be charged right there, right now. You cannot be messing around. Having smartness attached to rapid charge points has potentially limited benefits because what you really need to do at them is turn up, plug in and, after 15 minutes, go. Any smart additions probably would not add anything to that.

There are many next steps because there is lots to do in this area and the Government are very ambitious. Phase 1 refers to the regulations that we have discussed today to establish baseline device-level requirements for smart charge points; phase 2 will look beyond charge points themselves and be concerned primarily with placing security and interoperability requirements on the systems and entities that control charge points, as well as on other smart systems and devices. At that point, we will look much more broadly: beyond the devices in people's homes and into the system itself. We will consult on some more proposals in due course in 2022.

Motion agreed.

Renewable Transport Fuel Obligations (Amendment) Order 2021

Considered in Grand Committee

6.59 pm

Moved by ***Baroness Vere of Norbiton***

That the Grand Committee do consider the Renewable Transport Fuel Obligations (Amendment) Order 2021.

Relevant document: 21st Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, this instrument makes several important changes to the Renewable Transport Fuel Obligations Order 2007, which established a certificate trading scheme known as the renewable transport fuel obligation, or RTFO. This draft instrument would improve the RTFO scheme, ensuring that renewable fuels continue to play a key role in reducing emissions from road transport and, in the longer term, from transport modes with more limited decarbonisation options, such as aviation and maritime.

While the instrument relies on powers contained within the Energy Act 2004, parts of the 2007 order were previously amended by instruments made under Section 2(2) of the European Communities Act 1972. Accordingly, Schedule 8 to the European Union (Withdrawal) Act 2018 applies. The Secondary Legislation Scrutiny Committee's report of 25 November acknowledges that the committee has no specific comments on the instrument and notes that during the enhanced scrutiny process, and in response to industry comments, the instrument has been somewhat amended and improved. The instrument was also considered by the Joint Committee on Statutory Instruments on 17 November, and that committee identified no matters requiring report.

The RTFO scheme, changed by this instrument, promotes a market for renewable fuels used in transport. The scheme places obligations on larger suppliers of fossil fuel to ensure the supply of renewable fuels which reduce carbon emissions. These obligations are calculated as a percentage of the volume of fossil fuel supplied over a calendar year. They are met by acquiring certificates which are issued for the supply of sustainable renewable fuels. The trade of these certificates provides a revenue stream for suppliers of renewable fuels.

This instrument delivers several commitments made in our transport decarbonisation plan to upgrade the RTFO. It increases the main RTFO obligation level from 9.6% to 14.6% by 2032, continuing at that level in subsequent years, with 1.5% of this RTFO target increase being made in 2022, to maximise the carbon savings from the introduction of greener E10 petrol this September. The instrument also improves RTFO support for suppliers of renewable hydrogen by extending certificate eligibility to renewable hydrogen used in maritime vessels, and in fuel cell-powered rail and non-road vehicles. As targets for the supply of renewable vehicles increase and new end uses are included in the RTFO, the instrument strengthens the sustainability and greenhouse gas emissions savings criteria that renewable fuels must meet.

In addition, the instrument replaces references to various EU enactments with equivalent criteria. It replaces these references through changes made to the 2007 order itself, and by using technical guidance issued by the administrator. Technical guidance on sustainability reporting covers the values, formulas, and methodologies used to calculate carbon savings. To reflect changing international standards and evolving fuel production processes, and to ensure no obstacles to trade, the RTFO administrator proactively updates its technical guidance, a draft of which was published alongside this instrument.

Renewable fuels supplied under the RTFO scheme currently deliver about a third of all domestic transport carbon savings under current carbon budgets. They will also make an important contribution to future UK carbon budgets. I commend this instrument to the Committee.

Baroness Randerson (LD): I thank the Minister for her introduction. This is a complex but very important order. The sixth carbon budget requires reductions in emissions of 78% by 2035, and low-carbon fuels supported via the RTFO have been an important part of that process for the last decade. This SI extends the renewable transport fuel incentive to suppliers of renewable hydrogen used in fuel cell rail and non-road transport, and to renewable non-biological fuels for the maritime industries. It also increases the RTFO obligation by 5% until 2032, and updates emissions criteria.

This is an affirmative instrument which comes into force on 1 January 2022 which, as the Explanatory Memorandum points out, is less than 21 days. Clearly, that is less than the traditional amount of time. Some error has occurred somewhere down the line because while this is important, it is not a piece of emergency legislation. Therefore, it is regrettable that there is not the usual time limit.

Something to welcome strongly is that Articles 13 and 14 of this order strengthen the sustainability criteria. That thread runs through all of this. Are biofuels really sustainable? Are they really being produced in a fully sustainable manner? When you get down to the fundamentals, any land that you are using to produce biofuels is land that you could use to grow crops for food and so on. I therefore strongly welcome, for example, the criteria that would prevent biodiverse woodland being degraded for biofuel production.

As I said, it is a very complex area, because renewable fuels and feedstock originate from across the world. It is possible—indeed probable—that producers would be eligible for multiple incentives, which the UK provides, but are incentives where the fuel and crops originate from. What steps are being taken and what steps will the Government take to ensure that this is not exploited such that there are multiple payouts on one batch of fuel, if I can put it that way?

These detailed plans and arrangements were clearly devised prior to COP 26. How have they been affected, if at all, by the results of those discussions? Where do we go next, Minister?

Paragraph 7.12 of the Explanatory Memorandum refers to the increase in 2020 in the buy-out price from 30p to 50p. Can the Minister tell us whether this has been effective in stimulating the market?

The part of this we will all have noticed was the increase from E5 to E10 in September for bioethanol in petrol. I recall that, when we discussed the regulations on that, there were some areas where there were exceptions, such as the coast of Scotland, I believe. Were those exceptions envisaged to be temporary, perhaps to let the more distant parts of the UK improve their access to the most modern fuels, or is it envisaged that they will be permanent for those areas?

It is important to note that, despite government targets to phase out the sale of new internal combustion engine vehicles, raise the main RTFO target and so on, there remains a fatal flaw in government policy. Emissions from transport are not declining. Cars and vehicles are becoming more efficient, but the emissions are not declining because of the increase in road traffic. That has been made worse because many people have rejected public transport as a result of their fear of Covid. The Government have a major task to get us back on to public transport. I notice that the bus strategy, which has excellent aims, has a huge funding gap; four local authorities have made bids which are equal to the total amount of money available, and there are over 70 local authorities which could bid for it. Clearly there is a funding gap there.

I do not want to dwell on private grief for the Government, but last week was not an easy week for them in the north of England because of the rail announcement. Even with electric vehicles, the Government have a mountain to climb to gain public confidence. I am pleased to see these improvements, but there is still a vast amount of work for the Government to do, and unfortunately some of it involves additional funding.

Lord Rosser (Lab): My Lords, the order, as has been said, amends the Renewable Transport (Fuel Obligations) Order 2007 to increase targets for fuel suppliers, thus driving the supply of renewable fuel in transport and delivering further greenhouse gas reductions. It amends Article 4 of the RTFO order so that the main obligation on renewable fuel targets increases by five percentage points, from 9.6% to 14.6%, between 2022 and 2032.

Those suppliers that meet or exceed the obligations already acquire renewable transport fuel certificates, the training of which provides a financial incentive. The order extends that financial incentive to suppliers of renewable hydrogen, used in fuel cell rail and non-road transport, and of renewable fuels of nonbiological origin used in maritime transport.

The Government have said that the RTFO delivers about a third of the savings required for the UK's current transport budget, and that last year the RTFO scheme saved carbon emissions equivalent to taking 2.5 million combustion engine-powered cars off the road. They have also said that the changes made by this order are estimated to deliver the equivalent of an additional 1.5 million cars by 2032. As we know, in 2019, road transport accounted for 24% of all greenhouse gas emissions and greenhouse gas emissions from transport have remained largely unchanged since 1990, as the noble Baroness, Lady Randerson, just reminded us.

How did the Government finally come to the conclusion that a five percentage point increase in the renewable fuel target between 2022 and 2032 would be sufficient in the transport sector to meet our greenhouse gas emission and climate change goals? What, if anything, happens after 2032?

The Government consulted on only three options: increasing the main obligation by 1.5, 2.5 or 5 percentage points, with the Department for Transport backing a 2.5 percentage point increase in the renewable fuel target. Paragraph 10.3 of the Explanatory Memorandum states:

"Of the 77 respondents that expressed a preference on the amount by which this target should increase, 61 supported an increase to the RTFO main obligation of 5 percentage points or

[Lord Rosser]

more. These respondents included suppliers of renewable fuel who benefit from support under the certificate trading scheme, and suppliers of fossil fuel who must meet the targets. Those in support of an increase of 5 percentage points or more suggested this could provide long term certainty to industry and would provide a further contribution to the government's commitment to net zero greenhouse gas emissions by 2050. Accordingly, the government has decided to increase the RTFO main obligation by a further 5 percentage points between 2022 and 2032."

There appears to have been a greater commitment to the Government's net-zero greenhouse gas emissions target by 2050 from the respondents to the consultation than there was from the Government themselves, which begs the question: does the order go far enough? Why did the order reject going beyond 5 percentage points, as some respondents clearly proposed, despite that not even being one of the three options the Government had offered?

7.15 pm

The Government have announced a date for a ban on the sale of new petrol and diesel vehicles. For how many years will a new petrol or diesel vehicle purchased the day before the ban comes into effect be allowed to be driven on our roads? What is the position on a ban on the sale of second-hand petrol and diesel cars?

Aviation and shipping are important parts of the transport sector. How are these two domestic and international sectors to be decarbonised, and from when?

While this instrument is welcome, does it go far enough and fast enough towards decarbonising the transport sector by reducing emissions? Bear in mind that the Government have said, at paragraph 7.1 of the Explanatory Memorandum, that

"Renewable fuels can deliver emissions reductions quickly."

What has led the Government to believe that what is or is not covered within the provisions of this order represents the fastest that renewable fuels can deliver a reduction in emissions? I hope the Minister will address this point in her response.

I hope the Minister will also comment on the issue raised by the noble Baroness, Lady Randerson, about the 21 days between the making of the instrument and it coming into force. Why, on this occasion, does this accepted period appear to have not been achieved?

Baroness Foster of Oxton (Con): I just want to raise a question with my noble friend, and it has been outlined. While I generally support the push for bio and alternative fuels, I cannot do so at any price given the whole food for fuel argument, particularly when food is needed to sustain populations. While it is quite easy for us in the United Kingdom, and probably those in some other countries, to look at how the programme is working and what we are doing, the same cannot be said for some third countries. For example, in Brazil and some other countries in the great continents of the world, we see great destruction of wildlife, fauna and flora. Can my noble friend explain the measures that our Government are taking to police this?

Baroness Vere of Norbiton (Con): My Lords, I thank all noble Lords for their interventions and contributions to this debate.

I start by addressing the concern of the noble Baroness, Lady Randerson, about the 21-day rule. There is an explanation in the Explanatory Memorandum —which I probably will not read out now, because it is written there—for why we felt it was right to not abide by this rule, but I will say that I am less than happy about it. I think I will make a new year's resolution to have an SI debate in your Lordships' House or Grand Committee without somebody pointing to a mistake in a document or the fact that we have not been able to comply with a rule when, quite frankly, we really should have been able to do so.

Noble Lords have gone a little beyond the SI into the Government's broader policy on transport decarbonisation. I will write with a fuller answer on that, because there is a lot happening at the moment and it goes far beyond what is in front of your Lordships today.

The noble Lord, Lord Rosser, as ever, raised a very important point about the consultation and the responses from various people. As is always the case with a consultation, certain people will respond. We had 120 responses and the majority of those agreed with our proposals, including trade associations and fuel suppliers, which was great. But the Government have another responsibility: to make sure that it is fair on the general public—the people who have to buy the fuels. There was always going to be a balance between the cost that will potentially be added to the fuel at the pump versus how ambitious we would like to be. If the public had the deepest of pockets, we could be far more ambitious, but we always have to think about the cost.

I note the noble Lord's suggestions, such as banning the sale of a second-hand internal combustion engine vehicle, but I think that would be really harsh on somebody for whom it may be the biggest asset they own in the world. I would find it very difficult to do that without an enormous amount of fair warning. We do accept that there is never a good time to add cost to fuel consumers' bills, and this policy is expected to marginally increase fuel costs—but we believe that those costs are, on balance, manageable. We are looking at something like 0.5p per litre in 2022, rising to 1.6p per litre in 2032, which is a little over 1% of current petrol and diesel prices. But it is not nothing—it is not insignificant—so we do always have to think about the balance with these things.

The noble Baroness, Lady Randerson, asked about the exceptions in the rollout of E10. Those were the days—those heady days when we were upstairs in the committee room talking about E10 implementation. I cannot remember whether those exceptions are permanent or temporary; I will certainly write on that, as I will on whether the increase of the buyout price to 50p has been successful. We will be able to look at that.

If I may, I will talk very briefly about sustainability, because it is absolutely critical that we do not ride a coach and horses through very good-quality agricultural land to produce these fuels. All biofuels supported under the RTFO need to comply with strict sustainability criteria. My noble friend has pointed out some of the challenges with certain countries in the world. There are protections for biodiversity and against land use changes such as deforestation. These regulations have

improved the sustainability criteria, and I am very happy to write to the noble Baroness, and, indeed, to other noble Lords who contributed, to set out exactly where the changes have been made and the benefits that we expect to get from them.

I appreciate that there are a few unanswered questions, but I will be writing. I think we have reached the right balance by increasing by 5%; it will make a difference to our carbon emissions. We accept that there is more to be done in transport, but we are on that case and are doing as much as we can as quickly as we can.

Motion agreed.

Network and Information Systems (EU Exit) (Amendment) Regulations 2021

Considered in Grand Committee

7.24 pm

Moved by ***Lord Parkinson of Whitley Bay***

That the Grand Committee do consider the Network and Information Systems (EU Exit) (Amendment) Regulations 2021.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, these regulations were laid in draft before the House on 26 October. They will make important rectifications to the UK's network and information systems legislation, which helps maintain the security of key digital services on which British people and businesses rely. Their purpose is to ensure that the Information Commissioner's Office, in its role as competent authority for digital service providers, is kept informed of serious cyber events that affect digital service providers, comprising online marketplaces, online search engines and cloud computing services.

Before I turn to the provisions set out in this instrument, I will set the scene for the proposals it contains. The Network and Information Systems Regulations implemented the European Union's security of network and information systems directive of 2016. As a result of our departure from the European Union, certain deficiencies have arisen in the relevant legislation retained under the provision of the European Union (Withdrawal) Act 2018, which this instrument seeks to rectify.

The purpose of the Network and Information Systems Regulations, or NIS regulations for short, is to improve and maintain the security and resilience of essential services, such as transport or energy, within the UK, as well as certain digital service providers. The NIS regulations work by compelling operators of essential services and digital service providers to undertake measures to protect the network and information systems on which their essential or digital services rely from failure through either cyberattack or physical faults.

The NIS regulations are overseen by 12 competent authorities, which act as regulators for essential and digital services across six sectors. Organisations in scope of the NIS regulations must fulfil certain duties, such as having appropriate measures to protect their services and, critically, reporting cybersecurity incidents that have a substantial impact on their services to their competent authority.

Digital service providers, which form one of these six sectors, are regulated by the Information Commissioner, who acts as the competent authority. In other sectors, the factors and incident reporting thresholds, which determine what constitutes a "substantial impact" for the purposes of reporting, are set out in guidance published by the relevant competent authority.

Under the original EU directive and the UK's subsequent implementation, digital services are treated differently from essential services. They were regulated at an EU level, with one country taking responsibility for the activities of an individual digital service provider across the whole of the European Union. For this reason, the factors to be taken into account when determining whether an incident had a substantial impact for the purpose of reporting were not left to member states but set out in the Commission's implementing regulation, which applied across the EU market. When an incident reaches this threshold, it must be reported to the relevant competent authority, which regulates that provider on behalf of the European Union.

When the UK left the EU, the Commission implementing regulation remained embedded in UK law by virtue of the European Union (Withdrawal) Act 2018. However, the parameters and thresholds for reporting incidents set by that Commission regulation are no longer appropriate for the UK as an independent state. The most significant issue relating to reporting thresholds is that they were set by reference to the number of users affected or user hours lost. As these had been set with the EU market in mind, they were set at a level that is too high for the smaller UK market. As a result, the Information Commissioner has received only one report of a cyber incident affecting digital service providers since our departure from the European Union.

Under the current scenario, an incident needs to have a noticeable impact on an economy the size of the EU to be reportable in the UK. If the Information Commissioner is not receiving reports of incidents within the UK because the thresholds are too high, they will not have an accurate picture of what is happening in their sector. They will be unable to identify the threat, provide guidance or take necessary enforcement action if the provider is found to have breached its duties to protect its services. It is important, if the legislation is to remain effective, that the Information Commissioner is afforded the ability to set the reporting thresholds at a level appropriate for the UK.

I will now set out in a little more detail how the instrument before us seeks to resolve this deficiency. The key proposed amendment will remove the defective reporting thresholds from the UK version of the Commission implementing regulation. The NIS regulations already allow the Information Commissioner to issue guidance and the Information Commissioner has already carried out a consultation on these thresholds in parallel to the instrument being developed.

The instrument before the Committee strengthens the role of that guidance by adding a provision to the NIS regulations ensuring that digital service providers

[Lord Parkinson of Whitley Bay]
have regard to that guidance when considering whether an incident has substantial impact and is therefore reportable. The practice of setting these reporting thresholds in guidance is common among all other NIS competent authorities in the country; it is only by virtue of how digital services were supervised across the EU that their reporting requirements were set by an EU regulation.

The approach of using guidance to set the thresholds affords far greater agility to the regulator, allowing the Information Commissioner to respond to new developments and to set levels that are proportionate and not burdensome on the providers or, indeed, her own office. This amendment would bring digital service providers in line with operators of essential services in all other sectors across the NIS framework, ensuring that regulators are able to identify significant incidents affecting key services across the economy and act accordingly.

7.30 pm

There are also other minor textual amendments to the NIS legislation resulting from our departure from the EU, such as those that require digital service providers to consider the geographical impact of an incident across the UK, rather than across the EU. The amendments in the instrument are made using the power in Section 8 of the EU withdrawal Act. As the Committee will be aware, such provisions allow only for changes to be made to rectify EU-related deficiencies and not to implement policy changes.

I am content that these changes do not implement a new policy; rather, they make good on a requirement that is already in place—to notify substantial cyber incidents—by ensuring that the thresholds for reporting can be set at a level sustainable for the UK market. The changes do not introduce any new elements to the NIS legislation or make changes to the nature of the duties imposed on digital service providers.

I am certain that the Committee will recognise the significance of supporting the security of digital services for our society—from ensuring that people are able to use the internet securely to protecting the critical digital services that underpin the functioning of our economy.

Having the right legislative framework for deterring those who aim to compromise our systems and providing the necessary tools to help those who become victims of such compromises is vital. Without knowledge of such incidents, we cannot act: regulators and experts cannot provide much-needed support and guidance and we cannot inform others of impending threats.

In summary, the primary purpose of this instrument is to remove the incident reporting thresholds for digital service providers operating in the UK from legislation, allowing the thresholds instead to be set by the Information Commissioner in guidance at a level suitable for the UK economy.

The amendments are small, but nonetheless important to the functioning of our legislative framework. They ensure that the intended objective is achieved, that the policy is better implemented and that regulators have the tools to protect key digital services across our economy. As a result of these changes, the effectiveness of the network and information systems legislation to protect digital service providers will be retained. I commend these regulations to the Grand Committee.

Lord Bassam of Brighton (Lab): My Lords—well, my Lord—the Minister will be pleased to know that I do not have a lot that I want to say. As I understand it, this SI makes a couple of small changes, as the Minister has said, to retained EU law regulating the security of network and information systems of core UK service providers to reflect that fact that we are no longer part of the pan-EU regulatory regime.

I have just one or two questions. Why, given that the transition period ended almost a year ago, are we debating these changes only at the end of November 2021? While this may not have been day-one critical, one would have hoped that these kinds of cybersecurity issues would have been a priority for the DCMS.

The Government are lowering the reporting thresholds when relevant cyber incidents occur in an attempt to ensure that the Information Commissioner is sighted on them. Can the Minister confirm whether DCMS knows of any incidents occurring earlier in the year that did not meet the current threshold that would have met the revised one had it been in place?

When we discussed amendments to EU-derived regulations for video-on-demand providers in the past, the department conceded that our departure from the EU meant that we had no formal jurisdiction over most of the main players, which were generally registered on the continent. Is there a similar situation with some of the digital service providers or is this not a concern currently?

The Explanatory Memorandum, which I found very clear and helpful, shows that most of the costs associated with the change will fall on the Information Commissioner's Office. Our understanding is that the Information Commissioner is working well as a regulator, but of course with expanded responsibilities comes the need for greater resourcing. Is DCMS comfortable that the commissioner has enough staff and wider resource to complete these duties?

I turn to my final point. Is alignment with EU practices an issue at all, and do we have a continuing relationship with the EU regulator and regulation? Do we have to work within a commonly accepted framework, even though we are now outside the EU and obviously have to have our own system for regulation, appropriate to the size of our market?

Lord Parkinson of Whitley Bay (Con): My Lords, I am grateful to the noble Lord for his questions and helpful comments on the impact assessment. He asked why we are doing this now and not sooner. The issue that I outlined at the beginning was not identified as a deficiency until last year, when the Information Commissioner raised concerns over incident thresholds with DCMS—that is why we have brought forward the statutory instrument at her recommendation and in consultation with the ICO.

The noble Lord asked about the ICO's resources. We are confident that it has the resources, but we will maintain close dialogue with her to keep that under review. We have a continuing relationship with the EU.

The matters here obviously cross international boundaries and, despite leaving the European Union, we continue to work with our European neighbours and other international partners on issues such as this. But obviously we have no obligation to implement the new directive that the EU is bringing forward. We are monitoring developments in the EU to assess any impacts that those changes might have.

I am afraid I missed the noble Lord's second question, but the note I have been handed reminds me that it was on digital service providers. There is now a requirement for non-UK digital service providers to register with the Information Commissioner. As I say, there will be a divergence from EU regulations, but we will continue to follow a similar approach. I hope that answers the questions that he outlined and, on that basis, I commend the regulations to the Committee.

Motion agreed.

Committee adjourned at 7.37 pm.