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HOUSE OF LORDS
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

Wednesday 2 February 2022

3 pm

Prayers—read by the Lord Bishop of Winchester.

School Trips: Passport and Visa Requirements

Question

3.06 pm

Asked by ***Lord Anderson of Ipswich***

To ask Her Majesty's Government what assessment they have made of the consequences of current passport and visa requirements on the number of school trips from continental Europe to the United Kingdom.

Lord Anderson of Ipswich (CB): My Lords, I beg leave to answer the Question in my name on the Order Paper.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I think that the noble Lord wants to ask the Question. Before he does so, perhaps I may say to the House that yesterday I was quite insistent that not only had I sent out a letter to the noble Lord, Lord Dubs, but that the whole Committee had had a copy of it. I had cleared the letter but it had not gone out. I thank the noble Lord, Lord Paddick, for alerting me to that this morning and I apologise unreservedly to the Committee and the House.

We no longer accept national identity cards as a valid travel document from EU, EEA and Swiss visitors to the UK. The experience at the UK border since the change has been positive, with EU, EEA and Swiss citizens making the switch to use their passports for travel. We do not plan to change that approach.

Lord Anderson of Ipswich (CB): Around 1 million European children, mostly from France and Germany, used to come to the UK each year on school trips. Now that people need passports and, in some cases, visas, bookings for the UK are widely reported to have collapsed. Ireland and even Normandy are stepping in. Will the Government either bring back ID card travel for these low-risk groups or devise a simple group travel scheme that will let us welcome them to this country?

Baroness Williams of Trafford (Con): My Lords, it is quite early in the implementation to say just which way overall bookings are going but certainly Ireland is reporting positively on this. Of course, there are in existence such things as collective group passports, although they will decline over time. However, we do not plan to bring ID cards back and it is important that we have secure documents such as passports at the border.

Lord Morgan (Lab): My Lords, is not the reverse also damaging to our schoolchildren; namely, the fact that school trips from this country to the continent have been enormously cut back, with great harm to the education of our children? Is it not the same process as has happened to universities regarding the Erasmus scheme? The change has done colossal harm to internationalism and the transatlantic views of the British university population. Are our young people not all casualties of Brexit?

Baroness Williams of Trafford (Con): My Lords, that really is a stretch. We expect tourists who visit the UK from outside the EU to hold a passport and we now expect those from EU and EEA countries, and Switzerland, to do the same.

Lord Addington (LD): My Lords, we have a problem with people wanting to learn modern languages. There is a declining rate of people studying them. Does the Minister accept that, if we want to encourage their use, the Government should do their level best to encourage school travel—both into and out of this country? If this is not possible, because of some bureaucratic scheme, surely there is a case for changing the bureaucracy.

Baroness Williams of Trafford (Con): My Lords, this is not about bureaucracy. It is about the security of documents. It is quite early in the implementation process to say whether this has had a declining effect on tourism, but it should not have.

The Earl of Clancarty (CB): My Lords, in December, the *Guardian* reported the accommodation provider Lingua Stay as saying that schools across the continent had completely abandoned the UK in favour of other countries. Are the Government not concerned about the effect on the economy—including the education economy—of their decision not to allow group passports and IDs as travel documents for schools?

Baroness Williams of Trafford (Con): As I explained to the noble Lord, Lord Anderson, I think that collective, group passports are still in existence, although we expect them to be phased out at some point. The EU is now in the same situation as the rest of the world.

Lord Balfe (Con): My Lords, in an answer last June, the Minister suggested that collective passports under the 1961 Council of Europe treaty could be used. It turns out that these can be used only for nationals of the country sending the visit; in other words, a Spanish student in a French school could not benefit from this. Will the Minister undertake to talk to the group of tourism blue badge holders in London to try to devise a scheme—for the whole world, not just for Europe—that encourages young people to come to Britain? It is first impressions that often bring a lifelong admiration for a country.

Baroness Williams of Trafford (Con): The noble Earl will know that we continue to accept collective passports from countries that have ratified the relevant Council of Europe treaty. Nineteen countries have

[Baroness Williams of Trafford]
done so but, in practice, only the UK, Malta and Slovenia actively issue them. As I said earlier, I think they will probably be phased out.

Lord Coaker (Lab): My Lords, it is not too early to tell what the results of the Government's changes have been. Eurovoyages, a French school trip company, reported that, in 2019, 11,000 students were sent to the UK. This year, it will be between zero and 100. CTS Reisen, a German company, sent more than 1,200 school groups to the UK in 2019—some 37,000 pupils. In 2022, there are no firm bookings. This is the consequence of what the Government are doing. What does this say about Britain's place in the world and the Government's policy of global Britain?

Baroness Williams of Trafford (Con): My Lords, I think it says a lot about the pandemic. Very few people have actually travelled.

Baroness Prashar (CB): My Lords, the Government's argument that the continuation of this scheme would be a security risk and would discriminate against non-EU students has been taken on board by those administering these trips and by other interested parties, such as the British Guild of Tourist Guides and the Institute of Tourist Guiding. They have put forward some constructive suggestions to find a way through. Is the Minister willing to meet them?

Baroness Williams of Trafford (Con): My Lords, we have found a way through. It is called a passport.

Lord Newby (LD): My Lords, the Minister has twice cited security concerns to justify this change. What new security concerns have arisen since we left the EU?

Baroness Williams of Trafford (Con): Some ID cards are among the least secure documents seen at the border, as they were before we left the EU. As a rule, they are not as secure as corresponding national passports.

Lord Faulkner of Worcester (Lab): My Lords, I declare a family interest in that my younger daughter is a schoolteacher at a rural lycée in the centre of France in the Sarthe region. Every two years, until recently, she would bring a party of up to 40 of her 16 to 18 year-old students to London for a week's cultural visit, which gave them an amazing experience and a lifelong love of England and English people. These have all now stopped because very few of the students have a passport; as a result, as the noble Lord, Lord Anderson, referred to, they are now looking at destinations such as Ireland. Will she take on board the comments of President Kennedy about the value of international exchange students, when he said of foreign students studying in the US:

"I think they teach more than they learn"?

Baroness Williams of Trafford (Con): I do not disagree with the noble Lord about the value of foreign travel for students at any age. It absolutely enriches their experience. However, we expect tourists who visit the UK from outside the EU to hold a passport and we will now be expecting those from EU and EEA countries and Switzerland to do the same.

Lord Ricketts (CB): My Lords, is the issue here not really about maintaining the deep web of human relationships between our country and our near neighbours into the period when we are no longer in the EU? I have had many conversations with French people who have said that coming here was their first contact with abroad, it made a deep and lasting impression and it led to a lifetime's friendship with the UK. Surely for these children, who are a low security risk, it should be possible to find a pragmatic arrangement to allow them to come on a collective document.

Baroness Williams of Trafford (Con): I certainly agree with the noble Lord about a deep web of relationships. In fact, my first school trip was to France; I recall that it took probably five days on a coach and we only had two days there, but nevertheless it was a very enjoyable experience. However, we are now treating the whole of the world in the same way and we do not make any apologies for that.

Independent Office for Police Conduct

Question

3.16 pm

Asked by ***Lord Lexden***

To ask Her Majesty's Government what assessment they have made of the recent work of the Independent Office for Police Conduct.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the IOPC's annual reports provide an assessment of its work, including details of its performance against targets. Such information is available on the IOPC's website. We expect the IOPC annual report for 2020-21 to be published shortly. A review of the IOPC led by an independent reviewer, announced by the Home Secretary last year, is due to start shortly. It will consider the organisation's effectiveness and efficiency.

Lord Lexden (Con): My Lords, I pay tribute to the IOPC for some valuable recent work, but what action has it taken in response to the "profound concerns" voiced by the Home Secretary on 15 June last year about its investigation into Operation Midland, founded on the fantasies of Carl Beech, from which senior Met officers were able to walk away without reprimand because the IOPC could not be bothered to interrogate them? Also, is it not against the public interest to withhold from Parliament the IOPC report on the gross misconduct of Mike Veale, a man discredited for ever by his biased investigation, when he was chief constable of Wiltshire, of allegations against Sir Edward Heath, at a time when the IOPC itself found him guilty of lying?

Baroness Williams of Trafford (Con): I agree with my noble friend: I also pay tribute to the recent work of the IOPC, much of which has been in the headlines

in the last couple of days. We are not minded to initiate a public inquiry into either Midland or Conifer. It is important that the IOPC is an independent watchdog and essential for the public to have confidence in our model of policing.

Lord Rosser (Lab): My Lords, the IOPC has just produced a damning report about misconduct by some Met police officers and the culture that it found. The IOPC says:

"We believe these incidents are not isolated or simply the behaviour of a few 'bad apples'",

and that officers who challenged or reported unacceptable behaviour were "harassed, humiliated and excluded." There is clearly a major problem. An inquiry chaired by Dame Elish Angiolini has been ordered in the light of the kidnap and murder of Sarah Everard, and that has not been the only appalling incident involving police officers that has occurred. In the light of this latest damning IOPC report, will the Government now put the Angiolini inquiry on a statutory footing, with the ability to compel witnesses to attend and have documents produced, in order to provide backing and support for officers who want to blow the whistle on unacceptable behaviour and should not have to face harassment, humiliation and exclusion for doing so? Will the Government now also reconsider their position on regarding misogyny as a hate crime?

Baroness Williams of Trafford (Con): My Lords, I join the noble Lord in expressing my absolute disgust at some of the IOPC's reporting under Operation Hotton. It provides for very painful reading that members of the police could have said such offensive things in any environment. As I have said before, the Home Secretary can decide, in conjunction with the chairman, whether to put the Dame Elish Angiolini inquiry on a statutory footing if it is not meeting its terms of reference. We brought in the duty to co-operate last year, and police and organisations can find themselves sanctioned if they do not.

Baroness O'Loan (CB): My Lords, is the Minister aware that the Daniel Morgan Independent Panel reported last June that the IOPC is not properly resourced to do the work it is charged to do? We saw cases going backwards and forwards between the MPS and the IOPC because of lack of funds. Can the Minister assure the House that the IOPC will be properly funded to do the important anti-corruption work it does?

Baroness Williams of Trafford (Con): The budget for 2021-22 is £69.6 million and will remain so for 2022-23. The IOPC employs about 1,000 staff, and nearly 30% of them have a police background—so I think it is pretty well resourced.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it is the turn of the Liberal Democrats and the noble Baroness, Lady Harris of Richmond, wishes to speak virtually. I think this is a convenient point to call her.

Baroness Harris of Richmond (LD) [V]: My Lords, the IOPC does not work alone to deal with investigations. We know that investigations can take time, but can the Minister tell me where delays in the system are occurring and what the Government are doing to help alleviate them?

Baroness Williams of Trafford (Con): I think noble Lords would agree that we have seen good improvement in the IOPC's performance in the last couple of years. We are still keen to see further improvements and greater transparency, so back in February 2020 the Government introduced reforms to the IOPC to streamline its decision-making further and increase its effectiveness. There is absolutely no doubt that there is so much more to do to improve trust in the police complaints system and to raise awareness of the IOPC's role.

Lord Hunt of Wirral (Con): Does my noble friend the Minister agree with me that questions of transparency and accountability in relation to the conduct of the police have never felt more keenly vital to our well-being as a society? In the light of all the information now available—and going back to the Question originally asked by my noble friend Lord Lexden—is it not disgraceful that the completely discredited Operation Conifer has still not been examined by a fully independent inquiry? Surely no one can have any confidence, in this or any day and age, in the police simply marking their own homework.

Baroness Williams of Trafford (Con): I most certainly agree with my noble friend that trust in the police has never been more fragile than it is at the moment. Operation Conifer underwent several rounds of scrutiny, but there is further to go. Today's report certainly means that the police have a way to go before they regain the public's trust.

Baroness Chakrabarti (Lab): My Lords, whatever our differences, I have no doubt that the Minister feels as disgusted as I do—I want to say that. This was horrific hearing and reading for all of us. However, would she like to have just one more go at my noble friend Lord Rosser's question? The question was not "can" the Home Secretary put these inquiries on a statutory footing but "will" she. This is important for trust in the independence of the inquiry. It should be independent of both the Home Office and the Government, and the police. Will we, please, now have a fully statutory independent inquiry?

Baroness Williams of Trafford (Con): My Lords, the noble Baroness is going to be disappointed because I have said in the past and will repeat that if the Home Secretary feels that the inquiry is not fulfilling its terms of reference, she can put it on a statutory footing. Of course, it is a decision for the Home Secretary.

Lord Carlile of Berriew (CB): The noble Baroness is absolutely right to express disgust at the findings of the IOPC against the Metropolitan Police, but why is the Metropolitan Police not being held to account? Why is its leadership not being held to account and why is there not a thoroughgoing review of the structure and leadership of that force?

Baroness Williams of Trafford (Con): My right honourable friend the Home Secretary said today that there are questions about leadership in this whole horrible affair.

Lord Cormack (Con): My Lords, may I refer to the point made by the noble Lord, Lord Lexden, on Operation Conifer? It really is disgraceful that an honourable Prime Minister, known for his integrity, has been impugned by somebody proven to be a liar.

Baroness Williams of Trafford (Con): I note my noble friend's comment. I do not know what his question was but I would say to noble Lords that it clearly is terrible when someone is investigated for something for which there was no case to answer. I also go back to a point I have made time and time again: there have been well over 4,500 convictions for non-recent child sexual abuse.

Power of Attorney

Question

3.27 pm

Asked by ***Baroness Greengross***

To ask Her Majesty's Government what steps they are taking to tackle power of attorney being used as a form of economic abuse that disproportionately affects older people.

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, lasting powers of attorney—LPAs—offer vital protections where someone lacks the mental capacity to make their own decisions. While abuse is concerning, thankfully it is rare. Some 5 million LPAs are registered with the Office of the Public Guardian and in the year 2020-21, that office investigated 1,971, taking action in 675 cases. We cannot be complacent with older people at increased risk of abuse and we recently consulted on modernising LPAs to improve safeguards. The response to that consultation is due in the spring.

Baroness Greengross (CB): My Lords, unless stated, there is no obligation to tell family members that a power of attorney has been created and there are no publicly searchable online databases of registered powers of attorney. It can be hard to gain the information from the Office of the Public Guardian concerning powers of attorney in a timely fashion. This facilitates, perhaps, harm and abuse. The charity Hourglass, of which I am patron, supports victims of abuse and last year 144 of its cases reported having a power of attorney in place. What assessments have been made of proposals to introduce a national register of powers of attorney?

Lord Stewart of Dirleton (Con): My Lords, I begin by acknowledging, on behalf of the House, the great work that the noble Baroness has carried out in this very important field, not only as patron but as founder of the charity to which she made reference. The OPG is responsible for maintaining the register of LPAs in England and Wales; that is one of its statutory functions. That register can be searched by any member of the public or third party, using a service called OPG100. Additionally, donors and attorneys can provide third parties with access to OPG's "Use a lasting power of attorney" service, which allows third parties to check instantly the latest information and status of an eligible LPA. Modernising that process presents us with great opportunities, but we must also bear in mind obligations of confidentiality.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, I have come across several cases recently where elderly people have been taken advantage of, often by their own relatives, being relieved of thousands of pounds of hard-earned savings as a result of granting power of attorney. As solicitors are involved in this process, is the Minister satisfied that they are sufficiently aware of their duty of care to vulnerable clients during the discussion periods prior to such powers being granted?

Lord Stewart of Dirleton (Con): My Lords, the OPG is working with solicitors, other professional bodies and other bodies within the community to make sure that persons considering becoming donors and taking out powers of attorney are aware of these protections.

Baroness Kramer (LD): My Lords, as an MP I had the case of an elderly and very wealthy lady afflicted with dementia who was removed from the luxury home that she had chosen and could afford by her attorneys, who were also her heirs. She was put in a much cheaper home in order to protect their inheritance. The lady was so traumatised that she died within weeks. The Office of the Public Guardian could do nothing, because the new home met CQC standards. Is there a way to give it powers and to look at the misuse of the power, rather than just acting in cases of clear illegality?

Lord Stewart of Dirleton (Con): The OPG currently has powers to make reference to the police, in terms of fraud, to instigate investigations, including using other bodies such as local authorities or the National Health Service. Again, on the reference to the consultation that is to report in the spring, we look to strengthen the ability of the OPG to intervene in such cases.

Baroness Ritchie of Downpatrick (Lab): My Lords, could the Minister outline what further measures are contemplated to monitor the misuse of the power of attorney, sometimes by relatives of the person involved?

Lord Stewart of Dirleton (Con): The noble Baroness poses the question of monitoring the situation. Again, the consultation procedure has been invited to take views as to the use of identification procedures in relation to people becoming attorneys, and there is a range of measures in contemplation to assist banks and other institutions to properly investigate persons taking out such schemes.

Baroness Finlay of Llandaff (CB): My Lords—

Baroness McIntosh of Hudnall (Lab): My Lords—

Baroness Finlay of Llandaff (CB): My Lords, the Office of the Public Guardian has changed its processes so that it writes to donors at their home address to inform them that an LPA is being applied for, but in the consultation on modernising the LPA do the Government anticipate that they will need to bring forward new legislation to strengthen the powers of the Office of the Public Guardian to strike out people who hold an LPA who abuse those powers, as outlined in the question from the noble Baroness, Lady Kramer?

Lord Stewart of Dirleton (Con): My Lords, new legislation will be required. To put matters into perspective, in 2021 there were more than 5 million LPAs on the OPG register, and only nine have been removed from the register because of concerns about fraud by false representation during their creation.

Lord Morrow (DUP): My Lords—

Baroness McIntosh of Hudnall (Lab): My Lords—

Lord Morrow (DUP): In Northern Ireland, the Commissioner for Older People can speak on behalf of older victims of economic abuse. The same role exists in Wales, and the Scottish Government have in place a Minister for Equalities and Older People. Can the Minister identify an equivalent here in England, so we can bring these parties all together?

Lord Stewart of Dirleton (Con): I am grateful to the noble Lord for his question, and I can answer it by saying that in England it is a function of local government to carry out those tasks.

Lord Ponsonby of Shulbrede (Lab): My Lords, I too would like to acknowledge the lifetime's work done by the noble Baroness, Lady Greengross. There are things we take for granted until we no longer have them: our ability to choose; our ability to make decisions; and our ability to express ourselves. When these abilities fade, we need to have confidence that legal processes will protect our interests. We are all bombarded by attempts at fraud, almost on a daily basis, and more vulnerable people are more vulnerable to those attempts. The Government's stated aim is to create a lasting power of attorney service for the digital world. My stepfather is 97. He does not live in the digital world. How will his interests be protected?

Lord Stewart of Dirleton (Con): My Lords, I agree with everything the noble Lord outlined, and I can assure the House that a paper means of setting up these mechanisms will continue, even after digitisation.

Baroness McIntosh of Hudnall (Lab): My Lords—I am looking around carefully to make sure it really is my turn—I wonder if the Minister would agree with me that, while we have to be very concerned about the incidents of fraud and the misuse that has just been revealed in the questions he has been asked so far, there is none the less great virtue in lasting powers of attorney. They are very important ways in which all of us can protect ourselves against the things that may happen to us in the future. People should be encouraged to make lasting power of attorney arrangements early enough, while they still have capacity to understand fully what they are committing to, and to inform the people who will be their attorneys how they wish their wishes to be carried out. Would he agree they are not yet encouraged enough?

Lord Stewart of Dirleton (Con): I do agree with the noble Baroness, and I can advise her that even very recently OPG carried out engagement with specific groups in society identified as being less likely to avail themselves of the protections offered by LPAs—specifically, people from socioeconomic groups and within ethnic minorities who have been identified as less likely to take up these protections, which, I agree with the noble Baroness, are of enormous importance for the whole of society.

Baroness Hussein-Ece (LD): My Lords, could I ask the Minister about the increase in predatory marriages, whereby fraudsters target elderly people, usually with dementia, in order to swindle them out of their inheritance, usually by getting into marriage when they do not have the capacity, normally, to make such decisions. Could he say what the Ministry of Justice and his department are doing to put registrars on a statutory training course to ensure that, when they are approached by people who want to get married, they have the capacity to do so according to their own free will?

Lord Stewart of Dirleton (Con): I can say, under reference to the Question from the noble Baroness, Lady Greengross, which concerned lasting powers of attorney, that the OPC has, after certain recent cases, instituted increased training schemes within its number and introduced a buddying scheme so junior members of staff can learn from senior members of staff. As to the specific question the noble Baroness poses on predatory marriages, I regret to say it is not within my department, but I will speak to the Minister in charge, and it may well be, if the noble Baroness is willing to wait, that we will express ourselves in writing.

Kabul: Pen Farthing

Question

3.38 pm

Asked by ***Lord Foulkes of Cumnock***

To ask Her Majesty's Government what representations they received concerning the evacuation of Pen Farthing and his animals from Kabul.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, people, not animals, were the priority during the Kabul evacuation. As a British

[Lord Goldsmith of Richmond Park]
national, Mr Pen Farthing was offered evacuation as part of the organised airlift, which he declined. The decision to call forward the Nowzad staff was communicated by the Defence Secretary publicly, in tweets, on the morning of 25 August, and reiterated to the FCDO via the Cabinet Office later that day. The UK military, with the Defence Secretary's authorisation, provided practical support for a private chartered plane organised by Nowzad. This flight occurred after the civilian evacuation had come to an end during Operation Pitting. It is worth just saying that 15,000 vulnerable people were evacuated from Kabul.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, that was all very interesting, but it did not answer my Question at all. Did the Minister not hear Dominic Dyer, who was the principal lobbyist for Operation Ark, on LBC last Wednesday—and indeed repeated elsewhere—saying that the Minister, who is answering this Question, and the Prime Minister were involved from the very start? Indeed, he was not at all surprised therefore that the leaked emails confirmed that the Prime Minister had authorised the evacuation of animals from Kabul. He went on to say that he was sad that the Prime Minister was not proud of his part in it. So why are the Minister and Prime Minister so reluctant to accept credit for what they did?

Lord Goldsmith of Richmond Park (Con): My Lords, the email that the noble Lord mentioned says nothing of the sort and confirms nothing of the sort. A decision to call forward the Nowzad team was communicated by the Defence Secretary on the morning of the 25th. The Prime Minister had zero role in authorising individual evacuations from Afghanistan during Operation Pitting. The PM has made this clear, the Defence Secretary has made it repeatedly clear, other Ministers have made it clear and so have I in this House and outside of this Chamber. We got more than 15,000 people out during that process; it was the biggest and fastest evacuation in our history. Animals were never prioritised over people.

Lord Lancaster of Kimbolton (Con): My Lords, I am slightly troubled by the Question, because we run the risk of overshadowing what was an incredibly successful operation in Operation Pitting. I hope that your Lordships' House will join me in paying tribute to those members of 16 Air Assault Brigade who risked their lives in this operation doing a tremendous job in evacuating some 15,000 people. I simply seek reassurance from my noble friend that there are no circumstances under which animals would take priority over people.

Lord Goldsmith of Richmond Park (Con): My Lords, I can absolutely provide that reassurance. I add that Pen Farthing was on one of the very last flights to leave Afghanistan; he left on his own charter plane rather than on an RAF flight. It was not part of the evacuation effort, and the flight took place after the evacuation effort had ceased. That private plane landed in Kabul on 28 August. Animals were never prioritised over people at any point during the process.

Lord Purvis of Tweed (LD): As a result of the emails that we have seen from the brave Foreign Office whistleblower, either Parliament has been misled by the Prime Minister and the Minister or life and death decisions have been made in the name of the Prime Minister or the Minister but without the authority of the Prime Minister or the Minister. Which would the Minister consider to be most serious?

Lord Goldsmith of Richmond Park (Con): I do not accept the premise of the question on any level at all. This was an extraordinarily difficult time, particularly for officials in FCDO. There were people who were working two jobs all day and almost all night, dealing with thousands upon thousands of emails with evacuation requests every single day. Their work was heroic. It has been made clear that the PM did not weigh in on the Nowzad case. I do not deny that there is some confusion. It is not uncommon in Whitehall—as anyone who has been a Minister knows—for decisions to be interpreted or portrayed as coming directly from one department or another or even the Prime Minister, even when that is not the case. In this instance, that is not relevant because the decision was made publicly and directly by the Secretary of State, as he has made clear.

Lord Collins of Highbury (Lab): My Lords, I think that the families and children who were left behind would be shocked by the Minister. If there was a plane flying out of Kabul, I know who should have been on it. The simple question is—the noble Lord has to answer it, because I asked a Question last week about the *Companion to the Standing Orders*—why is it that someone in his private office believed that the decision to facilitate this evacuation of animals was approved by the Prime Minister? It is his private office. Can he tell us why the official believed that? It is a simple, straightforward question that deserves an answer.

Lord Goldsmith of Richmond Park (Con): I can answer half the question. I cannot tell the noble Lord why the confusion arose, other than that it was a particularly complicated time, but I can say that at the time the email was sent, the staff member who the noble Lord mentions was seconded to that emergency evacuations unit at the FCDO and was emailing in that capacity. The email was not sent under my instruction or with my knowledge; it was part of a wider process.

Baroness McIntosh of Pickering (Con): My Lords, can my noble friend say whether any health checks were undertaken on the animals in question before they left Kabul?

Lord Goldsmith of Richmond Park (Con): My Lords, as I said, it was an exceptional emergency situation. In normal circumstances, we do not recommend the movement of consignments of animals, particularly large consignments. We take biosecurity very seriously. On landing in this country, the cats and dogs were transferred to prearranged quarantine facilities where they will have to remain for four months or until they have completed the rabies risk management process

fully. The process ensures that animals meet the highest standards and protects our rabies-free status, which of course we value greatly.

Baroness Symons of Vernham Dean (Lab): My Lords, the noble Lord has not actually answered the Question that was put, which was not about authorisation. It quite clearly asked "what representations" the Government received "concerning the evacuation of Pen Farthing and his animals from Kabul." Will he address that issue? What representations were received by any member of Her Majesty's Government on this issue?

Lord Goldsmith of Richmond Park (Con): I suspect that, like every MP, and probably every person in this House, I experienced an extraordinarily effective campaign mobilising people to write emails to their representatives. So, like everyone, I received hundreds, maybe thousands of emails from people on this issue, but my position—in writing, on the record—has always been that animals should never have been, and were not, prioritised over people. The noble Baroness asked about specific representation. I could spend hours, probably, relaying the torrent of emails that was received, but I will add one further thing: at no point did the Government as a whole receive any kind of authorisation on this issue, one way or the other, from the Prime Minister, who had no involvement at all. I think that was the point of the Question that was put to me and I emphasise that again.

Lord Watts (Lab): My Lords, it is coming to something when the Prime Minister has a habit of not knowing what was going on in his department, and it sounds as though the Minister does not know what is going on in his. Can he explain why this individual was allowed to get a private jet in when there were still people we wanted to get out of there? How could he do it when the Government could not for a lot of brave people who will potentially give their lives because Ministers failed?

Lord Goldsmith of Richmond Park (Con): I think that is a completely nonsense question. The idea that the Prime Minister should be engaged in issues around the welfare of a handful of animals when we were engaging, as a Government, in one of the biggest—indeed, the biggest—evacuations this country has ever been involved in is just absurd. I would be appalled if the Prime Minister had been involved in such minutiae, frankly. As I said, we got 17,000 people out in a very short period of time. That is a record—it has never happened before. I think we can salute our Armed Forces and those officials who worked incredibly hard to pull off an extraordinary feat.

Lord West of Spithead (Lab): My Lords, does the Minister agree that the Navy evacuated one-third of a million people from Dunkirk and that that was actually the largest evacuation in our history? I do not know how many animals came, but certainly it was one-third of a million people.

Lord Goldsmith of Richmond Park (Con): That is a very good point.

Lord Grocott (Lab): My Lords, the Prime Minister has given his absolute assurance that he had nothing whatever to do with any of this. I just wonder how credible is the Prime Minister as a witness?

Lord Goldsmith of Richmond Park (Con): In these frenzied days and this feeding frenzy, small things can be perceived as very large things. In the cold light of day, in the months to come, when people look back at this question that has been occupying nearly 10 minutes of this House's time, we may wonder whether we lost a sense of proportion.

Lord Clark of Windermere (Lab): My Lords, it is clear, I think, that the Minister is saying that the Prime Minister did not know anything about this. Did his department issue an email or not? I am not asking whether the Prime Minister did it, but did someone in his department in No. 10 issue an email relating to this incident?

Lord Goldsmith of Richmond Park (Con): I do not know what emails were sent. Millions of emails would have been sent. I can say that there was no email from the Prime Minister's department, as the noble Lord called it, that authorised in any way this evacuation. That authorisation never came from the Prime Minister. I never said that he did not know about it; I am sure that, like everyone, he would have seen it on the news, but he was not involved in the decision and did not weigh in in any way at all.

Personal Protective Equipment: Accounting

Private Notice Question

3.49 pm

Asked by ***Lord Wood of Anfield***

To ask Her Majesty's Government what steps are being taken within both the Department of Health and the Treasury to account for the £8.7 billion spent on unusable PPE in the course of the financial years 2020-2021.

Lord Wood of Anfield (Lab): My Lords, I beg leave to ask a Question of which I have given private notice. I remind the House of my interests as a director of the Good Law Project.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): Throughout the pandemic, our absolute priority has been saving lives; £8.7 billion of the personal protective equipment inventory has been written down, not written off. This does not mean that it is unusable. The accounts make it clear that only 3% of the items purchased were not fit for any use. The majority of the impairment reflects the fact that the Government bought in a globally inflated market. It was better to do that than risk running out of PPE and risk lives.

Lord Wood of Anfield (Lab): My Lords, I thank the Minister for that Answer. Global inflation was clearly part of this, but of the extraordinary 72% of PPE

[Lord Wood of Anfield]
spend that has now been written down, £670 million was on defective equipment, £750 million was on PPE that was past its expiry date and £2.6 billion was on unsuitable supplies—if you add it all up, that is enough to build more than a dozen new hospitals. Apparently, Ministers now cannot locate a further £3.6 billion in supplies, and a further £1.2 billion is again being written down on advance orders for this year. Can the Minister pledge today to have a full investigation into PPE procurement processes, particularly into how it became possible for some suppliers, funnelled through the VIP lane, to make so much money from the taxpayer for equipment that was not used or unusable?

Lord Kamall (Con): The noble Lord asks a detailed question, so I hope noble Lords will forgive me if I try to respond in some detail. If you look at the breakdown of the writedown, you will see that, first, about £4.6 billion was attributable to changes in global prices following the point of purchase in a highly inflated market—noble Lords will remember that even toilet rolls went up at one time. As the noble Lord rightly says, the £673 million was for stuff that had failed the quality testing or technical insurance. The £2.6 billion was for stock that will not be used for its intended purposes but can be repurposed. We are also looking at stock in excess of the current forecast requirements, which can be stockpiled, and we are also introducing a tender for testing to see whether the life of some of that stock can be extended.

Baroness McIntosh of Pickering (Con): My Lords, can I press my noble friend a little more closely on one issue? I speak as president of the UK Warehousing Association. I am grateful to my noble friend for his explanation. What timetable do the Government have to remove this redundant PPE equipment from the warehouses in which it is currently situated to enable stock to be stored in those warehouses which really needs to be at this time?

Lord Kamall (Con): There are different ways; some of it is about stockpiling stuff that is still useful and which we would use in future anyway. We are looking at research into testing whether the life of some of our stock can be extended—we are working with some of the best scientists on that. We are also looking at where we can give stock away or sell it on, as all the stock we are passing on meets WHO standards. To give noble Lords one example, we bought lots of latex gloves; usually we do not buy latex gloves in this country because of allergies and, now that we no longer need them, we can give them to a country such as Syria.

Baroness Walmsley (LD): My Lords, those in the VIP lane were 10 times more likely to be awarded a contract, although there was no evidence that they had more expertise than any other company. Of the £8.7 billion-worth of material which could not be used by the NHS, how much went through the VIP channel? What efforts are the Government making to recover public money for material that was unusable for the NHS?

Lord Kamall (Con): If I could correct the noble Baroness, the £8.7 billion does not refer to material that can no longer be used. As I said earlier, some of it can be repurposed or reused. On the so-called priority lanes, a number of government officials, Ministers' offices, MPs, Member of the House of Lords, senior NHS staff, departmental staff and others were contacted. They then passed on these emails—I still get emails from people and pass them on to my department. All offers underwent a rigorous financial, commercial, legal and policy assessment. This was led by officials from various government departments as part of the PPE sale. The final decision on whether to enter into contracts sat with the appropriate accounting officer at the Department of Health and Social Care.

Baroness Thornton (Lab): My Lords, I think it would be best if the Minister does not try to justify the VIP list, since he was not there. Consider the answer given by the former Minister for PPE procurement matters, the noble Lord, Lord Bethell, to a Parliamentary Question on 1 September 2021:

"As of 27 July 2021, the Department was engaged in commercial discussions (potentially leading to litigation) in respect to 40 PPE contracts with a combined value of £1.2 billion".

Could the Minister please update the House on the situation with respect to that potential litigation and any attempt to recoup public money in the six months since the date of those official figures? If the Minister cannot provide the information today, could he write to me urgently, and ensure the information is placed in the Library?

Lord Kamall (Con): The Department of Health and Social Care's anti-fraud unit has acted quickly to investigate allegations of fraud. Indeed, this question came up when I was on a call with the unit earlier today; I was told that it saved £157 million in prevention and recovery by identifying and preventing high-risk contracts in the early days of the pandemic. There is a single company that is a potential source of loss, where we paid it and then terminated the contract as a preventive measure. I commit to write to the noble Baroness with a fuller answer.

Lord Alton of Liverpool (CB): My Lords, on Monday, at col. 650 in *Hansard*, the noble Earl, Lord Howe, promised to write to me and answer my specific questions about the origins of and deficiencies in PPE, some of which originated at the hands of slave labour in the genocide state of Xinjiang—where the Foreign Secretary herself has said a genocide is taking place. Can the Minister confirm that the reply will be with us before Report stage of the Health and Care Bill, and will he ensure that a copy is placed in the Library of the House? Will the Minister reconsider his statement made to me in reply to a Parliamentary Question that no organisation or individuals will be censured—especially bearing in mind what he has just told the House about the continuing inquiry by the fraud squad into allegations of fraud? If such allegations were found to be true, how can that rule out the possibility that anyone will be censured?

Lord Kamall (Con): I thank the noble Lord, Lord Alton, for his persistence in asking a number of questions. I think all noble Lords appreciate that we want to recognise the huge suffering of the Uighurs in China,

and that we should not do anything that can be seen to support it. I would also like to correct the noble Lord, Lord Alton: it was not the fraud squad; it was the Department of Health and Social Care's anti-fraud unit, which has been investigating these contracts throughout the pandemic. But I will speak to my noble friend Earl Howe and check when the answer will be available. The normal process is to make sure it is available before the next session of Committee.

Lord Hannan of Kingsclere (Con): My Lords, what lessons are to be drawn from the difference between the fiasco of PPE procurement and the world-beating success of vaccine procurement? The first was left in the hands of the usual administrative state, that of PHE and NHS procurement; the second was deliberately lifted out of the hands of bureaucracy and placed in those of an individual from the private sector. Would the Minister like to extrapolate or infer from that distinction?

Lord Kamall (Con): It is important to recognise that, throughout the pandemic, people were in a state of panic and there were people dying every day. What we saw was the coming together of the state and the private sector, working in partnership in the best possible way. The vaccines started in university research but were then commercialised and exported by the private sector. People who stayed at home during lockdown were served by Uber and Deliveroo—hard-working people were serving us. This was the best of the public and private sectors, working together for the best of the British.

Baroness Bull (CB): My Lords, across the Suffolk countryside, vast piles of shipping containers—some up to 60 feet high—full of this PPE are now lodged. Can the Minister say how long people in those areas are going to have to live with these monstrosities, which do not have planning permission? How much are the Government paying for this ad hoc storage on unsuitable sites?

Lord Kamall (Con): The noble Baroness raises a very important point about storage costs, and we are looking at how we can reduce them. We have managed to reduce weekly storage costs at the moment, but one of the things we are looking at is how we can pass on, donate or sell some of the equipment that is in storage. We have certain standards, other countries have other standards, and we are making sure that we are selling stuff that meets WHO standards.

Baroness Barker (LD): My Lords, in December 2021, Edward Argar reported that the Government were paying £4.5 million a week for storage costs for PPE. Are those storage costs for stuff which is now unusable?

Lord Kamall (Con): As I said earlier, a very small percentage was unusable, but we are looking at some of the things that are supposedly past their use-by and sell-by dates—rather similar to food; people know about the debate around food wastage. We have put out a tender for scientists to look at the equipment to see whether its life can be extended or it can be used in a useful way.

Baroness Altmann (Con): My Lords, it is understandable that in an emergency, huge amounts of taxpayers' money may need to be written off for contracts that were not viable. I commend the Government on all they have done for the pandemic, but would my noble friend agree with me that, given that this was an emergency, and given where we are on the cost-of-living crisis, it would perhaps benefit the Government to rethink the national insurance increase that is coming in April, as the cost-of-living crisis itself is an emergency?

Lord Kamall (Con): If you consider how quickly the Government, and all of us, had to act during the early days of the pandemic, it was clearly an emergency. Lives were being lost. This is a stab in the dark, but maybe some noble Lords read a newspaper called the *Guardian*. One of its headlines from April 2020 read:

"Hospital leaders hit out at government as PPE shortage row escalates".

Everyone knew that it was essential to get hold of as much PPE as you could in an incredibly challenging market.

Baroness Wheatcroft (CB): My Lords, the Minister explained that the ultimate decision on what PPE contracts to issue came from the department, but I think the House would still be interested to know what proportion of the unusable PPE, or PPE that was unfit for purpose, came through the VIP trail.

Lord Kamall (Con): That seems a reasonable question, but I hope the noble Baroness will understand that I do not have the answer at the moment. This is very much a dynamic situation. Some of the equipment we have may be deemed to be out of date but may be reclassified as usable after scientific analysis.

Baroness Blower (Lab): My Lords, on page 201 of the *Annual Report and Accounts* of the Department of Health and Social Care, the Comptroller and Auditor-General says that

"I have been unable to obtain sufficient, appropriate audit evidence to support the valuation of the Core Department & Agencies' and Group's onerous contract provisions of £1.2 billion".

Why is the DHSC unable to provide relevant and reliable evidence, and which Minister takes responsibility for this shambolic state of affairs?

Lord Kamall (Con): Interestingly enough, when I had the briefing with the team from the Department of Health and Social Care, I asked a very similar question about the qualification received from the Comptroller and Auditor-General—the C&AG—on limitation of scope. What it meant was that there was not enough audit evidence available for the C&AG to conclude. This stems principally from the fact that we were unable to perform a full stock-take on all items. So many millions of items were bought at the time, there was so much stock that the department could not yet do a full stock-take. The department does have a robust assessment of the risks, but it was important that we got as much stuff as possible, and it was unable to do a full stock-take of the millions of pieces of equipment.

Lord Forsyth of Drumlean (Con): My Lords, does my noble friend not recognise that some people have very short memories? If we look back, there was huge demand globally for PPE. The press and the public were screaming for supplies to be provided. People worked round the clock, and of course they ended up paying over the odds in such a situation. Politics is fine, but to try to score points against people who did their best in the interests of public health and who were not bean-counters is really unworthy.

Lord Kamall (Con): My noble friend makes a very important point. We should completely pay tribute to all those who worked as hard as they could during a time of panic. I remember that the leader of the British Medical Association said:

"This really is a matter of life and death. In what is an incredibly challenging time, doctors and healthcare staff should feel as equipped and supported as they need to be able to deliver care for patients."

You cannot put a price on that. We had to buy equipment from wherever we could to help make sure that we kept our staff safe.

Business of the House

Timing of Debates

4.04 pm

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

That the debate on the motion in the name of Lord Whitty set down for Thursday 3 February in Grand Committee shall be time-limited to 2 hours, and that in the name of Lord Browne of Ladyton to 2 and a half hours.

Motion agreed.

International Relations and Defence Committee

Motion to Approve

4.05 pm

Moved by ***The Senior Deputy Speaker***

Further to the resolution of the House of 13 May 2021, that the Committee should also have power to appoint a sub-committee for the purposes of any inquiry under section 3 of the Trade Act 2021;

That the Committee have power to appoint the Chair of the sub-Committee;

That the Committee have power to co-opt any member to serve on the sub-committee;

That the sub-committee have power to send for persons, papers and records;

That the sub-committee have power to appoint specialist advisers;

That the sub-committee have power to meet outside Westminster;

That the evidence taken by the sub-committee be published if the Committee so wishes.

The Senior Deputy Speaker (Lord Gardiner of Kimble): My Lords, this Motion is consequential on the decision of the House of 1 December last year to designate the International Relations and Defence Committee as this House's responsible committee for carrying out any inquiry into genocide under Section 3 of the Trade Act 2021. I beg to move.

Lord Alton of Liverpool (CB): My Lords, I am one of those who would be very happy to see this Motion approved. It originates out of an amendment that I moved to the Trade Bill, which became the Trade Act 2021. I am a Member of the International Relations and Defence Select Committee of your Lordships' House and was involved in the discussions about the creation of this committee. Nevertheless, I hope that the Senior Deputy Speaker will address one or two points about this that I raised and have concerns about.

First, it should be clear to your Lordships' House that this, of course, goes no way to deal with the specific issue of genocide in Xinjiang, regularly raised by Members of this House, which is the blight of the Uighur people in that province, and that it will not be possible for the committee that is being approved to examine that situation, because there is no free trade deal with the People's Republic of China currently in the offing. The House should be aware, therefore, that this does not deal with the substantive question that was raised at the time, and that this committee, however worthy, made up of the great and the good, will not even be able to deal with that issue.

Secondly, will the Senior Deputy Speaker give some clarity about what would happen if the identical committee that is also being established in another place were to reach a different conclusion at the end of an inquiry into this issue? Who would actually resolve that, and what would be the mechanism or procedure between the two Houses for dealing with this matter? With those simple questions, I personally am very pleased that we are making some incremental progress, at least, on this issue.

The Senior Deputy Speaker (Lord Gardiner of Kimble): My Lords, I am grateful to the noble Lord. He obviously had a very considerable input into these matters. Just to confirm, it will be for the International Relations and Defence Committee to decide when there is a need, in line with Section 3 of the Trade Act, to appoint a sub-committee into whether there exist credible reports of genocide in the territory of a counterparty to a prospective free trade agreement with the United Kingdom. These are absolutely the parameters in which this matter relates to the Trade Act 2021.

On the second matter—it is clearly an interesting point in terms of the two Houses—one question that has come across is why there was not a joint committee. My understanding is that the language of Section 3 of the Trade Act appears to preclude this, not least because different procedures apply in each House, as detailed in the Liaison Committee report which the House agreed on 1 December when it designated the IRDC as the responsible committee. Clearly, if and when there was this dialogue between the two Houses, it would be important for the two Houses and their

respective committees to reflect on the fact that both Houses had a responsibility to consider these matters. But, with those two questions in mind—

Lord Lexden (Con): Is there anything in the legislation to preclude a joint sitting of the two committees to resolve any differences that may arise between them?

The Senior Deputy Speaker (Lord Gardiner of Kimble): My noble friend raises an interesting question. I have to say that the actual construct of the Trade Act is not within my scope of knowledge. Clearly, there may well be occasions when those sorts of pragmatic considerations would, I imagine, be reflected on by pragmatic people in both Houses. I am just saying that my understanding is that the language of the Trade Act appears to preclude a Joint Committee—but the noble Lord raises a pertinent point. Unless there are any further questions, I beg to move.

Motion agreed.

Common Frameworks Scrutiny Committee

Constitution Committee

European Affairs Committee

Procedure and Privileges Committee

Public Services Committee

Committee of Selection

Membership Motions

4.10 pm

Moved by ***The Senior Deputy Speaker***

Common Frameworks Scrutiny Committee

That Baroness Mobarik be appointed a member of the Select Committee, in place of Lord Caine.

Constitution Committee

That Lord Robertson of Port Ellen be appointed to the Committee.

European Affairs Committee

That Baroness Scott of Needham Market be appointed a member of the Select Committee, in place of Baroness Jolly.

Procedure and Privileges Committee

That Lord Collins of Highbury be appointed an alternate member of the Select Committee.

Public Services Committee

That Lord Willis of Knaresborough be appointed a member of the Select Committee, in place of Baroness Tyler of Enfield.

Committee of Selection

That Lord Jones be appointed a member of the Select Committee, in place of Lord Plant of Highfield.

Motions agreed.

Building Safety Bill

Second Reading

4.10 pm

Moved by ***Lord Greenhalgh***

That the Bill be now read a second time.

The Minister of State, Home Office and Department for Levelling Up, Housing & Communities (Lord Greenhalgh) (Con): My Lords, it is a privilege to open the Second Reading debate of this landmark Bill today. I will never forget the events that led us to this moment, nor the 72 people who lost their lives in the most appalling circumstances in the largest loss of life in a residential fire since the Second World War. The fire at Grenfell Tower in the early hours of 14 June 2017 should never have happened. The legislation we are bringing forward today is part of our wider reform to make sure that something like this tragedy can never happen again.

We cannot bring back those who lost their lives on that terrible day, and nothing can undo the errors that led to their deaths. Yet, if anything is to come from this disaster, it must be the lessons that we have learned from the mistakes that were made. That is why the Government appointed Dame Judith Hackitt to review the current building safety regime and recommend wholesale reform. Her findings were unequivocal and clear. Too often, regulations and guidance were misunderstood or misinterpreted. The drive to do things quickly and cheaply—the noble Earl, Lord Lytton, mentioned the concept of value engineering—meant that concerns were ignored and safety was not prioritised. There was ambiguity around who is actually responsible for the safety of buildings, with insufficient oversight and enforcement.

Dame Judith called for a complete overhaul of the system, and her recommendations underpin the Bill, with a golden thread that will ensure that, henceforth, people remain safe in the homes that we build for them. The Bill is unapologetically ambitious, creating a world-class building safety regulatory regime that holds all to the same high standard. The Fire Safety Act, which we will commence shortly, was the first legislative step towards delivering meaningful change following that dreadful tragedy. The Building Safety Bill represents the next step, delivering significant improvements to both the regulatory framework and industry culture, creating a more accountable system.

The Bill will deliver improvements across the entire built environment. It will strengthen oversight and protections for residents in high-rise buildings and give them a greater say, and will toughen sanctions against those who threaten their safety. Its focus on risk will help owners manage their buildings better, while giving the homebuilding industry the clear, proportionate framework it needs to deliver better,

[Lord Greenhalgh]
higher-quality homes. It is proportionate and strengthens fire safety requirements in all premises regulated by the fire safety order. It rightly focuses the new, more stringent requirements on those buildings and issues that pose the greatest risk.

To that end, we are strengthening our regulation of high-rise residential buildings which are over 18 metres or above six storeys in height, whichever is reached first; those buildings pose the greatest safety risks in the event of a spreading fire or structural failure. We are including hospitals and care homes that meet the height threshold during their design and construction. We will establish a robust link between safety, design, construction and occupation, with stringent duties to ensure safety throughout the building's life cycle.

The Bill provides the framework to ensure that, during the design and construction, defined duty holders have clear responsibilities for compliance with building regulations, including fire and structural safety. They will have to clear a series of hard stops, through the new gateway system for in-scope buildings.

In occupation, every building in scope will have an identified accountable person with clear responsibility for safety matters. Their duties include registering the building with a new regulator, building an evidence and risk-based safety case, and the continued evaluation of potential hazards. Importantly, it will be a criminal offence not to carry out these duties effectively, punishable by an unlimited fine and up to two years in prison.

We are giving residents a stronger voice in the system through the Bill, making it easier for them to seek redress and raise concerns. The Bill will require an accountable person for a high-rise residential building to engage with their residents and establish a formal complaints process for residents to raise concerns. Both the accountable person and the responsible person for premises regulated by the fire safety order will be required to provide residents with access to key building safety information.

These measures will be overseen by the new building safety regulator within the Health and Safety Executive. The regulator will be equipped with robust powers to crack down on substandard practices. It will oversee the safety and standards of all buildings and will provide important independent advice to government on building safety and standards. It will support a significant improvement in the performance and competence of industry and building control professionals.

The Bill ensures that the regulator will regulate in line with best practice principles, being proportionate and transparent and targeting activity where action is needed. Crucially, it will act to ensure that proportionality is embedded within its operations and in its work with accountable persons to assess buildings.

I turn now to construction products. The testimony we have heard at the Grenfell Tower Inquiry has been shocking to say the least and has exposed a culture of corner-cutting, Spanish practices and disgraceful behaviour by an industry that has compromised building safety. We intend to put a stop to this. Following the Grenfell Tower fire, we banned the use of combustible materials on the external walls of high-rise residential buildings. The Bill creates powers to strengthen regulatory oversight for firms that manufacture and sell construction products and, crucially, powers to remove unsafe construction products from the market and take action against those that break the rules. The Bill will improve the standards of our construction products oversight regime.

The polluter must pay; developers and construction product manufacturers must be held to account. Residents must be protected against substandard materials, workmanship and practices that make homes unsafe. Our new regime will help address these issues for high-rise residential buildings, but we need to expand legal safeguards for residents wherever they live. That is why the Bill retrospectively extends the period during which compensation for defective premises can be claimed by over double the current period—from six to 15 years prospectively and by 30 years retrospectively—to make sure that the failures of the past can be addressed. This is a significant step forward, and we are going further, expanding the scope of the work for which compensation can be claimed to include future renovations.

We are also strengthening redress for people buying a new-build home through provisions for the new homes ombudsman scheme that will provide dispute resolution and resolve complaints involving the buyers of new-build homes and developers.

We also know that we must go further to protect innocent leaseholders, who are the victims, from bearing the financial burden of this crisis. I thank your Lordships, in particular my noble friends Lord Blencathra and Lord Young of Cookham and the noble Lord, Lord Stunell. I could not forget the noble Lord, Lord Kennedy, as well for being ever so helpful during these debates. I also thank the noble Earl, Lord Lytton, the noble Baroness, Lady Pinnock, and, of course, the right reverend Prelate the Bishop of St Albans, who has been an inveterate campaigner on behalf of leaseholders. This is a hugely important issue; it is important that we continue to do our best collectively to protect leaseholders.

The Secretary of State in the other place has been unequivocal in his determination that leaseholders living in their own flats in medium and high-rise buildings will not pay a penny to remediate unsafe cladding. We have scrapped proposals for loans and long-term debt for medium-rise leaseholders. We have allocated a further £27 million to help bring the misuse of waking watches to an end, and we are working towards making sure that leaseholders are protected from the risk of forfeiture relating to historical building safety issues, until a new industry-developed system is in place. But we know that more is needed. We will also explore further statutory protections for leaseholders and we will bring forward proposals for this House to consider at the earliest opportunity. I look forward to working with your Lordships on the Opposition Benches, with the Liberal Democrats, with the Cross-Benchers, and even with my own awkward squad, to ensure that this 143-clause Bill perhaps adds the odd extra clause and is the best possible Bill that we can take forward and get on the statute book.

The Government have accepted their share of responsibility and made significant financial provision—over £5 billion—through the ACM remediation programme and the building safety fund. Some developers

have already done the right thing and provisioned or are funding remediation works. We are also seeing that among registered providers. But too many others have failed to live up to their responsibilities; in some cases, they are not engaging at all with government. We cannot keep looking to the taxpayer to keep bailing out this failing industry: we must get the polluters to pay.

We have already announced a £2 billion tax on the biggest residential developers through the residential property developer tax and a further levy on developers building tall buildings through the Building Safety Bill, and we are now engaged with industry to ensure that it pays its fair share for fixing cladding problems, rather than the leaseholders. I point out that where both private developers and social housing organisations have developed land, they are equally culpable if they put up unsafe buildings and they must pay. Our expectations are clear: industry and the owners of land, such as registered providers, should fix the buildings they were responsible for. They need to contribute to a wider fund to ensure that remaining buildings are remediated to protect leaseholders.

In a round table held with the Secretary of State, senior executives from the country's biggest developers agreed that leaseholders should not pay. We continue to engage with them on how they will deliver a fully funded action plan by early March. We are also acting directly to make sure that those who manufactured dangerous products, built unsafe buildings and knowingly put lives at risk are also properly held to account. We have had a similar meeting with construction products manufacturers. I was shocked that Arconic, one of the manufacturers of the material used on Grenfell, did not show up; that is completely unacceptable. We have been clear in our intent: industry needs to develop real proposals to fund this crisis. If it does not agree a solution soon, we will, if necessary, impose one in law.

The Bill represents the most radical revision of our building safety regime in generations. It is a complete overhaul of safety management, putting residents' safety at the absolute heart of our reform. I commend the Bill to the House.

4.22 pm

Baroness Hayman of Ullock (Lab): My Lords, I begin by saying that we welcome the Bill, which will bring about the long-awaited changes to the building safety regime following Dame Judith Hackitt's independent review. I also thank my noble friend Lord Kennedy for the huge amount of work he has done on the Bill so far.

As the Minister reminded us, we must not forget why Dame Judith's review and this legislation are so very important. He reminded us that in June 2017, 72 men, women and children lost their lives in an inferno fuelled by the highly combustible cladding system that had been installed on the outside of their tower block. We should remember that that tower block was also compromised by a range of other fire safety defects.

Four and a half years on from the Grenfell Tower fire, thousands of residents across the country continue to live in a state of constant fear over the safety of their homes and the cost of putting right past failures. Although we welcome the Bill and the recent promised government amendments, we have concerns that without further changes to provisions affecting leaseholders, it will still fall short of meeting the objective of learning all the lessons of the Grenfell Tower fire and fail completely to restore public confidence in our building system.

I will outline our concerns to the Minister and I hope that his response will provide further positive reasons as to why we can look forward to government action on the outstanding concerns. First, we believe that the Bill's definition of "higher-risk buildings" could be strengthened to take into account the vulnerability of residents. The Minister mentioned the fact that the Government have modified the definition of higher-risk buildings to now include care homes and hospitals that meet an 18-metre height threshold. However, that still excludes often vulnerable people living in buildings below that threshold from access to vital protections under the new regulatory system. We believe that all supported accommodation should be included, regardless of its height.

I now turn to funding protections for leaseholders. Does the Minister agree that leaseholders in all affected buildings, regardless of their height, should be protected from covering any costs related to past regulatory failings, and that should include cladding and non-cladding fire safety defects? That protection should be retrospectively extended to leaseholders who have already made significant out-of-pocket investments in remediation works. The Government and the housing and development industries must be prepared to fund, in full, both cladding and non-cladding remediation works. As it stands, the Bill simply does not go far enough to address these issues.

We strongly agree with the Minister that developers must be held to account and I was pleased to hear him say that if this does not happen, law will be brought in to ensure that it does. So I would be interested to hear from him more about how that would take place. The Minister recognised that not all of industry has stepped up. How are the Government going to ensure that industry, right across the board, will play its part and pay the funds that it has been asked to? How will the Government continue to play their part and supply the funds that are needed? The Minister rightly said that a lot of money has been promised but this is a huge issue, with many residents very much out of pocket.

We need to make sure that the twin objectives of fixing the building safety crisis and delivering new and improved social housing can be delivered simultaneously through the Bill. Concerns have been raised that the housing building funds could be plundered. Could I please have some assurance from the Minister in that area?

I mentioned that all remediation costs should be covered retrospectively. Can the Minister advise leaseholders as to how they are expected to go about reclaiming those costs? When will the Government publish their promised amendments to provide concrete assurances to leaseholders that they will not be liable for those remediation costs? Will we be seeing those amendments in Committee?

The provisions of the Defective Premises Act currently stipulate that a leaseholder can make a legal claim for compensation if their dwelling is unfit for habitation,

[Baroness Hayman of Ullock]
as long as the claim is made within six years of the building being constructed. We welcome the amendment made in the Commons that extends that eligibility period from six to 30 years and that claims can now be made for defects arising from refurbishment works. Another crucial change is that leaseholders will be able to make claims retrospectively if their claims fall within the eligibility period. However, we have concerns that the cost and time implications of making a legal claim against developers will prevent many leaseholders from benefiting from this measure. Will the Minister think about what the Government could do to clarify this because it would be helpful if, in the first instance, they said that they expected building owners and freeholders to make a claim as they are more likely to have the capacity to do so than individual leaseholders? That expectation would also reflect the legal duty for building owners to prove that they have carried out their due diligence on finding all possible sources of funding that do not rely on leaseholders paying.

We also welcome the Bill's changes to the fire safety order, mentioned by the Minister, which introduce the duty for fire risk assessments to be completed by competent professional, and the improvements to residents' access to safety information about their buildings. However, it is unclear whether this duty for responsible persons to share fire safety information extends to prospective residents and residents who are not leaseholders but tenants in a building. If the Minister could clarify that, I would be very grateful. This clause could be strengthened by clarifying that responsible persons must proactively share fire safety information, including fire risk assessments in full, with prospective and current residents, including both leaseholders and tenants.

I turn briefly back to the area of most concern to leaseholders: the funding of the cost of cladding remediation and building safety. The Labour Party has been clear in debates both in this House and in the other place that leaseholders should not have to pay to fix this crisis. The Minister confirmed that this is the Government's point of view as well. Overall responsibility for funding building safety work has to lie ultimately with the Government to ensure that this happens.

It is also clear that industry has played a role in making decisions that have compromised the safety of buildings and has a part to play in shouldering the burden of costs. The Minister spoke about the recent announcement by the Secretary of State, which we very much welcomed, about the Government aiming to recover costs from developers for cladding remediation. But, as has been asked before, how does this help leaseholders who live in buildings with non-cladding-related defects, who also face excessive charges to make their homes safe? The Bill must protect all leaseholders facing costs for fire safety defects that they did not cause.

We recognise the Government's efforts to increase the building safety fund, but unfortunately the amount allocated is still not enough. Can the Minister reassure this House that the funding shortfall will not lead to a "first come, first served" allocation? This may mean that building owners with less experience of managing large refurbishment and construction projects will lose out, as it could take them longer to get together the information and evidence necessary to properly complete an application to the fund. This could include buildings where leaseholders exercise their right to manage, for example, or where there are projects with additional complications.

The Government need to find a solution that can make all homes safe, regardless of height, without passing on the burden of cost to leaseholders. The residential property developer tax and the building safety levy are very welcome, but will the Government ensure that the right measures are in place to prevent any unintended loss of affordable housing through lower Section 106 commitments?

The cost of waking watch has been a huge concern for many people, and I was pleased to hear the Minister talk about this. It is really good that in December the Government announced a £30 million waking watch relief fund and that this has now been increased. However, the fund still fails to reimburse leaseholders who have already paid out for interim waking watch costs and does not consider those who continue to need a waking watch as well as a fire alarm. Can this be looked at again?

To answer all these outstanding concerns, Labour has called on the Government to establish a new building works agency. This single body, which would be accountable to Ministers, would decide what works are necessary and commission and pay for them, then sign off the building as safe at the end of the process. The building works agency would work closely with local authorities and fire chiefs, who have been gathering data and are well placed to know how to manage projects locally. It would also have the legal powers to pursue those responsible through the courts if necessary. Keeping people safe in their own homes should not be a political issue, so will the Minister at least consider this very practical suggestion, given in good faith from the Opposition Benches? Will he work with both Labour and other noble Lords as the Bill goes forward to Committee so that we can continue to address concerns and improve this important piece of legislation?

In closing, I put on record my huge respect for the survivors and the bereaved of the Grenfell Tower fire and for the wider Grenfell Tower community, who continue to seek not only justice for their families and neighbours but wider change to ensure that everyone is safe in their own home. I know the Minister has worked hard to bring forward this legislation and I thank him for his diligence, yet there are still improvements that could be made. I offer him our full support in making a good Bill even better.

I look forward to listening to the debate today, and in particular to the valedictory speech of the right reverend Prelate the Bishop of Winchester. I wish him well for the future.

4.35 pm

Lord Stunell (LD): My Lords, I start by declaring my interests as they appear in the register. I am the honorary president of the National Home Improvement Council and an honorary fellow of the Institute of Civil Engineers. For two years, I was the Minister with responsibility for building regulations in DCLG.

We must never forget the 72 deaths at Grenfell Tower or the injuries and trauma arising directly from gross failures by professionals at every stage of the construction process, refurbishment and its regulatory oversight. I first aimed to tackle the long-standing dysfunction of regulation in the industry in my Sustainable and Secure Buildings Act 2004. Section 8 on certification and Section 9 on appointed persons gave a power to the Secretary of State to bring in what we now call the "golden thread". Sadly, those powers remained unused for the following 18 years.

It will not surprise your Lordships that I and my colleagues give an enthusiastic welcome to this overdue Bill. We want to see its speedy passage and quick implementation. My noble friend Lady Pinnock and others will spell out the urgency of all necessary repairs being carried out on the tens of thousands of existing homes that have been found to have fatal flaws in their construction, with full financial protection for innocent leaseholders.

The bold ministerial words uttered so far have cut no ice with leaseholders who face five-figure bills and threats of repossession. Evidence of action is needed. Repairs must be undertaken without delay; bills settled by those who caused the problem, and families made safe in their home. If the developers push back, and the Secretary of State finds himself in the High Court, that must not be a reason to leave leaseholders almost literally swinging in the wind—with no cladding or insulation, and with enormous bills for waking watch and for their basic heating.

Speed is also needed so that the construction industry can get on with the job. It cannot invest in the right skills and training, nor develop competencies without the certainty provided by this legislation.

Of course, not all this can be put into the Bill. We shall certainly vigorously press the Government to explain their intentions more clearly when we consider the draft statutory instruments alongside our further considerations on the Bill. This way, we can assist the Government in producing a coherent scheme of regulation that will be fit for purpose. Such an examination will help to ensure that there is a speedy transition from where we are now to where we must be, so that we do not create another green homes grant fiasco. That landed without notice on an unprepared industry and was scrapped within six months.

The long title of the Bill is helpfully comprehensive and inclusive. It makes,

"provision about the safety of people in or about buildings and the standard of buildings".

However, the specifics addressed in the Bill are quite narrow. Only a small class of buildings will come under the new rules. Only one aspect of their design, construction and occupation is to be regulated by the building safety regulator. As it stands, the regulations and monitoring of other measures required for the avoidance and mitigation of fire in all other buildings will remain subject only to the existing regulatory regime. This system is certainly not rigorous. The British Woodworking Federation estimates that there are 600,000 unfit fire doors currently installed in the United Kingdom. Is the Minister satisfied with this? Does his department simply accept that regulatory failure of fire protection is acceptable, as long as it is not in a high-rise building? We will want to test these points in Committee and will invite the Minister to bring more buildings into scope.

A further gap in robust regulation is that even in high-risk or high-rise buildings, however defined, the application of all other parts of the regulations will be subject only to the existing failed compliance system, with the failing inspection service still responsible for regulatory oversight of that building's energy performance and weather resistance or climate resilience—among other things—with no golden thread, no long-term monitoring and no accountability.

So, for instance, when zero carbon is not achieved in a high-rise block and faults in design or construction or subsequent alterations emerge, those leaseholders would be no further forward than they are now. It could even be that the same residents in the same flats in another 10 years face bills for remediation of failed insulation, unless, of course, the building safety regulator is also to take on the monitoring of those other parts of the building regulations. The rule should be "One building, one building regulator" for all aspects of building regulations, and we will want the Minister to face up to that in Committee.

The current regulatory system for building construction is manifestly not fit for purpose, regardless of a building's height, complexity or fire risk, or whether the building inspector is from the private or local authority sector. This Bill is a necessary response to the tragedy of Grenfell, but it is also a once-in-a-lifetime opportunity to fully reform that failed system and we will put our views about how that might be done to the Minister in Committee.

Finally, the architecture of the Bill is complex, with an array of new structures, new professions and new roles as a means of achieving its ends. It is not by any means simple or intuitive, and we will be seeking clarification and refinement at Committee stage so that we have a workable and understandable structure that will produce safe buildings well into the future.

This complex Bill is very much welcomed on this side. We want to see it proceed quickly and be implemented smoothly. We must guarantee that the terrible tragedy of Grenfell can never be repeated. We must ensure that the innocent are safeguarded from the folly, carelessness and greed of those who have committed the offences and that those thousands of residents already caught up in the nightmare of unfunded remediation are fully protected. Our work on further stages of this Bill will be to work with the Minister to make sure that we achieve that.

4.42 pm

Lord Best (CB): My Lords, my contribution to this debate relates to the new homes ombudsman, the scheme that will be established by the provisions in Part 5 of the Bill. I declare past interests as the previous chair of the Property Ombudsman and chair of the Government's working group on regulation of property agents.

Among the catalogue of criticisms of this country's major housebuilders, redress for buyers of defective properties and victims of shoddy workmanship, scams

[Lord Best]
and dodgy deals deserve our urgent attention. We are all familiar with the long list of ways in which the volume housebuilders have let us down—building safety, yes, but also poor design, low space standards, soulless estates, broken promises to provide affordable homes, exorbitant profits and bonuses for bosses, leasehold scams, sales agreements that contain unfair conditions and excessive charges, lack of investment in training, skills, and apprenticeships, building on greenfield sites when brownfield development would be far more appropriate, and building out only at a speed which ensures continuing scarcity and ever-higher prices. We need also to confront housebuilders' defective workmanship and dreadful consumer/customer service in responding to entirely justified complaints by home buyers. It is excellent that the Government are seeking in this Bill to address this issue.

The proposal for a new homes ombudsman came from two reports by the All-Party Parliamentary Group for Excellence in the Built Environment, supported by the Construction Industry Council. I declare my interest as a vice-chair of that APPG alongside my noble friend Lord Lytton. Our first report, in 2015, entitled *More Homes, Fewer Complaints*, commended the idea of a new homes ombudsman. Our second inquiry, in 2018, spelled out how an ombudsman could drive up standards and improve consumer rights. It was skilfully chaired by Eddie Hughes MP, who is now the very Minister responsible for implementing the initiative. He says in his foreword to our report:

"I have been contacted by many MPs with despairing constituents who have implored them to help achieve redress from housebuilders refusing to rectify poor workmanship … Consumers desperately need greater leverage to drive a change in this culture".

Submissions received by the inquiry from home buyers described how builders failed them, making buying a new home, as one first-time buyer said,

"the worst decision of their life."

Surveys show that well over 90% of home buyers have experienced snags or defects when moving in, and in over 70% of those cases the problem has never been fully resolved. We are a very long way from zero-defect construction. It is quite extraordinary that the new house buyer has to expect snagging difficulties, problems with doors and windows not fitting properly, leaks and cracks. If cars—vastly more complicated things than houses, with thousands of working parts and the capacity to travel safely at speed—can be purchased without defects then why not static, solid, basic houses?

So it is very good news that we are now to have an ombudsman to whom the home purchaser can turn. There have been concerns over the suggestion that the industry-based New Homes Quality Board, rather than the Secretary of State, might appoint the ombudsman and write their code of practice. This could undermine public trust and lead to accusations that the housebuilders were pulling the strings.

My short list of questions today to the Minister, whom I congratulate on bringing forward this legislation, relates to the powers that the new homes ombudsman will possess. In essence, I am asking: will the ombudsman have real teeth?

First, could the Minister confirm that the new homes ombudsman will have the power to expel a housebuilder from the redress scheme—for example, for non-payment of compensation to a buyer—and that this would mean, quite properly, the ombudsman having the power to stop any further sales by a builder since they could not continue to sell homes if no longer in the scheme?

Secondly, will the ombudsman be able to award high enough levels of compensation to deter bad practice?

Thirdly, in common with many ombudsman schemes, will this ombudsman have the power to undertake own-initiative investigations around issues likely to justify multiple complaints, without each complainant having to make a separate case, and will it be able to publish guidance accordingly?

Fourthly, to avoid sharp practices and eliminate detrimental clauses in the small print, will the ombudsman be able to require the use of standardised sales contracts?

Fifthly, can it be that the ombudsman will have jurisdiction only for the first two years after a purchase, bearing in mind that defects often emerge after that date and that warranty providers exclude all the builder's smaller defects that can make life miserable? The Legal Ombudsman, for example, can take action up to six years after a problem has been identified.

Sixthly, will the ombudsman be able to specify that builders use only approved warranty providers that have passed a rigorous assessment?

Seventhly, will the ombudsman be able to ban non-disclosure agreements—"gagging orders"—which some builders, for fear of gaining a poor reputation, have insisted on from buyers whose homes have been subject to remediation?

Eighthly, will the ombudsman publish its decisions, to name and shame offenders and exonerate the others?

Lastly, will the ombudsman be able to extract a sufficient levy from the housebuilders to resource all the work necessary to deal with what I suspect will be a multiplicity of complaints from all over the country?

I look forward to hearing the Minister's response and, I hope, to being able to support this important ingredient in the Bill.

4.49 pm

Baroness Sanderson of Welton (Con): My Lords, I welcome today's debate, and I thank my noble friend the Minister for his commitment to this issue. It is appreciated.

We all know the importance of the Bill before us today and we all know what led to its creation: the devastating fire at Grenfell Tower. It was a tragedy that shocked and shamed the country, yet more shocking still has been the evidence that has since come out of the public inquiry. Listening to all those involved makes for a deeply depressing experience. With the notable exception of RBKC, no one is ever to blame. It is always someone else's fault, someone else's problem.

Take the architects involved in the refurbishment. Apparently, they did not have design responsibility; that was the contractors'—except the contractors say that they delegated it to the cladding subcontractor. But no, hold on a minute, the cladding subcontractor says that the design compliance was not its job but the

job of—wait for it—the architects. As for the companies that made the cladding, Arconic, Celotex and Kingspan—no, none of this was their responsibility. Never mind that the inquiry evidence shows that they manufactured or provided products that they knew or suspected to be dangerous for buildings of above 80 metres. Nor, apparently, was it the fault of the bodies responsible for testing and certification—bodies that have been accused of being too close to their customers and failing to provide the necessary protections.

Worse even than all this is the casual disregard—the flippancy—shown by pretty much everyone involved, at every level, in an industry that is supposed to have safety at its core. It is impossible to convey, so here they are in their own words, as heard at the public inquiry. An email from a senior staff member at Local Authority Building Control about the wording of a certificate, wrongly asserting that Kingspan's insulation could be used on high-rise buildings, states:

"This issue has been burning for a LONG time though, hasn't it? (Get it!!!!) Why is it raising its head again all of a sudden?"

An email between the contractors, fire engineers and architects, about the need to install strong fire barriers, says:

"There is no point in 'fire stopping', as we all know, the ACM will be gone rather quickly in a fire!"

Messages between employees of Kingspan discussing the rating of their material as class 0, or non-combustible, state:

"Doesn't actually get class 0 when we test the whole product tho. LOL."

An email from Grenfell's fire risk assessor to the council's tenant management organisation, after the LFB contacted them asking for help in identifying vulnerable persons, said:

"I would say you have nobody that this refers to … If you identify anybody now questions like why were they not included in the buildings FRA spring to mind. A good response I believe would be thank you for this information if we find anyone in the future we will let you know."

For reference, while some updating did later take place, 15 of the 37 residents classed as vulnerable and disabled died in the fire.

This, then, was the culture of a truly broken industry. Within this, I fully appreciate that the role of government must also be looked at, and it will be considered by the inquiry shortly. I also appreciate, however, that that must not take away from the huge strides that the Bill will make.

Before I get on to that, I have one question for my noble friend the Minister. Incredible as it seems, post Grenfell and after all we have learned, the regulations still allow for tall residential buildings with only one fire escape staircase. Last month, it came to light that plans for two such developments in London are being rethought after concerns were raised locally and by the LFB.

Dozens of other countries require two or more escape stairs in such buildings, and I would like to know whether we will consider doing the same. It seems an anomaly when the Bill will do so much to fix the system, including the building safety regulator; new competence requirements for anyone carrying out design or building work; gateway points to ensure that building regulations compliance is considered at every stage of design and construction; and an accountable person who will ensure that residents are given a voice in decisions that concern the safety of their buildings. These changes are all designed to ensure that a tragedy such as Grenfell never happens again. While I understand that there will be improvements to make, regarding cladding remediation in particular, I urge noble Lords to bear in mind the fundamental reason for the Bill: that no one has to endure what the residents endured that night.

I declare my interest as a community adviser on Grenfell. I have worked with many members of the community since the days immediately after the fire. I have witnessed their strength and dignity in the face of so much suffering. I have heard what happened to them. It is not something that they like to talk about but, with kind permission, I want to tell one man's story.

He grew up in Grenfell Tower and his mother and sister still lived there. On the night of the fire, they were trapped on one of the upper floors. His sister called him, leaving the line open as he rushed from his home in north London. Standing inside the cordon area, he saw his friends at the windows. He watched the flames engulf the building, as he remained on the phone to his sister. Despite her deteriorating situation she kept insisting she was okay, until finally she began to fade away. He heard a banging on the floor and then silence. At this point, he thought he had lost his mum too but, 30 seconds later and for the first time in the early hours of that morning, he heard her voice. She was struggling for breath and said her last words: "I can't breathe, I can't breathe." He stayed on the phone, unable to cut off the call, hearing only the sound of the fire but hoping against all hope that maybe they would be okay, maybe someone would rescue them. It took him over an hour before he finally managed to switch off his phone.

Can noble Lords imagine how difficult that must have been and how difficult the reliving of that moment must still be? That is the reality of Grenfell. That is why the Bill is before us today—and it is why we must do everything we can to ensure its safe passage through this House.

4.57 pm

Baroness Warwick of Undercliffe (Lab): My Lords, I am pleased to join others in welcoming the Building Safety Bill to the upper House and I congratulate the Minister on its introduction. The tragedy of the Grenfell fire four years ago exposed huge concerns about building safety in relation to both fire safety and building standards more generally. The Bill is a hugely important piece of legislation in our efforts to ensure that a tragedy like the fire at Grenfell Tower can never happen again.

Housing associations across the country have been working since June 2017 on assessing and remediating building safety risks in thousands of blocks. As chair of the National Housing Federation, the representative body of housing associations in England—I declare that interest—I have come to understand and appreciate the depth and breadth of the crisis.

[Baroness Warwick of Undercliffe]

It is the priority of the sector to ensure that safety concerns can be identified and addressed as quickly as possible to help residents feel safe in their homes. So many of us will remember from the passage of the Fire Safety Act that progress towards ending this crisis has been delayed and prolonged by seemingly intractable funding challenges, not least for innocent leaseholders facing huge bills.

That is why I very much welcome the announcement that the Secretary of State made in the other place on 10 January that the Government will protect leaseholders from the costs and make developers, contractors and manufacturers pay to fix the building safety issues that they caused. The Government are right to make those who profited from unsafe building practices pay. This important step will enable us to start the process of charting a course out of the crisis.

As I have mentioned many times in this House, housing associations are not-for-profit organisations providing affordable homes for those on the lowest incomes. To cover the costs of remediation on buildings where social renters live, housing associations are already expecting to spend in excess of £6 billion on building safety works. As a consequence, housing associations are now less able to improve their current homes or build new ones.

The National Housing Federation's 2021 survey found that 12,900 homes, more than 10% of affordable new homes to be built over the next five years, have already had to be cut to prioritise spending on building safety. I welcome confirmation from the Secretary of State that leaseholders of buildings owned by social housing providers will have access to the new funding to avoid these costs spiralling further. However, like others, I would welcome clarity from the Minister on the Government's approach to non-cladding costs, and whether funding recouped from industry will be allocated for this purpose.

I know that the housing association sector is committed to working closely with the Government to find a fair and sustainable solution to our housing prices that balances both making buildings safe and enabling new homes to be built. I was delighted to hear the Secretary of State refer to building social housing and improving existing homes as a core mission of his department. However, I was worried that correspondence from the Treasury made public at the start of the year suggests existing departmental budgets would need to be used, should it not be possible to recoup money from industry. That is why I hope that the Minister will assure us today that the affordable homes programme will be protected to avoid any further reductions in the delivery of much-needed affordable housing.

I also want to support the Government's evidence-based approach to assessing and managing risk in buildings. It is right that, where safety issues present an unacceptable level of risk, they are fixed with urgency; it is also right that, if risks can be eliminated and effectively minimised without vast building works, these options should be explored and, where suitable, implemented. I welcome the launch of PAS 9980 to aid this transition. We are in the early stages of implementation, and it is not yet clear how it would truly impact on how mid-rise buildings are treated and, in truth, what impact it will have on the amount and costs of work needed on buildings between 11 and 18 metres. I understand that the Government have already undertaken a survey of such buildings to ascertain a view on this; I also believe that close monitoring of the implementation of PAS 9980 could greatly help the Government, building owners, tenderers and lenders in understanding the evolving situation. Will the Minister commit to publishing the findings of the Government's recent survey, and what plans does he have to monitor the approach to proportionality?

Finally, I welcome the part of the Bill that introduces a new homes ombudsman scheme—and I declare an interest as the chair of the Property Ombudsman. I wholeheartedly agree with the points made by the noble Lord, Lord Best—indeed, I would like to see the ombudsman report directly to Parliament. I just want to emphasise that, at a time when public and particularly home-buyer confidence is so low, the need for transparency and absolute real and perceived independence is crucial if the Government are to reassure homeowners that the ombudsman has teeth. Only that way will they have the trust and confidence in the redress or reassurance that they receive from the ombudsman. This is especially true when property developers do not comply with a decision; there needs to be a clear and transparent mechanism for enforcing decisions, in the worst case removing businesses from membership, and communicating this to existing and potential home-buyers. That enforcement should apply not just to financial redress but to implementation of recommendations to drive better outcomes for all.

This urgently needed Building Safety Bill has the potential to provide safety and security to those whose homes have wrongfully been built with safety risks. I hope that it will create a future in which the horrors of an event like Grenfell are no longer possible. The housing association sector wants to work with government to ensure that the Bill is as effective as possible at delivering that ambition.

5.03 pm

Baroness Brinton (LD) [V]: My Lords, I declare my interest as a vice-president of the Local Government Association and as vice-chair of the All-Party Parliamentary Fire Safety and Rescue Group. I look forward to hearing the valedictory speech of the right reverend Prelate the Bishop of Winchester. He was formerly general secretary of the Church Mission Society. At that time, I remember an imaginative fundraiser when the then Reverend Graham Kings led a camel from Oxford to Cambridge to raise funds for rural Kenyan schools. I did the last day of that walk, and I have to say that the camel was mobbed as we finished it. Large amounts of funds were raised, and there was lots of media coverage—CMS objective achieved. I wish the right reverend Prelate well in his retirement.

It is worrying that, five years after Grenfell, the necessary cultural changes in the building industry have still not happened. We know that there are too many developers prepared to game the system, despite the Grenfell inquiry and Dame Judith Hackitt's review. There still is not a level playing field to protect tenants and leaseholders, not only on who should pay the costs, so ably explained by the noble Baroness, Lady Sanderson, but more broadly on the other deeply

unsatisfactory breaches of safety, beyond cladding, which also make people's homes unsafe. I also echo her comments about two staircase exits in high-rise buildings—that is absolutely vital.

Other breaches of building regulations are not covered, such as a lack of compartmentation and electrical standards still not being met, both of which are high-level risks for fire and the spread of smoke and fire. Without compartmentation, staying in your flat is worthless. Doors that do not meet fire safety standards have caused deaths in common parts, including on emergency exit stairwells. There was a fire in a block of flats in Tower Hamlets just two days ago, where smoke escaped into the stairwell and residents trying to get out were overcome. As with cladding, leaseholders are having to pay for all this work to be put right, even though developers have a clear responsibility for not building unsafe buildings, and refurbishment companies ignore the original fire and building regulations. This is totally unjust.

Over the last two years, the All-Party Parliamentary Fire Safety and Rescue Group has responded in considerable detail to the plethora of government consultations on fire and building safety, and I am grateful to the Minister for attending our meetings on a fairly regular basis. Last year's consultation from the DfE proposed to remove the requirement for sprinklers in all but a very small percentage of new schools. Twenty years ago, as a former chair of governors of my local primary school, I saw it burn to the ground. The disruption to the pupils' education over the next two years cost Cambridgeshire County Council many times more than even the retrofitting of sprinklers would have cost. To not even put sprinklers into new schools is just unacceptable.

The case for sprinklers is compelling in high-rise blocks, as well as non-residential buildings. They save lives, they can save jobs and precious education, and they prevent damage to the environment by reducing the severity of fires. As a result of the multiple-fatality fire in 2009 following the refurbishment of Lakanal House, the London Fire Commissioner told the coroner that automatic fire sprinkler protection would have prevented the deaths of six residents. Subsequently, the coroner recommended to the then Secretary of State that he should encourage social housing providers in high-rise blocks of over 18 metres to consider retrofitting automatic sprinkler protection. Can the Minister say if the Government will now accept this recommendation?

Both the All-Party Parliamentary Fire Safety and Rescue Group and the National Fire Chiefs Council in their previous responses to the Regulatory Reform (Fire Safety) Order 2005 consultation said that there remains a fundamental disconnect between the non-worsening conditions of building regulations and the expectations of continuous improvements through the fire risk assessment process set out by the fire safety order. Regulation 4 of the Building Regulations 2010 states that, where the work did not previously comply with Schedule 1, the new work, when complete, should be

"no more unsatisfactory in relation to that requirement than before the work was carried out"—

meaning that the general fire precautions may never be improved to modern standards. This runs contrary to the principles of prevention outlined in the fire safety order—that premises' risk assessments should adapt to technical progress and reduce the overall risk within buildings.

The all-party group also noted that Dame Judith Hackitt concluded that the construction industry's prevalent culture was undermining building safety. She referred to procurement regimes that were not fit for purpose. In relation to building safety, she added that

"unhelpful behaviours such as contract terms and payment practices which prioritise speed and low cost solutions, exacerbate this situation."

She concluded that poor procurement and payment practice

"provide poor value for money and poor building safety outcomes."

She recommended that contracts' payment terms and practices should be recorded as part of a proposed digital building safety file. Does the Minister agree with these conclusions?

I thank the Local Government Association for its briefings on the provision for duty holders to choose their building control regulator. It says:

"By requiring regulators to remain in competition with 'approved inspectors' for the majority of buildings, the Bill leaves in place one of the root causes of the current crisis."

It absolutely does. It is quite extraordinary that it should be allowed to continue. The LGA goes on:

"Compliance with regulation cannot be a commodity and local authority building control should not be left to tackle non-compliance in buildings over 18m while simultaneously having to compete with private businesses for work in out of scope buildings, often owned by the same developers."

My honourable friend Daisy Cooper MP has repeatedly asked, since the passage of the Fire Safety Act 2021, if the Government will consider the creation of an independent register of qualified fire risk assessors. At the time, she was told it was being considered, and withdrew an amendment from that Bill on that basis, but nothing has happened. Can the Minister say whether this register is now planned, as well as a register of safe building materials?

Finally, what will be in the regulations is critical. Some of the language used in the Bill is not exact enough; what will matter is the regulations that underpin this extremely complicated Bill, which will need to be ironed out before it becomes operational. I hope that during the passage of the Bill, the Minister will be able to clarify some of these key issues at the Dispatch Box to give your Lordships' House confidence that we will finally see regulations that will protect lives, ensure accountability by those who have not followed the standards and protect buildings.

5.11 pm

Lord Aberdare (CB): My Lords, I welcome the Building Safety Bill, and its provisions to implement the recommendations of the Hackitt report following the Grenfell Tower tragedy. In particular, I was glad to hear the ambitions stated by the Minister that it should represent a complete overhaul of the culture of the construction sector. In so doing, it presents an opportunity to tackle issues that have bedevilled the sector for many years, with a damaging effect on safety and quality. Many of these affect smaller construction firms and their relationships with the larger contractors

[Lord Aberdare]
for whom they work, as well as their ability to invest in improving their skills, quality, productivity and, of course, safety. I shall focus specifically on the issue of cash retentions.

The Hackitt report states:

"Payment terms within contracts (for example, retentions) can drive poor behaviours, by putting financial strain into the supply chain. For example non-payment of invoices and consequent cash flow issues can cause subcontractors to substitute materials purely on price rather than value for money or suitability for purpose."

There is broad consensus in the sector that action is needed on retentions, and that this requires legislation. The Government have indeed been exploring the options and have conducted a number of reviews and consultations over the years. But their insistence on seeking

"industry-led solutions, rather than further regulation"—[*Official Report*, Commons, Building Safety Bill Committee, 26/10/21; col. 455.]

to quote the current Construction Minister, Christopher Pincher, during Committee in the other place, has resulted in stalemate. With the industry inevitably divided between the beneficiaries and victims of retentions, this makes consensus unrealistic, if not impossible.

There have been some welcome steps forward. The snappily titled *Guidance on Collaborative Procurement for Design and Construction to Support Building Safety*, produced by the procurement advisory group set up by the Minister's own department and issued just last month, reiterates the Hackitt report finding. It states:

"The use of cash retentions can also interfere with cashflow and can undermine the principles on which collaborative relationships are based. Arguably, any collaborative relationship should exclude the use of cash retentions. If exceptional circumstances require a retention, then it should be held in an account ring-fenced by a trust arrangement."

I say amen to that, but it will not happen without government action. Ministers regularly give assurances that they recognise the importance of the issue. To quote Christopher Pincher again:

"I also recognise—I think we all do—the argument that poor, adversarial practices can lead to unsafe, low-quality building safety outcomes, as well as poor value for money."—[*Official Report*, Commons, Building Safety Bill Committee, 26/10/21; col. 454.]

There is work going on in other government departments, notably BEIS, including through the Construction Leadership Council, which it co-chairs with industry, and which has a business models work-stream looking at how to eliminate retentions. The CLC has endorsed the road map produced by Build UK which aims for an end to retentions by 2025, but the road map on its own will not bring this about.

There are other steps that the Government could take. It is disappointing that there is no reference to discouraging retentions in the government-sponsored *The Construction Playbook* that sets out much positive guidance on procurement. It is hardly helpful that some departments, notably the Department for Education, continue to use retentions. Perhaps the Minister could say whether we can expect any progress in those areas.

We have seemingly endless reports, advisory groups, workstreams, road maps, guidance and good practice models, but without the essential legislative underpinning it seems unclear how the Hackitt report's warning that poor payment culture leads to poor and unsafe buildings will be addressed. Meanwhile, retentions will continue to impact safety and quality.

I would welcome a clear indication from the Minister about which option the Government now favour: an outright ban on retentions, a trust arrangement such as a retention deposit scheme or some combination of both, and how they see any such approach being implemented, given the need for Government to give a lead. After all these years of reviews and consultations, a clear direction and plan are needed if the aspiration of resolving retentions by 2025 is to be met, so that smaller construction businesses, such as those represented by Actuate UK and previously by the Specialist Engineering Contractors' Group, can rely on receiving funds due to them and are no longer hamstrung in their ability to invest in the training, skills and technology that are essential to ensuring safety.

I hope the Minister will say something in his response about how the specific concerns expressed in the Hackitt report about the impact of poor payment practices such as retentions on safety and quality will be addressed by the Bill's new regulatory regime, and indeed how his department will ensure that the guidance provided by its procurement advisory group will be implemented.

This Bill will be—or should be—crucial in changing the culture of the construction sector in relation to safety and quality. Perhaps the Minister will tell us why taking long-overdue action to mitigate the impact of retentions on safety should not be included in it as one of the unsafe industry practices that the Bill seeks to address.

5.17 pm

Lord Young of Cookham (Con): My Lords, like others, I welcome the introduction of this Bill, which will help restore confidence in homes built by the UK construction industry after the damaging revelations of recent months. If the Government's ambitions for home ownership are to be achieved, buyers must have confidence in the homes they are buying and so must lenders.

I join others in wishing a long and happy retirement to the right reverend Prelate the Bishop of Winchester who, when I was a Member of Parliament for Hampshire, had responsibility for my spiritual health.

I want to refer to the helpful covering letter that my noble friend the Minister wrote to us on 20 January, entitled "Introduction of the Building Safety Bill" and, in particular, to the section headed "Protecting Leaseholders from Unnecessary Costs"; I do so alongside the Statement on building safety made in the other place by the Secretary of State on 10 January. My noble friend's letter says:

"The Secretary of State recently announced that leaseholders living in their homes should be protected from the costs of remediating historic building safety defects."

Amen to that, but none of the subsequent paragraphs in the letter, or indeed anything in the Bill at the moment, gives a guarantee that this will be done, nor do they explain how it will be done. Hence the need for further amendments, to which I will return in a moment.

The next paragraph of the letter covers one of the building safety defects—namely, cladding—but not others. It makes it clear that the costs are to be met by

a scheme funded by industry, alongside a further push to make sure that developers fix the unsafe buildings they built. Again, amen to that, but it follows that unless and until industry pays, the work will not be done, and the last thing leaseholders want is more delay.

The initiative to get the industry to contribute voluntarily is commendable but the volunteers are not going to pay for other peoples' buildings; their shareholders would complain if they did. We know that many of the offending companies either cannot pay or will not pay. At the moment, leaseholders have no bankable guarantee that their buildings will be fixed with someone else paying. I welcome all the recent initiatives to help leaseholders and applaud the work of my noble friend the Minister for his tireless campaign behind the scenes but, as he recognised in his opening remarks, we are not there yet.

Now we have to turn to the Statement I referred to earlier, which clearly stated:

"We will take action to end the scandal and protect leaseholders."

The Secretary of State went on to say:

"We will make industry pay to fix all of the remaining problems and help to cover the range of costs facing leaseholders."

The Statement concluded:

"I can confirm to the House today that if they do not, we will impose a solution on them, if necessary, in law."

When pressed by an Opposition MP, the Secretary of State said in reply:

"She specifically requested that we provide amendments to the Building Safety Bill to ensure that there is statutory protection for leaseholders. That is our intention—we intend to bring forward those amendments—and I look forward to working with her and colleagues across the House to provide the most robust legal protection."

So the Secretary of State must have some idea of the sorts of amendments that he plans to bring forward.

Later, he clarified what he meant by statutory protection:

"First, we will make sure that we provide leaseholders with statutory protection—that is what we aim to do and we will work with colleagues across the House to ensure that that statutory protection extends to all the work required to make buildings safe."—[*Official Report*, Commons, 10/1/22; cols. 285-91.]

Note that that commitment extends to all building work, not just cladding. Again, this is all very good news, and I commend the work of my noble friend for pressing for those commitments. However, it raises some questions—I appreciate that my noble friend may not have all the answers, but he may be able to reply in general terms.

First, many leaseholders are currently threatened with repossession, eviction and bankruptcy because at the moment they are currently legally liable for the bills, which the Secretary of State has recognised are in no way their fault. They have been promised statutory protection—but statutory protection from what, and from when? Are buy-to-let landlords included, and what about private leaseholders in blocks owned by social landlords?

Does this protection cover all the work done for which they have been invoiced but not paid; does it cover invoices only from the date of the Statement? Does it become operative only when the necessary legislation is passed? Does it cover only cladding or—as one of the quotes I just referred to implies—all safety work? Should it be retrospective, as the noble Baroness, Lady Hayman, suggested in her opening remarks? Leaseholders need clarity on these issues, and they need it now.

Then, if both the statutory protection and the legislation to oblige industry to pay are to be included in this legislation—again, as the Secretary of State implied—that is a high legislative hurdle in a very short timescale. What progress has been made in drafting the necessary clauses? They are bound to be controversial if they are to be effective, and the House is allergic to Henry VIII clauses.

I and my noble friend Lord Blencathra—the so-called Awkward Squad; an unusual name for two former Conservative Government Chief Whips—are willing to help tackle the issues that will need resolving. How does one define a delegated powers clause which allows the Government to decide the meaning of "defective construction", particularly if there has been no breach of building regulations? Will there be an appeals procedure? How do we do this without delaying essential remedial work? Will some sort of credit facility be available until the cash comes in? Will the scheme be proof against ECHR challenge?

How do we enforce against foreign companies domiciled overseas, where they have wound up the offending subsidiaries—and, if we cannot, how will the resulting shortfall be met if no more funds are available from the Treasury?

I hope my noble friend has some of the answers, not just for the sake of concluding our debate this evening but for the sake of leaseholders, who will be hanging on every word of his reply.

5.24 pm

Lord Shipley (LD): My Lords, I agree very strongly with what the noble Lord, Lord Young of Cookham, said. First, I remind the House that I am a vice-president of the Local Government Association. I welcome the Bill strongly. I think I will be happier if it includes, in addition to residential buildings over 18 metres, all high-risk buildings, and I hope we will take that further in Committee.

The disaster at Grenfell represents one of the biggest failures of public policy in recent decades. The report of Dame Judith Hackitt in May 2018 said that the current system was not fit for purpose, so it is vital that this new system works. This Bill represents a fundamental reform of the building safety system. It may have taken four years to get to this point—which is a long time—but it seems to me that it is four years well spent. Of course, even the best systems for securing safety will depend on the people who carry out the new processes. I will say something more about that in a moment.

But first, I want to approach the Bill from the perspective of a new occupant of a high-rise residential block. I would want to feel confident that I knew the following before I moved in: is there more than one lift and more than one staircase? Are there secure emergency exits? What are the evacuation rules? Have they been tested and does everyone know what they are—or do we stay put in a fire? Are there high-quality fire doors

[Lord Shipley]
in common areas that are kept closed, and high-quality fire doors as part of my own property, such as my front door? Are there sprinklers—and if not, why not? Have the building materials been tested properly and are they safe? Who is responsible for safety? Is there a named person monitoring my block to whom I can go with concerns? Are there regular residents' meetings to raise issues of concern? Are the results of fire safety inspections public for residents to read? Is it clear what I have to do myself to maintain safety, and what penalties might there be for non-participation? Are there regular electrical safety checks, and who undertakes and registers these?

We will explore many of these issues in Committee, and some, of course, lie in the Fire Safety Act 2021. But the success of this Bill will all depend on the people carrying it out: their training, competence and understanding of their role, and the golden thread of information held in one place, which is a such an important part of the procedures in the Bill. In the end, of course, it is everybody's responsibility to make sure that Grenfell can never happen again.

As the Minister said in his letter of 20 January, this is a complex and technical Bill. Importantly, there are a lot of new roles in it, and they all seem to be necessary. There are responsible persons, accountable persons, principal accountable persons, duty-holders, clients—who will have to approve the competence of the principal designer and the principal contractor—other designers and contractors, building safety managers, registered building inspectors, building owners, insurers, and the new homes ombudsman. And there will be others, not least the national regulator for construction projects. It will be vital that everybody knows who is responsible for what exactly, and that there is a regular review of them undertaken through the building safety regulator and the Government.

The crucial role will be that of the new building safety regulator within the Health and Safety Executive, who will have the key role in bringing together the fire and rescue services and local authority experts, including the building control staff, to make regulatory decisions. It will be critical that the regulator drives ahead with improving competence within the sector and within the unified building control profession common to the public and private sectors. This system will work only if everyone working as part of it has the required set of knowledge and expertise.

Much will depend on the gateway structure—which I strongly welcome—so that the risks are evaluated at every stage of a new building's design and construction. In particular, in terms of gateway 1, I would like to be clearer about what actions are being taken to improve training. It will matter because it relates in part to the planning system, both in terms of application and the permission itself. I submit that local government planning authorities will need to give some substantial thought to the training of councillors.

I wish the Bill well. It is really important and I commend all those involved in getting us to this position because it is a substantial achievement. I hope that the Minister may agree to some system of annual reporting to Parliament on the working of the new structure, that roles are clear and that the blame culture has been significantly reduced, if not eliminated. I hope he will give further thought, too, to how competence will be assessed and reported.

Perhaps I may raise one other issue, which relates to permitted development rights. Are the Government thinking of restricting those rights when office blocks are converted into residential flats of whatever height?

I hope it will not prove the case that too much is being left to secondary legislation. It would be helpful to see as much further information as can be brought forward in Committee and on Report as possible; otherwise there will be a great deal of work to do in assessing that secondary legislation. That said, I commend the Bill.

5.31 pm

Lord Crisp (CB): My Lords, like other noble Lords, including the noble Lord, Lord Shipley, I commend the Bill and very much welcome the concurrent announcements on funding. I come to this from a health background. Health, housing and buildings are intimately connected. However, I have to say that I have been on a learning curve and have talked to a lot of people over the past few days, including architects, builders and others.

I have heard about exactly what the Minister, my noble friend Lord Best and others have commented on: the crisis in construction. As some have said to me, there is a race to the bottom, with people getting away with what they can and a culture in which clients stand back and architects no longer have responsibility for quality. As one person said to me, quality has been devolved to the contractor, so people are marking their own homework or, as the noble Baroness, Lady Sanderson, said, shifting blame from one to the other. This is a systemic issue and not about individuals. I am delighted that the Minister and the Government have ambitions to address that system.

I recognise that the immediate focus is on high buildings and the response to Grenfell, that the matter is urgent and that this has been a long time coming. However, there is a tension here between that short-term ambition and the wider remit of the Bill. Like other noble Lords, I have enormous sympathy for the families of those who have died and am deeply moved by the stories we have heard in your Lordships' Chamber and elsewhere—as well as by the pressure and problems that people have faced over the past four years, waiting to know what will happen to their investment, home or whatever. The Bill cannot avoid these wider issues and I do not really think that the Government want to.

The noble Baroness, Lady Brinton, and other noble Lords reminded us that the Hackitt report talked at length about culture change and the need to force things to be done differently. I welcome the framework that has been developed around accountability, responsible officers and the golden thread. I should be interested to understand in Committee and on Report how those will be worked out in more detail.

We also need a change in how we think about safety—not as a narrow technical concept about freedom from immediate injury but as something much broader, perhaps more common-sense, linking to health and well-being. It should be a concept that people would

recognise. If they were thinking about safety in buildings, they would think about damp, cold, poor air circulation and buildings where falls are likely to happen on the stairs, as well as fire and electrical faults that cause fire, and much more—a wider concept of safety. All that is, of course, appropriate to the Long Title of the Bill, which is to make

"provision about the safety of people in or about buildings and the standard of buildings".

There are links here to so much else across government and to Bills that are coming or are already in front of your Lordships' House. That is particularly important at a time when we perhaps move on from the pandemic, when we have seen the importance of people's homes in their lives. If there is a vision for this country, it must include decent homes and buildings that are safe in all the aspects that I have talked about. After all, homes are part of the fundamental foundation for much of our lives.

There are obvious links with the Health and Care Bill going through the House. A number of noble Lords mentioned the importance of the links between health and housing, recognising that until 50 or 60 years ago health and housing were covered by the same Secretary of State. There is overwhelming evidence of the relationship between people's mental and physical health, and the design of their homes and neighbourhoods. That is set out by Public Health England and includes a wide range of structural and place-based factors, from the need for active travel and walkable streets to reducing air pollution, and to minimum space, accessibility and light standards. It is said that all that costs the NHS in the region of £1.4 billion a year, but what is the wider cost to individuals and society?

As regards the levelling-up White Paper and other Bills to come, we all know that people on lower incomes tend to live in poorer-standard homes in poorer environments and have poorer life expectations as a result. I will not, at this stage, ask the Minister how this Bill intersects with the new policies for levelling up, although no doubt that will come up again in Committee.

In Committee I will raise an amendment on safety having a wiser definition—something more like freedom from the risk of harm arriving from the location, construction or operation of buildings that may injure the health and well-being of the individual. The Building Safety Bill is an opportunity to change fundamentally the way we deliver homes and places with multiple benefits to people—a real culture change. Putting safety, in the sense that I am talking about it, at the heart of decision-making would be a positive legacy from the challenges of the pandemic and a response to the tragedy of Grenfell, and would match the ambition at the heart of the levelling-up agenda.

On that note, it is my great privilege to hand over to the right reverend Prelate the Bishop of Winchester for his valedictory speech.

5.37 pm

The Lord Bishop of Winchester (Valedictory Speech): My Lords, by the end of the 19th century, there had been a significant evolution in the quality of housing, particularly in England. The standout feature of this development is the terraced house. In contrast to continental Europe, our towns and cities abound with terraced houses of all kinds, appealing to nearly all levels of income. The Victorians had strict building regulations for terraced housing and in my own diocese there was also the innovation of a cavity wall system in the city of Southampton. Alongside this development came improvements in safe drinking water and sewerage management. The combination of good housing and water management facilitated good health. Put simply, caring for building safety is caring for the health of our nation. Building regulations are crucial.

Positively, safe housing implies shelter, comfort, security and privacy. It also implies protection from people, pests, hazards and disease. Thus building regulations must require the co-ordination of all those involved in housing provision around the core value of safety as an aspect of national health and well-being. My episcopal friend, the right reverend Prelate the Bishop of Manchester, will say more about this in his speech. Here, perhaps I may take this opportunity to offer a short reflection on my time in this House, as I take my leave at the end of this week and retire in Plymouth, where there are many terraced houses.

From these Benches we do not often show our theological workings in speeches. During my time here, I have come to see the importance of a social imagination shaped by what Jesus often talked about and taught us to pray about: that God's kingdom come and his will be done. With a social imagination of God's justice, truth, mercy and love, both the weighty concerns of our nation and the minutiae of legislation can be opportunities for the coming of the kingdom. With such an imagination, we may dare to believe that God's kingdom comes in fashioning good legislation for the better ordering of our national life and its common good. Hence the importance of fair distribution of safety costs, as emphasised by the right reverend Prelates in the recent fire safety debates. As a Member of your Lordships' House, I have participated using the agreed procedures for our debates, but I am also motivated by a concern that the love of God is made visible in the love of neighbour. My hope is to see God's kingdom come enacted in practical legislation. It is from this perspective that our daily prayers invoke the wisdom of God in all our decision-making.

During my time, I have been most concerned with the institutions of further and higher education, so it has been a privilege to have participated in debates on Bills on these issues. For many, the institutions of FE and HE, both colleges and universities, become anchor institutions for students' personal development and flourishing, and in their preparation and skilling to contribute to our society. If we are to "build back better" and "level up" our communities, we must continue to invest in, sustain and hold accountable our FE and HE institutions. I have urged for both a diversity of provision, and a co-ordination of enterprise between FE and HE. Accessible and, I hope, inspirational vision documents for FE and HE have been published by the Church of England during my time. While these are faith documents, they express their perspectives in the language of a social imagination that we may all share: wisdom, community, virtue, common good, vocation, transformation and hope.

[The Lord Bishop of Winchester]

I thank all those who have supported me: my episcopal colleagues, particularly the Convenor of the Lords spiritual, the right reverend Prelate the Bishop of Birmingham; the parliamentary support team, led by Richard Chapman; and especially my parliamentary assistants, not least my son, Johnny Dakin, who was seconded on a work placement as part of his first degree, and latterly Madeleine Hayden, who also worked tirelessly to promote FE and HE in church forums. The Reverend Gary Neave has been an outstanding colleague and has supported my FE and HE work. To the doorkeepers who remind Bishops about our forthcoming prayer duties: thank you for the personal nudge. I also acknowledge my unique link with Black Rod in our shared responsibilities as officers of the Most Noble Order of the Garter. I am glad not to have drawn anything other than felicitous attention from that office during my time.

It has been a privilege to be in your Lordships' company during the years of my tenure. I shall retire with many good memories of informative debates, and of having had the opportunity to play a tiny part in the great traditions of this House as it seeks to inform and revise the legislative programme of Her Majesty's Government. Deputy Lord Speaker, and through you, Lord Speaker, may God grant you wisdom and strength as you oversee this House. And may the building regulations that apply to our national housing stock be applied to the renovations of this great Palace of Westminster, that the health of all here be enriched and prolonged.

Noble Lords: Hear hear!

5.42 pm

The Lord Bishop of Manchester: My Lords, I count it a great privilege to speak following the valedictory speech of my right reverend friend the Bishop of Winchester. He has indeed been a powerful advocate, both in your Lordships' House and in the Church, for our nation's further and higher education sector. In that capacity, he has also been a great personal supporter and encouragement for me, in my own rather modest efforts at lifelong learning. Along with this, his passion for the global Anglican Communion and his strong links with Africa will be much missed, both in this House and in the House of Bishops of the Church of England. We all wish him a long, happy and fruitful retirement, and indeed pray that he will be safe in his new home.

In turning to the substance of this debate, I declare my interests as set out in the register, as chair of Wythenshawe Community Housing Group and as deputy chair of the Church Commissioners for England, both of whom are substantial residential landlords. Last year the Archbishops' commission on housing reported, with recommendations for both Church and State. In the debate in this House, my most reverend friend the Archbishop of Canterbury drew attention to the five principles which underlie the findings of that commission: that every household should have a home that is sustainable, safe, stable, sociable and satisfying. As he said in that debate,

"from almshouses to housing associations, (the Church) has for centuries been involved in the provision of decent places to live. We do not do this just to be nice—we are not an NGO with a pointy roof—but because we believe that Christ commands us to love our neighbour."—[*Official Report*, 24/3/21; col. GC 38.]

We on these Benches heartily welcome this Bill as a means to progress the principles enshrined in the *Coming Home* report.

The proposed building safety regulator is particularly welcome. As the chair of a housing association, I am familiar with the work of the regulator in that part of the housing sector, where regulation is seen as not simply about punishing bad practice, but as promoting good practice. I welcome this, not least since theologically I am drawn far more to the advocacy of virtue than the denunciation of sin.

While I accept that the regulator of social housing has a particular role as a consequence of the state funds that support the sector, I struggle to agree that issues of safety are substantially different between different forms of tenure. I hope that as this Bill progresses, we will be able to clarify and, where need be, strengthen the regulator's role.

Many noble Lords have already drawn our attention to the fire safety scandal in medium- and high-rise buildings. I deliberately do not refer to it as a cladding scandal; while it may have come to our attention through the tragic loss of life at Grenfell Tower, what has been exposed is much wider. It has been my privilege this last couple of years to support the campaigning efforts of the Manchester Cladiators. These are ordinary men and women who purchased properties in good faith, and now find their homes are technically worthless. Not only that, but they face unaffordable costs in terms of remediation works and in paying for interim measures.

I am proud that my housing association has spent a considerable sum to remediate taller buildings, and without requiring leaseholders to pay for the work. But that does not come without a cost. As the noble Baroness, Lady Warwick, has already said, many housing associations are now cutting newbuild plans in order to focus spending on building safety. We need both safe homes and more homes. I urge the Minister, whose understanding and sympathy have helped move matters forward significantly in recent months, to press on his colleagues, perhaps particularly in Her Majesty's Treasury, that the one-off costs of remediating a crisis that has built up largely unacknowledged and over many years should not be taken from the budgets required for the regular ongoing work of building the new affordable homes that this nation badly needs.

For many of us in your Lordships' House, this matter will not have been rectified until two things have happened: that all affected properties can be bought, sold and insured at their full, true value, with mortgage providers content to lend against that full value and that this is achieved without the costs being borne by the leaseholders. In that category, I include individuals who have sublet properties that they had to move out of, and now cannot sell. Meeting these two criteria will require the legislation we pass to cover not only buildings of over six storeys or 18 metres in height, but to encompass buildings of four storeys or 11 metres tall, which I believe is the height standard supported by the Fire Brigades Union, whose members

attend fires in such properties. I welcome assurances from Her Majesty's Government that they will seek to bring forward new provisions as the Bill progresses. I and my friends on these Benches will be scrutinising those amendments carefully as well as considering support for other amendments as noble Lords may bring before us.

I will end my remarks by quoting Scripture. On the matter of building safety legislation, Deuteronomy Chapter 22, Verse 8, reads as follows:

"When you build a new house, you shall make a parapet for your roof, otherwise you might have blood guilt on your house if anyone should fall from it".

If I may be permitted a pun, they were building on biblical foundations—foundations laid in that book around 3,000 years ago. We must consider not only parapets, but the general safety of our building.

For today, we are seeking to find the right legislation that will protect our fellow citizens in their homes. It is a sacred duty—if we fail, we risk drawing that same blood guilt on this House. I welcome this Bill and look forward to supporting and strengthening it as it progresses through your Lordships' House.

5.48 pm

Baroness Eaton (Con): My Lords, I declare my interest as recorded in the register.

I am delighted to be making a short contribution to this very welcome Bill. I congratulate the Minister and his team, as have others this afternoon, on the content of this long-awaited and very necessary Bill. I know that all noble Lords taking part today recognise the necessity for the Bill to be passed speedily, and hope that all our contributions bring about a positive outcome. I join others in giving warm wishes for the retirement of the right reverend Prelate the Bishop of Winchester, and hope he recognises that a good life does exist after life in the House of Lords. We thank him most sincerely for his very thoughtful contribution to this very important debate.

Dame Judith Hackitt's review, *Building a Safer Future*, recommended a culture change within the construction industry. It also said that this had to be underpinned with more emphasis on competence and regulatory oversight.

A number of noble Lords have mentioned professional compliance. I note from the briefing I received from the Architects Registration Board that Clauses 130 to 132 directly change its responsibilities and powers in a very positive way. Professional regulation has an important role in creating a culture of safety in all buildings. The public, who use the services of professionals such as architects, have the right to expect that, once qualified, they are competent and that they will maintain and develop skills and knowledge throughout their working lives. At present, the only way to assess continuing development is if there is a disciplinary complaint. Clause 130 will give the power to ensure that continuing professional development is carried out throughout an architect's career. The Bill also gives powers to publish disciplinary orders against an architect on the register. Clause 130 will help promote public confidence in the profession and deter incompetence and poor professional conduct.

Architects are not the only professionals involved in the construction industry. We heard the most alarming tales from my noble friend Lady Sanderson of buck-passing between professionals after the Grenfell tragedy. I am sure the House would value more information from the Minister as to how the Bill will help raise the bar of competence of other professionals, including approved inspectors.

As a member of the RoSPA presidential team, I was shocked to hear the statistics behind stair accidents in the United Kingdom—43,000 hospital admissions every year is a horrifying number. For many, a fall on the stairs will lead to injuries from which they can never fully recover. An accident on the stairs can cause irreparable damage—not only physical injury but also loss of confidence. Such a fall can rob someone of their independence, resulting in the need for residential care. From there, the burden is often passed on to family members and the NHS. Safer stairs would mean safer homes, and that in turn would mean not only that many lives would be saved but also that their quality would be infinitely improved. The numbers clearly show that stair accidents are a more silent, but more preventable, danger than fires. The number of hospital admissions caused by falls, compared to those caused by burns, is in the ratio 235:1. Our staircases are a very real danger, hiding in plain sight.

Simple solutions to complicated problems are hard to come by, but enshrining the most up-to-date industry standard for stairs into law represents genuine low-hanging fruit. It is a cost-free, industry-approved, ready-made measure which would create a 60% reduction in falls in new builds. As the issue of stair safety is of interest and concern to so many, will the Minister support regulations to ensure that the existing British safety standard is incorporated into the Bill?

I know that including regulations on the face of a Bill is sometimes viewed as inappropriate. I believe there is precedent for including standards such as this in primary legislation. For example, the recent ban on combustible materials has come about by updating Regulation 7 of the Building Regulations 2010. Where legislation can be used to make buildings safer at no extra cost to the taxpayer, surely it is wise to do so. Leaving regulations to secondary legislation can be a long drawn-out process.

With such high numbers of accidents on staircases, speed of implementation is essential. I look forward to my noble friend's comments.

5.55 pm

Baroness Young of Old Scone (Lab): My Lords, Grenfell was, and still is, a safety scandal and a tragedy. The subsequent wrangling as to who should be responsible for remedying fire safety in unsafe buildings is an even bigger tragedy and scandal. I commend the account of the noble Baroness, Lady Sanderson, who really brought home just how tragic the incident was. It is important that this Bill passes your Lordships' House, though with improvements, and I hope that Grenfell can be a watershed moment for wider safety in homes. Apart from high-profile tragedies, there are daily, small and quiet tragedies taking place in terms of building safety

[Baroness Young of Old Scone]
that could, through the simple amendment already suggested by the noble Baroness, Lady Eaton, be remedied in this Bill to save lives.

As the noble Baroness, Lady Eaton, said, there are clear statistics about the profile of falls on stairs which bear repetition. They claim the lives of more than 700 people in England every year and are the cause of 43,000 hospital admissions. It is estimated that the most up-to-date British standard on stair design, if adopted, would reduce falls in new homes by 60%. Even though this standard has been in place since 2010, it is only guidance and not a legal requirement. In most new homes, it is simply not happening. Housebuilders go in packs. Unless they are all mandated, none of them will stick their head above the parapet—I hope we are not talking about the parapet that the right reverend Prelate the mentioned.

This Bill could make implementation of the standard statutory and save not only lives but misery for many people. As the noble Baroness, Lady Eaton, said, there are precedents for making such standards statutory. The standard is tried and tested and was subject to extensive consultation at the time of its introduction more than 10 years ago. The Royal Society for the Prevention of Accidents—which I thank for its briefing—has now taken views extensively on making the standard statutory in new homes. It has spoken to homebuilders, private and social housing providers, local government and fire chiefs, and no one seems to be against such a move.

The risk from falls on stairs is increasing as the proportion of older people in the population grows—I am sure that this phenomenon is of interest to Members in your Lordships' House. In addition, it is a fascinating fact that, in all age groups, feet are getting bigger. Overstepping traditional stair tread sizes causes falls. Falls on stairs are problematic for fire evacuations, yet modest increases in the size of stair treads, the provision of handrails and slip-resistant measures have a disproportionately beneficial effect. The standard can be implemented in new homes at minimal or no cost. I hope that the Minister will grasp the opportunity to incorporate this affordable, simple and effective measure into the Bill to save lives and reduce life-changing injuries.

In the other place, the Minister deferred the issue to the building safety regulator. We should not have to wait for the regulator to be established, to gather evidence to identify emerging issues in the safety and performance of buildings, including staircases, and to make recommendations to Ministers, who will consider whether change to standards or guidance is needed. That seems to me a rather long and tortuous process, when the evidence of the effectiveness of the measures and the severity of the risk is already available. The standard has existed for 11 years. The guidance has not worked. This Bill provides the opportunity to tackle these hundreds of small, quiet tragedies that happen every year. I look forward to the Minister's response.

6 pm

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I declare my interest as set out in the register. I congratulate the Minister on his passionate introduction to this important Bill—a Bill that is the result of the terrible tragedy at Grenfell Tower. Dealing with the safety of high-rise buildings, whether they provide homes for families or offices for workers, is vital in a society that prides itself on looking after everyone, no matter their circumstances. The Bill is detailed and complex and, although it deals mainly with high-rise buildings, it has other sections dealing with local government building control.

Fire safety, regardless of cladding issues, has always been an aspect of dwellings that are likely to house occupants, whether this is an HMO or a block of flats designed for family units. Having spent some time in the past sitting on a fire authority, I wonder whether the capacity of the fire service has been considered in relation to the provisions of this Bill. As arson has decreased over the years—thank goodness—the emphasis of the fire service has shifted from mainly firefighting to mainly prevention, which is always better than cure.

There are a number of new regulators and enforcers in this Bill. There is a requirement for a principal accountable person to be specific to each building within scope. Those buildings out of scope will be dealt with by local building control. Will local authorities have sufficient capacity and financial resources to fulfil these new complex conditions? Each building will require a building assessment certificate. There will be duties to co-operate, communicate, co-ordinate and appoint competent people. I will return to this competence shortly. For each building, there are three gateways which must be completed, and certification given, before the building can be occupied. I welcome these stringent measures designed to ensure safety and save lives.

Much of the detail will come forward from the Secretary of State through secondary legislation. Trading standards will have its enforcement powers extended to meet the new regulatory requirements. I welcome this, but I wonder whether trading standards will also have sufficient resources to meet these new demands. This leads me on to whether there will be serious issues, including on construction-product testing, and the inspection, competence and skills of fire risk assessors. Ensuring a sufficient supply of fire-risk assessors, installers, building managers and responsible persons who are competent is key. How will the Government ensure that there are sufficient skilled and competent people to fulfil these vital roles?

There is the FE sector, which uses regulated qualifications to train the workforce, including vocational qualifications, NVQs. There are also many qualifications offered by several awarding organisations that can be mapped and amended to use as a platform for upskilling the workforce and to show competence. Are the right people in place to implement this? The supply of competent people to carry out these roles is vital.

The independent review into the testing of construction products has not yet been published. How can Parliament effectively scrutinise the Building Safety Bill without sight of this report? The House does not know what progress has been made to establish a national regulator for construction products to enforce new rules and ensure that the materials used to build homes are safe. Can the Minister say when is this likely to happen?

There are currently a small number of accredited certification bodies with cladding-testing sites in the UK. This means a limited number of furnaces available to test all combustible building and construction material and products, including fire doors. This has led to a delay in lead time for furnace testing. Will manufacturers, therefore, be able to ensure capacity to service the industry? Certification bodies at testing sites are managed by private sector companies, and the woodworking and joinery sector has serious reservations about the increasing price of testing, as demand increases and there is limited supply. This could lead to increasing prices as the call of shareholders becomes louder, measured against the quality of service and provision?

As I said earlier, fire safety is not just about cladding. On 17 June 2020, the results of the 2019 fire door inspection scheme were published. There were more than 100,000 inspections on more than 2,700 buildings. Of the buildings inspected, 37% had sleeping accommodation, 25% housed the elderly and 5% housed disabled people or people with cognitive needs. From the doors inspected, 76% were condemned as not fit for purpose, and 57% were deemed to need small-scale maintenance. The top reasons for condemning the doors were: excessive gaps around doors that had not been installed correctly; poorly adjusted door closers; poor smoke seals; and non-compatible expanding foam. Only 24% of doors inspected had third-party certification and were installed and maintained correctly.

It would seem that private sector involvement in the fire safety of buildings, especially doors, has led to lower standards, as feared by the FBU. Leaving cladding to one side, properly fitted, effective doors are essential to prevent the spread of fire and provide safe havens and methods of escape during a fire. It is necessary to have sufficient qualified, trained fire inspectors, ensuring that the internal issues around fire safety are dealt with effectively, especially where central staircases are in place, protected by working fire doors. I look forward to the Minister's response to this debate, and I fully support the Bill.

6.07 pm

Lord Etherton (CB): My Lords, I also warmly welcome this Bill and the Minister's introductory words. I am also very grateful to the right reverend Prelate the Bishop of Winchester for his thoughtful comments.

I support the call by many, including the Law Society, for the Government to identify sufficient funding to cover the full cost of cladding remediation to ensure that no leaseholder faces the prospect of picking up the bill themselves, regardless of block height. However, I am concentrating on a situation in which that has not yet happened: a situation that was alluded to by the noble Lord, Lord Young of Cookham. It is probably going to take years for this situation to be resolved, either by payment of compensation to have remediation work carried out or by compelling developers to carry out the remediation work themselves. In the meantime, there is an obviously liability that needs to be addressed by someone on whom it will fall.

In this period of time, when there is still work to be done, and at a cost, the relations between the landlord and the tenant are governed by the terms of their lease. In cases of leases of less than seven years, there is no problem, because the landlord cannot recover the costs of repair and maintenance from the tenant. In the case of leases of more than seven years, there will almost inevitably be obligations on the landlord to repair common parts, including the exterior, but expenses will be recoverable, in whole or in part, by way of a service charge payable by the tenant. That situation is, unless something else comes into play, as I said, likely to continue for a considerable period of time.

My comments are really directed to the position of the landlord in relation to these service charges, and against the background that many small, residential, tenanted blocks of flats are owned not by large, profitable property companies but by private individuals. They are not necessarily wealthy but may have wanted some additional income—people who have bought to let or invested their personal pension in a residential block. There may be a situation in which all or some of the tenants have bought the freehold, or indeed the common parts may be held by way of commonhold.

The issue of how these costs in relation to remediation are to be addressed in this interim period—if I can call it that—is found in Part 5 of the Bill. The effect of Part 5 is to provide for amendments to be made to the Landlord and Tenant Act 1985. I am concerned with the provisions that require the landlord to, among other things,

"take reasonable steps to ascertain whether monies may be obtained from a third party in connection with the undertaking of the remediation works and, if so, to obtain monies from the third party".

That is a mandatory requirement, not one dependent on discretion.

New Clause 20D(3), to be inserted into the 1985 Act, says:

"In subsection (2)(b) the reference to obtaining monies from a third party includes obtaining monies … pursuant to a claim made against … a developer … or … a person involved in carrying out works in relation to the building."

A further new subsection provides that if there is a "failure to comply" with that obligation,

"a tenant may make an application for an order that all or any of remediation costs are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by … the tenant".

Part 5 envisages that in this interim period the landlord is under a requirement to, among other things, take steps to see whether there is a claim and to pursue it. If the landlord—whether a he, a she or an it—fails to do so, there can be an application to the court for an order that the service charge is abated in consequence. As I see it, the difficulty with this is that it will cause the most enormous amount of dispute. Who is to say how much a landlord of the type I have described should properly spend on a claim?

Everybody is agreed—I certainly agree—that it would be quite wrong to expect leaseholders to undertake costly and complex litigation. This sort of dispute in relation to defective building work is among the most expensive, long-drawn-out and complex of all litigation—there is a special court designed to deal with it, the Technology and Construction Court.

Equally, it seems quite wrong for the landlords I have described—the private landlords, not the large companies—to have to involve themselves in exactly

[LORD ETHERTON]
the same type of litigation. Indeed, I expect that, were they to do so, the tenants might well say, "I'm not going to pay because you should never have spent so much money on it". You are left with a dilemma in which steps must be taken by the landlord in relation to potential third-party claims, but there is no indication at all of what would be reasonable. How much money should be spent? For how long should the claim just be advised upon? How long should it continue?

There is a provision that:

"The Secretary of State may issue guidance about the taking of steps under subsection (2),"

which I have referred to,

"and may revise or withdraw any issued guidance … proof of compliance with any applicable guidance may be relied on as tending to establish that there was no such failure."

I urge the Minister and the department to consider very carefully indeed whether it is appropriate to require all landlords to take those steps as a mandatory matter in view of all the costs and the absolutely inevitable dispute between tenants and landlords in relation to who is to bear those costs as reasonable service charge costs.

One solution might be to provide in the guidance, if not in the Bill, that the amount to be spent will be reasonable if it is limited to, let us say, a proportion of the annual rents. There must be some kind of qualification to prevent yet more disputes and more distress.

6.15 pm

Lord Naseby (Con): My Lords, it has been my privilege to be involved in public and private housing for over 50 years now. I was chairman of the housing committee in the London Borough of Islington from 1968 to 1971 and represented Northampton South—the main, central part of Northampton—on a fourth-generation development plan. I looked back on the Bills that have passed since I got into Parliament in February 1974 and can think of no Bill more important than the one before us. Having done that little bit of research, I am thankful that my noble friend on the Front Bench will take charge of it and see us through the challenging package ahead of us.

I want to pick out one or two areas that have not been spoken about this evening. Property protection is not a consideration of the fire safety building regulations. Currently, the fire safety building regulations are based on a consideration of life-saving only—and quite rightly so. The life-saving limitation means that the sole focus of the fire safety building design is the safe evacuation of all occupants in the event of a fire. While life safety is clearly paramount, the consequence of this approach is that it leads to the design of disposable buildings—not the most technical term in the world—which too often results in disproportionate damage when fire strikes. My understanding is that Her Majesty's Government have commissioned some research to assess the merits of a property protection consideration. I hope we can discuss that in Committee, and I look forward to taking part in that discussion.

Being at the ripe age of 85, I was going to say something about safer stairs, but my noble friend Lady Eaton covered it more than adequately. I back her up and will be happy to join her if she tables an amendment to enshrine British Standard 5395-1 in law. I will support her on that.

I came relatively fresh to this whole business; obviously, I was well aware of the tragedy of Grenfell. The more I look it, the more I think we now seem to be in slight danger of differentiating one type of leaseholder from another. In a Bill as comprehensive as this, that would not be a sensible move. Fundamentally, all leaseholders—whether owner-occupiers or individual landlords—should be treated equally. Not to do so is not only unfair but, I suspect, unnecessary. Buy-to-let landlords and owner-occupier leaseholders face the same problems with developers, through no fault of their own. We also find certain developments where there is a mixture, so in my judgment it would be invidious to deal with just one category rather than another.

On the Bill as it stands, the "golden thread" referred to by Judith Hackitt in her final report is very welcome. It seems so vital. I have had the privilege of working in the aviation industry and being an RAF pilot. Every plane that is made has a logbook and a life history of that plane. We see how vital that is, even in today's world with sophisticated engineering, given the tragedy of the recent Boeings that crashed. You need that history to know how to change and develop. I think it will be welcomed by the industry.

I also looked at the construction products and testing facilities. Some industries test at great length, but I am afraid it is very weak in this industry and we really need to toughen that up. The original problem at Grenfell probably lay with that cladding and its combustibility.

That is enough from me, other than just to make one point. The Bill needs to be implemented successfully. There needs to be a situation in which industry is fully prepared to operate under the new regulatory scheme and it is very important for industry to be provided with clarity and timescales. I know the Secretary of State feels very strongly about this but in my experience, as someone who has been in politics a long time, it is no good shouting at people; you have to work with them. You have to be a bit devious and find a way through the back door. I urge my noble friend to persuade his right honourable friend to do just that.

6.21 pm

Lord Foster of Bath (LD): My Lords, I begin by again offering my condolences to the friends and family of those who died in the tragic Grenfell Tower fire and remind the House that, like my noble friend, I too had a brief stint in DCLG as the Minister with responsibility for building regulations. Like all noble Lords who have spoken already, I am broadly supportive of the Bill so, with the limitations of time, I just want to raise three issues that I think should be included in the Bill and will help the Minister achieve his objective of making it the best possible Bill.

The Bill makes provision for the safety of people in or about buildings and the standard of buildings, so we should be considering the impact of poor-quality homes on the safety of the people who live in them, a point raised by the noble Lord, Lord Crisp, and by both right reverend Prelates. However, the Building Research Establishment's chief executive claims:

"Millions of individuals and families are living in unhealthy housing—a reality that is having a huge impact on the NHS."

According to one study, that costs the NHS in England alone £1.4 billion a year.

Even more worrying is the number of deaths caused by poor-quality homes. Based on the most recently available ONS figures for excess winter deaths, the fuel poverty charity National Energy Action has estimated that well over 8,500 people died from cold in the winter just two years ago, with the charity's CEO, Adam Scorer, commenting:

"Low incomes, high energy costs and poor heating and insulation all combined to leave them in conditions which were unfit to help them survive the cold weather."

Of course, given the significantly rising fuel bills that we now have, we could see even higher death rates in future years unless action is taken.

We still have over 13.5 million homes deemed below band C on the energy performance rating. Over 3 million such homes are occupied by families deemed fuel-poor—people who simply cannot afford to stay warm. Given that the impetus for the Bill was the tragic Grenfell fire, we should also recognise that the number of poorly insulated homes is rising as dangerous cladding, which provided heat insulation, is removed from other blocks, leading to newspaper headlines such as:

"The tower block where they put foil behind the radiators and wear dressing gowns all day to keep warm … this is life in Malus Court"

as that tower block is stripped of its cladding. A major energy insulation programme is urgently needed.

The Government have already set themselves two extremely welcome targets. First, all fuel-poor households should be brought up to EPC band C by 2030 and, secondly, all other households should be brought up to EPC band C by 2035. However, to give the industry the confidence it needs to invest, these targets should be enshrined in legislation. We have heard today, and had it confirmed half an hour ago in the Minister's letter to us all, that placing targets in law is right for the levelling-up programme, so I certainly believe it is right for the home energy efficiency target. I have a Private Member's Bill to this effect, but I would be very happy to hand it over to the Minister so that he can include it in this Bill, so that the Government's promises are turned into legal realities. I look forward to his reaction.

I turn to another issue. The disastrous fires at Grenfell Tower in 2017, Shepherd's Court in 2016 and Lakanal House in 2009 were all started by faulty electrical goods. Electrical Safety First has calculated that in the last five years there were 1,169 fires in high-rise blocks of flats attributed to faulty electrical domestic appliances. It has undertaken investigations into the safety of electrical products sold online, finding that 14 out of 15 electrical products randomly purchased online were unsafe. It found white goods that had been recalled by the manufacturer because they were potentially unsafe still being sold to consumers on online marketplaces. The Office for Product Safety and Standards reported that of 29 unsafe electrical products it had identified, 27 were listed for sale on online marketplaces.

The Government say in their UK product safety review that they are

"committed to ensuring that only safe products can be placed on the market now and in the future",

but it seems these fine words do not apply to the increasing number of electrical goods bought online. Electrical Safety First believes the current regulatory provisions are inadequate. The NAO refers to

"gaps in regulators' powers to regulate online marketplaces"

The PAC shares the same view, noting that

"under current legislation, online marketplaces are not responsible for the safety of products sold by third parties on their platforms."

Can the Minister explain why

"ensuring that only safe products can be placed on the market"

appears to apply to shopping on the high street but not to online marketplaces? Will he use the Bill to remedy this omission? At the same time, can he explain why, contrary to the promise in the social housing White Paper that standards in social housing should be the same as in private housing, a private landlord has to ensure the safety of electrical installations but a private residential owner or social landlord does not? Does he acknowledge these problems and, again, does he accept that the Bill could be used to solve them?

Finally, picking up on a point just raised by the noble Lord, Lord Naseby, and earlier by my noble friend Lady Brinton, I suggest the Bill should address the perverse situation under the building regulations whereby if all the occupants of a building escape safely from a fire but the building is totally destroyed, the outcome is considered a success. This "life safety limitation" provided by the regulations, which significantly influences the design of buildings, should be revised. After all, the outcomes of the Worcester Park and Beechmere care home fires in 2019 and the Bolton Cube fire in 2020 were surely not successes as 23 families, 150 residents and 200 students lost their homes and property.

This should be changed by making a proportionate property protection consideration part of the basis of the fire safety building regulations, requiring a legally enforceable but flexible system for fire safety building design, appropriately tailored for all types of building and delivered through guidance on the appropriate use of, for example, compartmentation and active fire suppression systems to restrict fire spread. I am grateful that the Minister has already started a review of that; I look forward to hearing what it says. While many details need clarification and there are omissions that need to be added to the Bill, this is an important Bill and I commend it.

6.29 pm

Baroness Bennett of Manor Castle (GP): My Lords, I believe I can make this a full cross-House welcome for the Bill—rather a rare occurrence. I join others in warmly welcoming the tone of the Minister's speech. With its regular repeats of the campaigners' hashtag "polluter pays" and the promise to take on board proposed amendments from your Lordships' House, it truly is a breath of fresh air. I can only congratulate the Minister and the Government.

I note how this shows that campaigning works. After uncountable long hours of effort from affected residents, petitioning, marching, letter-writing and social media campaigning, the people who, through no fault of their own, find themselves in unsafe, faulty, terrible standard buildings are today being heard in your

[Baroness Bennett of Manor Castle]
Lordships' House. I hope that they will get some sense of repayment from that. If only the residents of Grenfell—who before the terrible tragedy tried so hard to get officialdom to listen to their safety concerns—had been listened to, then 72 people might be alive today. There is a lesson there that I hope Ministers will take note off. Experts by experience are indeed experts about their lives and environment and need to be listened to.

As so many speeches thus far have demonstrated, there is much to do in improving the Bill, ensuring that it covers all the dangerous buildings that it should, particularly those occupied by vulnerable residents, as the noble Baroness, Lady Hayman of Ullock, highlighted, as well as the crucial issue of fire doors, as highlighted by the noble Lord, Lord Stunell, and many others. What could be more basic and surely solvable than that? As many other noble Lords have noted, a lot of the focus has been specifically on cladding, but there are so many other issues, and it is crucial that the Bill does not become overly focused on cladding at the cost of those other issues. Following on from the noble Lord, Lord Foster of Bath, who talked about fire suppression systems, there has often been an ideological resistance in the UK to sprinklers, but we really need to rethink that for many types of buildings. On the structure of the Bill, the idea that housebuilders will just hand over their ill-gotten gains to cover the damages at the Government's request is surely a fantasy. The Bill needs to demand full, complete recompense.

However, rather than running down the already well-travelled list of the ways in which this Bill needs to be improved, I will briefly take a broader view. I cannot help thinking that the Bill Office was perhaps demonstrating a better quality of engineering than many buildings in putting me after the noble Lord, Lord Foster, given the point he made about building safety more broadly and cold homes—I would add to that homes that overheat, given the increasing number of heatwaves that we will experience in the climate emergency—being a risk to life which should be covered in this Bill.

We have the poorest quality housing in western Europe—draughty, poorly insulated and expensively relying on gas for heating and cooking, which has, as we increasingly understand, significant health impacts as well. I foresee long conversations with the Bill Office about scope, but a home that kills its vulnerable resident with excessive heat, or that sickens and kills them through biting cold, is one that is deadly. That has to be a building safety issue. This is an issue that the Government seem astonishingly reluctant to tackle after their green homes grant fiasco. I note that the big announcement today on levelling up fails to address this issue—astonishingly, given how much of a factor it is in the terrible quality of life and the poverty in so many of the areas in this country that the scheme is supposed to address.

The Bill also needs to at least start to address the enormous systems disaster that is the building sector. I have no doubt at all that, this morning, inadequately trained workers were putting the finishing touches on buildings that are dangerous and that will be moved into by unsuspecting residents—or possibly suspecting residents, who still have no choice in the matter. The CEOs of our mass housebuilders should be forced to have the speech of the noble Lord, Lord Best, embedded on their phones, playing morning and night, to show them what society thinks of them and their companies. They have operated for the profit of the few at the cost of the rest of us, as in so much of our society. That financialisation has to be challenged, treated as morally unacceptable and made legally impossible. I acknowledge that this is something that we cannot fix just with this Bill, however much your Lordships' House improves it—and I am sure that we will improve it massively.

It is interesting to take a global perspective and see the other parts of the world with building safety crises similar to that in the UK. In the US, in Florida, there was the dramatic, awful, deadly Champlain Towers South collapse, which was recently explored in-depth by the *New York Times*. It demonstrated that in the building boom there in the 1980s, regulatory corners were not cut but rather bulldozed through, and now there is a legacy of incredibly dangerous buildings in an incredibly difficult and dangerous environment. In Australia, the University of New South Wales's City Futures Research Centre looked at 635 apartment buildings in Sydney. Its report—called *Cracks in the Compact City*, if noble Lords want to look it up—found that 42% of blocks had water problems, 26% had cracking problems and 17% had fire safety issues. One building, built just six years ago, was in danger of immediate collapse.

What ties together these countries? Neoliberal politics and, attached to that, a particular ideology that "cutting red tape" is how to set societies on a better way forward. It is important to highlight that because, as we are here in your Lordships' House today, we see the Government embracing the need for regulation, forced by tragic circumstances and dedicated campaigning. They are accepting the need for so-called red tape, which actually forms the rules that keep us and the environment safe.

At the same time, we have a press release from No. 10 that tells us that a

> "'Brexit Freedoms' Bill will be brought forward to end the special status of EU law and ensure that it can be more easily amended or removed".

It tells us there will be a

> "Major cross-government drive to cut £1 billion of red tape for businesses".

Applying that approach is what forces us to be here today, trying to rebuild essential systems of regulation that were slashed away in an orgy of deregulation. We can do much today to force the repair of walls, the replacement of fire doors and the renovation of dangerous balconies. Changing our economic and government system is a much bigger task that this Bill demonstrates is urgently needed.

6.37 pm

Baroness Featherstone (LD): My Lords, I too welcome the Bill. I say to the Minister opposite that if he takes on board all the wonderful knowledge, expertise and advice that has been offered to him today, he will have a sensational Bill.

Lord Khan of Burnley (Lab): It would be a very long one.

Baroness Featherstone (LD): That is okay, we have the time.

I want to illustrate a number of issues by bringing the actualité of one small block of 45 apartments in Guildford that was just completed in 2016. The block is not 18 metres tall, but it is facing a raft of costly issues to do with fire safety. The End our Cladding Scandal group highlighted these problems because, as it said,

"There may be more funding for cladding … but the burden of paying for repairs for other serious safety defects—lack of compartmentation, missing fire breaks, shoddy building work—has still not been lifted from leaseholder shoulders, whatever their building's height."

This Bill is such an opportunity to do the right thing.

Leaseholders and shared owners in this block have been aware since early on of several issues—snagging, I guess you would call them under normal circumstances—but then came the tragic and terrifying fire at Grenfell. Since then, there have been many concerns over the fire safety of these apartments. It is the case that Metis Homes wrote to confirm that the cladding material was not the dangerous type used on Grenfell. However, in late 2019, mortgage companies were requesting EWS1 forms—external wall system surveys—in order to grant loans against any property that had cladding. While the legal requirement was only for buildings over 18 metres high, which the block that we are talking about is not, none the less, those same mortgagees required EWS1 forms of the residents of this block. In June 2020, they were given a B2 rating—a fail—because although the cladding was fine, the fixing method and the insulation were not. Also noted were the lack of fire barriers—compartmentalisation—and the wooden balconies. It has been very difficult, nigh impossible, for residents to get clear, detailed information on any fire safety risks to the apartments. The builders, Metis, and John Lewis/Waitrose, which owns the retail space below the apartments, have all completed an invasive survey, but will not disclose the information to the residents. Can we not make access to such information mandatory?

The block of flats had its AGM last week. It is clear from the information provided to residents at that AGM that the fire safety issues for the apartments are extensive and the likely cost of remedial work is £5 million. The developer, Bowmer and Kirkland, is unwilling to accept liability, and therefore the cost of the works is likely to fall on the residents. However, as I said, the fire issues at the apartments relate to insulation and how it has been glued to the building, not the cladding; therefore, I do not believe they will be able to benefit from the remediation funds being made available as part of the Bill. Surely such defects should be covered, not just the cladding: a fault is a fault and danger is danger.

Residents were also informed this week that an enforcement notice has just been served by Surrey Fire and Rescue Service because not enough action has been taken by the management company and, as a result, alarms are going to be installed. Where is the cost to the management company for not taking appropriate action? Where is the forcing mechanism? There must be detriment to the management for lack of proper conduct.

To make matters worse—and this is a relatively small bill—the cheapest quote was £29,000, and that includes 2.5% of managers' costs, and the residents have been advised that the cost will be split between private and social housing residents, with the former paying £600 and the latter £1,200. The housing association has said that it will cover the £1,200 but has given no assurance that it will not recharge it back to the shared ownership residents via rent or service charges. As a result of the uneven split in charges, there is real concern about how the £5 million remedial bill will be split. Even if the £5 million were split equally between the 45 apartments, that is £104,000 each, which is a massive sum that is likely to be unaffordable for the leaseholders, especially shared-ownership leaseholders, who, on average, paid £200,000 for a 50% share of their apartment and often used all their savings to do so.

In the Commons debate on the Bill, the problem of leaseholders facing other fire defects was raised and the Government were questioned on whether they would extend legal protections afforded by the Bill to them as well. The Minister replied:

"We will work with parties across this House—across both Houses—and with interested parties to ensure that these issues are properly understood and debated."—[*Official Report*, Commons, 19/1/22; col. 381.]

I suggest to the Minister that understanding and debating are not enough: that will not change things. The Government must bring forward amendments—assuming they do not accept all of ours—attributing costs to those responsible. That has to be the way forward.

As far as I can tell, nothing in the Bill would address a plethora of other fire defects. More pertinently, some of these residents are terrified. They have already had a fire. How that fire started is unclear, but the automatic opening vents failed. It was only because a resident heard an alarm going off inside a neighbour's flat and went to investigate that more damage was not done and lives were not lost.

Those residents—and no doubt thousands experiencing the same things across the country—urgently need legal protections within the Bill extended so that they are not left to foot crippling bills that should be paid by those responsible for the defects. The potential economic and human cost of not providing this protection is huge and totally unacceptable.

6.43 pm

Baroness Grey-Thompson (CB): My Lords, I, too, welcome the Bill. I am not a housing expert, but I have been motivated to speak in this debate due to the significant number of disabled people who have been in touch to express their serious concerns. I declare my interests. I am president of the LGA and, when in London, I stay in a block of flats. This debate has made me strongly consider my personal safety.

Like others in your Lordships' Chamber, I have received many emails about the costs of remedial work and the impact on people's lives. It has become apparent that many disabled people have become marooned in their flats, which they, like others, bought in good faith. Disabled people spend an enormous amount of time thinking about accessing and egressing accommodation. They have to take account whether

[Baroness Grey-Thompson]

there is a fire lift or whether the lift gets turned off in an emergency. They have to think about evacuation procedures, such as whether it is safer to remain in their flat or to leave; whether there is a refuge or place of safety—they are quite different things—and whether to choose to use an evac chair or an evacuation sledge. That is a difficult choice, as the latter means, for me, giving up my only means of mobility. It is not stepping out of a pair of shoes.

I know from personal experience that finding accessible accommodation that is also affordable and vaguely near where you want to live is incredibly difficult, and you can then become tied into it. Any disabled resident living in a flat under the Regulatory Reform (Fire Safety) Order 2005 has been entitled to have a "suitable and sufficient" fire risk assessment, but one disabled resident who got in touch with me told me that the initial advice in case of emergency was to stay in their flat, but when they sought independent advice they were told to leave because, for the particular block of flats they lived in, if they were there for more than 20 minutes, their chance of survival was severely reduced.

A recent article in the *Disability News Service* stated that the Government had awarded to CS Todd Associates the contract to produce new fire safety guidance. The same consultants stated in 2011 that it was "usually unrealistic" to expect landlords to put in place arrangements for disabled people to evacuate blocks of flats in the case of an emergency. It also wrote the LGA guidance, which had to be withdrawn, and the British standard, which also had to be withdrawn.

I am also very concerned by comments that have been sent to me by a member of the Fire Safety Forum. I apologise if the comments have been taken slightly out of context, but they do need interrogating. A member of that forum wrote about "what fun" they would have

"watching Rudetube videos of the poor disabled people crawling on their hands and knees down smoke filled corridors when the common parts of the fire alarm system operates to tell them to get out in to the corridors because there is smoke in there. It all promotes equality, because the able bodied people will have to go on their hands and knees too when the smoke layer gets too low, rather than staying in the safety of their flats."

I am happy to share the links with the Minister and his team. The name alongside those comments is Colin Todd. Even if the word "unrealistic" has been misunderstood or poorly defined—because I recognise the complication of providing a plan in what can be difficult and changing circumstances—it feels as if disabled people are being told that they should not get in anyone else's way and do not have a chance of evacuating the building.

I understand that the Minister has responded to the request to look into this and said that the contract was awarded according to the correct procedure. I learned this afternoon that a letter has been sent on behalf of some disabled residents to the Home Office asking that the award of this contract be rescinded.

On researching for this debate, I was reminded that, many years ago, I was on a plane and—please bear with me—I was going to an athletics competition. Without anyone ever telling me, I always knew that the chance of me getting off a plane in an emergency was virtually zero. That is why I taught my daughter, from the point she could understand—probably about 18 months old—that if we were ever in that situation, she had to get herself off the plane. On this particular trip I had given up my day chair, was in my seat right at the back with other athletes, and a member of the cabin crew came to tell me that if the plane went down, not only was I not going to get off, but I should not get in other people's way. Furthermore, no one from the crew, whatever the circumstances, was going to come back and help me off. This is how disabled people feel in these circumstances.

I cannot begin to imagine what anyone went through on 14 June 2017, and I thank the noble Baroness, Lady Sanderson of Welton, for her incredibly moving speech. As reported by Disability Rights UK on 31 March 2021 on the evidence sessions:

"Fifteen of the 37 disabled residents"—

of Grenfell Tower—

"died in the fire that killed 72 people".

That means that 40% of the disabled people who lived in the tower died.

So I ask the Minister: can he understand why disabled people are so angry, and is it not reasonable that a disabled person should have a plan and have at least a chance of getting out of a building in an emergency? When will Her Majesty's Government be releasing the outcome of the consultation on personal emergency evacuation plans, which closed on the 19 July last year? Finally, will the Minister offer his reassurance that he will do everything possible to protect disabled people through this Bill as, at the moment, there is little reference to them?

6.49 pm

Baroness Jolly (LD): My Lords, I feel privileged to follow that speech but also somewhat at sea, so I will default to what I was going to say anyway.

The Government's Notes describe the Bill as:

"A Bill to make provision about the safety of people in or about buildings and the standard of buildings".

As we have heard, it was introduced to avoid life-changing horrors such as we witnessed with the Grenfell fire, causing the death of 72 residents. I would not want to diminish the significance of that disaster, but we ignore another issue that has been taking place in homes for years: falls on the stairs. They are a hidden killer, claiming the lives of 700 people in England every year, with a further 43,000 admitted to hospital. Staircase accidents do not make the news. While tragic disasters such as the Grenfell fire quite understandably horrify us when they occur, staircase falls happen so regularly that they go completely under the Government's radar. I should declare my interest as another member of the RoSPA presidential team.

For every hospital admission caused by a burn, there are 235 caused by a fall. That is why I am tabling an amendment to the Bill to ensure that staircases in our homes are built to the correct industry standard, BS 5395-1. It has existed since 2010. It has been thoroughly tested, evidenced and assessed by industry, and, as the Minister will confirm, it has been tested by government. However, having been introduced, it was never enshrined in law; it exists only as a standard and, as such, is just a recommendation.

RoSPA, which for over a century has led the way in taking an evidence-based approach to mitigating and managing risk, has consulted widely with house builders and industry bodies. The amendment that I will be tabling has the backing of the housing industry, including the Berkeley Group and Orbit Housing, because building firms recognise that the existing British Standard 5395-1 would make stairs safer at almost zero excess cost. It would also create a legal benchmark and a level playing field for everyone.

The difference between staircases built to the British Standard and most other staircases is minimal to the naked eye, but hugely significant. The British standard requires a larger surface area for the foot to tread and places a maximum steepness on the height of each stair. It also mandates a handrail on both sides. These simple changes reduce the risk of falling by an absolutely staggering 60%. The fact that such an industry standard exists but is not widely used is beyond belief. Countless lives would be saved and so much heartache avoided if we simply enshrined this simple standard in law. Very few amendments to Bills are as uncomplicated and straightforwardly beneficial as the one that I hope to table. It would save more lives than anything else in the Bill. I feel privileged to be part of an organisation that has saved thousands of lives over the last 100 years, and it is no exaggeration to say that this amendment could save thousands more.

Stair accidents are a silent killer because by their very nature they do not make headlines; they happen one at a time, usually to older people, and they are so commonplace that we take them for granted. Staircase deaths occur incrementally, so that only by viewing the bigger picture does the scale of the problem become clear. Making stairs safer by design is essential for ensuring that future generations do not die on the stairs at the alarming rate that our generation does. By outlawing the use of unsafe stairs in new builds, the problem would be steadily weaned out and a fresh page turned.

Given the focus on new builds, we think this would be straightforward; it would cost nothing extra but would save countless lives. I would be delighted if the Government supported the amendment that I am going to table, which calls for the Secretary of State to consult on regulations requiring staircases in new builds to comply with the British standard. If the Minister would like to meet me, I would be delighted to discuss this further.

6.54 pm

The Earl of Lytton (CB): My Lords, all these wonderful speeches are a hard act to follow. I declare that I am a fellow of the Royal Institution of Chartered Surveyors, a valuer and a patron of the Chartered Association of Building Engineers, so this is familiar territory. I very much welcome the Bill and the opportunity that it presents to discuss the issues. I thank the Minister for his comprehensive introduction, his engagement, his openness and above all his vigour. However, I believe the Bill needs improvement in scope and function.

First, a bit of advice. The Minister's letter of 20 January suggests that the department will investigate the governance of RICS. With respect, that ship has sailed. Following a report by Alison Levitt QC, the noble Lord, Lord Bichard, was asked by RICS last December to look into its governance and purposes—so, as ever, we should wait for that report.

The Government should be wary of criticising insurers, managers and valuers for overreaction to safety risks. Proportionality is based on good information and consistent technical advice, so the withdrawal of the consolidated advice note and its replacement with PAS9980 does not necessarily put the genie back in the bottle. Perceptions of risk pervade the property sector. Valuers reflect but cannot uninvent market sentiment. RICS sets standards for consistent analysis and reporting but cannot override the market, which is why, with full support from valuers and the wider industry, it retains the application of EWS1, including low-rise buildings with cladding, and has published a detailed justification.

Noble Lords may recall that a low-rise modern block of flats in Worcester Park was completely destroyed by fire in September 2019—unrelated to cladding, I understand, and, thankfully, nobody was injured. While human life is of first importance, instances of total loss of buildings influence insurance risk. Cladding apart, as we have heard, compartmentalisation, fire stopping and so on are issues regardless of building height, so it is self-evident that low rise does not of itself negate the risk to buildings and occupants, which is why the scope of the problems has grown.

The Bill will create the role of "accountable person". Dame Judith Hackitt's recommendation that there be a single individual is logical in administrative terms, but people are now nervous about taking on that responsibility. Residents' management companies are often populated by volunteers, few with knowledge of building construction and maintenance. Collective freehold ownership and commonhold do not resolve this issue, so management professionals are extremely concerned about this.

My next point is about accreditation, particularly of those who have reason to design, specify, supervise or carry out works to residential properties, most especially those forming part of larger buildings. That certainly needs to be tightened. As HSE is now to have oversight of responsible persons, it should be working with all professions and accreditation bodies to ensure consistent standards without excessive cost.

My main point, however, is about financing the remediation of dangerous cladding and other fundamental defects in construction. I welcome the Government's announcement to protect leaseholders from remediation costs. However, the details and scope are as yet unclear. Without a range of mechanisms for raising the necessary funds quickly, leaseholders may well continue to live in unsellable, risky and high-cost buildings.

The Government demand that industry steps up to the mark and voluntarily pays for its mistakes, but I remain concerned about reliance on that. Whatever welcome pledges of support are made, the Government need to ensure that they are bankable at an early date, so that any necessary fallback measures can be enacted in the Bill.

It is obvious that remediation of unsafe buildings must proceed with redoubled urgency, and unaffected buildings need to be signed off rapidly, so scaling up the inspection capacity is vital. Innocent leaseholders of all types—I make no exclusions—must be protected

[The Earl of Lytton]
from the costs of remedying critical construction defects. They have purchased in good faith on the basis of fitness for purpose, and I do not exclude social landlords.

We need to concentrate minds. Responsibility for serious defects in original construction or refurbishment rests squarely with those who designed, specified, constructed or supervised the works, or who made false claims for construction products. Those responsible should not be allowed to collectivise their liability through an overall levy and thus avoid individual blame, or the culture will simply persist. The taxpayer should not fund this, other than to ensure a legislative framework, robust administration and the early generation of remediation funds, and to provide a fallback where all else fails. Funds already allocated should be for bridging and safety-net purposes and not deplete other areas of departmental funding. Protracted legal proceedings and justice according to bank balance must be avoided. This should be overseen by an independent national entity, although the joint inspection team may have a role in assessing buildings and collecting evidence.

These are the principles behind what is known as the polluter pays amendment, which has been gathering momentum for some months. I pay tribute to the Minister for his engagement with this and to those whose persistence has developed the concept to an advanced stage. I hope the Government will adopt it. Polluter pays would create strict liability where it is found that buildings did not meet relevant standards at the time work was carried out. That liability would cover interim safety measures and insurance premium increases. Once defect and involvement are known, liabilities towards owners would be established on a joint and several basis, so blame would not need to be apportioned. It would provide a relatively simple appeals system via the First-tier Tribunal to prevent leaseholders facing an unequal contest with large corporations. These liabilities need to be taken on the chin: no tax breaks, side deals, concessions or sweeteners—just the same transparent rules for everybody.

Successive Governments may have failed to regulate adequately after the Building Act 1984, but that Act did not remove anything from the principles of the building regulations, the British Standards Institution, codes of practice and other documents. Since 1965 the requirements have been clear, but elements of the construction industry have simply evaded obligations and everyone knows it.

We cannot allow the responsibility of the neglectful few to burden society at large or damage the wider industry reputation, or we will never deal with the perverse incentives to cut corners long term. The human toll is acute and practical imperatives need high standards of corporate ethics, shouldering of responsibility to rebuild sectoral confidence and, above all, speed. This need has never been greater. I look forward to working with the Government to seize the opportunity for real and lasting change under the Bill for the relief of freeholders, for national credibility in construction and in the interests of justice.

7.02 pm

Baroness Fox of Buckley (Non-Afl): My Lords, it is a pleasure, though daunting, to follow the noble Earl, Lord Lytton, who has been a fount of knowledge on the issues in the Bill. It is a significant Bill, one which many have been waiting for, because its provisions will have far-reaching consequences for so many householders and the whole industry of building construction. It is also a very technical Bill, which I have struggled with and am unlikely to be able to contribute to in detail in Committee. However, for Second Reading, I thought my recent experience as a leaseholder might be useful.

In April 2020, in the depth of the first lockdown, there was a house fire in my council block of maisonettes in Haringey. The fire rapidly spread across the roof of the block and created a huge blaze. Thankfully, no one was hurt, but 17 fire engines and a lot of shaken up people later, the whole block had suffered major water damage. I and all the families were evacuated and we thought that would just be for a couple of months. In reality, the due date for return is this April, two years after the fire. This delay has had a devastating impact on many people, my neighbours more than me. The reason I am telling noble Lords this is not for sympathy but to note that sometimes it is not the safety of a building, or even the fire, that causes the suffering, but the officialdom that handles it. In this instance, the context was Covid restrictions and a safety-first approach that became an excuse for inexcusable inaction and inhumane indifference. An atmosphere of excessive precaution over the coronavirus led to a local government housing department seeming to seize up and consign leaseholders and tenants to being made effectively homeless for two years.

I tell this tale because one concern I have is that there are always dangers in responding to something as horrific or emotional as the Grenfell tragedy—a danger that we bend the stick and focus on zero risk and safety first above all other considerations. This can lead to unintended consequences, so now there is a scramble to require building owners to review a fire-risk assessment on all residential buildings. But this can be a time-consuming and expensive business. Most importantly, we need to ask whether it is proportionate or necessary on such a wide scale.

Southwark Council has recently announced extra-intrusive fire safety checks in hundreds of its high rises, involving not only surveys of outside buildings and communal areas but the council being able to

"enter homes with a camera."

It also

"may need to open up walls and ceilings."

This is not because of any defined risks; it seems to me that it is an exploratory "just in case" fishing exercise. While it is posed as putting tenants' safety first, we must ask whether this sort of action, which is massively disruptive for households, addresses the top safety threat to people in south London. The LGA has noted its concerns about these new financial burdens and the impact of such surveys and all the remediation that has to happen on social housing blocks. It warns that the burden for this

"will fall on council housing revenue accounts and housing associations, punishing social housing tenants and those on the waiting list."

The point is that the vast majority of homes in the UK are safe. The Minister himself noted in his very helpful letter that evidence suggests that only a small proportion of fires in high-risk buildings escape the room of

origin, and that there is a general downward trend in the number of deaths from fires in people's homes over the last two decades. Thank God for that. Overall, the evidence shows that risk is low across all accommodations and buildings. Partly, we need to consider whether blanket mandates affect priorities and resources.

The LGA queries whether height is an effective determinant of risk or too simplistic, sometimes neglecting other factors such as vulnerability of occupants. This catch-all also treats all buildings of over 18 metres as dangerous when they are not, forcing the use of

"scarce resource unnecessarily which could be deployed to life-saving effect elsewhere."

The mandate to investigate every building and for historical remediation to happen is explained as a way of reassuring residents and leaseholders that their homes are safe, rather than it being a necessity. I worry, however, that sometimes reassuring measures might inadvertently create a disproportionate sense of escalating fear among the public. I suggest, therefore, that we do not allow the horrors of Grenfell and the egregious negligence there to create the impression that we should all be fearful in our homes all the time. That is one reason that I am glad the Bill stresses throughout that the new building safety regime will be proportionate rather than overuse the precautionary principle.

The phrase "health and safety gone mad" might be a caricatured take on those who are cavalier about regulations and whether there are some destructive features of health and safety culture that can lead to, for example, a focus on myriad possible risks rather than clearly defined dangers, and a micromanagement of unknown risks, with everything seen as a potential hazard. This can lead to a defensive focus on compliance and the proliferation of petty regulations that mean we lose sight of the regulations that really matter. In turn, all this might lead to formalised procedures in which box-ticking can usurp human judgment and create an army of new box-ticking bureaucrats and a new industry of layers upon layers of regulators, with new roles that can be very confusing. Already, we can see that these new layers of bureaucracy are creating a skills crisis and a capacity problem.

Of course, I am keen to see more fire engineers, surveyors and so on, but with the new focus on competence and the upskilling of those presently involved in building construction, we must avoid also suggesting that there is widespread incompetence. I worry about inadvertently demonising the 2 million people involved in the construction industry. I urge noble Lords to avoid characterising the majority of contractors, designers, builders and architects as incompetent cowboys cutting corners. Is this name-calling not just another part of blame culture? It might be that I have a disproportionately high number in my family who work in the construction industry, but I do think we need a balance.

This industry is crucial to building the desperately needed new homes, hospitals and factories and to making the levelling-up agenda concrete. We do not want them all demoralised, stuck in endlessly continuing professional development seminars, tangled up in—yes—red tape and treated with suspicion as dodgy, hostile players by the public. We must resist the temptation, therefore, to demonise everybody in this game.

The Deputy Speaker (Lord Lexden) (Con): My Lords, the next speaker, the noble Baroness, Lady Harris of Richmond, is taking part remotely. I invite the noble Baroness to speak.

7.10 pm

Baroness Harris of Richmond (LD) [V]: My Lords, never again must we be faced with the shocking sight of a tower-block of flats being consumed by raging flames. We watched in horror those devastating scenes, and later listened to the harrowing stories from the survivors of that awful conflagration. Their stories are seared in my memory, and I echo many noble Lords' comments on this.

This Bill proposes welcome improvements to regulations, which should have been foreseen long ago and acted on. It is to our shame that it has taken the loss of the lives of 72 people for us to see what a terrible dereliction of duty the whole building establishment had allowed to occur over many years. We watch today, almost five years on from the appalling Grenfell tragedy, cladding that was known at the time to be lethal still having to be removed from high-rise buildings, because only now are the Government facing up to their responsibilities and offering help in the shape of a £5 billion fund for those living in the most vulnerable or, as the Bill puts it, higher-risk buildings.

It also proposes revising the regulatory framework for construction products, I therefore hope that we will never see the likes of Kingspan, which provided much of the insulation in the cladding on Grenfell Tower, being a chosen business. That insulation, Kooltherm K15, was known to be lethal and Kingspan's employees knew it too, as the inquiry found out. Another company, Celotex, used hidden, non-combustible boards to make sure that it got through safety checks—and so it goes on. We can only hope that the Bill will prevent rogue companies such as these getting any building contracts for this type of work ever again. Can the Minister assure me that the new building regulations will root out those contractors long before they can be allowed to build again?

The current Secretary of State for Levelling Up, Housing and Communities, the right honourable Michael Gove, has finally woken up to the fact that the Government's proposed loan scheme for all the remediation work was a complete non-starter, and stated that no householder living in their own flat would have to pay a penny to fix unsafe cladding. He gave the building industry, as we have heard from the Minister, two months to agree to a financial contribution scheme, but only for buildings between 11 and 18 metres in height. Has the industry agreed a suitable financial contribution? What is going to happen to the thousands of leaseholders of flats that are less than 11 metres high, who also have to face the cost of removing their unsafe cladding? Will the Government ensure that they, too, are compensated, after years of trying to get housing associations and private landlords of these properties to take responsibility for the removal of the cladding? Those tenants have for far too long been ignored and vilified for asking too many questions and making a fuss.

Reading the Bill, it seems to me that there are large number of scrutineers of future building projects. I worry that it could be a case of too many cooks being

[Baroness Harris of Richmond]
able to mask rogue elements of the building trade, allowing them to slip through the regulatory net. As my noble friend Lord Shipley has stated, there are the Building Safety Regulator, registered building inspectors, the Building Regulations Advisory Committee, the Industry Competence Committee, authorised officers, the Health and Safety Executive, duty holders, principal accountable persons—who have to appoint building safety managers—all before we get to the Golden Thread through the gateway regime, which, as I understand it, is supposed to ensure compliance throughout the whole of a new build.

Clauses 80 to 84 explain this, and continuing clauses set out the responsibilities of the accountable persons. Those clauses are interesting to me, and I am concerned to know how they will work in practice. A great deal of responsibility will rest on the shoulders of these people, and I worry that this position could be used as a scapegoat in any future structural failings of a building. Clauses 100 to 103 set this out.

I share the concerns expressed by the Royal Institute of Chartered Surveyors that the Bill may create a two-tier system of regulation—especially, as I mentioned earlier, given that no provision has yet been made for the risks in low-rise buildings. It goes on to emphasise that the industry does not yet have qualified individuals to undertake the onerous duties of the accountable person. What is the Government's response to that? Where are they going to get those highly skilled people? The Chartered Institute of Building was equally concerned about these issues, which it believes will be crucial to the practical implementation of the Bill.

Overall, we must welcome this Bill as another step in the long journey of holding our building regulators and suppliers to account for past catastrophic failures, but it is in the implementation of all its proposals that we will be watching carefully and assessing whether this Government keep their word and ensure that the awful sight of the Grenfell Tower in flames will never happen again.

7.16 pm

Lord Thurlow (CB): My Lords, I declare conflicts of interest in owning two buy-to-let flats in London and as a member of the RICS for some 30 years. This Bill is long-awaited; Grenfell is nearly five years ago, and the Bill is long overdue. It sets out clear improvements in the system going forward, and I am keen to support it in principle, but I believe that it contains inadequate protections for existing leaseholders, particularly occupiers of existing older buildings, and certainly including those below the 18-metre height restriction or seven-storey levels.

Other noble Lords have talked about this, too. The principal thrust of the Bill is, of course, to protect lives, particularly those of residents. Yet looking at the Bill, I question whether it is not more building focused than people focused. Of course, one leads to the other, but the focus should, I think, be on the people, and that will manifest itself in different ways. One example is in costs of occupation, which are going to rise as a result, through additional service charge recoveries. It is wrong to expect tenants to pay 100% of the annual costs anticipated by the Bill. Another example is access to redress for leaseholders; the process sounds straightforward but, as we have just heard, for many it will be a formidable mountain to climb, with layers of bureaucratic overlaps, probably requiring costs that many can ill afford. I hope that the Minister will confirm that this will not be the case. I was much encouraged by his remarks at the beginning of this debate.

For those living in older buildings with a heightened fire risk, particularly since Grenfell, the costs have sometimes been crippling. As we have heard, there have been huge remediation costs, soaring insurance costs, waking watch Bills and the mental health consequences for many, to say nothing of being bled dry financially, with no prospect of selling at value. We have all heard of examples. The Minister refers to protecting leaseholders, but will it be comprehensive? If this Bill sets out to protect people, leaseholders should be at the front of the queue.

I would like to touch on building ownership. Excluding social housing, existing private residential blocks may belong to City institutions or public property companies, transparent organisations. Many will belong to private property companies; some belong to private individuals—and this number is likely to be much higher than most people realise. Many are discrete operators attempting to remain below the radar and anonymous. They can camouflage ownership, probably further protected by managing agents to whom the owners themselves will sometimes be very closely linked. This will confuse and frustrate leaseholders, who will easily give up their quest for redress. I know there are provisions for building safety managers, accountable persons and regulators, but without transparent ownership, I do not understand how redress can be effectively enforced in all cases. I think there should be transparent ownership details available, identifying owners or shareholders rather than corporate vehicles often registered offshore, as the noble Lord, Lord Young of Cookham, referred to in his speech.

Let us consider why investors own these assets. They are investments; they expect to receive rents, net of all costs. Costs are usually redirected to residents via service charges. As I mentioned, the Bill is likely to increase those annual charges to occupiers. I suggest these costs should be paid by the building owners, or at least be shared. It is not enough to assume investors may protect their investments by deflecting unexpected costs on to their residents to protect returns: their assets are, after all, being improved. I repeat: I believe the future costs set out in the Bill should be more equitably shared.

For occupiers, rights of redress are critical. I have mentioned some of the practical difficulties, but the Hackitt report stated that this Bill should reassert the rights of residents. It will not be easy nor cost-free, as items creep into service charge bills. The costs of fire safety works could be shared between freeholders and leaseholders, though there is a strong case to exempt leaseholders altogether. One normal risk of property ownership is things going wrong. Every property owner with an old house or a flat in an old building knows that it goes with the territory. Insurance is available and is the owner's responsibility. This should not be a tenant risk; however, it usually is.

What of older buildings which fall short on safety grounds, those below 18 metres or the seven-storey threshold? I join many others in referring to this sector—in particular the noble Baroness, Lady Harris, just now. These deserve more attention, particularly to protect leaseholders from risks and costs. I would not want to live in an old building on the sixth floor, just below the 18-metre threshold, which did not make the Bill's cut, and be trapped up there, six storeys up. If there is to be a height limit, there is a strong case for two or three floors. What then of vulnerable people? We have heard about this too. If this Bill really wants to put the interests of residents first, these out-of-scope buildings should be included but treated differently as circumstances and assessors consider appropriate. I hope the Minister will reconsider the scope criteria.

In summary, I do not have time to add to the comments on defective materials and the laudable "polluter pays" principle, which I support. It is excellent to note that leaseholders are indeed to be protected. The more effective regulatory framework for testing and approving building products is overdue. Nor do I have time to discuss offences set out under the Bill, but I think penalties should be high. I look forward to the forthcoming government amendments, and I hope protection for leaseholders will run robustly as a central tenet throughout.

7.23 pm

Lord Blencathra (Con): My Lords, first, I declare a personal interest as a leaseholder of a flat near here, which will qualify for some fire remedial works and was built by one of the big four, who collectively raked in almost £4 billion in 2020. I give a warm welcome to the Bill, particularly the creation of a regulator. However, of particular interest to me are the parts on high-risk buildings and other safety measures. While I welcome these, I believe that we now have an opportunity to go much further.

When the Bill left the Commons, we did not have my right honourable friend the excellent Michael Gove as Secretary of State, so the Bill does only half of what it needs to do. Then on 10 January we had the superb Statement from the SoS, repeated here by my noble friend Lord Greenhalgh, setting out all the actions the Government propose to take to really sort out the cladding problem and protect leaseholders. We all owe a deep debt of gratitude to the Minister: I know that he has been arguing for all the things that were in that Statement and he had the good fortune to get a new Secretary of State who agreed with him and had the guts to go for it. I congratulate him on his rather feisty introduction of the Bill today. I also congratulate the noble Lord, Lord Best, on his outstandingly succinct description of today's construction industry—what the *Spectator* last year called the house mafia.

What did the Secretary of State say on 10 January? He set out the range of actions and initiatives he wanted to take. These were in two broad categories, which could be classed as leaseholder protection measures and "polluter pays" measures. He said in the Statement repeated by my noble friend that he would take action against those who mis-sold dangerous cladding and insulation and those who profited from the consequences of Grenfell. He would review government schemes and programmes to ensure there were commercial consequences for any company responsible for this crisis and refusing to help fix it. He would take powers to exclude any company from government schemes and impose proportionate risk assessments on organisations such as the RICS and powers to review the operation of the RICS.

He would set a higher expectation that developers must fix their own buildings, and possibly issue instructions to insurance companies. There would be statutory protection for leaseholders from certain building costs and protection of leaseholders from eviction and forfeiture. He would introduce a residential property development tax and a building safety levy, and there would be new collaborative procurement guidance on removing the incentives for industry to cut corners and to help stop the prioritisation of cost over value, and possibly put that on a statutory footing. That is what the Secretary of State said he wanted to do. I am absolutely certain that, if my right honourable friend Michael Gove had been in post one year ago, most of those provisions would be in the Bill today, but now we have the chance to add them.

I do not intend, in Committee, to add just a few new clauses; rather, I have asked the Public Bill Office to draft two whole new Parts to add at the start of the Bill. One Part would be on leaseholder protection, with clauses setting out that no leaseholder will have to pay for any fire-related remedial work. I want leaseholder protection to be first and foremost in the Bill as a new Part 1, or a new Part 2 at the very latest. I want clauses defining what fire-related remedial work is, and what buildings it should apply to; clauses prohibiting freeholders and leaseholders from gold-plating remedial works to add to the value of their property portfolio. For example, if wooden decking balconies have to be replaced, leaseholders must be protected from freeholders replacing them with, say, bronze-covered aluminium or Italian marble flooring, making leaseholders pay.

Then I need clauses setting out alternatives to cladding replacement for low-risk buildings and permitting the Secretary of State to prepare new risk assessments. These could replace those compiled by the Royal Institution of Chartered Surveyors—and I want to put in a legal power to review its modus operandi, since it has not exactly covered itself in glory over the past three years, I submit to the noble Lords behind me. Finally, in this Part, I want a clause creating a scheme similar to the Flood Re agreement between the Government and insurers to keep down the cost of flood insurance, but in this case covering fire insurance.

The other new Part will contain "polluter pays" provisions or schemes for fire hazard remedial works. In it, I want to have clauses setting out that developers will be primarily responsible for the costs of all remedial works. Where they have created special purpose vehicles which they have now wound up, then the holding company will be liable. All contractors who supplied materials which were not fit for purpose, whether or not approved at the time, will be liable. Where we cannot find the developer or their special purpose vehicle, or their holding company, or their contractor, or their supplier, then the whole industry should be liable and pay through a levy system that will raise a

[LORD BLENCATHRA]
lot more than £5 billion. Clause 57 does not go far enough, since it applies to future bills and not to bad ones of the past.

Now, clearly, my proposals—if I lay them before the House—will impact on current company law, laws of limitation, the Building Act and a host of other Acts. There may be ECHR concerns and concerns about retrospectivity. But we have never had a problem such as this before, where companies have made billions from flawed construction in the past. I submit that it is therefore right that we reach back in time to make them pay to remedy it now. They did it, not the leaseholders. Therefore, those parts of the Bill will need to be more skeletal than I would have approved of last week when I was still the chair of the Delegated Powers Committee.

Noble Lords: Oh!

Lord Blencathra (Con): Ahem. We will also need some Henry VIII clauses to make those changes to existing Acts of Parliament. It is a tall order, but in the time we have, we can do it. We cannot at this stage set out all the details in new clauses since we do not know exactly what powers and provisions we will need. However, we can draft sufficiently wide regulatory powers to deal with all eventualities. Naturally, I want these to take the affirmative procedure so that there is some element of proper parliamentary scrutiny.

Simply look at Clause 57. Five out of the eight new subsections begin with the words "regulations may" or similar, so the Government have already taken wide regulatory powers. In any case, no matter when we take forward a primary Act—in this Bill, next year or in two years' time—we will still need extensive regulation-making powers for all the details. I say let us do it now so that all those who have raked in billions from property deals see that this Government and this Parliament mean business—I have almost finished.

I know that my amendments will have dozens of technical flaws and will need beefing up and filling out. But that is what government lawyers and the Office of the Parliamentary Counsel are for. All I want to do is set the parameters of the action we need to take—and we need to take that action because leaseholders, as the innocent parties, demand nothing less. We need to take it so that all developers and contractors see this sword of Damocles hanging over their heads, because that is the only way they will ever pay up.

I look forward to debating this further in Committee and to getting support from your Lordships, if not for the exact details then at least for the concept of my amendments. In the meantime, I warmly support the Bill.

7.31 pm

Lord Jordan (Lab): My Lords, this Bill was born out of a disaster—one that saw many people killed and injured in their own homes. The Bill, which we all support, will enact measures to prevent that happening again. Tonight, however, we have heard that many more needless deaths and injuries are still happening now in homes, which the Bill could and should take steps to prevent.

I too declare my interest as a vice-president of RoSPA, which is leading a campaign to significantly reduce these injuries and deaths occurring in homes across the country by making staircases safer. The campaign's objective has earned itself a strong base of cross-party support in the other place, and we are now hoping that your Lordships will demonstrate the same unity and bring about the passing of an amendment embedding safe stairs in law.

Your Lordships have heard that the amendment will simply ask the Secretary of State to consult on regulations requiring staircases in all new-build properties to comply with the latest industry standard for stairs. This would not be a case of requiring existing properties to replace staircases, nor would it be a case of inventing a new stair safety specification from scratch. We have an existing construction industry standard that is already proven to be safer and is approved by industry. All we ask is that this standard is legally mandated for new-build homes, putting safety into building design.

We will not find a better or easier opportunity to make houses in this country safer at such a minimal cost. We should not turn it down. Nor should we accept the Government's excuse that primary legislation is not the right place for this amendment. There is ample precedent for mandating standards in this way. An indefensible argument must not stand in the way of saving lives.

The statistics around staircase accidents, including the human and economic costs, are horrifying and unacceptable. We all take it for granted that falls on stairs will happen, but do we really take on board what that means when we hear that every year 700 people lose their lives and thousands more continue to go through pain, suffering and loss of independence because of bone-shattering accidents? We must not forget that the homes we build today must still be standing long after we are gone. It is certain that, if we do not make stairs safer now, lives will be lost. However, an amendment to the Bill that requires a safer standard for stairs in newly built houses will leave a life-saving legacy for future generations.

7.36 pm

Baroness Pinnock (LD): My Lords, this has been an excellent debate on a Bill that is widely supported across the House. I remind noble Lords of my interests as a member of Kirklees Council and as a vice-president of the Local Government Association.

First, a question: why is it that regulation is seen by some as an unnecessary obstacle to business until a tragedy occurs? It has taken, as I think all noble Lords have said, the deaths of 72 people at Grenfell Tower nearly five years ago for building safety to be taken seriously once more. To respect the memory of the 72 and all those whose lives have been scarred forever by that dreadful fire, the Bill must provide the deep-seated reforms that are essential to prevent a repeat of Grenfell. Secondly, the Bill absolutely must ensure that existing leaseholders and tenants do not pay for any of the remediation work, such as replacing flammable cladding and rectifying construction failures such as the failure to include fire breaks.

Noble Lords from across the House have rightly welcomed the Bill, which will make sure that legislation and regulation reflect modern construction methods and materials. It is, as my noble friend Lord Stunell

described, "a once in a lifetime opportunity to regulate what is currently a dysfunctional industry". Unfortunately, the Government have failed to grab that opportunity fully and define new standards of housing construction and accountability for those standards for all new housing. As my noble friends Lord Foster and Lord Stunell pointed out, here was an opportunity to set new standards for energy insulation, expectations for zero-carbon homes and heightened fire safety features; and for a step-change improvement in regulation, inspection, and enforcement. However, the Government have chosen to focus on a narrow element of the housing construction industry: that of so-called higher-risk buildings. That is truly a missed opportunity.

On the proposals in the Bill, Dame Judith Hackitt's 2018 report, *Building a Safer Future*—which I have read—proposed a systemic reform of building regulation, and the Bill is incorporating into legislation the safety system that she laid out. The framework, which creates a hierarchy of responsibilities, is a considerable improvement on the existing position. The new building safety regulator will be embedded within the Health and Safety Executive, which seems appropriate and positive. Duty-holders, responsible for different aspects of design and construction, will be accountable to the new regulator. What is not clear are the skills and expertise that are required, as my noble friend Lord Shipley said, and whether these already exist and need to be codified or whether there will be delays in implementation because new training programmes will be necessary.

Once a higher-risk building is occupied, a whole new, and costly, regime is proposed. Leaseholders already pay considerable sums for a managing agent or equivalent posts, which are not regulated—anyone can set up as a managing agent, with no experience of property management. The Bill proposes the role of "accountable person". Does the Minister anticipate that managing agents will take on that role? As the accountable person will be responsible for appointing a building safety manager, can the Minister explain what qualifications this postholder will have, the anticipated additional cost to leaseholders and the accountability of this postholder to those required to pay for the work?

I was speaking to leaseholders only yesterday. One said to me that she already pays a service charge of £6,000 a year, and that it is estimated she will have to pay a further £2,000 on top of that for a building safety manager. There surely has to be a better way forward than piling costs on to leaseholders—I think it was the noble Lord, Lord Thurlow, who referred to that. Can the Minister explain whether these posts will be expected to report to the building safety regulator?

What powers will residents have in this new regime, either as tenants or leaseholders? I appreciate that there will be a new ability for tenants to refer complaints straight to the ombudsman, but what rights will leaseholders have to ensure that they are getting value for money from these new posts? Will all inspection reports be made available to all residents? Will they have a right to challenge overcharging for these new posts and for any repairs that are deemed necessary? There is the opportunity in this Bill to strengthen the rights of leaseholders, one for which I am sure we will be placing amendments in Committee because, unfortunately, it is an opportunity that is being missed at the moment.

My noble friends Lord Stunell and Lady Brinton rightly pointed to the disaster that is the existing building inspection system. At the heart of this particular problem was the decision, 20-plus years ago, to enable developers to appoint their own building inspectors, under contract to that company and therefore hardly independent. Perhaps some of the construction failings exposed post-Grenfell are a consequence. The part-privatisation of building control also denuded local government of building inspectors. That, combined with the very large cuts to local government funding, meant fewer inspectors and therefore a less tightly regulated system for construction. Light-touch regulation can have dreadful consequences in this sphere.

Many noble Lords, including my noble friend Lady Harris, spoke about construction materials, and rightly so. The Grenfell Tower Inquiry is exposing some of the irregularities, or indeed worse, by manufacturers and suppliers. A single clause, Clause 128, attempts to remedy this. However, it would be helpful if the Minister could explain the system for testing new products. My noble friend Lady Bakewell of Hardington Mandeville highlighted issues around fire doors in this regard.

I would like to know from the Minister what role the British Research Establishment and the British Board of Agrément will have in testing and recommending building products. They are not mentioned in the Bill. It will be good to hear the Minister's response to that, and to the very interesting suggestion from the noble Lord, Lord Crisp, of taking a wider view of safety. I look forward to discussing that proposal further. This falls in line with many noble Lords who have raised the issue of safe staircases—that would come into that general sphere. There is room, within the Bill, to make amendments to that effect.

Last of all these issues, but in no way least, is the failure so far of the Government to make practical and realistic responses to the cladding and remediation crisis. Just a few weeks ago, the Secretary of State made a bold announcement, in which he said that:

> "Government must take their share of responsibility",—[*Official Report*, Commons, 10/1/22; col. 283]

that manufacturers have shown "insufficient contrition", that those who profited will pay the price, and that leaseholders are "blameless".

The aim is to extract £4 billion from the companies that developed the buildings in order to pay for the removal of dangerous cladding from blocks between 11 and 18 metres. It is absolutely based on the polluter pays principle. I congratulate those leaseholders who have campaigned tirelessly for four years to get to the position we have today, where everyone across this House has confirmed they are in support of that principle. However, achieving that aim looks increasingly difficult. The noble Lord, Young of Cookham, emphasised how difficult it is going to be. I read in the media, only last week, I think, that developers are already consulting their legal advisers, which undoubtedly means they do not wish to pay and will find a means not to. What then? The Government appear rightly to have turned to materials companies to also contribute. Can the

[Baroness Pinnock]
Minister tell the House the total sum that has so far been contributed by both developers and materials companies?

There is an urgent need to know, as invoices for remediation are with leaseholders now. The deadline for payment is this coming April, for many of them, and housing experts expect numerous defaults unless effective action is taken by the Government. Will the Minister let the House know when action will be taken to fulfil the promise made by the Government—which I applaud—that leaseholders will not have to pay a penny piece towards remediation? They need to know; we need to know.

As the Minister well knows, leaseholders face not just the costs of the removal of unsafe cladding—ACM cladding and other types that are flammable as well—but of construction failings, such as the lack of fire breaks. The Government have stated that leaseholders will not have to pay. We need to see essential steps taken to ensure they are not burdened with these totally unaffordable bills. Until we know, this will not do. Leaseholders have done everything right and nothing wrong; they are completely innocent victims in this building safety scandal.

This is a complex Bill with positive intent. Opportunities for more comprehensive reform have been missed and some elements will need to be amended to fulfil the aims that we all have to improve the Bill and, in the words of the Hackitt report, build a safer future. I look forward to working with the Minister and colleagues from across the House to make what is already a good Bill a much better one, and to make sure that leaseholders do not pay a penny towards remediation costs.

7.49 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, it is not normal for the Opposition Chief Whip to respond to a Second Reading debate, but Members will be aware that I have been involved with these issues for some considerable time. I have also missed the noble Lord, Lord Greenhalgh, very much, so I thought that with him leading on this Bill and it being such an important issue, I would have to make an appearance. Maybe I will be part of the Chief Whips Awkward Squad from now on. I am not sure that the noble Lord has missed me, or my amendments, as much. I have my Oral Question on Monday on issues very pertinent to this Bill, as he knows.

First, I need to make a number of declarations of interest to the House. I am a vice-president of the Local Government Association, a non-executive director of MHS Homes Ltd and chair of the Heart of Medway Housing Association. I also own a home on a leasehold basis.

Secondly, I pay tribute to the right reverend Prelate the Bishop of Winchester for his service to the House. He has been a Member of this House for 10 years, and we have benefited from his wise counsel. I note his interests in Africa and education, and I say to the right reverend Prelate that we enjoyed his wonderful valedictory speech very much and congratulate him on it. We will miss him very much, and we wish him well in his retirement.

Thirdly, can I say how much I welcome the Bill before us? It does much of what needs to be done to improve building safety and the building safety regime that needs to be in place to protect people and give them the reassurance they need to live their lives without feeling constant worry, and without being faced with bills they cannot afford for matters they are not responsible for causing or creating.

For too long, elements of the building industry have had a poor attitude to safety, in terms of construction, materials and the verification processes to ensure safety and compliance. I see this Bill very much as another step along the way to driving that culture out. It is not and can never be acceptable that this culture exists. The tragedy in all this is that the catalyst for change was the fire at Grenfell Tower on 14 June 2017, with the loss of 72 lives, and the campaign by Grenfell United following that tragedy. Its campaign goes on, and there will be more to be done when we get the report of the second phase of the Grenfell Tower inquiry.

I very much agree with the comments of the noble Baroness, Lady Sanderson of Welton, about buck-passing and, importantly, the attitudes she highlighted when she read out some of the comments in those emails. It is utterly disgraceful, and that is the culture that needs to be dealt with. The arrogance of the former leadership of Kensington and Chelsea Council needs to be called out as well.

But, of course, there were heroes. There were heroes on the night: the firefighters who went into the burning building; other emergency responders; the contractor who went in and turned the gas off; the local community that responded; the officials from both local and central government who supported the community; and, of course, the community itself and Grenfell United. They all showed people working together selflessly for the benefit of others. They are the best examples of humanity—but we have also seen the worst examples as well.

I have to say, as I have many times before, that the Prime Minister's constant attacks on the FBU irritate me. Let us be absolutely clear: the FBU—the firefighters' union—and the firefighters, the heroes, are the same people. We cannot attack the union and then say what great people the firefighters are. That does annoy me. I have called on him many times before to apologise, and I expect that I will be waiting a long time for that to come along, but I want to put that on record.

As we have heard, many of the proposals contained in the Bill build on the review led by Dame Judith Hackitt and the consultation that followed, which had submissions from the Local Government Association, the National Housing Federation and others. I join with the right reverend Prelate the Bishop of Manchester in his tribute to the Manchester Cladiators and the other "cladiator" groups around the country. The justness of their campaign has been clear for all to see. They are not going to go away; there is more to be done. Their cause is just, and we support them very much.

I have criticised the Government from the Dispatch Box many times on this issue, often about the speed of all this. We have got here, finally, with the Bill, and that is great. But the Bill is not sufficient. Dame Judith's report was published in May 2018, nearly four years ago. Looking at the issues in the Bill, you could

never accuse the Government of acting in haste. I note that there was a draft Bill in the other place, and important work has been carried out, but we now need to quickly get on, get the Bill through this House and improve things.

Having said that, as the Official Opposition, we certainly intend to table several amendments to seek to challenge the assumptions in the Bill and to make improvements to it where we think it necessary, and we will divide the House if we must. I am aware that the Government made several commitments in the other place to bring forward amendments to address issues raised there. We look forward to having early sight of these amendments and to having constructive discussions around them and the way forward.

Looking at the Bill itself, I welcome the proposal for the establishment of the building safety regulator and the proposal that the Health and Safety Executive should be the regulator. I ask the noble Lord, Lord Greenhalgh, to set out whether he himself is satisfied that the funding mechanism is adequate, proportionate and financially robust enough to enable the building safety regulator, local authorities and fire and rescue services to go about their important roles efficiently and effectively and to deliver on the promises and commitments made. I fully support the duty to co-operate that will exist for local authorities and fire and rescue services, but, as I have said, we need to be confident that the funding streams and mechanisms are fit for purpose to deliver what is required.

I am also clear that the Bill cannot be seen as separate from the Fire Safety Act. I ask the noble Lord in responding to the debate to address the issue of the responsible person under the fire safety order, the accountable person under the Building Safety Bill, and how that comes together. We cannot create a situation which will cause more difficulty and confusion. We must have clarity here in terms of roles, responsibilities, obligations and what can and cannot be charged for.

I welcome the changes to the fire safety order, which introduces a duty for a fire risk assessment to be completed by competent professionals. As my noble friend Lady Hayman of Ullock said, the issue of height in determining risk has been questioned here today, and many noble Lords across the House have accepted the point that many buildings under 18 metres equally have issues and need to be classified as high risk. I hope that the Government can come forward and publish the findings of their report on the recent survey on buildings between 11 metres and 18 metres, so that we can see the points they looked at there.

Issues such as methods of construction, the number of protected means of escape and the number of vulnerable residents in the building have all been raised by other noble Lords, and we need to take them into account. I very much believe that the definition of higher-risk buildings needs to be broadened to cover the points that I and others have raised. Can the noble Lord, Lord Greenhalgh, also comment on those matters in his reply to the debate?

I am conscious that there have been so many questions that the noble Lord cannot respond to them all, so maybe he could take a leaf out of the book of the noble Lord, Lord Bourne of Aberystwyth, and write us a round-robin letter covering all the points. That was one of the great things that the noble Lord always did, so maybe the noble Lord, Lord Greenhalgh, could do that to cover all the points raised to make sure that nothing slips by, as it were.

We have talked many times over the past four years about the problems that leaseholders living in buildings affected by either cladding concerns or other building safety issues have faced. While the Government have moved on the issue of cladding—I thank the noble Lord very much for his own work on that—clearly lots more work needs to be done and other issues need to be addressed, and I am sure they will be raised in the course of the Bill going through this House.

I have a few questions for the Government. How will they ensure that industry plays its part and pays for the fund it has been asked to pay for? How will the Government continue to play their part and pay the funds needed to end the crisis while ensuring both that funding is affordable and that social housing supply is protected? It is really important that money is not taken from the social housing fund to fund this work. How can leaseholders who have already paid remediation costs get their money back? That is a really important issue for the leaseholders.

I agree with the noble Lord, Lord Stunell. The Minister's words and the action for leaseholders are very welcome. I very much support these.

My noble friend Lady Warwick of Undercliffe raised important issues with which I agree and to which I am sure the Minister will respond when he replies to the debate. How can we ensure that housing associations will have access to funding to carry on their important building work, delivering for people as well?

Can we have clarity on for which works additional funding can be recouped, and which the industry will cover? Can the noble Lord, Lord Greenhalgh, confirm that the affordable homes programme will be protected in full and ensure that the existing departmental budget will not, as I said, be used as a backstop for the funding if the building industry does not come forward with the money we expect?

I fully endorse the remarks of the noble Lord, Lord Young of Cookham. He raised really pertinent questions for the Minister to answer in the course of the Bill's passage through this House. They are the matters on which we need answers, otherwise we will have lots of amendments on Report to deal with those points, which need answering.

The noble Lord, Lord Shipley, made a very important point about the use of converted office buildings as flats, which need to be fully integrated into the fire safety regime. I welcome the changes to provisions relating to the Defective Premises Act, that claims will be able to be made retrospectively for leaseholders and the eligibility extension to 30 years.

Like the noble Lord, Lord Foster of Bath, I support the calls by Electrical Safety First, and I pay tribute to the work of that charity in campaigning for mandatory electrical safety checks in both social rented homes and leasehold properties. It is important to understand that we have mandatory electrical safety checks in the private sector but not in the social sector or leasehold properties. All three types of tenure, however, could be

[Lord Kennedy of Southwark]
found in the same block of flats. Unless all three types are checked to ensure that they are correct, the building is not safe. It is important that we bring social housing and leasehold properties up to the same standard, otherwise the buildings are not safe. I hope we can discuss this further and get it agreed while the Bill goes through the House.

Like the noble Lord, Lord Stunell, I very much support the calls from the British Woodworking Federation on the issues of construction, product testing, inspections and the competence of fire risk assessors, installers and building managers. I could not believe these shocking figures: of the 100,000 inspections carried out, 76% of fire doors failed their inspection. This is an absolutely appalling situation and its own scandal, which needs to be put right.

The noble Baroness, Lady Eaton, my noble friends Lady Young of Old Scone and Lord Jordan, the noble Lord, Lord Naseby, and others raised the campaign for safer stairs. Again, this is a very simple change that we want to get through in the Bill. I look forward to the amendment being tabled; it is one that these Benches will certainly support if the House is divided.

I agree with the noble Lord, Lord Foster of Bath, who has called for home energy efficiency targets to be enshrined in law. I hope the noble Lord, Lord Greenhalgh, can take up the offer from the noble Lord, Lord Foster of Bath, to take his Private Member's Bill on board. I am sure that would be welcomed by all sides of the House.

The noble Baroness, Lady Grey-Thompson, who gave a very powerful speech about building fire safety, highlighted how evacuation procedures are completely inadequate for disabled people. The number of disabled people who lost their lives in Grenfell Tower is absolutely tragic and shocking.

The noble Earl, Lord Lytton, with his tremendous experience, outlined the problems with leasehold and commonhold. His point about reliance on the industry stepping up and what happens when it does not needs to be addressed by the Minister in his response today. The polluter pays amendment is great and could work well, but what if it does not? Could we examine what would happen? We also need to look at that. What could be the robust mechanism behind it to ensure that it works?

The noble Lord, Lord Thurlow, highlighted some of the inadequacies in the Bill, particularly in regard to leaseholders and their means of redress for problems. He speaks with great experience and authority on these matters and the Government should listen to his remarks, which would help the Bill through the House.

I enjoyed the speech of the noble Lord, Lord Blencathra, and look forward to considering his amendments. We may well support them and cause more problems for the noble Lord, Lord Greenhalgh. I very much look forward to that.

In conclusion, there is a general welcome for the Bill. Members right across the House want it to become law quickly. Legitimate concerns have been raised in the House that need addressing. Legitimate questions need answering. The Government need to respond and table amendments quickly in response to the concerns raised and have those discussions. However, as always, I am hopeful of positive engagement with the noble Lord, Lord Greenhalgh. He always does so and I thank him for that. There is no desire to divide the House but, equally, if we have to do so we will. Finally, as I said, we would be grateful if the Minister could confirm that he will send that round-robin letter because it is impossible to respond to all the points. I would not want anything to slip through the cracks.

8.06 pm

Lord Greenhalgh (Con): My Lords, I really enjoy the tutorials I get from the noble Lord, Lord Kennedy. I shall do my best to start at a high level because this is a serious debate. There have been a lot of expert contributions and I have, as noble Lords will know, listened carefully to them all. I should start by saying that when I joined the Government I was told that I could have any job I wanted and was then assigned building safety and fire. The offer changes as one goes through the process.

It means that I have spent some time thinking about the root causes of the Grenfell Tower tragedy. I like to think about things and today we are addressing two of the fundamental root causes. That is why the Bill has the support of this House. We saw a corrosive construction industry culture that needs addressing and the Building Safety Bill seeks to do that. That is why it is so important. We also have, as admitted by my right honourable friend the Secretary of State in the other place, a building safety regulatory system that is, frankly, broken. That is why we need the Bill and we are all keen to make sure that it gets on to the statute book. That is important.

I also want to respond as Fire Minister to the comments of the noble Lord, Lord Kennedy, about the ordinary firefighter and the Fire Brigades Union. I engage; I met Andy Dark and Matt Wrack last week and will engage with them again. However, it is important to reflect that, as regards the Manchester Arena attack and the night of the Grenfell Tower tragedy, there are lessons to be learned for fire and rescue services. We must not mistake the need for reform, which should get widespread support from this House. As Fire Minister, I am about to publish a White Paper that will seek to reform professionalism and ensure that we get better people into the fire and rescue service. The paper will also look to improve governance. It should not prove particularly controversial and will, I hope, have widespread support. However, the reform agenda does not take away from the fact that the ordinary firefighter goes forward into danger, rescuing people's lives. They certainly have my support and, I am sure, the support of everybody in this House.

It is virtually impossible to respond to the contributions of 32 speeches in the time available. We are then going on to Committee, where the Bill will be debated in depth in the unfortunately slightly less well-lit Moses Room—although it is now dark in here without natural light. We will, however, have an opportunity to debate these matters at length during the passage of the Bill.

First and foremost, we need to understand the issues around scope. This Bill affects the whole built environment. The new building safety regulator will be responsible for building regulations, looking at standards and competence and working with the British

Standards Institution to set the competence of the professionals involved in the development of all the built environment.

I want noble Lords to realise that it is important to set the high-risk regime at an appropriate level. If we say we want everything in the high-risk regime then, frankly, the building safety regulator will fail. There are 12,500 high-rise and 77,000 medium-rise buildings—the lower one goes, the more buildings there are. It is very important to have an appropriate scope for the high-risk regime and not ask too much of a new fledgling regulator who exists in shadow form. I hope noble Lords will be patient about scope. This does not mean that it will not widen over time, but we need to start in the right place.

I really enjoyed the valedictory speech of the right reverend Prelate the Bishop of Winchester. I do not think I have heard the right reverend Prelate speak before, but I listened to almost every word. While I do not think the Palace of Westminster is an example of remediation at pace, I completely agree that "caring for building safety is caring for the health of our nation." That is absolutely right. It is one of the reasons why I am passionate about this ministerial brief. It is very important that we get this right, and I thank the right reverend Prelate for raising it in that way.

As someone who loves history, I recognise that the Victorians did not get everything right, but they got the built environment right. They worked off pattern books. They built some of the finest homes that—like the Romans'—will probably last for a thousand years. We must get back to those principles of quality that the Victorians pioneered and that the Edwardians followed. Somewhere along the way, we lost the culture of building quality in this country.

I also single out my noble friend Lady Fox of Buckley—although she is not my noble friend because she is not on these Benches. She raised a very important point. The proportionality needs to be right in both council homes and social housing, as well as in private housing. There are people who profiteer from this stuff; they create a disproportionate approach and people pay for that. I was approached, not about a council home, but about Saxon House—a home in Sutton—where, essentially a cowboy did an EWS1 form and failed it. This caused untold stress and misery. A young man, called George Martin, managed to challenge it. It is important that we stop in their tracks those who are not acting properly. I involved the police in that case and supported the leaseholders in Saxon House. It is important to have a greater sense of proportion when approaching this crisis. We must remember that some people simply want to profiteer from a problem that has effectively been built up over 30 years. It is shameful to see such instances.

I was given a list of everyone who referenced protecting leaseholders and the polluter pays principle. I could spend the next 40 minutes reading out everybody's names. In trying to answer all the questions, I will pick out those from my noble friends Lord Blencathra and Lord Young. In essence, we have made a commitment to protect leaseholders and make the polluter pay. Voluntary contributions can go so far, but we want this in law. From my noble friend Lord Blencathra I have learned about a framework—a toolkit in my language—for protecting leaseholders and getting the polluter to pay. The Government will bring forward amendments—I think the deadline for Committee is Valentine's Day, 14 February. We will be ready to debate many of these amendments at the next stage of this Bill, although some may not be ready. Some are not government amendments. I have been working very hard and listening very carefully to Steve Day, whom the noble Earl, Lord Lytton, has been championing. I have put him in touch with lawyers with real expertise. Professor Susan Bright of Oxford, a land lawyer of the highest quality, has been helping to draft an amendment —now known as the Bright-Day amendment, which is better than the dark night amendment. I hope that this will be ready for noble Lords to consider, although it has not yet gone through government processes. We want every tool in the toolbox to make sure that we protect leaseholders and make the polluter pay.

The comments from the noble Baroness, Lady Warwick of Undercliffe, were very interesting. I want to find out more about the statistic she quoted. It is staggering to think that many registered providers put £6 billion towards remediating their own housing stock. The leading developers have made provision of no more than £1 billion for their share of this crisis. I therefore pay tribute to the registered providers who are doing the right thing and making their buildings safe and not relying entirely on the probably £300 million or £400 million of taxpayers' money that has gone towards remediation. However, that is a small fraction of the amount of money that the noble Baroness referred to. That is a very useful contribution toward resolving this crisis, because of the balance sheets of the G15, whose shoulders are considerably broader than the average leaseholder and shared owners who live in their homes. That is a tribute, and I look forward to having a summit with the National Housing Federation and leading registered providers to see how we can move forward in that vein.

I was a little disappointed when I saw a tweet that a small number of registered social landlords were effectively engaging a lobbying agency to try to promote ways to stop leaseholders being able to pursue claims. That is not the way to go. We have to recognise that there are people who are doing the wrong thing, and we have to encourage them—whether they are developers or registered providers—to do the right thing by leaseholders.

I thank the noble Baroness, Lady Grey-Thompson, for sharing her speech, but it got to me quite late; it really struck me, and stopped me in my tracks. I got to know some disabled leaseholders who are leading the campaign, Claddag. Sarah Rennie and Georgie Hulme are incredible people, and I want to be pointed to some other examples. When it comes to public procurement —I declare my interest as someone who has been in local government for 20-odd years, although I never became a vice-president of the LGA; I do not know what I did wrong—it is important that we look at that. However, public procurement has the potential for litigation and there are all kinds of things that, as a Minister, I cannot do. I hear what the noble Baroness says, and there is an intention to do all we can to help disabled people to live safely in their home, whether in high-rises or medium-rises. I want to give her that assurance as the Minister responsible.

[Lord Greenhalgh]

I have known the noble Lord, Lord Best, for a long, long time. He asked around 15 questions about the new homes ombudsman. I spent the weekend talking to my honourable friend Natalie Elphicke, who is interim chair of the New Homes Quality Board. She assured me that the governance is clear—although they seek contributions from developers to pay for this scheme, they have no say in how it is run. I was reassured by her clear explanation. While the detail of the scheme is going to follow this legislation, I can confirm that the Bill explicitly allows the new homes ombudsman scheme to expel members—that is one assurance that I can give. The scheme must also include provision about the enforcement of determinations made by the ombudsman that may include expulsion from the scheme, alongside setting out the circumstances in which an expelled member would be able to rejoin the scheme. I hope that gives some assurance.

The noble Lord, Lord Shipley, and the noble Baroness, Lady Hayman of Ullock, wanted to know about information for residents. Existing leaseholders and landlord-owners of flats will be able to request building safety information from the accountable person and to share this with prospective purchasers and tenants. Transparency is an essential way of getting this new system to work.

I have not had the benefit of the British Woodworking Federation information about fire doors, but I am pretty shocked by the numbers that have been quoted in this debate. I am aware, of course, that some of the newer fire doors perform far less well than some of the older ones. In many cases, the older the fire door, the better it performed. There is a real fundamental issue with the construction products testing regime carried out by the BRE or the BBA—we have to recognise that it is broken. That is why the previous Secretary of State asked for a construction products testing review. We are not that far away from having the report. We have a draft; I do not know how long it will be, but it is not miles away from being made public. We are looking at it very closely in draft form, but the usual phrase is "in due course".

I was very struck by the speech of my noble friend Lady Sanderson, someone who has been a community adviser to the Grenfell bereaved and survivors and lived this since the night of Grenfell, along with Nick Hurd, the Prime Minister's adviser on Grenfell; it is a fantastic way of staying connected with the community. It was a buck-passing culture and a pass-the-parcel approach that led to a lot of the tragedies we have seen. No one takes ownership or responsibility; frankly, that is why we need this Bill. My noble friend rightly questioned whether we should continue to build high-rises with a single staircase. That is a very important point that we need to look at and find out how to address.

The noble Lord, Lord Shipley, and I have one thing in common: we were at Procter & Gamble. I was there in the 1980s and 1990s, but he was probably there in the 1960s.

Noble Lords: Oh!

Lord Greenhalgh (Con): I am only joking; that is not fair.

Lord Shipley (LD): It was the 1970s.

Lord Greenhalgh (Con): The 1970s, okay. One of the things it taught you was to really distil your arguments down and to learn things over time. The noble Lord specifically asked whether we could review this on an ongoing basis. I take that suggestion as a very sensible one. Any Government—this Government in particular—need to do things and then see whether they work, review and reflect, and try to take that on board. I do not know whether I have overstepped the mark as a Minister, but I think that is a very sensible suggestion.

We will ensure that we improve competence. One of the things we must recognise is that, to improve competence, which was raised by the noble Lord, Lord Shipley, you need to establish what competence is. That is one of the things we are doing very carefully; it is being done by officials and the shadow building safety regulator. You then have to find out how the accreditation will work, and I know that UKAS and others want to step forward and do that. That will all happen as a result of this Bill.

The noble Lord, Lord Aberdare, gave a really thoughtful speech on something that was new to me, so I appreciate his contribution on cash retention. The Government continue to work with industry on the future of retention payments in the construction industry. However, I am told that there is not a clear consensus as to what may replace the practice, so there is more work to be done. I thank the noble Lord for raising an important issue.

The noble and learned Lord, Lord Etherton, raised Part 5 and the duty on landlords, and asked whether we were going to cause litigation by setting unreasonable demands on landlords. He also came up with a solution. I really appreciate him raising that issue; leaseholders need as much protection as possible. We are requiring landlords to seek claims only where reasonable, but we note the noble and learned Lord's suggestions for the guidance, and we will take them on board as we continue with the passage of the Bill.

The noble Baronesses, Lady Jolly and Lady Young of Old Scone, the noble Lord, Lord Jordan, and my noble friends Lady Eaton and Lord Naseby all mentioned the Safer Stairs campaign. As someone who has an elderly father—sadly, my mother did not survive the first wave of Covid—I worry. The thing I worry most about, as someone gets frailer, is staircases. I almost have to declare a personal interest. It is important that we look at staircase standards and recognise how best to achieve that end point, so that new builds have the right level of minimum standard. That does not mean it has to be enshrined as a maximum standard, but we have to work out what we would be proud of as a minimum standard in regulations. I thank noble Lords for raising this issue.

I think it is ironic that one of the sponsors of this campaign is Berkeley homes, because Richmond House, which someone mentioned, is of course a Berkeley build, as is Worcester Park, which really was a shoddy building, although luckily there was no loss of life there. Some developers who normally build good stuff have built things that they should be ashamed of. It is ironic that Berkeley is sponsoring what is a very noble campaign—none the less, I support it.

The noble Lord, Lord Foster, raised electrical safety. I am sure we will work through some of his suggestions—along with pretty much everything else he is interested in—in Committee. I have the briefing and I understand the issue; it is something that we have debated many times.

The noble Baroness, Lady Pinnock, raised building safety managers, and I have the note that was prepared by ARMA and IRPM on this. I hear the concerns about cost, and we take those concerns extremely seriously. There is not a one-size-fits-all approach, and if you are not prescribing how you do it, we do not see why you cannot have a property manager continue to discharge the functions of a building safety manager, going to the expertise only when it is needed. Think of the equivalent in healthcare: you typically go to a GP but see the specialist only when required. I have some sympathy with the issue, but I think that we are not being prescriptive about it, and so it should not be used as an excuse by managing agents to whack up the prices for leaseholders.

I welcome the clear cross-party support from so many noble Lords. There is broad support for the principles set out in a Statement by my right honourable friend the Secretary of State in the other place, on 10 January. We will continue to work with your Lordships—even the noble Lord, Lord Kennedy—and by working together we will ensure that homes are safe for future generations. It is a worthy ambition. I commend the Bill to the House.

Bill read a second time and committed to a Grand Committee.

Surveillance Camera Code of Practice

Motion to Regret

8.28 pm

Moved by ***Lord Clement-Jones***

That this House regrets the Surveillance Camera Code of Practice because (1) it does not constitute a legitimate legal or ethical framework for the police's use of facial recognition technology, and (2) it is incompatible with human rights requirements surrounding such technology.

Relevant document: 23rd Report from the Secondary Legislation Scrutiny Committee

Lord Clement-Jones (LD): My Lords, I have raised the subject of live facial recognition many times in this House and elsewhere, most recently last November, in connection with its deployment in schools. Following an incredibly brief consultation exercise, timed to coincide with the height of the summer holidays last year, the Government laid an updated *Surveillance Camera Code of Practice*, pursuant to the Protection of Freedoms Act 2012, before both Houses on 16 November last year, which came into effect on 12 January 2022.

The subject matter of this code is of great importance. The last Surveillance Camera Commissioner did a survey shortly before stepping down, and found that there are over 6,000 systems and 80,000 cameras in operation across 183 local authorities. The UK is now the most camera-surveilled country in the western world. According to recently published statistics, London remains the third most surveilled city in the world, with 73 surveillance cameras for every 1,000 people. We are also faced with a rising tide of the use of live facial recognition for surveillance purposes.

Let me briefly give a snapshot of the key arguments why this code is insufficient as a legitimate legal or ethical framework for the police's use of facial recognition technology and is incompatible with human rights requirements surrounding such technology. The Home Office has explained that changes were made mainly to reflect developments since the code was first published, including changes introduced by legislation such as the Data Protection Act 2018 and those necessitated by the successful appeal of Councillor Ed Bridges in the Court of Appeal judgment on police use of live facial recognition issued in August 2020, which ruled that that South Wales Police's use of AFR—automated facial recognition—had not in fact been in accordance with the law on several grounds, including in relation to certain convention rights, data protection legislation and the public sector equality duty.

During the fifth day in Committee on the Police, Crime, Sentencing and Courts Bill last November, the noble Baroness, Lady Williams of Trafford, the Minister, described those who know about the Bridges case as "geeks". I am afraid that does not minimise its importance to those who want to see proper regulation of live facial recognition. In particular, the Court of Appeal held in Bridges that South Wales Police's use of facial recognition constituted an unlawful breach of Article 8—the right to privacy—as it was not in accordance with law. Crucially, the Court of Appeal demanded that certain bare minimum safeguards were required for the question of lawfulness to even be considered.

The previous surveillance code of practice failed to provide such a basis. This, the updated version, still fails to meet the necessary standards, as the code allows wide discretion to individual police forces to develop their own policies in respect of facial recognition deployments, including the categories of people included on a watch-list and the criteria used to determine when to deploy. There are but four passing references to facial recognition in the code itself. This scant guidance cannot be considered a suitable regulatory framework for the use of facial recognition.

There is, in fact, no reference to facial recognition in the Protection of Freedoms Act 2012 itself or indeed in any other UK statute. There has been no proper democratic scrutiny over the code and there remains no explicit basis for the use of live facial recognition by police forces in the UK. The forthcoming College of Policing guidance will not satisfy that test either.

There are numerous other threats to human rights that the use of facial recognition technology poses. To the extent that it involves indiscriminately scanning, mapping and checking the identity of every person within the camera's range—using their deeply sensitive biometric data—LFR is an enormous interference with the right to privacy under Article 8 of the ECHR. A "false match" occurs where someone is stopped following a facial recognition match but is not, in fact, the person included on the watch-list. In the event of a

[Lord Clement-Jones]

false match, a person attempting to go about their everyday life is subject to an invasive stop and may be required to show identification, account for themselves and even be searched under other police powers. These privacy concerns cannot be addressed by simply requiring the police to delete images captured of passers-by or by improving the accuracy of the technology.

The ECHR requires that any interference with the Article 10 right to freedom of expression or the Article 11 right to free association is in accordance with law and both necessary and proportionate. The use of facial recognition technology can be highly intimidating. If we know our faces are being scanned by police and that we are being monitored when using public spaces, we are more likely to change our behaviour and be influenced on where we go and who we choose to associate with.

Article 14 of the ECHR ensures that no one is denied their rights because of their gender, age, race, religion or beliefs, sexual orientation, disability or any other characteristic. Police use of facial recognition gives rise to two distinct discrimination issues: bias inherent in the technology itself and the use of the technology in a discriminatory way.

Liberty has raised concerns regarding the racial and socioeconomic dimensions of police trial deployments thus far—for example, at Notting Hill Carnival for two years running as well as twice in the London Borough of Newham. The disproportionate use of this technology in communities against which it "underperforms" —according to its proponent's standards—is deeply concerning.

As regards inherent bias, a range of studies have shown facial recognition technology disproportionately misidentifies women and BAME people, meaning that people from these groups are more likely to be wrongly stopped and questioned by police and to have their images retained as the result of a false match.

The Court of Appeal determined that South Wales Police had failed to meet its public sector equality duty, which requires public bodies and others carrying out public functions to have due regard to the need to eliminate discrimination. The revised code not only fails to provide any practical guidance on the public sector equality duty but, given the inherent bias within facial recognition technology, it also fails to emphasise the rigorous analysis and testing required by the public sector equality duty.

The code itself does not cover anybody other than police and local authorities, in particular Transport for London, central government and private users where there have also been concerning developments in terms of their use of police data. For example, it was revealed that the Trafford Centre in Manchester scanned the faces of every visitor for a six-month period in 2018, using watch-lists provided by Greater Manchester Police—approximately 15 million people. LFR was also used at the privately owned but publicly accessible site around King's Cross station. Both the Met and British Transport Police had provided images for their use, despite originally denying doing so.

It is clear from the current and potential future human rights impact of facial recognition that this technology has no place on our streets. In a recent opinion, the former Information Commissioner took the view that South Wales Police had not ensured that a fair balance had been struck between the strict necessity of the processing of sensitive data and the rights of individuals.

The breadth of public concern around this issue is growing clearer by the day. Several major cities in the US have banned the use of facial recognition and the European Parliament has called for a ban on police use of facial recognition technology in public places and predictive policing. In response to the Black Lives Matter uprisings in 2020, Microsoft, IBM and Amazon announced that they would cease selling facial recognition technology to US law enforcement bodies. Facebook, aka Meta, also recently announced that it will be shutting down its facial recognition system and deleting the "face prints" of more than a billion people after concerns were raised about the technology.

In summary, it is clear that the *Surveillance Camera Code of Practice* is an entirely unsuitable framework to address the serious rights risk posed by the use of live facial recognition in public spaces in the UK. As I said in November in the debate on facial recognition technology in schools, the expansion of such tools is a

"short cut to a widespread surveillance state."—[*Official Report*, 4/11/21; col. 1404.]

Public trust is crucial. As the Biometrics and Surveillance Camera Commissioner said in a recent blog:

> "What we talk about in the end, is how people will need to be able to have trust and confidence in the whole ecosystem of biometrics and surveillance".

I have on previous occasions, not least through a Private Member's Bill, called for a moratorium on the use of LFR. In July 2019, the House of Commons Science and Technology Committee published a report entitled *The Work of the Biometrics Commissioner and the Forensic Science Regulator*. It repeated a call made in an earlier 2018 report that

"automatic facial recognition should not be deployed until concerns over the technology's effectiveness and potential bias have been fully resolved."

The much-respected Ada Lovelace Institute has also called for a

"a voluntary moratorium by all those selling and using facial recognition technology",

which would

"enable a more informed conversation with the public about limitations and appropriate safeguards."

Rather than update toothless codes of practice to legitimise the use of new technologies like live facial recognition, the UK should have a root and branch surveillance camera review which seeks to increase accountability and protect fundamental rights. The review should investigate the novel rights impacts of these technologies, the scale of surveillance we live under and the regulations and interventions needed to uphold our rights.

We were reminded by the leader of the Opposition on Monday about what Margaret Thatcher said, and I also said this to the Minister earlier this week:

> "The first duty of Government is to uphold the law. If it tries to bob and weave and duck around that duty when it's inconvenient, if Government does that, then so will the governed and then nothing is safe—not home, not liberty, not life itself."

It is as apposite for this debate as it was for that debate on the immigration data exemption. Is not the Home Office bobbing and weaving and ducking precisely as described by the late Lady Thatcher?

Lord Alton of Liverpool (CB): My Lords, the noble Lord, Lord Clement-Jones, has given an eloquent exposition of the reasons for supporting his Motion of Regret. The Motion refers to the ethical and human rights considerations that attach to the use of surveillance camera technology, and it is to those two considerations that I shall address my remarks. I especially draw the Minister's attention to the Amnesty International report of 3 June 2021 about the use of surveillance technology in New York, to which the noble Lord referred, and also to the serious civil liberty questions that that report raised. Concerns were raised in Japan on 28 December, in *Yomiuri Shimbun*, and in the *Financial Times* on 10 June, about Chinese technology in Belgrade, and on the Asia News Monitor in November 2021 in a report from Thailand about mass surveillance against Uighurs in Xinjiang, as well as a report in the *Telegraph* of 1 December, in which the head of MI6, Richard Moore, said that

"technologies of control … are increasingly being exported to other governments by China—expanding the web of authoritarian control around the planet".

It is not just control—it is also a keystone in the export of truly shocking crimes against humanity and even genocide. Just a week ago, we marked Holocaust Memorial Day, on which many colleagues from across the House signed the Holocaust Memorial Day book or issued statements recommitting to never allowing such a genocide to happen ever again. Yet, sadly, in 2022, as the Foreign Secretary has said, a genocide against the Uighur Muslims is taking place in Xinjiang. As I argued in our debate on Monday, we are doing far too little to sanction those companies that are actively involved, or to regulate and restrict the facial recognition software that has allowed the Chinese state to incarcerate and enslave more than a million Uighurs.

In the 1940s, we did not allow the widespread use of IBM's machines, or other tools of genocide used in Nazi Germany and manufactured by slave labour in factories and concentration camps, to be sold in the United Kingdom. Today we find ourselves in the perverse situation of having Chinese surveillance cameras with facial recognition software being used in government departments, hospitals, schools and local councils as well as in shops, such as Tesco and Starbucks. It is an issue that I doggedly raised during our debates on the telecommunications Bills that have recently been before your Lordships' House. As I said in those debates, a series of freedom of information requests in February 2021 found that more than 70% of local councils use surveillance cameras and software from either Dahua Technology or Hikvision, which are companies rightly subject to United States sanctions for their involvement in the development and installation of technology and software that targets Uighur Muslims. Nevertheless, these companies are free to operate in the United Kingdom.

So much for co-ordinating our response with our Five Eyes allies, which was the subject of one amendment that I laid before your Lordships' House. Far from being a reputable or independent private company, more than 42% of Hikvision is owned by Chinese state-controlled enterprises. According to Hikvision's accounts, for the first half of 2021, the company received RMB 223 million in state subsidies, while the company works hand in glove with the authorities in Xinjiang, having signed five public-private partnerships with them since 2017. What is perhaps just as disturbing are the recent reports in the *Mail on Sunday* that Hikvision received up to £10,000 per month of furlough money from United Kingdom taxpayers from December 2020 until February 2021. How can it be right that, at a time when the US Government are sanctioning Hikvision for its links to Uighur concentration camps, the UK Government are giving them taxpayer money and Covid furlough funds?

It is clear that the introduction and use of this type of facial recognition software technology by the police needs substantial regulation and oversight, especially because of the dominance of sanctioned Chinese companies in the UK surveillance market. Hikvision alone has nearly 20% of the global surveillance camera market. Hikvision is working hard to penetrate and dominate the UK surveillance technology sector. In May 2021, it launched a consultant support programme and demonstration vehicles so it could bring its technology "to all parts of the United Kingdom".

In October, it became corporate partner in the Security Institute, the UK's largest membership body for security professionals, and it has launched a dedicated UK technology partner programme. All of this deserves further investigation by our domestic intelligence services.

8.45 pm

I agree with the noble Lord, Lord Clement-Jones, a long-time friend, that the surveillance camera code of practice is insufficient in addressing legitimate human rights concerns around the widespread use of such technology. Nor do I think this technology is conducive or necessary for the police to maintain public safety or to tackle criminal enterprise. Despite some of the recent instances of poor policing in this country, on the whole we have a better culture of policing—a point that the Minister often makes, and I agree with her—that recognises the balance between protecting public order and serving the community, certainly in comparison with many other developed countries. We should therefore be cautious about importing both the technology and the tactics of authoritarian regimes. After all, these tactics and technology come from countries that do not have the rule of law and seek to maintain the power of their regimes through a mixture of brutality, fear and the regular incarceration of their people, which is made all the easier by the unregulated use of facial recognition software and surveillance.

More broadly, the Government need to look seriously at banning the participation of Hikvision, Dahua Technology and other sanctioned companies from the UK market. We should emulate the USA and Australia, which have recognised not only the human rights concerns but the national security concerns regarding these cameras. Those countries are actively removing Hikvision cameras from public buildings.

The UK should also introduce its own entities list, which would include sanctions and investment bans against Chinese companies actively involved in the

[Lord Alton of Liverpool]
construction and maintenance of the concentration camps in Xinjiang. That would include the likes of Hikvision, Dahua Technology, SenseTime and the audio recording company iFlytek. In particular, it is particularly unacceptable that Legal and General, the largest pension fund manager in the UK, continues to have holdings in iFlytek.

The Minister should explain to the House why Hikvision was able to access the UK furlough scheme, what efforts the Government will take to recoup taxpayers' money that has gone to Chinese companies sanctioned for their involvement in genocide—an issue raised by the noble Lord, Lord Agnew, during his recent resignation statement—and why Hikvision has not been banned here, as it has in the US.

It is clear that there needs to be legislation to regulate the use of facial recognition software and surveillance technology in the United Kingdom. I strongly agree with the recommendation made earlier by the noble Lord, Lord Clement-Jones, referring to his Private Member's Bill. I urge the Minister to work with colleagues to bring forward legislation in this area at the earliest opportunity. She should rest assured that if the Government do not, I am sure that noble Lords such as the noble Lord, Lord Clement-Jones, will continue to press for legislation to that effect.

As a society, we must work harder to repudiate those few misguided individuals who seek to import and expand the use of Chinese facial recognition technology, software and tactics in the UK. Those who think that China's social credit system or mass surveillance system are benign, or at the very least economically beneficial, need to have their heads examined. They may couch these policies in the language of technological progress but, as history has shown, such intrusive mass-surveillance systems have always been the handmaiden of fascism.

I hope that the Minister will carefully respond to what I have said today and that all of us can work to regulate the use of this technology and to make the presence of Hikvision and Dahua Technology in the UK history.

Lord Anderson of Ipswich (CB): My Lords, as expectations of privacy are lower in public places than at home, overt surveillance, such as by street cameras, is generally seen as a lesser intrusion into our liberties than either covert surveillance by intelligence agencies—the subject of my 2015 report, *A Question of Trust*—or so-called surveillance capitalism, the monitoring and monetising of our personal data by big tech. However, that assessment has been cast into doubt by automatic facial recognition and similar technologies, which potentially enable their users to put a name to every person picked up by a camera, to track their movements and to store images of them on vast databases that can be efficiently searched using AI-driven analytics.

Those databases are not all owned by the police: the company Clearview AI has taken more than 10 billion facial images from public-only web sources and boasts on its website that its database is available to US law enforcement on a commercial basis. This technology, part of the information revolution in whose early stages we now find ourselves, can now more be stopped than, two centuries ago, could the steam engine, but, as has been said, the abuses of overt surveillance are already obvious in the streets of China and Hong Kong. To show the world that we are better, we must construct for those who wish to use these powers, as our forebears did in the Industrial Revolution, a democratic licence to operate.

We start in this country with a number of advantages. We have a strong tradition of citizen engagement and, as the noble Lord, Lord Alton, said, a culture of policing by consent. We inherited strong data protection laws from the EU and we still have legislation that gives real protection to human rights. We even had—almost uniquely in the world—a Surveillance Camera Commissioner, Tony Porter. I pay tribute to the extraordinary work that he did, on a part-time basis and without any powers of inspection, audit or sanction, including the issue of a 70-page document with detailed recommendations for police users of this technology.

I regret that the *Surveillance Camera Code of Practice* is, by comparison, a slim and highly general document. It is not comparable to the detailed codes of practice issued under the Investigatory Powers Act 2016 and overseen by the world-leading Investigatory Powers Commissioner's Office. The designated bodies which must have regard to it are confined to local authorities and policing bodies; they do not include, as the noble Lord, Lord Clement-Jones, said, health, education or transport providers, private operators or, indeed, the Government themselves. Consultation on the latest version made no attempt to involve the public but was limited to statutory consultees.

The recent annual report of Tony Porter's impressively qualified but thinly spread successor, the Biometrics and Surveillance Camera Commissioner, Fraser Sampson, commented that his formal suggestions for the code were largely dismissed as being "out of scope". He added:

> "That my best endeavours to get even a sentence reminding relevant authorities of the ethical considerations were rejected on the grounds that it would be too burdensome is perhaps an indication of just how restrictive this scope—wherever it is to be found—must have been."

I do not know whether the highly general provisions of the code will be effective to improve local policies on the ground and ensure the consistency between them that my noble and learned friend Lord Etherton and his colleagues gently pointed out was desirable in their judgment in the Bridges case. In the absence of an IPCO-style inspection regime, perhaps we never will know. I suspect that the need not to stifle innovation, advanced in the code as a justification for its brevity, is a less than adequate excuse for the failure to do more to develop the code itself against a changing legal and technological background.

The words of the Motion are harsher than I would have chosen but, as the Snowden episode a few years ago showed, public trust in these increasingly intrusive technologies can be suddenly lost and requires huge effort to regain. I hope that the next revision of this code will be more energetic and ambitious than the last.

Baroness Falkner of Margravine (CB): My Lords, it is a pleasure to follow three incredibly distinguished speakers in this debate. With reference to the remarks

of the noble Lord, Lord Clement-Jones, attributed to the Minister, I must say that if this is a subject for geeks, I am delighted to join the band of geeks.

I fear I shall demonstrate a level of ignorance tonight, because I am a newcomer to the debate. In fact, I emailed the noble Lord, Lord Clement-Jones, earlier today because I had only just realised that it was taking place tonight. I am also speaking in a hybrid capacity—I now understand the true meaning of "hybrid"—so my opening remarks will be personal, but for those that follow, I will need to declare an interest, so I shall do so in advance of making those remarks.

In my opening remarks I have to say just a few things that demonstrate what a parlous state we are in as a country in terms of respect for human rights. The level of permissiveness in the capture—state capture, policy capture—of institutions that operate in authoritarian regimes, a list of which the noble Lord, Lord Alton, has given us, is truly staggering. We bang on about how fantastic our sanctions regime is, and so on, yet these companies, many of them Chinese, as the noble Lord described, operate here with complete impunity and we seem entirely content to allow them to do so, while we also recognise, in our foreign policy statements, that some of these countries have very ignoble intentions towards any freedom-loving democracy. I know the noble Baroness represents the Home Office, but I hope it is something the Government at large will take account of, because commercial surveillance, commercial espionage, commercial authority and commercial capture of the economy are all things we need to be incredibly vigilant about. One needs only to look at Russia's capture of the German political debate, through Nord Stream 2, and what we are facing now with the Ukraine issue, to understand what is being discussed here by the noble Lord, Lord Alton.

Those are my general remarks. My remarks on it as chair of the Equality and Human Rights Commission now follow. There, I have to say to the noble Lord, Lord Clement-Jones, that I am so relieved he managed to secure this regret Motion. Articles 8, 9, 10, 11 and 14—the general article against discrimination—of the European Convention on Human Rights are engaged in this, so the fact that we get a document as thin as this is truly remarkable. I understand why only statutory bodies were consulted—it was a means for the Government to get it through in six weeks without being very concerned about broader concerns—but it is regrettable. The Bridges case directly engaged the public sector equality duty. The Equality and Human Rights Commission is the regulator of the public sector equality duty, yet the idea that it was not consulted, post the judgment, on how we might strengthen the code in light of that judgment is a matter of great deep regret to me.

I have a couple of points on the code. In paragraph 10.4 we are told that effective review and audit mechanisms should be published regularly. The summary of such a review has to be made available publicly, so my question to the noble Baroness is: why only a summary? In the interests of transparency and accountability, it is essential that these bodies regularly give a full explanation of what they are doing. The public sector equality duty requires legitimate aims to be addressed objectively, verifiably and proportionately. We, the public, will not be capable of assessing whether those tests have been met if there is only an executive summary to go by.

My other point concerns section 12.3, "When using a surveillance camera" and so on. The third bullet point requires "having due regard" and states that

"chief police officers should … have regard to the Public Sector Equality Duty, in particular taking account of any potential adverse impact that the LFR algorithm may have on members of protected groups."

Again, no practical examples are provided in this rather thin document. We know from publishing statutory codes that the public, and even the bodies that use this technology, want practical examples. A code is effective, of value and of use, to the providers as well as the public, only when it gives those practical examples, because you cannot test the legal interpretation of those examples until you have that evidence before you.

We, the EHRC, have been unable at short notice to assess whether the code is in compliance with the Bridges judgment—I wonder, myself, whether it is—but we do not take a clear position on the legality of the revised code, and I should say that in clarification. However, we have recommended previously that the Government scrutinise the impact of any policing technologies, in particular for the impact on ethnic minorities, because we have a mountain of evidence piling up to say that they discriminate against people of darker skin colour.

We wanted mandatory independent equality and human rights impact assessments. These should ensure that decisions regarding the use of such technologies are informed by those impact assessments and the publication of the relevant data—this takes me back to my point about executive summaries—and then evaluated on an ongoing basis, and that appropriate mitigating action is taken through robust oversight, including the development of a human rights compliant legal, regulatory and policy framework. That is in conformity with our role as a regulator. We have recommended that, in light of evidence regarding their inaccuracy, and potentially discriminating impacts, the Government review the use of automated facial recognition and predictive programs in policing, pending completion of the above independent impact assessments and consultation processes, and the adoption of appropriate mitigation action. We await action from the Government on the basis of this recommendation.

9 pm

In concluding, I want to share the new workstream that we will have in our new strategic plan, which we hope will be laid before Parliament in the next couple of months. In that plan, we will be influencing UK regulatory frameworks to ensure that equality and human rights are embedded in the development and application of artificial intelligence and digital technology. That is a change from the past and a new innovation, and we intend to take it extremely seriously. We will take enforcement and other legal action, so that the use of AI in recruitment, in policing and in other employment practices does not bias decision-making or breach human rights. I look forward to the Minister's response.

Lord Rosser (Lab): My Lords, I first congratulate the noble Lord, Lord Clement-Jones, on securing this debate. Obviously, all who have spoken deserve a

[Lord Rosser]

response to the points they have raised, but I am particularly interested in what the reply will be to the noble Baroness, Lady Falkner of Margravine, who asked who was and who was not consulted and why. The point she made there most certainly deserves a response from the Government.

The *Surveillance Camera Code of Practice* was first published in June 2013 under provisions in the Protection of Freedoms Act 2012. It provides guidance on the appropriate use of surveillance camera systems by local authorities and the police. Under the 2012 Act these bodies

"must have regard to the code when exercising any functions to which the code relates".

As has been said, the Government laid an updated code before both Houses on 16 November last year and, as I understand it, the code came into effect on 12 January this year. The Explanatory Memorandum indicates that changes were made mainly to reflect developments since the code was first published, including changes introduced by legislation such as the Data Protection Act 2018 and those arising from a Court of Appeal judgment on police use of live facial recognition issued in August 2020, which was the Bridges v South Wales Police case.

Reporting the month before last, our Secondary Legislation Scrutiny Committee commented that the revised code reflects the Court of Appeal judgment

"by restricting the use of live facial recognition to places where the police have reasonable grounds to expect someone on a watchlist to be"

and added that the technology

"cannot be used for 'fishing expeditions'".

The committee continued:

"The Code now requires that if there is no suggested facial matches with the watchlist, the biometric data of members of the public filmed incidentally in the process should be deleted immediately. Because the technology is new, the revised Code also emphasises the need to monitor its compliance with the public sector equality duty to ensure that the software does not contain unacceptable bias. We note that a variety of regulators are mentioned in the Code and urge the authorities always to make clear to whom a person who objects to the surveillance can complain."

As the regret Motion suggests, there is disagreement on the extent to which the code forms part of a sufficient legal and ethical framework to regulate police use of facial recognition technology, whether it is compatible with human rights—including the right to respect for private life—and whether it can discriminate against people with certain protected characteristics. Interpretations of the Court of Appeal judgement's implications for the continued use of facial recognition technology differ too.

As has been said, the use of facial recognition is a growing part of our everyday lives—within our personal lives, by the private sector and now by the state. It can be a significant tool in tackling crime but comes with clear risks, which is why equally clear safeguards are needed. It appears that our safeguards and understanding of and frameworks for this spreading and developing technology are largely being built in a piecemeal way in response to court cases, legislation and different initiatives over its use, rather than strategic planning from the Government. Parliament—in particular MPs but also Members of this House—has been calling for an updated framework for facial technology for some years, but it appears that what will now apply has finally come about because of the ruling on the Bridges v South Wales Police case, rather than from a government initiative.

The police have history on the use of data, with a High Court ruling in 2012 saying that the police were unlawfully processing facial images of innocent people. I hope the Government can give an assurance in reply that all those photos and data have now been removed.

While a regularly updated framework of principles is required, as legislation alone will struggle to keep up with technology, can the Government in their response nevertheless give details of what legislation currently governs the use and trials of facial recognition technology, and the extent to which the legislation was passed before the technology really existed?

On the updates made to the code, it is imperative that the technology is used proportionately and as a necessity. What will be accepted as "reasonable grounds" for the police to expect a person to be at an event or location in order to prevent phishing exercises? As the Explanatory Memorandum states:

"The Court of Appeal found that there is a legal framework for its use, but that South Wales Police did not provide enough detail on the categories of people who could be on the watchlist, or the criteria for determining when to use it, and did not do enough to satisfy its public sector equality duty."

Can the Government give some detail on how these issues have now been addressed?

A further area of concern is the apparent bias that can impact this technology, including that its use fails to properly recognise people from black and minority-ethnic backgrounds and women. That is surely a significant flaw in technology that is meant to recognise members of our population. We are told that the guidance now covers:

"The need to comply with the public sector equality duty on an ongoing basis through equality impact assessments, doing as much as they can to ensure the software does not contain unacceptable bias, and ensuring that there is rigorous oversight of the algorithm's statistical accuracy and demographic performance."

What does that look like in practice? What is being done to take account of these issues in the design of the software and in the datasets used for training for its use? What does ongoing monitoring of its use and outcomes look like? The Secondary Legislation Scrutiny Committee raised the question of who a person should direct a complaint to if they object to the use of the technology, and how that will be communicated.

We have previously called for a detailed review of the use of this technology, including the process that police forces should follow to put facial recognition tools in place; the operational use of the technology at force level, taking into account specific considerations around how data is retained and stored, regulated, monitored and overseen in practice, how it is deleted and its effectiveness in achieving operational objectives; the proportionality of the technology's use to the problems it seeks to solve; the level and rank required for sign-off; the engagement with the public and an explanation of the technology's use; and the use of technology by authorities and operators other than the police.

What plans do the Government have to look at this issue in the round, as the code provides only general principles and little operational information? The Government previously said that the College of Policing has completed consultation on national guidance which it is intended to publish early this year, and that the national guidance is "to address the gaps". Presumably these are the gaps in forces' current published policies. What issues will the national guidance cover, and will it cover the issues, with great clarity and in detail, which we think a detailed review of the use of this technology should include and which I have just set out? Unfortunately, the Explanatory Memorandum suggests that neither the College of Policing national guidelines nor the updated code will do so or indeed are intended to do so.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank the noble Lord, Lord Clement-Jones, for securing this debate and all who spoke in it. Let me clarify that when I referred to those who are interested and knowledgeable about LFR as "geeks", it was meant as a compliment. Sometimes it is difficult to get people to be interested in some of the things that we do in the Home Office. I am also grateful to the noble Lord for putting on record his views on the revised code, which came into force on 12 January of this year. I understand that it was published in full, and there is more detail in accompanying documents, including the College of Policing guidance and ICO guidance.

As I think the noble Lord, Lord Clement-Jones, said, the code was established in 2013 during the coalition Government under PoFA—the Protection of Freedoms Act 2012—to provide guidance to local authorities and the police on the appropriate use of surveillance camera systems.

Surveillance in schools is not really for the surveillance camera code of practice. Private use, which the noble Lord also talked about, is of course a DCMS matter. I am not trying to pass the buck, but it is not unusual for people to get those mixed up. In fact, that goes to the heart of what the Government are trying to do—namely, to try to simplify the landscape, which is all too often far too complex.

The principles in the code enable the police and local authorities to operate surveillance cameras in a way that complies with the breadth of relevant law in this area. Because the code is principles-based rather than technology-specific, it has remained largely up to date despite the pace of technological advancement in this area. Therefore, the changes do not increase the scope of the code or, indeed, its intended impact.

There have been a number of legislative developments and a key court ruling since the code was first published, which noble Lords referred to. The reason for updating the code was to reflect those changes, while we also took the opportunity to make the text easier for users to follow at the same time.

The consultees were mainly among policing and commissioners, including the Information Commissioner's Office. The Surveillance Camera Commissioner published the draft, so it was in the public domain, and civil society groups commented on it, including the NPCC.

9.15 pm

It is fair to say that the public expect the police to use technologies such as surveillance cameras to keep them safe. The Government and the police have a joint responsibility to ensure that they do so appropriately, while maintaining public trust—I think the noble Lord, Lord Anderson, talked about public trust. There are now real opportunities to make use of facial recognition to improve public safety. As has been mentioned, generations of police officers have used photographs of people to identify suspects and, more recently, CCTV images have been a vital tool in investigations. There are so many examples where suspect images have been matched to wanted known individuals, ensuring that they cannot evade justice when they cross force boundaries. What is changing is the ability to use computers to match images with increasing confidence and at speed, as well as combining technologies such as surveillance cameras and facial recognition to greater effect.

I shall mention a few examples. LFR trials have resulted in 70 arrests, including for suspected rape, robbery and violence, false imprisonment, breach of a non-molestation order and assault on the police. At a Cardiff concert there were no reported mobile phone thefts when South Wales Police used LFR, where similar concerts in other parts of the UK resulted in more than 220 thefts. South Wales Police produced around 100 identifications a month through retrospective facial recognition, thereby reducing identification time from 14 days to merely hours, which can be critical when dangerous individuals are at large.

Noble Lords talked about lawfulness and I will refer, as noble Lords have done, to the Bridges case. He claimed that his privacy rights were breached on two occasions when he passed in front of cameras during South Wales Police's LFR trials. The Court of Appeal found several things: that there was a sufficient legislative framework to cover policing use of LFR but that the police had too much discretion on the who and where questions. The College of Policing national guidance is addressing those, to provide consistency. South Wales Police failed to take reasonable steps to demonstrate the potential for bias in facial matching algorithms, although the court found no evidence of it.

The court also helpfully confirmed—which goes to the question of the noble Lord, Lord Rosser—that the police have common law powers to use LFR and, by implication, other novel technologies. The Data Protection Act is relevant but under legislation for operating "in accordance with law", published police policies constitute law for these purposes, and the use of LFR was proportionate. Whether something is proportionate is a judgment, not a simple mathematical calculation—for example, by multiplying the privacy impact on a person bringing a claim by the total number of people impacted. Also in answer to the noble Lord, Lord Rosser, LFR deletes the biometrics of those not matched instantaneously.

The noble Lord, Lord Clement-Jones, and others asked about the accuracy of LFR. The accuracy of any technique will depend on the technology and how it is used. Facial recognition systems are probabilistic; they suggest possible matches, not definite ones. The technology is increasingly becoming more accurate.

[Baroness Williams of Trafford]

There will always be false alerts and—here is the crucial point—that is why a human being always takes the final decision to engage with an individual matched by the technology. On bias, it is very important that the police comply with the public sector equality duty to maintain police confidence. South Wales Police and the Met have found no evidence of bias in their algorithms and, as I said, a human operator always takes that final decision.

I should make the point that the US National Institute of Standards and Technology found that the NEC had

"provided an algorithm for which the false positive differential was undetectable",

and that the algorithm

"is on many measures, the most accurate"

the NIST has evaluated. It was developed using the same technology and training data set as the algorithm used by South Wales Police and the Met. South Wales Police have since upgraded to an even more accurate algorithm. I hope I have demonstrated both the comprehensive legal framework and the common law powers.

The noble Lord, Lord Alton, made a very interesting point about systems that might be brought in that might raise ethical consideration for the operation of those systems. The FCDO and the Cabinet Office will issue new guidance to enable buyers to more effectively exercise their discretion to exclude suppliers linked with modern slavery and human rights violations. The public procurement Bill will further strengthen the ability of public sector bodies to disqualify suppliers from bidding for contracts where they have a history of misconduct, including forced labour and modern slavery. But I thank him for bringing the issue, which is of great concern to many people, to noble Lords' attention.

The Human Rights Act, the Equality Act and the Data Protection Act are all parts of the consideration that the police must give when exercising their new powers. The code actually references all those pieces of legislation. The police are also subject to regulation, particularly through the Information Commissioner's Office, a range of oversight bodies and other bodies providing guidance and support. We helped the police appoint a chief scientific adviser, and forces have access to further support from their own ethics committees, the Police Digital Service and the College of Policing.

We have been working with police to clarify the circumstances in which they can use live facial recognition and the categories of people they can look for. The College of Policing is planning to publish that national guidance in due course. It is an important part of our democratic process that people can raise and debate legitimate concerns about police use of new technologies, including in Parliament. I do welcome the opportunity, on the noble Lord's Motion, for us to be able to do so today. The updated surveillance camera code references the Bridges judgment and requires the police to comply with it. The more detailed guidance the court called for will be set out in the College of Policing's national guidance.

I will finish by saying the police do have a duty to make use of technologies to keep the public safe, and the Government are committed to empowering them to do so while maintaining public trust. Updating the code to reflect the latest legal position is just one of the steps we are taking to achieve those important aims.

Lord Rosser (Lab): Before the Minister sits down: is the issue of live facial recognition and its use by the police a matter for the police and crime commissioner to decide or for the chief constable to decide?

Baroness Williams of Trafford (Con): It would usually be a matter for local forces in the context in which they are deploying it. In terms of the seniority of the officer who can authorise it, I do not know, actually. I just know it is a matter for local forces to decide when and for what purpose they are using it. But I can write to the noble Lord about that.

Lord Rosser (Lab): I take it, since the noble Baroness did make a reference to democracy and democratic accountability, that surely, at the very least, since the police and crime commissioner is elected and accountable, it must be a decision for a police and crime commissioner, rather than a police constable who is not elected and not accountable in that way.

Baroness Williams of Trafford (Con): The PCCs clearly have oversight of what their police forces are doing, and I would be most surprised if the PCC was removed from that sort of operational context.

Lord Alton of Liverpool (CB): The noble Baroness was good enough to reference the statement from the FCDO. Would she be willing to take back to it the specific point I raised this evening about the company Hikvision, which is banned in the United States because of security, human rights and civil liberties concerns, and all the other things I said? I hope, therefore, that the noble Baroness will feel able to ask the FCDO why it has been banned in the US on the same intelligence we have, but not in the United Kingdom.

Baroness Williams of Trafford (Con): I referenced this without mentioning the company's name. I recognise the seriousness of the issue and I will take the point back.

I have had a note to say that it is at constable level, but of course they are accountable to the PCC.

Lord Clement-Jones (LD): My Lords, I thank the Minister for her comprehensive reply. This has been a short but very focused debate and full of extraordinary experience from around the House. I am extremely grateful to noble Lords for coming and contributing to this debate in the expert way they have.

Some phrases rest in the mind. The noble Lord, Lord Alton, talked about live facial recognition being the tactic of authoritarian regimes, and there are several unanswered questions about Hikvision in particular that he has raised. The noble Lord, Lord Anderson, talked about the police needing democratic licence to operate, which was also the thrust of what the noble Lord, Lord Rosser, has been raising. It was also very

telling that the noble Lord, Lord Anderson, said the IPA code was much more comprehensive than this code. That is somewhat extraordinary, given the subject matter of the IPA code. The mantra of not stifling innovation seems to cut across every form of government regulation at the moment. The fact is that, quite often, certainty in regulation can actually boost innovation—I think that is completely lost on this Government.

The noble Baroness, Lady Falkner, talked about human rights being in a parlous state, and I appreciated her remarks—both in a personal capacity and as chair of the Equality and Human Rights Commission—about the public sector equality duty and what is required, and the fact that human rights need to be embedded in the regulation of live facial recognition.

Of course, not all speakers would go as far as I would in asking for a moratorium while we have a review. However, all speakers would go as far as I go in requiring a review. I thought the adumbration by the noble Lord, Lord Rosser, of the elements of a review of that kind was extremely useful.

The Minister spent some time extolling the technology—its accuracy and freedom from bias and so on—but in a sense that is a secondary issue. Of course it is important, but the underpinning of this by a proper legal framework is crucial. Telling us all to wait until we see the College of Policing guidance does not really seem satisfactory. The aspect underlying everything we have all said is that this is piecemeal—it is a patchwork of legislation. You take a little bit from equalities legislation, a little bit from the Data Protection Act, a little bit to come—we know not what—from the College of Policing guidance. None of that is satisfactory. Do we all just have to wait around until the next round of judicial review and the next case against the police demonstrate that the current framework is not adequate?

Of course I will not put this to a vote. This debate was to put down a marker—another marker. The Government cannot be in any doubt at all that there is considerable anxiety and concern about the use of this technology, but this seems to be the modus operandi of the Home Office: do the minimum as required by a court case, argue that it is entirely compliant when it is not and keep blundering on. This is obviously light relief for the Minister compared with the police Bill and the Nationality and Borders Bill, so I will not torture her any further. However, I hope she takes this back to the Home Office and that we come up with a much more satisfactory framework than we have currently.

Motion withdrawn.

House adjourned at 9.30 pm.

Grand Committee

Wednesday 2 February 2022

Subsidy Control Bill

Committee (2nd Day)

4.15 pm

Relevant documents: 17th Report from the Delegated Powers Committee

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): My Lords, welcome to the Grand Committee. 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 that we are not expecting, the Committee will adjourn as soon as the Division Bells are rung and will resume after 10 minutes.

Clause 10: Subsidy schemes and streamlined subsidy schemes

Amendment 14

Moved by ***Baroness Blake of Leeds***

14: Clause 10, page 6, line 32, at end insert—

"(4A) A streamlined subsidy scheme may be made, in particular, to support areas of relative economic deprivation."

Member's explanatory statement

This amendment would make clear that streamlined subsidy schemes may, among other things, be made for the purposes of supporting areas of deprivation.

Baroness Blake of Leeds (Lab): My Lords, Amendment 14 was tabled by my noble friend Lord McNicol.

We always know in this environment that timing is everything. We must be extremely mindful when debating these elements of the Bill that today the Government published the levelling-up White Paper. It is critical that we bear that in mind as we discuss these important issues, particularly on economic deprivation. We must go back to the lengthy debate that we had on Monday and focus on the benefit that the work we will do here will bring to our communities across the United Kingdom, and focus on the purpose, on what really matters as a result of the improvements that we can make to the Bill. This is an illustration of the importance of joining up key pieces of legislation. Since coming down to the Palace of Westminster I have noticed that this is a work in process and this legislation is something that we can assist with.

Bearing that in mind and being very much aware that a lot of the work that has gone into the levelling-up White Paper has already been released in the media—many noble Lords, I am sure, have had sight of the proposals—I will concentrate on Amendment 14 and refer to the extended list of amendments that have come into this group since Monday afternoon.

As I said, the third group on Monday facilitated an interesting debate on economic deprivation and a number of related issues. It is worth returning to the topic today as the Minister's responses were not convincing. There is more work to be done on these areas. Some of the amendments in this group go beyond a laser focus on economic deprivation, allowing us to probe slightly broader issues, such as whether and how the concept of social value, used in relation to procurement, will be applied to the subsidy regime. We are grateful to the GMB union for its input on these texts.

The noble Lord, Lord Lamont, made a very powerful contribution on Monday, making the point that areas of high deprivation need a degree of certainty, and that is one of the focuses that we need to bring to bear. Sadly, I have to say that, at first glance, the announcements on levelling up do not provide that certainty. The confirmation of various missions mentioned in the White Paper provides a marginally clearer idea of what the Government want to achieve, but we are still largely in the dark as to how the various 2030 targets will be met.

We have staggering examples of discrepancy in funding. For example, transport in London and the south-east of England received £882 per head in the year 2019-20, while in the north-east it was only £315 per head. Analysis in the *Guardian* of funds allocated so far through the future high street fund, the community renewal fund and the towns fund also suggests that the wealthiest parts of England are being allocated, in some cases, up to 10 times more money per capita than poorer and, I have to say, often Labour-controlled councils—that point is perhaps best discussed alongside Amendment 35 later today. IPPR North points out that funds allocated to the north thus far amount to an investment of £32 per head, which compares to a £413 per person fall in annual council service spending between 2009-10 and 2019-20. We also have the comments from the National Audit Office, which suggest that grants from two different funds were not based on evidence. We very much want levelling up to be a reality and would support proposals being brought forward that would achieve this end. We have to make sure that, through the work that we are doing in this Bill, we contribute to that end.

Amendment 14 would make clear that streamlined subsidy schemes can be made to support areas of economic deprivation. This would not be a requirement, but would focus the Secretary of State's mind once the new regime is up and running. Clarity would support the goals of facilitating quicker and more efficient awards of low-risk subsidies. I am sure the Minister will talk up the inbuilt flexibility of the new system, but here is an opportunity to send a signal to the communities that we want to help. I am sure that the noble Lord, Lord Ravensdale, will make the case for his Clause 18 stand apart amendment, which looks at relocation subsidies through an economic development lens, but I hope that Amendments 27 and 28 will at least give us some clarity on how that prohibition will work. Are we talking about movement within or between local authorities, regions and nations of the UK, or does it depend on context? The current drafting is not clear, and this kind of area should not be left to guidance and therefore to different interpretations.

Amendments 34 and 36 seek to move the discussion on to the social value to be derived from subsidies, which might be an alien concept to some considering this legislation. We must avoid always viewing matters

[Baroness Blake of Leeds]
purely in terms of the economic bottom line. We all want to create jobs and fuel economic growth, but there is a need to do that in a fairer manner, ensuring job security, good pay and strong employment rights across all sectors and, of course, as we have already discussed, ensuring that we bring in environmental benefits.

In recent years, the Government have spent billions of pounds subsidising a wind sector that sustains a relatively modest number of jobs and has not always supported UK suppliers, including the steel industry. Wind is an increasingly important part of the energy mix, and key to reducing emissions. It is clearly worthy of subsidies, if that is what it takes to make cleaner forms of energy more attractive, and of course to create new jobs. However, the TCA, and international agreements, give scope for the inclusion of social objectives when giving subsidies. We want to understand whether the Government intend to use that flexibility, and if so exactly how.

Amendment 36 draws on the concept of social value, which authorities are compelled to consider under the Public Services (Social Value) Act 2012 when undertaking procurement exercises. Do the Government plan to include similar provisions in the Bill?

There are a great many questions for the Minister to answer on this group. I hope that he will be able to address most of the points today, but I would be pleased to receive further written answers if that is more appropriate. I do not wish to pre-empt other contributions this afternoon, but it feels as if there is much more work to be done in these areas before Report.

Lord Wigley (PC): Amendment 23 in my name has been included in this group. That is a slightly odd grouping, and perhaps I should have pressed for my amendment to be de-grouped. I shall speak to it in a moment, but first may I endorse entirely the comments made in opening this debate? It is vital that we ensure a decent standard of living and income per head throughout these islands. It is not enough to compensate people for being deprived of many of the aspects of life that are valuable to them. We need the economy to be able to sustain populations at a level of income that enables them to get benefits of the sort that are enjoyed in, for example, south-east England.

Let us compare the GDP per head of Kensington and Chelsea and that of the valleys of Gwent, or of Anglesey. Chelsea's figure is eight times higher. We need economic solutions, not just for Anglesey and Gwent but for the north-east of England, Lancashire and other areas—all the old industrial areas. We need to get the economies working, to ensure that the other benefits that the people of those areas have a right to expect can be delivered.

My Amendment 23 seeks to include in the Bill an assurance that nothing in it prevents a public authority from giving financial support aimed at achieving cultural or environmental objectives. I draw attention to my registered interests with regard to cultural dimensions in which my family is heavily involved. I do not think the amendment should be necessary, for it is a long-standing feature of the cultural scene that grants and subsidies are necessary to underpin activities that otherwise might not be viable. Clearly, in making grant payments to one body, organisation or even company, the Government are in effect giving it a competitive edge over others that do not get such support; the marketplace is hardly designed to support and sustain such activities. Yet many aspects of the arts are inevitably dependent on such interventions, and nothing in this legislation should be open to accusations of undermining cultural viability.

Equally, the objectives of environmental policy must also, surely, be exempt from any restrictive limits placed on public bodies from maximising our ability to reach environmental targets. This is a probing amendment, and I trust the Minister can give me the assurance I seek.

4.30 pm

Lord Purvis of Tweed (LD): My Lords, it is a pleasure to follow the noble Lord to pick up, and indeed support, many of the points he made about geographical inequality, and to tease out a bit further from our debate on the first day of Committee the Government's refusal to link any form of geographical basis to the proposal on deprivation, as with others.

As the noble Baroness, Lady Blake, indicated, we are now going through parts of the White Paper on levelling up, and I am sure that the struggling communities across many parts of England will be relieved to hear that they are going to get more politicians. It brought back some memories. When I was a youngster, there was the proposal for more politicians in the north-east of England but with no extra money—a proposal for what we might call a north-east assembly. There was a very outspoken MEP in that region at the time—one M Callanan, I think he was called. I remember reading him in the *Chronicle* and seeing him on Tyne Tees telly. He said—I paraphrase—that with more politicians without any budget, the Government were desperately seeking to shore up their flagging regional devolution campaign. How times have changed.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): For that campaign, we used a large inflatable white elephant.

Lord Purvis of Tweed (LD): That is what I remember seeing on Tyne Tees telly.

Lord Callanan (Con): It was the cheapest campaign I have ever been on.

Lord Purvis of Tweed (LD): Well, I think the proposals for the White Paper are cheaper, because there is no money attached to them at all.

The Government's position is that, to maintain the level of EU structural support, £1.5 billion a year must be distributed. I will not quibble about some of the details, but let us take it as read that £1.5 billion a year must be distributed. The Government promised that there would be no shortfall. There were two references in the manifesto that stated so:

"a UK Shared Prosperity Fund to ensure that the people of the UK do not lose out from the withdrawal of EU funding".

The Minister stated so when he led on the repeal of the structural fund SI, and he stated so again on Monday in Committee.

We, national devolved Governments and local authorities thought that this was a straightforward commitment to replace the previous funds without there being a loss of funds, but no. On page 74 of the spending review, the weasel words "rise to" were inserted. The Government stated that, to ensure that the people of the UK did not lose out from the withdrawal of EU funding, the investment would need to be £4.5 billion in this spending review period, but, as they stated on page 74 of the spending review, it is £2.6 billion over the next three years—a cut of £1.9 billion, cutting support in areas most in need. The cuts in the coming years are a staggering £1.1 billion.

As the noble Lord, Lord Wigley, said, nor has there been any commitment to replicating per-person investment support. Under the previous schemes, investment was £130 per person in England, £180 per person in Scotland, £280 per person in Northern Ireland and £780 per person in Wales, reflecting the areas identified for particular need. I would like the Minister to write to me about what the proposed per-person investment will be for 2022. That is when we will know whether indeed we are losing out from the withdrawal of EU funding.

I was genuinely interested in what the Minister said on Monday about the geographical delineations referenced in Amendment 14 with regard to areas of need. He said, and he was specific in his language, that there was a differing approach from that used by the levelling-up fund. I then looked at the levelling-up fund methodology, which states that the methodology used is

"to develop an index of priority places for the Levelling Up Fund."

Furthermore,

"any comparison of need between places in different nations should be made using a consistent set of GB-wide metrics only."

The levelling-up fund is using an index of priority places based on need. To be consistent, that is GB-wide, and all authorities, when they are putting forward their bids for the levelling-up fund, will be clear as to what status they are in with regard to the index of priority.

So far, that is clear. However, the Government have said that there is no link between the two. The conclusion might be that this Bill is not linked with the levelling-up approach, but that is not what the Minister said at Second Reading. He said:

"Under this regime, public authorities at all levels of government will be empowered to give subsidies to help address regional disadvantages, supporting our levelling-up aims."—[*Official Report*, 19/1/22; col. 1712.]

So the aims are the same, but if there is no methodology to support a scheme's aims of addressing regional disadvantage under this Bill—in other words, inequalities—how will levelling up actually be achieved? The CMA will only have the ability to review a scheme's legality under this Bill; it will have no scope to help to address and support our levelling-up aims. Who will do that? Which body will consider whether this Bill is "supporting our levelling-up aims", as the Minister said at Second Reading?

The Minister might say that they are completely distinct and that the fund will operate completely distinctly from the subsidy regime. I looked at the levelling up-fund prospectus, which states categorically at paragraph 6.9 that all applicants to the levelling-up fund

"must also consider how they will deliver in line with subsidy control (or State Aid in Northern Ireland) as per Government guidance … This will be tested as part of the appraisal process and monitored thereafter."

How, and by whom? If every application to the levelling-up fund is to be considered in the context of this Bill, they are linked. If the Government are making the case for having a regional index for that fund, for which all applications have to satisfy this Bill, but this Bill says that there will be no index or any regional aspect, how on earth will this be monitored with regard to meeting the levelling-up aims?

My final point refers to further amendments to Clause 18 on markets. The Minister has been at pains to say that there will be no definition of "local market". I question how all the Government's different considerations will be satisfied if there is to be a review of the impact on local markets without there being an index such as the levelling-up fund. I simply do not know why the Government have made the clear distinction between this Bill and the levelling-up approach, which they say has to be consistent with the Bill. I hope the Minister will be able to clarify those points.

Baroness Jones of Moulsecoomb (GP): My Lords, I sat here on Monday on the first day of Committee and I wondered how much of the replying Minister's speech was written already—that is, Ministers were not responding to any of the good sense or good words that they heard from this side of the Room. It struck me that that should be seen as a little more important than it was on Monday.

This is an important group, because it is asking what we want to use the subsidies for, rather than just saying, "How do we want to control subsidies?" Supporting areas of deprivation has to be a core principle in our subsidy schemes and everything the Government do. We are very lucky now; we have a department for levelling up and we have a White Paper. Apparently, the White Paper points out how unequal the UK is. If you measure it on any economic or social metric, it is incredibly unequal. We have to ask: what have the Government been doing for the past 12 years? Of course, they are a Conservative Government, so clearly the levelling-up agenda is to mop up all the damage they have done in the past 12 years. Tackling deprivation and inequality will take a lot more than fine words, and streamlining subsidy schemes that are tailored to overcoming deprivation would be a good start.

Similarly, we should be making it easy for public authorities to support cultural and environmental objectives. I support noble Lords who have spoken so far, and I will be interested to hear the Minister's response to Amendment 23, tabled by the noble Lord, Lord Wigley, on this point, because it would be a great shame if the Bill were to interfere with achieving cultural and environmental objectives. We should concentrate on calculating social value as articulated in Amendment 36, tabled by the noble Lord, Lord McNicol of West

[Baroness Jones of Moulsecoomb]
Kilbride, as this is still a fledgling area of procurement practice and was one of the features of David Cameron's early years as Prime Minister when he was still trying to do some good. The Government seem to have stalled on social value since then. If we can improve the methodology for calculating social value and properly embed it in procurement and subsidy schemes, every pound spent by the public sector will have a much greater benefit for our communities. It will help to tackle deprivation, benefit the environment and create flourishing local authorities. I hope the Minister can explain what the Government are doing to advance the social value agenda.

Lord Berkeley (Lab): My Lords, I rise to move Amendment 25A in my name. I shall not speak to any other amendments, because to some extent I am here as an amateur among experts. I have one point to make, which I hope I can do quite quickly. However, I support the general trend from my noble friend's introduction and other noble Lords who have spoken.

I was unable to speak at Second Reading, because if I had I would have missed the sleeper to Cornwall, which I have to take. I am sorry about that. Many questions that come up are about how and what can replace the different bits of the EU competition regime. I got to know it quite well and got either to like or love it but at least to deal with it. My amendment covers everything that I think are subsidies, although when one looks at the definition of subsidies in the Bill it is unclear whether it covers a one-off payment or a series of payments or even what in the transport world is called the public service obligation. Perhaps somebody will refer me to where I have got it wrong in that instance.

In all these things, there seems to be nothing in the Bill about whether any particular subsidy, whatever anybody is talking about, is value for money or whether it has gone through the government procurement rules, which, in simple terms, means that it has gone out for three quotes or something like that. There may be many instances where that is not appropriate. I worry about whether this is just giving a blank cheque to Ministers or any local authority that chooses without any of the checks and balances. It may go to the CMA in the end, but to start with it is not there. This afternoon, we have been debating the PPE issue. I am not suggesting that was about the urgency for procurement. On the other hand, the urgency has long since passed, and that leaves a nasty taste in some people's mouths.

My other reason for raising this is that I have been involved in a levelling-up plan for a ferry to the Isles of Scilly, which some noble Lords know about. The local authority applied for £48 million from the levelling-up fund to be given to one private company without any tendering. The noble Baroness, Lady Vere, has been very helpful and has tried to put my mind at rest that government procurement rules will be looked at here. However, there are two issues. I think they apply to many procurement issues that come into the category of subsidy control.

The first is: should it be given at all, and has the amount applied for been properly calculated? Has the authority gone out for competitive tenders or can it demonstrate that it is value for money? Secondly—this is often more difficult—is there a better way of doing it? I have given the example of Scilly, where a better way would be to do it with one ferry rather than two, for half the price. That is not part of a levelling-up application. On the other hand, somebody should be looking at things like this to make sure that the Government, or the taxpayer, are getting value for money.

That could apply to many projects which noble Lords have mentioned on levelling up, including no doubt the railway projects in the regions which my noble friend talked about. It would help me to understand whether there is any check in the Bill involving value for money and going out to competitive tendering, or not, to demonstrate that that has been done before a decision is taken to go ahead.

4.45 pm

Lord Ravensdale (CB): My Lords, I oppose the question that Clause 18 stands part of the Bill. We have had an excellent debate so far on how the Bill fits with assisting disadvantaged areas. It feels quite appropriate to have these discussions on the day the levelling-up White Paper is being discussed in another place.

What runs through all these discussions on disadvantaged areas is that the UK is one of the most geographically unequal major economies. As the noble Lord, Lord Lamont, stated in Committee on Monday, that has only worsened over the last three decades. We need to throw everything at this problem, which is why noble Lords are keen to see more definition on how the Bill will help disadvantaged areas, given that subsidies provide a key part of the mechanism to enable levelling up.

Clause 18 relates to the relocation of activities and states:

"A subsidy is prohibited by this section—

I repeat, prohibited—

"if … it is given to an enterprise subject to a condition that the enterprise relocates all or part of its existing economic activities".

Of course, we need measures to prevent gaming the system and internal competition. However, this clause appears to be rather a blunt instrument to achieve this end and goes against the flexible nature of the Bill. There are many productive relocation projects that could contribute well to levelling up, and that need not be unduly distortive of competition in so doing, but which would be made much more difficult by the presence of this clause in the legislation. We already see government departments moving out of London into the regions. Inevitably, we need the same to happen for some business investments, too, if the Government are serious about levelling up.

I do not see why the Bill would want to prevent subsidies for productive relocation projects moving into disadvantaged areas, which could be a boost in many instances to the levelling-up agenda. This has already given rise to concerns that it will adversely affect the ability of LEPs and local authorities to use grants and other forms of subsidy to relocate. The question then becomes: how do we prevent issues with internal competition if we do not want this to become a free-for-all?

The answer is that the Bill already covers these aspects. I turn to the subsidy control principles in Schedule 1, where principle F states:

"Subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom",

while principle G states:

"Subsidies' beneficial effects … should outweigh any negative effects, including in particular negative effects on … competition or investment within the United Kingdom."

These two principles already cover, in my mind, the issues of negative effects on competition or investment within the UK. I therefore believe there is a case that Clause 18 is not required, because if a relocation subsidy was distortive of competition, it would be caught by those two principles in Schedule 1.

In addition, I want to pick up on Amendments 27 and 28, as spoken to by the noble Baroness, Lady Blake, on the meaning of area in Clause 18. For example, are moves within the same local authority permitted or not? We may need some more definition of what comprises an area in Clause 18.

I can see the intent behind Clause 18, but there are existing protections to achieve these ends in the Bill. If implemented, it could present a risk to the levelling-up agenda through a blanket prohibition on productive relocation projects. So far in Committee, the Minister has made the point that this is a framework Bill and will support levelling up through the subsidies that it will enable, but surely we do not want it to have a clause within it that could directly work against levelling up. I look forward to the Minister's response on this and would welcome further discussions with him on this aspect of the Bill to ensure that it is coherent with the Government's wider strategy.

Lord German (LD): My Lords, I appear to have come into this argument about consistency between the noble Lord behind me and my noble friend Lord Purvis. It strikes me that, if this Government are intent on getting a coherent policy, they must have one fitting with the other.

My noble friend just talked about the figure of £780 per head. I will not argue in greater detail what I said during a previous day of debate in Committee, but I also want, in answer to a Written Question and Oral Questions, a statement from this Government that Wales will receive, pound for pound, what it received from the European fund. My target is £780. If the Minister could indicate in his reply whether the Government are still intent on reaching that target—and if so, when —that would be helpful.

It seems to me that consistency is also about the way in which the subsidy regime might work. How subsidies have been applied in the past is important. I quote by way of example the case of both sides of the Severn Bridge. One is in Wales, the other is in England. A major UK company relocated from the Welsh side to England. Having reflected on it, the Welsh Government spent a considerable amount of money preparing the site which the company had vacated and turning it into something that became a possible, and certainly large-scale, logistic hub into which a major British company relocated, again moving from one side of the Severn Bridge to the other. That was allowed, because basically what we were seeing was economic development potential and the available subsidy regime being used to the full.

However, I do not understand how this subsidy Bill will mean that companies can relocate or move, except by indices that, we are told, are now not consistent with the subsidy regime. It is therefore difficult for a member of the public or a public body trying to think how they will sort out their subsidy regimes from now on to make certain decisions about the future. Perhaps the Minister can provide us with some certainty on what relocation means, because without a map, a plan or boundaries, where does it stop? Where does it start? Does it mean that both sides of the Severn Bridge are in the same government economic plan and can be at both ends at the same time?

I want to say a few words about the SPEI schemes and ask the Minister some questions about them. In principle, such schemes are helpful and permissive because they follow on from the EU's SGEI scheme, but there are two differences between the European scheme and the scheme proposed in this Bill. The first is that the SPEI must reflect the principles in Schedule 1, of which principle F is a new one. This amplifies the question I asked just now about whether, without access to a methodology for location, it will be possible to determine the issues raised by principle F. The second difference concerns the need for public interest objectives to be placed as an obligation for the companies concerned—that is, the companies that provided the delivery of goods and services or actually delivered them—in future.

To understand that need, how are we to measure what public good or public service obligation is? That is not yet reflected in the content of the Bill, and I wonder whether the Government will make it clearer, especially as we are probably not talking about the exempt ones but of that lower limit up to £700,000 and then further to £14.5 million. These are important features of any economic development plan for any area. The schemes currently captured by the SPEI rules include housing, rural transport services and some aspects of health. My question to the Minister is: how much broader could SPEI schemes go? The public good could span a wide regime of operations. In the light of two examples, I will ask the Minister how a scheme could be tested and whether he could treat these examples as a means of achieving an understanding of the intention behind this proposal in the Bill.

The amendments in the name of the noble Lord, Lord McNicol, are trying to establish a level of detail that we do not yet have. It is essential to have that detail, either in the Bill or in further explanation from the Government, of what schemes could be involved and use these services. Those services could be provided under current expenditure or from capital expenditure for projects that are needed.

I want to work on leisure centres, and arts centres or concert halls. Leisure centres used to be very much a local authority activity, but they are critical to providing a social good in ensuring the good health of communities. Therefore, many local authorities have now turned to the private sector to build, and sometimes to run, these centres. Would an SPEI scheme be available for that sort of operation?

[Lord German]

It is similar for arts centres, which are frequently multipurpose halls now. As well as concert halls, they are perhaps homes for orchestras and community centres. Not only concerts but a whole lot of activities occur in them. Having a regime that provides a subsidy means that ticket charging can be affordable across the community. In places such as London, it is possible not to have a subsidy, because the audience will clearly pay far more for their tickets than they would in other parts of the country.

Given the disparities in the regions and nations of our United Kingdom, it is important to understand how these things will work in practice. A number of these multipurpose halls may well have a resident artist, an orchestra, a teaching capability or an education facility. In fact, it would be easy to demonstrate a public good, but they will need support or a subsidy. Will an SPEI scheme apply equally to them, provided that the public good stands up? It could be said that the availability of affordable tickets for the general population is important, no matter where it comes from.

In conclusion, this section of the Bill needs further explanation, simply because it could be used to great effect by local authorities and the devolved Administrations. Unfortunately, it does not mean that they will have a subsidy to offer, certainly not in Wales, unless the Government can match the £780 a head that we had until last year.

Lord Bruce of Bennachie (LD): My Lords, the Government are anxious to reduce regional inequality and to promote greater equality, but it is difficult to understand how that it is going to happen without the economy seeing some relocation. The Government's plans today involve taking money away from the home counties and transferring it to the north of England. That puts them in a political quandary, because if they do not deliver material results in the red wall seats and they have also alienated their blue wall seats, they may find themselves losing on both fronts. That is a problem for them, but from the country's point of view we want to see those inequalities being reduced. My question to the Government is how they think this can be achieved if any suggestion of relocation is prevented.

5 pm

I think I mentioned to the Committee on Monday that I moved to the north-east of Scotland in the early 1970s specifically to be engaged in economic development promotion, at a time when the population of the area was falling and was projected to fall further. Of course we had the unexpected benefit of the discovery of oil and gas in the North Sea, which transformed the economy. Nevertheless, two things happened. First, there were discrepancies between what was happening in the growth areas of Aberdeen and in the rural hinterland, which aggravated some of the rural problems. Secondly, we are now in transition away from oil and gas, and the area needs to change its economic mix. Therefore, there are a couple of questions that I would be interested to test the Minister on.

I go back to the problems of rural areas in the 1970s and 1980s. When I was a relatively new Member of the other House, the Government had a youth training scheme. A rural community in the west of my then constituency, Huntly, found it impossible to get trainees placed until the local rotary club asked if it could set itself up as a YTS-promoting authority. I had to engage at first hand with Mr Eric Forth, who was then the responsible Minister, and he gave a dispensation because rotary clubs were not perceived to be the natural means of delivering the scheme. But it was agreed, and the rotary club's simple answer was, "We will ask our members if they are willing to provide placements in their local businesses for local youngsters from the schools." It was a huge success and ran for many years. Indeed, when it was closed down, it had a profit that it was able to hand back to the continuing agency.

That perhaps reinforces my point that local people, locally engaged and in partnership with the public and the private sector, are best placed to deliver development, not central agencies being delivered from Edinburgh, London or somewhere else. The local authorities have been savagely squeezed, so their capacity to fund such things has been inhibited. I say to the Government: give the local authorities some of the resources rather than holding them centrally, and let them work to decide on this.

That brings me to my final transitional point. As we face the inevitable decline of activity in the North Sea and the eventual transition to net zero—that still implies oil and gas production, even until 2050, but on a declining basis—the industry is diversifying. It is using its cash flow and expertise to invest. We have an excellent partnership called Energetica, which is trying to promote an energy and business corridor between the northern suburbs of Aberdeen and Peterhead along the Aberdeenshire corridor and involves the private sector, Scottish Enterprise and the local councils. It envisages being a powerhouse for transition. Will it have the resources and be able to do that? What constitutes relocation? If it is confused or unclear, that could be a problem.

We also have an entirely private sector operation called Opportunity North East, which is looking at all the diversifications away from oil and gas to which we could contribute. It is chaired by Sir Ian Wood. He is now retired but the Wood Group, as was, is a FTSE 100 company that employs about 40,000 people worldwide. Interestingly, it has diversified substantially away from oil and gas to the point where only 40% of its turnover now comes from fossil fuels. It still needs that fossil fuel revenue to continue the process of transition.

My question to the Minister is very practical. These are schemes in hand with real ambition to achieve change in an area that is facing real challenges. They require a regime that will enable them at least to do what they are doing, but preferably to get access to funds that enable them to do it more effectively and in ways where they will not be challenged. If a company decides to invest in a situation like that, which might involve some reorganisation of their operation, it is very difficult to determine whether they are relocating or just reprioritising some of their locations. It would be counterproductive if they were stopped in that scenario.

I repeat that if we are trying to redistribute some of the wealth, the growth and the economy, surely relocation is part of that. After all, in principle the Government

are keen to redistribute civil servants, who presumably could fall foul of the Bill if they are directed and provided with incentives to move out of London, Edinburgh or wherever. It is important that we get some clarity on how this will work, and a recognition that local partnerships, local authorities and the private sector are better placed than central government to deliver that. It should not be left to short-term political decisions to meet the threat of electoral reversals, but should be based on a proper, transparent strategy which is about showing that everywhere that has the will and capacity to change has the backing and the resources to do so.

Lord Thomas of Cwmgiedd (CB): My Lords, I have a few short points. First, I support the noble Lord, Lord Ravensdale, regarding Clause 18 not standing part of the Bill. It is always very unfortunate when we have in legislation something that says that a subsidy is prohibited by the sanction if it is given to an enterprise subject to a condition that the enterprise relocates. The Explanatory Notes make it very clear that, by "condition", something explicit is meant. Does it mean therefore that something implicit is permissible? As the Bill aims to achieve transparency, should we not be open and clear, particularly regarding the enforcement by the CMA, about what precisely we will allow in respect of relocation? The noble Lord may be right about the principles governing it, but a provision that makes it dependent on whether it is explicit or implicit is of benefit only to the lawyers, and we do not need to go down that route.

The second issue goes to the question of how this is to work and be enforced, which is the interrelationship of subsidies, procurement and the levelling-up fund. It seems quite clear that procurement obviously can operate as a subsidy, although there is an exemption—the Minister explained it in answer to Amendment 3, tabled by the noble Lord, Lord Wigley—which might exempt certain schemes from it. How does the value-for-money concept in the procurement Bill relate to subsidies?

My last question goes to the levelling-up funds. I assume that something will be done to ensure that they will not be part of financial assistance but, even if they are not for the purposes of the Bill, no doubt the Competition and Markets Authority and the court will have to take into account, in looking at distortion, the cumulative effects of funds from the levelling-up fund and funds from the local authority, because they are both, in essence, forms of state aid. It may be difficult to do it today, but can we have a paper which explains interrelationship of subsidy by way of procurement and how the levelling-up funds relate to the Bill? They are all potentially forms of state aid.

Lord Callanan (Con): My Lords, I thank the noble Lord, Lord McNicol, for tabling the lead amendment in this group, and the noble Baroness, Lady Blake, who ably introduced it. It was great to be reminded by the noble Lord, Lord Purvis, of my previous existence in the campaign against the northern regional assembly—I dread to think how many years ago that was. I seem to remember that Mr Cummings was also involved in the campaign; the noble Lord missed his opportunity to have a go at poor Dominic for that. This is an interesting group of amendments which promotes some good questions. I will try to address the points from the noble Lord, Lord McNicol, and the noble Baroness, Lady Blake, and from the noble Lord, Lord Berkeley, on Amendment 25A, as well as the points from the noble Lords, Lord Ravensdale and Lord Wigley, and the noble and learned Lord, Lord Thomas.

As the noble Baroness, Lady Blake, helpfully reminded us, the context for this is the publication of the levelling-up White Paper. In that, we have announced a comprehensive programme of policies that will put the UK on a path towards greater economic prosperity in every region and place—including, I hope, the north-east of Scotland. We will do this through significant targeted investment, such as the £4.8 billion levelling-up fund that has been referred to, which will invest in infrastructure that improves everyday life across the UK, including by regenerating town centres and high streets, upgrading local transport and investing in cultural and heritage assets.

It is not in question that any government subsidy scheme set up in the context of this levelling-up fund or otherwise should be in compliance with the provisions under this Bill, once it is in force. However, as we discussed on Monday and as raised by the noble Lord, Lord Purvis, again today, subsidies can of course be an important tool to achieve levelling up, but for reasons of time and efficiency I will focus today on the Bill itself and the amendments tabled. I am sure there will be plenty of opportunities to debate the levelling-up fund and its excellent proposals in this House in future.

Lord Wigley (PC): Does the Minister accept that cultural levelling up is part of the Government's aim, and that cultural facility away from London and the south-east is a very important part of life and the economic substructure? Therefore, is it in order for money to be used to attract cultural investment, whether in theatres, concert halls or other aspects, which may attract business away from London and might be caught under the provisions of the later clause which arises in this group? How is that going to work?

Lord Callanan (Con): I agree. Personally, I am fully in favour of cultural institutions transferring out of London. I will address the relocation point in my later remarks.

This grouping spans several clauses of the Bill but, in responding to the amendments, I will keep coming back to the central refrain that I iterated on Monday as well. The Bill regulates the giving of subsidies where there is a market failure or an equity rationale, with the intention of minimising distortions to competition, investment and trade. It is intended to be a flexible and minimally burdensome regime that applies to subsidies of all types and in all policy areas. As such, my central contention that applies to a lot of these amendments is that there is no need to privilege or exempt certain sectors or highlight certain objectives. Nor is it for the Bill to dictate rigidly the purposes for which public authorities should use subsidies or how they should achieve their purposes.

Clause 10 concerns the creation of subsidy schemes and streamlined subsidy schemes. A streamlined subsidy scheme is made by a Minister of the Crown for the

[Lord Callanan]
purposes set out in the Bill. Amendment 14 would clarify that the Government may create streamlined subsidy schemes for the purposes of supporting areas of relative economic deprivation. Specifying particular policy objectives at this stage on the face of the Bill may in fact lead to the power to create streamlined subsidy schemes being interpreted in an unduly narrow way in the future.

5.15 pm

Concerns might also be raised, on the back of this, about why other desirable policy areas are not mentioned in the Bill as potential streamlined subsidy schemes—and whether their absence may suggest that the Government have deprioritised that policy objective. The Government fully support actions to assist areas of deprivation and facilitate the levelling-up agenda. Indeed, I will ensure that our streamlined subsidy schemes collectively reflect the importance that we attach to levelling up.

The Bill does not restrict the policy objectives that a streamlined subsidy scheme can pursue. We do not want to restrict it unnecessarily to one policy objective, however advantageous that policy may be. The new domestic subsidy control regime will give authorities the flexibility to deliver subsidies where they are needed to support economic growth, without facing excessive bureaucracy or lengthy pre-approval processes. The Government will also publish guidance to make it clear how the principles should be applied by public authorities when considering subsidies that advance the levelling-up agenda, or that promote the economic development of relatively disadvantaged areas.

As for Amendment 23, I entirely agree with what the noble Lord, Lord Wigley, said in his contribution and his intervention, and with the sentiment expressed on this amendment by the noble Baroness, Lady Jones—that the continuing support of our nation's cultural and environmental objectives is of the utmost importance. I hope that I can give him the reassurance that he sought that the new domestic regime will facilitate subsidies in aid of cultural or environmental goals. Any well-designed subsidy or scheme with these at its core should not experience any difficulty in complying with the regime's common-sense principles or other requirements.

As I have previously noted, principle A states that public authorities may give subsidies only to pursue a policy objective which either remedies a market failure or addresses an equity concern. Subsidies pursuing cultural or environmental objectives would almost always comply with this principle. Indeed, the illustrative guidance published last week on the application of the subsidy control principles—I appreciate that the noble Lord may not have had an opportunity to look at it yet—provides examples of subsidies targeted at environmental issues and the preservation of cultural sites as measures addressing forms of market failure. Furthermore, it states that subsidies targeted at extending access to cultural or educational amenities would be an example of an equity objective.

It is important that subsidies and schemes, including those with cultural or environmental goals, also comply with the remaining principles. These ensure, for example, that subsidies are not excessively large, that they minimise distortion to UK competition and investment, and that they are designed to bring about a change in the behaviour of the recipient. Of course, not all cultural and environmental funding will fall within the new regime's definition of a subsidy. However, where it does, it will need to comply with the subsidy control principles I have outlined, but we do not believe that this would be particularly difficult.

The amendment would not meaningfully change the ability of public authorities to use well-designed subsidies to fund art, culture and environmental protection—if that is what they choose to do—because that path is already smooth. It could, however, become a loophole for subsidies and schemes to avoid complying with the basic principles. In certain circumstances, it could hinder the UK's ability to fulfil our international commitments, particularly those under the trade and co-operation agreement with the European Union—of which the noble Lord is so supportive.

I thank the noble Lord, Lord Berkeley, for his Amendment 25A, which would require public authorities to consider value for money before giving a subsidy or making a subsidy scheme and, where applicable, to consider making subsidies subject to competitive tendering processes. In the light of this amendment, I think he has missed his vocation in Her Majesty's Treasury. The foundation of the new regime is a set of clear common-sense subsidy control principles. These principles are fundamentally aimed at reducing harmful distortions to domestic competition and investment, as well as trade or investment between the UK and other countries, which can arise from the giving of subsidies. These principles also support public authorities to award subsidies that deliver strong benefits and good value for money for taxpayers. For instance, principle C requires that subsidies be designed to bring about

"a change of economic behaviour of the beneficiary",

while principle G states:

"Subsidies' beneficial effects … should outweigh any negative effects".

The subsidy control principles also support competitive processes for awarding subsidies, where possible. The recently published illustrative guidance states that public authorities should consider implementing an award process which involves at least some element of competition between potential recipients. While I agree with the comment of the noble Lord today that it is important to ensure value for money in public spending, I emphasise that this scheme is not a subsidy for existing public spending control and value-for-money tests, and that he can rely on Her Majesty's Treasury to impose those tests on all public spending under the Treasury's Green Book and the principles set out in *Managing Public Money*.

As I have previously said, this Government do not want unnecessarily to interfere in the spending decisions of democratically elected public bodies. Public authorities, including the devolved Administrations, are best placed to make decisions about the funding of projects that they deem to be priorities in their areas. This is why the new subsidy control regime is designed to empower public authorities to design subsidies in a way that is tailored and bespoke for their local needs, without facing excessive bureaucracy.

Moving on to Amendments 27 and 28, I start by stating the purpose of Clause 18. Clause 18 is a prohibition on subsidies that are explicitly contingent

on the recipient relocating—that is, to receive the subsidy, the recipient must cease activity in one area and move to a new area. It is meant to capture examples of outright poaching of an entire business from one area to another of the type that we often see between states in the US. This clause puts down a marker and is intended to prevent a very small class of subsidies that would disrupt the internal market and constitute a serious waste of public money. The prohibition is not intended to capture subsidies that may substantially improve the attractiveness of investment in a specific area and thereby have the indirect effect of recipients relocating. Expansion into a new area would not be prohibited, nor is it intended to prevent those subsidies aimed at levelling up. I understand that this last point is of particular interest to the noble Lord, Lord Ravensdale, and I shall come back to it in my comments on why Clause 18 should stand part of the Bill.

On Amendments 27 and 28 from the noble Lord, Lord McNicol, I know that he is not looking to amend this provision but is instead looking for greater clarity about how it will work and what constitutes an "area" for the purposes of the prohibition. The term is intentionally left undefined and, informed by guidance, public authorities will apply a common-sense interpretation of it. Where a public authority gives a subsidy that is conditional on the recipient ceasing its activities in one area and moving to another, they will need to show that the move is genuinely within the same area. Factors that will be relevant to that assessment include existing definitions of an area, such as county, unitary or mayoral combined authorities' boundaries, but public authorities will also need to consider other interpretations. The illustrative guidance that we published last week sets out some questions that public authorities should ask themselves as they consider the geographic and distributional impacts of subsidies and as they consider levelling-up objectives more widely. This will be supplemented by further guidance that will be published well in advance of the regime's commencement. As I have said, the clause is designed purely to prevent poaching and subsidy races between public authorities in which context the definition of "area" will at that time be quite clear. However, fixing local authority areas at this stage risks creating arbitrary geographic distinctions that do not necessarily work in every case.

Going back to the question from the noble Lord, Lord Ravensdale, about whether Clause 18 should stand part of the Bill and picking up on the contribution of the noble and learned Lord, Lord Thomas, I hope these clarifications have shown the utility of this prohibition.

Lord Purvis of Tweed (LD): If a public authority—let us say the Scottish Government—had a scheme and defined for the purposes of that scheme the entirety of Scotland, therefore allowing relocation anywhere within Scotland, is the Minister satisfied that this would come under the Bill?

Lord Callanan (Con): If it was in compliance with the other principles in the regime, of course it would be in compliance. It would be for the Scottish Government to determine what they would consider—

Lord Purvis of Tweed (LD): If the Secretary of State decided that the geography was the whole of the United Kingdom, would that be acceptable under the Bill, too?

Lord Callanan (Con): The noble Lord is dragging me into hypotheticals, but obviously the purpose of the Bill applies to the whole of the United Kingdom, so the principles would apply across the whole country, yes.

Lord German (LD): The Minister has mentioned the question of guidance twice. Guidance is not law, of course, unless it is. It exactly what it is meant to be: guidance. Given the importance of guidance to the question of what an area is, would it be possible for this guidance to be issued, even in draft form, before we conclude this Bill, so that we can at least know what is in the Government's mind?

Lord McNicol of West Kilbride (Lab): Just to take both earlier points, if the Secretary of State defined an area as the whole of the United Kingdom, and that covers it, part of the subsidies could be used to move businesses inside the whole of that area. If that is the case, it defeats the whole purpose of it, does it not?

Lord Callanan (Con): I do not want noble Lords getting mixed up. I was referring to the fact that schemes can be designed for the whole of the United Kingdom. The purpose of this clause is to prohibit direct subsidies where a business is paid a sum of money to move from area A to area B—let me finish this point—depending on the definition of the areas that we spoke about previously.

However, that is only for direct subsidies, of course. The attractiveness, training provisions et cetera that could exist or be subsidised in a different area might make it more attractive for that business elsewhere, but the idea is to avoid the situation in the US that I talked about, where they come along and give companies—I will not name them, but noble Lords know the examples I am talking about—huge amounts of money literally to get it to close down its operations in one state and move to another. That is what we are trying to avoid, but we fully accept that it is perfectly in order to increase the attractiveness of an area, show how wonderful it is and show what is available there, including trading provision, sites et cetera. However, we do not accept using direct financial assistance to move from one part to the next.

We have already published illustrative guidance. We will look at enhancing that further with more detail before we commence with the legislation. If it is drafted and ready in time, I will share it with the noble Lord, of course.

Lord Fox (LD): Without labouring the point, but labouring the point, I want to come back to the point made by the noble and learned Lord, Lord Thomas, about the grey areas that appear to be here. This is not a hypothetical example—it is a real one without names—but imagine that you have an inward investor, possibly doubling down on an investment that has already been made. As part of the process of negotiating with that investor, government, whether national or local, determines

[Lord Fox]
that it is important to have a technology park where the investor's suppliers are aggregated and work together to support the investor.

The level of support needed to create the system of suppliers that supports the inward investment, which is clearly of benefit to the region, and therefore to the country, is clear. However, it is also clear that, if arms are not twisted, they are also being bribed or given money to create that park, that environment, to make sure that the inward investor gets what they want when it comes to the investment. Is the Minister saying that this sort of process will be entirely legal even if Clause 18 remains in the Bill?

Lord Callanan (Con): Yes, if they are an inward investor coming into the country and they do not already have an operation in another part of the country.

Lord Fox (LD): But if they are relocating suppliers in order to support—

Lord Callanan (Con): That is not the example the noble Lord quoted. My understanding is that, if they are just increasing the attractiveness of an area and there is no direct financial payment to the company to move from one area to the next, yes, that would be allowed. If that is not correct, I will write to the noble Lord, but that is certainly my understanding of how that would work.

As I explained, this prohibition puts down a marker that is intended to prevent the small class of disruptive but harmful subsidies, such as poaching and outright bidding wars. I suggest to the noble and learned Lord, Lord Thomas, that it would not be easy for such subsidies to circumvent this prohibition.

5.30 pm

In response to the noble Lord, Lord Ravensdale, those harmful subsidies are already very unlikely to comply with the principles. However, the degree of harm they could cause to the internal market and the inappropriate use of public money this would involve justify the extra reassurance of this prohibition, as both a deterrent and a hard stop.

In respect to the comments of the noble Lord, Lord Bruce of Bennachie, it is important to restate that this prohibition is not intended to capture subsidies that may substantially improve the attractiveness of investment in a specific area, as I have just explained, which would have the indirect effect of recipients relocating. The approach strikes the right balance: the clause will prohibit some of the most potentially harmful subsidies, without preventing what all would agree are levelling-up subsidies that attract investment to disadvantaged parts of our nation.

Lord Purvis of Tweed (LD): I am grateful to the Minister; he is being very generous. This is just to confirm this point: if a public body is able to self-define an area under this clause, there would be nothing to prevent the Scottish Government from defining the area as Scotland. They could therefore offer relocation subsidies to businesses in England to relocate to Scotland, and vice versa; there would be nothing to stop the Secretary of State from defining the area as England, which would be more worrying, and therefore having subsidies that are specifically for those relocating from, say, Wales.

Lord Callanan (Con): I think the noble Lord is confusing two different areas. There is the area that would define a particular scheme and the direct subsidies that we are talking about. Yes, clearly there would be a prohibition on the Scottish Government directly financing the relocation of a company from England to Scotland, or vice versa.

Lord Purvis of Tweed (LD): No, that is because the area is Scotland.

Lord Callanan (Con): It does not matter, because anywhere within the United Kingdom is the area covered by this Bill.

Lord Purvis of Tweed (LD): Minister, Clause 18 could say the United Kingdom, but it does not. It says "area". As the Minister has said on a number of occasions today, the public authority defines the area.

Lord Callanan (Con): It would be the area of the particular authority that is offering the subsidy. Earlier, I offered a more precise definition of what the area would be, whether it is the Scottish Government for Scotland or the council area that the noble Lord, Lord Bruce, referred to in north-east Scotland. They would be the areas of the authority combined. If the Scottish Government, for instance, wanted to offer a direct subsidy for a company to move, or the British Government offered a subsidy for a company to relocate, even within their own area, it would not be permitted.

As I said, indirect attractiveness in enhancing training provisions, for example, would be permitted. This is to prohibit a particular small class of actions. The example that we used was in the United States. We have all seen examples of companies moving from one state to another. They literally close down one operation and move to another because of the enormous subsidies offered. That is what we want to prohibit. We certainly do not want to prohibit areas—indeed, it would be contrary to our policy aims—from making themselves more attractive by offering indirect subsidies, as this would help the levelling-up agenda. I hope I have clarified that.

Amendment 34 was tabled by the noble Lord, Lord McNicol. First, I will say a few words about the purpose and effect of Clause 29, which this amendment seeks to change. The clause sets out the specific provisions for giving subsidies for services of public economic interest, which are services provided to carry out particular tasks in the public interest. These are services where, without a public subsidy, a vital public service would not be supplied in an appropriate way by the market—or, in some cases, would not be supplied at all. These could include, for example, ferry links between Scottish islands—no doubt the noble Lord, Lord Berkeley, would want to quote the example of the Scilly Isles—and a rural bus service.

The provisions in Clause 29 facilitate the subsidies being given while ensuring that this is done transparently, that they are reviewed regularly by the public authority, and that they avoid overcompensating the beneficiary. The Government's aim in drafting Clause 29 was to provide a simple yet effective framework within which public authorities could confidently provide SPEI subsidies that would allow the continued provision of important services and, in doing so, ensure that the subsidy is limited to what is necessary to deliver that service.

In response to the question from the noble Lord, Lord German, about whether a leisure centre would be considered an SPEI, I do not want to comment on that specific scenario. There is no reason in principle why it should not be, but the Bill would absolutely allow a subsidy to a leisure centre, whether it is an SPEI or not—we could probably have lots of debates about the degree to which leisure centres are SPEIs—if the public authority was assured that there was a market failure or equity rationale and the other relevant requirements were met. I will purposefully not comment on his proposition that the residents of London should not benefit from public leisure centres. I am sure that is not what he was trying to imply.

The amendment tabled by the noble Lord, Lord McNicol, seeks to add a further requirement on public authorities when considering the cost of delivering the SPEI. They would need to consider the social and economic welfare of users of the service and of those engaged in its delivery. These will be important factors for many, if not all, SPEIs, and I expect that public authorities would regularly take account of these considerations when reviewing these types of services on a case-by-case basis. For example, service providers of rural transport services may be required, by the terms of their contract, to consult service users through annual customer surveys or regular engagement with local stakeholders to show that the service in fact meets local needs.

However, the inclusion of this amendment in the Bill would introduce additional complication and a degree of uncertainty for public authorities in how they undertake this assessment. The defining factor for SPEIs must be the type of service that is provided and the fact that it would not be adequately provided by the market. The provisions in Clause 29 are designed to ensure that those services are designed appropriately and with minimal market distortion. As important as the social and economic welfare of service users and providers is, I do not believe it is at the core of this assessment and of the subsidy control provisions.

More broadly, it is important to emphasise that the subsidy control regime does not sit in isolation, nor should it determine every element of spending decisions taken by public authorities in the UK. They must continue to take into account spending rules and to ensure value for taxpayers' money. They must also make evidence-based, democratically accountable policy decisions about how and where to intervene, in a way that takes into account the specific characteristics and needs of the geographical area and the subject matter for which they are responsible. It may therefore be appropriate for public authorities to include reference to the social and economic welfare of service users and providers in their own guidance on specific SPEIs.

With respect to the social and economic welfare of those engaged in delivering the services, I remind the noble Lord that the UK has one of the best employment rights records in the world. We continue to build on this record, ensuring that our workers have access to the rights and protections they deserve. I therefore do not believe that it is desirable for the subsidy control regime that we are debating to prescribe how public authorities must account for the social and economic welfare of service users and those engaged in delivering the service.

Finally, I will comment on Amendment 36. I am also grateful to the noble Lord, Lord McNicol, for tabling this especially thought-provoking amendment. I understand that the noble Lord intends it to be a probing amendment and I will treat it as such. It raises some interesting questions about subsidies and the nature of the relationship they create between a public authority and a subsidy beneficiary.

The social value Act, from which I assume his amendment takes its inspiration, requires a public authority that is procuring the provision of services, goods or works to give weight to social value factors in what would otherwise have to be a strict value-for-money calculation. Authorities within the scope of that Act should consider whether it applies where a subsidised contract is awarded. In contrast, and perhaps paradoxically, the giving of public money in the form of a subsidy is not primarily a market-based or economic calculation. Of course there are economic duties, within this regime and in public spending controls, to ensure that a subsidy is efficient and effective.

However, the first requirement of this regime—the first condition that a public authority must satisfy before giving a subsidy—is, in essence, one of social value: what is the equity rationale? Is there a market failure and what is the benefit to wider society in providing this subsidy? I hope this answers the question of the noble Baroness, Lady Jones, on the same subject. Moreover, public authorities must conclude their assessment against the principles with the balancing test in principle G: that the beneficial effects of the subsidy should outweigh any negative effects. Of course, these duties fall on the public authority and not the beneficiary directly but, in considering the first and last principles, the public authority must consider the effect of the subsidy in the round.

If it were reasonably foreseeable that, in the actual purchasing of a good or service funded by subsidy, the beneficiary would be undermining the equity rationale for giving the subsidy or that it would somehow worsen another equity objective, then it is hard to see that the subsidy could satisfy either principle A or G. None of this is to say that a public authority cannot impose secondary requirements on a beneficiary, where the size and nature of a subsidy might lead it to do so. Many public authorities award subsidies through a written contractual arrangement that sets out the terms and conditions under which the financial assistance is given, and this would be the way to impose such conditions. But it would be disproportionate to require public authorities to impose social value conditions in all cases, particularly as the questions of equity are already built into the fabric of the regime.

[Lord Callanan]

As an aside, the noble Lord has also proposed that public authorities should be able to impose penalties if the use of the subsidy does not deliver the chosen social value purposes. As I have explained, it is not proportionate to require public authorities to impose these secondary requirements. However, let me reassure him that Clause 77 provides that if a subsidy is not used for its intended purpose, it can of course be recovered.

I am grateful to all noble Lords for putting forward their amendments and for the long subsequent discussion that has taken place, but I hope I have set out the reasons why I am unable to accept these amendments on behalf of the Government. In the light of the fulsome explanations I have provided, I hope that noble Lords will feel able to withdraw or not press their amendments.

Baroness Blake of Leeds (Lab): I thank everyone. Given the nature of the earlier discussion, particularly about the cultural venues, perhaps I should declare my interest as a vice-president of the LGA at this point, with apologies for not doing so earlier. I wonder if noble Lords are all sitting feeling relieved that they are not standing here trying to pull all this together. On behalf of the Committee, I thank everyone who has contributed; it has been a very helpful debate. I also thank the Minister for his fulsome response.

However, the nature of the amendments we are considering in this group and their probing nature is such that noble Lords have been seeking reassurance. Although the Minister has attempted to give us reassurance, without looking through the detailed responses that the Committee has given this afternoon I am not convinced that on the matters raised we can all put our hands up and say that that reassurance has been received on all points. I hope there will be opportunities to come back and look at the continuing areas of concern.

I am also struck by the fact that we have not had the opportunity to discuss in detail the evidence submitted by experts during the House of Commons proceedings, including the very serious arguments by Professor Fothergill and Dr Pazos-Vidal about the benefit of defining areas. I confess that I am at a loss as to how the Government can bring this down to the point where the interested parties can make sense of the opportunities available to them, and how we can move this forward in a simple way that would enable areas and businesses to benefit, without the excess bureaucracy that the Minister assured us would not get in the way. I remain to be convinced on some of these points.

5.45 pm

The other area that we have focused on is how to bring benefit to places—but again, through the social value debate, are we concentrating enough on the benefit to people who live in those communities? I confess a personal interest in the disclosure of the Minister's role in the north-east devolution assembly debate. Having been on the other side of the fence in the Yorkshire debate at the time, I can probably tell him exactly when that was. I knew that a certain Dominic Cummings cut his political teeth there: I think that the physical white elephant that the Minister mentioned was dreamed up by him.

So many points have been raised today that I cannot possibly do them all justice, but I want to dwell on my noble friend Lord Berkeley's pertinent amendment on value for money. In the current climate of looking at how money has been spent over the past couple of years, every single pound of public money is critical. I welcome the comments from all noble Lords. We will take the Minister's comments away and look at them in more detail, then regroup and consider how to address the real concerns that we still have about so many of the points discussed this afternoon. I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

Amendment 15

Moved by ***Lord Fox***

15: Clause 10, page 6, line 33, leave out subsections (5) and (6) and insert—

"(5) A streamlined subsidy scheme must be made or modified by regulations subject to the negative procedure."

Member's explanatory statement

This amendment would require a streamlined subsidy scheme to be made by regulations, as recommended by the DPRRC.

Lord Fox (LD): My Lords, they say that a change is as good as a rest, so the Minister should be very sprightly now, as these amendments bring a slight change of gear. The group consists of eight items, mostly on the same theme, with the exception of the clause stand part in the name of the noble Baroness, Lady Bennett. Because that is so different, in the interests of time and clarity I shall not speak to it, so I look forward to hearing more about it from her.

I am tempted to say, "Here we go again". The pattern we see here is one that we see with every Bill. First, the Government table new legislation absolutely riddled with secondary legislation. There is usually at least one case of secondary legislation allowing the amendment of primary legislation. Then the Delegated Powers and Regulatory Reform Committee steps forward and issues a report highlighting those issues and recommending remedies. Next, the Minister—in my area it is always the noble Lord, Lord Callanan—stands up, pleads the case for flexibility and sometimes, indeed increasingly, disputes Parliament's competence to even make some of the decisions that will be required in the future. If we are successful through this process, some, although usually not all, the offending clauses get removed or modified. Lately, however, I detect an emboldened Minister. Increasingly—the ARIA Bill is an example—he uses the Dispatch Box to refute the arguments of the DPRRC.

We should be clear that this committee is an important senior committee of your Lordships' House, and its report *Democracy Denied? The Urgent Need to Rebalance Power between Parliament and the Executive* stated that

"the principles of parliamentary democracy, namely parliamentary sovereignty, the rule of law and the accountability of the executive to Parliament"

should be at the heart of how a department approaches the delegation of legislative powers. The Bill falls far short of that objective, which is why there are so many

amendments in my name in this group. I am also pleased to support the noble Lord, Lord McNicol, and the noble and learned Lords, Lord Judge and Lord Thomas, in Amendment 50, which seeks to deal with Clause 47, which is clearly the most egregious example of executive overreach.

I turn to the amendments in order. Amendment 15 would require a streamlined subsidy scheme to be made by regulation. Clause 10 allows Ministers to make streamlined subsidy schemes, which are defined opaquely in Clause 10(4). This demonstrates that Ministers consider that all subsidies within such a scheme comply with the Bill's subsidy control principles and requirements. In practice, it means that if a public authority keeps within the limits of the scheme it is no longer required to consider the subsidy control principles or requirements when giving an individual subsidy. Streamlined schemes will be laid before Parliament after being made. They will not be subject to the negative or the affirmative procedure for regulations. The DPRRC report sets out a very good rationale for recommending that the power to establish streamlined subsidy schemes in Clause 10 should be exercised by regulation and that then the negative procedure would be appropriate, hence Amendment 15.

Next is a probing amendment to raise concerns about the definitions in Clause 11 being made by regulations, as also highlighted by the DPRRC. Clause 11 allows certain definitions to be defined by affirmative regulations rather than appearing in the Bill. These definitions are

"subsidy, or subsidy scheme, of interest"

and

"subsidy, or subsidy scheme, of particular interest".

We have touched on this already. These definitions are important in determining the scope of the subsidies or the schemes that must be referred to the CMA under Clauses 52 to 64. The DPRRC is sceptical about the Government's reasoning for leaving these definitions out of the Bill, and so am I. The DPRRC states:

"The power in clause 11(1) to define in regulations certain key terms is inappropriate and we recommend that it be removed from the face of the Bill."

As a coda, and this is quite unusual, the DPRCC adds:

"Although we have been critical of the over-use of Henry VIII powers, we prefer to see key definitions appear on the face of the Bill—perhaps with a Henry VIII power to amend by affirmative regulations—rather than not appearing on the face of the Bill at all and always being a matter for regulations."

That is an interesting twist, and one that is worth debating.

Amendment 26 addresses Clause 16(4) to (7) and seeks to require designations related to marketable risk countries to be made by regulations not by direction. Again, this is recommended by the committee.

Clause 16(4) is subject to neither the affirmative nor the negative procedure. The Government's reason for having no parliamentary procedure is that they

"want to be able to act rapidly to allow short-term export credit finance where market factors may have rendered the list of marketable risk countries in need of amendment."

One thing that the Covid crisis has demonstrated is that there is no barrier to the rapid tabling and approval of regulation. One thing that Brexit has demonstrated is that your Lordships' House has a huge capacity to handle literally thousands of regulations when they are set before it. So any pleading that executive power is needed because Parliament cannot move fast enough is tosh, frankly—or, as the DPRRC puts it rather more politely,

"the Government can make rapid legislative changes by negative regulations or 'made affirmative' regulations. The idea that the making of regulations is inconsistent with the need to move quickly is fallacious. Negative and 'made affirmative' regulations can be made as quickly as can a direction."

In other words, it is tosh. This amendment would install a process of regulation rather than ministerial direction.

Amendment 30

"would remove the ability of the Treasury to amend the definition of 'deposit taker'".

Amendment 31

"would remove the ability of the Treasury to amend the definition of 'insurance company'".

Amendment 32

"would remove the ability of the Treasury to amend the definition of 'insurer'".

Clauses 25 to 27 give the Government the ability to revise certain definitions to cater for developments that cannot be anticipated at the time of the Bill's enactment. By way of example, the definition of "deposit taker" in Clause 25 uses a standard definition found across the statute book. If this definition required amendment in some future primary legislation, it would be perfectly possible for that legislation to contain the necessary consequential provision to enable the definition in Clause 25 of this Subsidy Control Bill to be amended in due course. The same reasoning applies to the definitions of "insurance company" in Clause 26(4) and "insurer" in Clause 23(7). Amendments 30 to 32 would remove the ability to amend those definitions, which, clearly, would not hamper future changes.

Amendment 50, proposed by the noble Lord, Lord McNicol, and signed by myself and the noble and learned Lords I mentioned, would remove Clause 47, which aims to give the Treasury powers

"to keep financial stability directions secret from Parliament and the public, thereby enacting a recommendation of the Delegated Powers and Regulatory Reform Committee."

As the committee states,

"clause 47 involves fundamental issues of government accountability and parliamentary scrutiny … Not only does the provision enable the Government to disapply a legislative provision—the Bill's subsidy control requirements—by a direction that can be kept secret from Parliament, but the justification for the power not being subject to any parliamentary scrutiny procedure includes, according to the Memorandum, 'the potential for non-approval by Parliament'".

In other words, this has to be included because Parliament might not agree with it. That should give us pause for thought.

The DPRRC is clear on the malign nature of this clause. It says that

"clause 47 is extraordinary for several reasons … Parliament has no power to scrutinise and reject a Government direction suspending the application of the Bill's subsidy control requirements … Parliament may be deliberately kept in the dark about the existence of such a direction if the Treasury elects to rely on clause 47(7) … One of the Government's reasons for having no parliamentary procedure is that the potential for non-approval by Parliament would create uncertainty that the subsidy will continue to be

[Lord Fox]

available. In other words, because the Government might be defeated if the direction could be voted upon, there should be no parliamentary procedure and no vote."

In conclusion, the committee recommends

"that clause 47(7) should be removed from the face of the Bill",

which is what Amendment 50 would do.

I am sure the noble and learned Lords who follow me, and indeed the noble Lord, Lord McNicol, will be more erudite, but I leave this set of amendments with a final injunction that we should seek to uphold all the DPRRC's recommendations, not just the most serious ones. Parliamentary power is being eroded, little by little, one piece at a time. We have to resist this. I beg to move.

6 pm

The Deputy Chairman of Committees (Baroness Fookes) (Con): My Lords, I point out that if Amendment 15 were to be agreed, I could not call Amendments 16 or 17 by reason of pre-emption.

Baroness Jones of Moulsecoomb (GP): I agree with every word that the noble Lord, Lord Fox, just said. I liked him shouting "tosh!" at the Government; that was great. That is a very gentle word for it. He also sent me into a mild panic, because I had not realised that my noble friend Lady Bennett had tabled a clause stand part debate in this group. All I can do is repeat her explanatory statement which says that this

"is intended to elicit why Bank of England monetary policy subsidies are excluded from the provisions of the Bill."

I hope there is an answer on that in the Minister's speech. I had thought the noble Lord, Lord Fox, was perhaps talking about my Amendment 33 which we have of course already debated. I thank him for his remarks.

On this group generally, I have argued many times about government regulation-making powers, because I am absolutely sick of the Government bringing skeleton legislation that needs little more than a parliamentary rubber stamp for them to make substantive law by future regulations. This is a power grab that most of us absolutely abhor. However, this is a unique case. I want to support these amendments for new regulation-making powers because the alternative envisaged by this Bill is that, instead of making regulations which are passed by Parliament, the Government would simply make a decree and then inform Parliament after the fact. I support the amendments.

Lord Judge (CB): My Lords, I apologise that I was not able to attend Second Reading. I had other commitments in the House, so ask noble Lords to forgive me.

I put my name down in support of the noble Lord, Lord McNicol, and was delighted to do so. However, I am sure he will forgive me if I explain that I am actually not supporting him but the Delegated Powers and Regulatory Reform Committee, which is what we should be looking at. The noble Lord, Lord Fox, thought there might be some erudition, but there is no need for it; this is a perfectly simple constitutional aberration.

When the Minister comes to reply, I would like him to kindly look at paragraph 16 of the committee's report, where there are three "extraordinary" provisions—that was the word used—which need attention. Unless he can answer in a way that convincingly refutes their effect, we might as well keep on fighting about this. As I say, it is a constitutional aberration and we should not have it. It is an amazing thing for one of our committees to say that a subsection, in this case Clause 47(7), should be removed from the Bill. We need to know why it should not.

Lord Thomas of Cwmgiedd (CB): I shall add two very short points. First, it seems to me absolutely fundamental to a democratic society that the laws made by a legislature permit everything to be done openly and stop anyone prohibiting publication at any time. As the committee said, there is enough discretion in the earlier subsection. Secondly, accessible and open legislation is essential to the rule of law. It seems to me that this clause is an attack on both democracy and the rule of law and has no place in this Bill.

Lord Hope of Craighead (CB): My Lords, when the Minister comes to reply, would he explain the purpose of Clause 47(6), which requires that the direction must be published? We need to understand the purpose of that subsection before we look at Clause 47(7) which is the subject of this discussion. As I understand it, it is there in the interests of transparency and clarity. If that is the purpose, it is even more surprising that there is a power to disapply.

After all, the purpose of the direction is to inform somebody. Who is it who is to be informed? It is not subject to parliamentary procedure, but it is there for a purpose. We need to know from the Minister expressly what that purpose is, so that we understand the significance of Clause 47(7).

Lord Purvis of Tweed (LD): My Lords, I support my noble friend Lord Fox and will add a couple of points. First, on the streamlined schemes, there is the potential for them to be very major and, in effect, a policy driver in themselves. But if they are laid and are not in an order, which we would have the ability to scrutinise, they will not necessarily come with an equalities or impact assessment. It will be a fundamental weakness if they are simply laid. It goes against the grain of what we have been trying to argue, which is for good-quality proposals that come with equalities assessments. It will bypass that and that is a retrograde step.

On the ability to amend without there also being scrutiny, I point out, having checked on legislation.gov.uk, that there are 15 references to deposit-takers in other legislation and 34 references to insurers. What the Government propose is simply to amend primary legislation and a suite of other measures. The area of confusion for me is that there is also legislation that relates to Scottish insurance, which could be changed by a Secretary of State without there being proper scrutiny of that either.

My final point relates to the element of secrecy in Clause 47(7). The Government seem to be proposing that we go back to a situation of hue and cry, in which measures by the Treasury that could be supporting individual businesses will never be reported. We will

know only if there are whistleblowers, if people are raising concerns and they have that knowledge. We saw to our cost with the Libor-fixing situation what can happen when there is a lack of transparency and reporting. It is simply not good enough. When I was a member of the Finance Committee of the Scottish Parliament, we had mechanisms for our committee to meet in private when Finance Ministers were able to say, either on the grounds of national security or during the economic crash, that there were reasons why information would not be made public at that point. We were briefed and there would, subsequently, be a report that Parliament could have. There are other mechanisms for secrecy than this approach.

Finally, I have been a Member of two Parliaments for 18 years now. I never thought I would read a parliamentary committee highlighting this statement:

"In other words, because the Government might be defeated if the direction could be voted upon, there should be no parliamentary procedure and no vote."

This provision should not progress. It is as simple as that.

Lord McNicol of West Kilbride (Lab): My Lords, I am grateful to the noble Lord, Lord Fox, for tabling these amendments. As we have heard, they reflect the bulk of the DPRRC's recommendations. I also thank the noble and learned Lords, Lord Judge and Lord Thomas of Cwmgiedd, and the noble Lord, Lord Fox, for signing Amendment 50, even if it was not to support me but the recommendations of the DPRRC.

The DPRRC took the unusual step of voicing its concerns for Clause 47(7) at first, rather than working through the Bill and its clauses in turn. That goes to highlight even further its real concerns, specifically around issues of transparency and secrecy. We will come on to further amendments on transparency and try to open this up because, as we have heard, when you shine a light on the decisions being made, they are put under scrutiny. Issues and concerns can be brought to the fore so that we do not, as the noble Lord, Lord Purvis, said, end up relying on whistleblowers.

Taking the point made by the noble Lord, Lord Purvis, it may be that the immediate release of certain directions and information could have undesirable consequences in terms of market behaviour, but there must be other ways of taking it forward. The noble Lord has touched on one of them at the Scottish Parliament, where meetings were in private but the information was subsequently released.

At Second Reading, the Minister said:

"However, we will of course take into account the findings from the Delegated Powers and Regulatory Reform Committee's report and we will review accordingly."—[*Official Report*, 19/1/22; col. 1712.]

I know we are all sitting here waiting to see if any of those will be enacted, and I very much look forward to the Minister's response. The words of the DPRRC have been quoted but it is worth putting on the record points 13 and 14 in its 17th report, which say that:

"We do not recall any other occasion where the Government have argued that one reason why Parliament should not be able to scrutinise delegated legislation is because the Government might be defeated on it … Neither have the Government cited any precedent where the ability to disapply a legislative provision (here, the Bill's subsidy control requirements) can be achieved by a direction that can be kept secret from Parliament."

With that, I look forward to the Minister's response.

Lord Callanan (Con): My Lords, this group of amendments contains a number of amendments tabled in relation to the Delegated Powers and Regulatory Reform Committee's report on the Bill, which I received and, like all noble Lords, read with great interest. I thank the noble Lords, Lord Fox and Lord McNicol, for their amendments. I was also going to thank the noble Baroness, Lady Bennett, but sadly she is unable to join us today, which of course is a real tragedy for us all. Nevertheless, we have the benefit of the noble Baroness, Lady Jones, in her stead, which is wonderful for us.

I wholly echo the sentiments expressed by the noble Lord, Lord Fox, and the noble and learned Lord, Lord Judge, on the vital role that the DPRRC plays in supporting the work of your Lordships' House. I am grateful to my noble friend Lord McLoughlin and his committee for their scrutiny of the Bill.

As I stated at Second Reading, I am very well aware of the strength of feeling across the House on the provisions in the Bill highlighted today. I was expecting many of the speeches that were given. I am sure that noble Lords are aware that my right honourable friend the Lord President of the Council, Jacob Rees-Mogg, has also taken an interest. He recently wrote on this issue to my noble friend Lord McLoughlin and the previous chair of the committee, my noble friend Lord Blencathra, noting that the Government are taking its findings into consideration. While at this stage I cannot commit to changing anything in the Bill, I will take away the comments of noble Lords for due consideration. It is important that we get this legislation right and that the powers are proportionate and measured, as well as conducive to effective subsidy control.

Let me start with some thoughts on Amendment 15 to Clause 10. I previously noted that Clause 10 concerns the creation of subsidy schemes and streamlined subsidy schemes. A streamlined subsidy scheme must be laid before Parliament before it is made, or modified, by a Minister of the Crown. Streamlined subsidy schemes offer public authorities a swifter route to demonstrating compliance for categories of subsidies at especially low risk of causing market distortions, that promote UK strategic policy objectives and which the Government judge to be compliant with the subsidy control principles.

This amendment would require streamlined subsidy schemes to be made or modified by regulations subject to the negative procedure. Indeed, the noble Lord's amendment is in line with the recommendation made by the DPRRC in its report. The Government believe that Clause 10 sets out a proportionate level of parliamentary scrutiny for streamlined subsidy schemes. The regulations will be laid before Parliament both when they are made and when they are amended. I also intend to engage with the devolved Administrations, other public authorities, and the experts in the subsidy advice unit on the development of these schemes.

6.15 pm

I do not believe that it is appropriate to make streamlined subsidy schemes by way of regulations. These schemes will be technical, detailed documents, which are not well suited to being drafted as legislation. It is essential that they are drafted in such a way, and

[Lord Callanan]
with a level of detail to ensure, that they are understood clearly by small public authorities and by lay persons and technical experts, as well as by lawyers.

I trust that the several illustrative products we published last week demonstrate to the Committee the nature of the streamlined subsidy schemes, and illustrate that they would not easily be achievable by means of a statutory instrument. The Government will also, in sufficient time ahead of publication, publish further details on how streamlined subsidy schemes will be monitored, evaluated and updated.

I recognise the importance of having sufficient parliamentary oversight of the subsidy control regime as a whole, and of having appropriate scrutiny mechanisms for the streamlined subsidy schemes. I am happy to consider this point further.

On Amendment 26, Clause 16 provides a list of 10 countries defined as marketable risk countries. The clause sets out that the Secretary of State may give a direction, which must then be laid before Parliament, that a country on this list should not be treated as a marketable risk country where the conditions in subsection (5) are met. The Secretary of State must revoke any direction where those conditions are no longer met. Marketable risk countries—such as, for instance, the United States or member states of the EU—have higher levels of private insurance market capacity, such that government export credit support is, in our view, not appropriate. The general approach is that export credit insurance cannot be offered by UK Export Finance to UK enterprises for business with customers in marketable risk countries. I am sure that noble Lords would support that principle.

The noble Lord's amendment would require designations to be made by regulation, not by direction. The Government's view is that rapid action to amend the list of marketable risk countries may be necessary in the event of any sudden changes in economic circumstances. A direction from the Secretary of State, as opposed to regulation, would enable the Government to act swiftly to amend the list of marketable risk countries. I reiterate that I recognise the strength of feeling among noble Lords on this matter, and I undertake to consider it further.

Amendments 30 to 32 were tabled by the noble Lord, Lord Fox. Their purpose is to remove the ability of the Treasury to amend Clauses 25, 26, and 27 by regulations so as to alter the meaning of "deposit taker", "insurance company" and "insurer" respectively. The effect would be that, in instances where those definitions need to be altered, the Treasury would have to do so through primary legislation rather than regulations. I am afraid I must also reject these amendments. The ability of the Government to amend these definitions to remain up to date and effective is an important one. The Government must be able to reflect any future changes resulting from the continued evolution of the financial sector.

It is not uncommon for primary legislation to give the Government the power to amend definitions by regulations. Instances can be found in financial services and non-financial services legislation. For example, there are delegated powers in Section 355 of the Financial Services and Markets Act 2000, where the Treasury has the power to specify the meaning of "insurer". Although there are no plans to do so at this stage, it is vital, in an area of law with a nexus to financial regulation and the UK's international obligations, as is the case with the Bill, that the Government are enabled to update definitions. The ability to amend these definitions by secondary legislation provides a more effective and faster tool to do this than primary legislation. I emphasise that the power itself is very narrow, in so far as it relates only to those definitions of institutions captured by the requirements. Furthermore, any changes in definitions will be effected by affirmative procedure, ensuring that there is proper parliamentary scrutiny, and be subject to consultation with the Financial Conduct Authority and the Prudential Regulation Authority.

Lastly on the amendments, I turn to perhaps the main event of this grouping: Amendment 50 to the famous Clause 47. The purpose of this amendment is to remove the exception to the duty of publishing a financial stability direction. Again, I understand that the rationale for this is to address the DPRRC's concern that the use of this exception would remove public and parliamentary scrutiny of the use of this power. The effect of this amendment would be that the Treasury no longer had the explicit ability to delay publication of a financial stability direction where

"that publication … would undermine the purpose for which it is given".

Again, I must respectfully reject this amendment. The exception under Clause 47(7) serves a meaningful purpose in ensuring that the Treasury can delay publishing a direction while publication could undermine the purpose for which that direction was given in the first place. Furthermore, I do not believe that the removal of Clause 47(7) is necessary to ensure transparency over the use of direction. Subsection (7) was not created with the intention of allowing financial stability directions to be kept secret permanently. We agree that this would not be appropriate; indeed, as the noble and learned Lord, Lord Hope, suggests, subsection (6) is intended to deal with this very aspect of transparency.

There are circumstances where it would clearly be necessary to delay the publication of a financial stability direction. Publishing a direction effectively discloses that financial assistance has been given and therefore undermines the ability to grant assistance on a covert basis. For example, the ability to delay disclosure is critical in instances where the Bank of England provides liquidity support to stabilise a failing firm. In situations such as this, disclosure of the direction could further damage confidence in a firm, exacerbate a liquidity stress, or give rise to financial and market-wide instability—including further firm failures—unrelated to broader market fundamentals.

Lord Purvis of Tweed (LD): Is it the view of the Minister that the powers under subsection (6) allow for delayed disclosure?

Lord Callanan (Con): Yes, that is the subsection which provides the ability to publicise that fact—it is in subsection (6).

Lord Purvis of Tweed (LD): So the point the Minister is making, which is to have the legal ability to delay disclosure, is afforded under subsection (6). The deletion of subsection (7) then does not affect that power. It would mean only the removal of the ability for there to be no disclosure at all, because the power to delay disclosure would be under Clause 47(6). Is that correct?

Lord Callanan (Con): We think that subsection (7) is important for financial stability and legal certainty but, as I have said on the other amendments in this group, I am happy to take this away and look at the matter further.

This is the very effect that assistance, and the direction that facilitates that assistance, would be deployed to avoid. Northern Rock serves as a clear example, where the revelation that the firm was in receipt of emergency liquidity assistance led to a run on the bank. That exacerbated its problems and, in the end, hastened its failure. Consequently, if disclosure of financial stability directions cannot be deferred, it would effectively render them unusable in situations where it is necessary to provide lending on a covert basis. Making a direction unusable in this way would be especially problematic if the success of the financial assistance was dependent on the use of a financial stability direction to disapply any of the requirements.

In relation to the specific statement being referenced in paragraph 16 of the report, as mentioned by the noble Lords, Lord Purvis and Lord Fox, that statement makes it clear that the concern is not about the risk of parliamentary defeat. The concern surfaced in the statement is the perception of stakeholders of a risk that non-approval could result in the rejection or undermining of the proposed subsidy. In that circumstance, the primary concern would not be in relation to a defeat in Parliament but that, as a result of that risk perception among stakeholders, the subsidy would be ineffective in the short term or even rejected by the proposed recipient. This would mean that the use of the power would not even get to the point of a vote.

The current drafting of Clause 47(7) provides a clear mechanism in law for delaying publication and a basis on which the Treasury can make the decision that the publication would undermine the purposes for which the direction was given. When the Treasury considers that publication would no longer undermine the purpose of the direction, it would at that time—this comes to the point made by the noble and learned Lord, Lord Hope—be required to publish that direction in accordance with the duty in Clause 47(6). Therefore, subsection (7) simply makes explicit the ability to delay publication where that publication would undermine the purpose for which the direction was given. It does not provide a means for the Government to avoid scrutiny indefinitely.

Lord Judge (CB): What is the point of Clause 47(7) if the object is to allow, in appropriate circumstances, a deferral or a delay in the publication of the information?

Lord Hope of Craighead (CB): Might I add to my noble and learned friend's question? To whom is the information to be given? Who needs to know about this direction? It is rather important to understand how the scheme is supposed to work. Presumably, the publication is to serve a purpose; one needs to know to whom it will be disseminated.

Lord Callanan (Con): Ultimately, the purpose is to provide transparency so that, after the fact, the public and Parliament are informed on the subsidy that has been given. However, we maintain that it is important to keep the subsidy under the radar unless it would undermine the purpose for which it was given in the first place if it were publicised. The example of Northern Rock is the one that we quote, as it would potentially cause a run. I recognise the strength of feeling from the DPRRC and among noble Lords on these clauses. As I have said, I will look at them further before we get to Report—[*Interruption*.] I am happy to have satisfied the noble Baroness, Lady Jones, for a change.

Turning to some of the comments on why Clause 11 should stand part of the Bill, this clause enables the Secretary of State to make secondary legislation to define subsidies or subsidy schemes of interest or of particular interest. Again, I recognise that the power set out was criticised in the DPRRC's report, and that it recommended that these definitions be on the face of the Bill. If I may briefly summarise the purpose of this clause, Part 4 of the Bill establishes the mechanisms for the referral of these subsidies and schemes to the subsidy advice unit. Voluntary referral will be available for subsidies or schemes of interest, while subsidies that are classified as subsidies of particular interest will be subject to mandatory referral. After referral, the public authority's assessment of compliance with the subsidy control requirements will be evaluated by the unit, and a report containing its findings will be published. This is a pragmatic way of ensuring that additional scrutiny is given to potentially distortive subsidies. The clause therefore allows the Government to define these types of subsidies and schemes.

The noble Lord sought clarity on why the Government intend to set relevant criteria and thresholds in regulations, rather than in the Bill. Let me point out the illustrative regulations that the Government published last week, as well as the accompanying policy statement. I welcome any comments that noble Lords may have on these documents, of course, and stress that the Government will take careful note of the views expressed when developing these draft regulations. I hope that this provides further clarity and assurance on how the Government intend to use these powers.

The reason why the Bill takes a power to define these categories is because it is important that the Government are able to modify the criteria over time in response to market conditions, or the periodic reviews that will be carried out by the subsidy advice unit, to ascertain how the domestic control regime is working in practice. Both Houses will of course have an opportunity to debate any regulations in draft to ensure that the criteria for what constitutes "of interest" or "of particular interest" are robust and capture the right subsidies and schemes for additional scrutiny.

6.30 pm

Of course, I recognise that the same could be accomplished by putting the definitions in the Bill while taking the power to amend those definitions

[Lord Callanan]
through secondary legislation, as the DPRRC noted. The main reason why we have not done this is to ensure that feedback can be sought on the precise criteria to use, building on the more general responses to questions in the public consultation last year on which subsidies could be considered as particularly high risk. The illustrative regulations will afford us the opportunity to seek this input from noble Lords, the devolved Administrations and other stakeholders.

I do not believe that it would have been desirable to put these definitions in the Bill when we retained a level of open-mindedness about the precise definitions. I also do not believe that it would have been possible to seek granular responses before publishing the rest of the Bill and setting out the precise mechanisms and processes that apply to these two categories of subsidy. The illustrative regulations also demonstrate the lengthy and detailed nature of this policy, which would not fit easily into the Bill.

Finally, I will share some thoughts on why Clause 46 should stand part of the Bill. This clause sets out that activities conducted by or on behalf of the Bank of England in pursuit of monetary policy are not subject to the subsidy control regime. These measures were implemented by central banks in pursuit of monetary policy and have always been considered to be outside the scope of EU state aid rules. The EU and the UK confirmed in the joint declaration on monetary policies and subsidy control their mutual understanding that activities conducted by a central bank in pursuit of monetary policy are outside the scope of subsidy control provisions in the trade and co-operation agreement.

It is important that the position set out in the joint declaration is put beyond doubt in UK law. One of the Bank of England's independent statutory functions is, of course, to maintain UK price stability and, subject to that, to support the economic policy of the Government. It is appropriate and necessary that the domestic subsidy control regime exempts monetary policy measures in pursuit of these objectives. The Bank has statutory independence for monetary policy of course, which is a crucial part of the macroeconomic framework. The exemption is consistent with and indeed reinforces the Bank's independence in taking monetary policy decisions, as such decisions could become the subject of oversight and enforcement on subsidy control grounds.

To close, I look forward to no doubt substantial engagement with noble Lords further on these issues. Therefore, for the moment, I hope noble Lords feel able to let Clauses 11 and 46 stand part of the Bill, and that they will not press Amendments 15, 26, 30, 31, 32 and 50.

Lord Fox (LD): My Lords, this has been an interesting debate. The Minister said "for the moment"—perhaps for the moment.

I appreciate that the Minister has at least left his door ajar to some of this, but the body language, and indeed the language, still indicate that there is this cultural campaign to make sure that executive power is gathered where possible and that the legislature is pushed to one side. This is what the DPRRC referred to in its report; it is what we have to put up with in every piece of legislation. Actually, as I said, I get the sense that the Government are emboldened and keep going even further with this. I feel that your Lordships will have to consider where we go with this on Report.

I have a couple of observations. When a Minister says that something is too technical, I feel as though I am being tapped on the head and told that I should not worry about such things—this coming from the Minister who tabled the 17 technology areas for the security and investment Bill, which was one of the greatest aggregations of technical information that I have ever seen. The idea that we and Parliament are not capable of handling something that is "technical" is deeply patronising.

Turning the focus to Clause 47(7), nowhere in it are the words "delay", "temporary" or "otherwise" used. If, as the Minister implied—said absolutely, in fact—the purpose is a temporary delay in what would otherwise be a fully transparent process, that is not what Clause 47(7) says. If that is what the Minister wishes to put to us, that is what it should say in the Bill, but it does not.

Putting those comments to one side, I am sure that we will come back to this unless the Minister mobilises the full forces of righteousness and comes back with some meaningful amendments. I beg leave to withdraw Amendment 15.

Amendment 15 withdrawn.

Amendments 16 and 17 not moved.

Amendment 18

Moved by ***Lord Callanan***

18: Clause 10, page 6, line 35, at end insert—

"(7) A subsidy scheme or streamlined subsidy scheme may provide for the value of a subsidy to be determined by reference to its gross cash amount or the gross cash equivalent."

Member's explanatory statement

This amendment ensures that subsidy schemes and streamlined subsidy schemes can refer to the gross cash amount or gross cash equivalent amount of the subsidy, as determined by regulations made under Clause 82.

Lord Callanan (Con): My Lords, the amendments in this group are technical amendments that would update the Bill to permit regulations made on gross cash equivalent to apply to all parts of the Bill to which they are relevant. These amendments have the same basic purpose so I will take them together.

Subsidies can come in many different forms, from cash grants to discounted contributions in kind. It is important to establish a common methodology for calculating the value of the latter kind of subsidy as this will avoid public authorities taking different, and difficult to compare, approaches to this issue. Clause 82 enables the Secretary of State to make provisions by regulations, which will be subject to the negative procedure, for how the gross cash amount and the gross cash equivalent amount are to be determined for four different clauses that are listed in the Bill. These regulations will set out a methodology for calculating the value of any subsidy or scheme for use by public authorities. This will avoid public authorities using to calculate gross cash equivalent a range of methodologies that may not be wholly or easily comparable with each other.

Clauses 10 and 11 concern the creation of subsidy schemes and streamlined subsidy schemes, and enable the Secretary of State to make regulations defining the meaning of subsidies or subsidy schemes of interest or of particular interest. The amendment to Clause 82 would ensure that regulations made under it, which make provisions about how the gross cash amount and the gross cash equivalent are to be determined, are applicable to all regulations and schemes made under the terms of the Bill.

The other amendments to Clauses 10 and 11 would enable the values of subsidies of interest or of particular interest, subsidy schemes and streamlined subsidy schemes to be defined by reference to the gross cash amount or gross cash equivalent amount of the subsidy or scheme. I hope noble Lords will agree that these are minor and technical amendments that will avoid any need for complex cross-referencing in the regulations and reduce any confusion for public authorities; I therefore ask that they be accepted. I beg to move.

Baroness Jones of Moulsecoomb (GP): I would like to raise a small, technical point; I think that the Minister skimmed over it in the debate on Amendment 33 in my name, possibly because I did not explain it properly. Subsidies for fossil fuels should be calculated using the IMF definition of financial assistance for fuel consumption multiplied by the difference between existing and efficient prices. In his reply, the Minister explained that he would not want to ban subsidies for fossils fuels, but he did not say anything about the merits of the IMF definition of fossil fuel subsidies. This is an important issue because it factors in the negative impacts of environmental and social costs, which are otherwise ignored. When we look at fossil fuel subsidies holistically, we realise just how much more expensive fossil fuels are than renewables. I do not expect an answer today, but it would be good to have an answer in writing whenever possible because the Minister did not mention it.

Lord Callanan (Con): That issue is not covered by these amendments, but I will come back to the noble Baroness in writing.

Lord Fox (LD): My Lords, those on this side welcome these three amendments. It is always hard to get those first government amendments out; after then, you can keep them coming, Minister. We have one or two suggestions about what you might like to put in them.

It is good to have a consistent approach; indeed, a consistent approach to how you value a subsidy is a good starting point. Perhaps we can then have a consistent approach to how local authorities evaluate the need for a subsidy, and to how they are regulated and managed within areas. Consistency is what we are calling for. This is clearly the first baby step towards having a control system operated from a level playing field.

Lord McNicol of West Kilbride (Lab): I echo the points of the noble Lord, Lord Fox: it is interesting to see government amendments at this early stage, even though none of these issues was raised at Second Reading. Likewise, we are not going to oppose any of these amendments.

Similarly, not just on consistency but on transparency, a good number of amendments were tabled in Committee on which we are more than happy to work with the department and the Minister to bring them back on Report. This will hopefully deal with a number of issues on which we have concerns, so that we do not object to them at that point.

Lord Callanan (Con): I am happy to see that the Liberal Democrats believe in consistency and to work with the opposition parties when amendments are required, as appropriate.

Amendment 18 agreed.

Clause 10, as amended, agreed.

Clause 11: Subsidies and schemes of interest or particular interest

Amendment 19

Moved by ***Lord Callanan***

19: Clause 11, page 7, line 7, at end insert—

"(2A) Provision under subsection (2)(a) may provide for the value of a subsidy to be determined by reference to its gross cash amount or the gross cash equivalent."

Member's explanatory statement

This amendment ensures that subsidies of interest and subsidies of particular interest can be defined by reference to gross cash amount or gross cash equivalent amount, as determined by regulations made under Clause 82.

Amendment 19 agreed.

Amendment 20 not moved.

Clause 11, as amended, agreed.

Clause 12: Application of the subsidy control principles

Amendment 21

Moved by ***Lord McNicol of West Kilbride***

21: Clause 12, page 7, line 19, leave out subsection (2)

Member's explanatory statement

This amendment would require individual subsidies given under a subsidy scheme to be judged against the subsidy control principles.

Lord McNicol of West Kilbride (Lab): My Lords, we understand the Government's desire to keep the subsidy control regime as straightforward as possible so that public authorities at all levels can respond to events as they arise. The Minister knows that we generally support these aims but, as we made clear at Second Reading, we have real concerns about the lack of transparency and accountability. The three amendments in this group have been tabled to look at that. The issue of transparency concerns individual subsidies given under a subsidy scheme not showing as transparently as others on the database or elsewhere.

[Lord McNicol of West Kilbride]

Amendments 21 and 24 would require individual subsidies inside a scheme to be judged against the subsidy control or energy and environmental principles, as appropriate; I thank the noble Baroness, Lady Sheehan, for putting her name to Amendment 24. The Minister may tell us that removing both Clause 12(2) and Clause 13(2), as the amendments outline, is unnecessary, as Clause 12(3) and Clause 13(3) state that the schemes should not be made unless an authority is "of the view" that the individual subsidies "will be consistent with" the principles. However, being "of the view" that something is consistent with the rules is not the same as specifically stating it or judging that it has been defined within the rules.

More importantly, the lack of transparency arising under the subsidy schemes could be vast. Individual subsidies—large amounts of money or support—could be hidden; they would not be shown and would not be transparent if they are within the schemes. The first two amendments look to set that out.

6.45 pm

Amendment 68 would allow decisions to be made on individual subsidies under a scheme subject to an appeal to the Competition Appeal Tribunal. It cannot be right that individual subsidies can effectively be hidden from scrutiny, thus requiring entire schemes to be challenged on the basis of concerns on one or two individual subsidies given within them. We will come on to discuss transparency matters shortly, but I hope the Minister can help move this debate forward a bit. Again, we are focusing in on the issue of transparency and trying to shine a light on decision-making and the financial contributions and support that would be given. With that, I beg to move Amendment 21.

Baroness Sheehan (LD): My Lords, I added my name to Amendment 24. I also support Amendment 21, which is closely related, and Amendment 68, which has real implications in addressing limits on enforcement for subsidies that may have been misdirected. I thank the noble Lord, Lord McNicol of West Kilbride, for tabling these amendments and for his very able introduction of them.

To my mind, Amendments 21 and 24 have been tabled to try to establish why the Government wish to disapply the subsidy control principles and the energy and environment principles from a subsidy merely because it has been given under a subsidy scheme. According to the excellent Library briefing on the Bill, the Government have said that a subsidy scheme is a means for public authorities to award a number of subsidies to enterprises on a discretionary basis, as opposed to awarding subsidies on a case-by-case basis to individual enterprises. To use the Minister's words, the Government want to try to create a "minimally burdensome" scheme. It would make it quicker and easier for subsidies to be given if this were to be the case.

As drafted, the Bill says that subsidy schemes must be made by a public authority only if the subsidies provided for by the scheme will be consistent with the subsidy control principles laid out in Schedule 1—I hope noble Lords are still with me; I think it will make sense in *Hansard*—or, where relevant, the energy and environment principles laid out in Schedule 2. That is all well and good. A subsidy made under a subsidy scheme must comply with the principles laid out in Schedules 1 and 2, so you would think it would be open to review on that basis and enforceable as such. But you would be wrong, because Clause 12(2) states that

"'subsidy' does not include a subsidy given under a subsidy scheme."

Why? It does not make any sense. Hence Amendment 21 is needed to take out this nonsense, so that the subsidy control principles can apply to all subsidies.

Similarly, Amendment 24 would remove Clause 13(2) so that the energy and environment principles can also apply to all subsidies. Given that there is a threshold for transparency and accountability of about £500,000 for subsidies given under a subsidy scheme, that will very quickly add up to millions of pounds, for which, as the Bill is currently drafted, there will be no scrutiny. That would not serve businesses or the Government.

Amendment 68 is necessary because Clause 70(2) says that the CAT cannot be asked to review a subsidy decision if the subsidy was given under a subsidy scheme; only the subsidy scheme itself can be reviewed. That makes a nonsense of the enforcement regime because no route will then exist to review whether a subsidy complies with the subsidy scheme. To the question of when a subsidy is not a subsidy, the answer is when it is given under a subsidy scheme. Surely the Minister can see the absurdity of such a position. Every subsidy must be available for review if necessary. That is why these amendments are necessary. I thank the noble Lord, Lord McNicol of West Kilbride, for tabling them.

Lord Fox (LD): My Lords, it is with great pleasure that I follow my noble friend Lady Sheehan and the noble Lord, Lord McNicol, in support of these amendments. Subsidy schemes seem to be designed as monoliths with no granularity at all. Why is that one of the central theses of this Bill? What possible advantage do the Government seek to gain, other than the ability to hide what money is going to whom? To those of us on this side of the Committee, that appears to be what is going on.

Amendment 21 would ensure that subsidy schemes cannot be used to hide subsidies that would, if they were stand-alone subsidies, be reported, as my noble friend set out. It is clear to all three of us that there is huge scope for significant and expensive subsidies to be hidden in these schemes. That seems to be the only reason why this is in the Bill. I am sure that the Minister will want to explain the reasons, because that must be the response to these amendments. I am sure that we will all be happy to throw our hands up if we are wrong and there is a hugely important reason why this is needed for the operation of the subsidies.

Amendment 24, co-signed by my noble friend, would require individual subsidies given under the subsidy scheme to be judged against the energy and environment principles. Once again, we are back to Monday evening, when my noble friend Lord Purvis posed a question regarding principle G in Schedule 1. The noble Lord, Lord Callanan, got to answer it; I suppose that this time it is the turn of the noble Baroness, Lady Bloomfield.

During that debate, the Minister seemed to make it clear that sustainability considerations are indeed implicit in every aspect of the Bill. He suggested that, by implication, there must be some benefit for these things to be legal, but there is no explicit reference to that. I apologise if I am putting words in his mouth because principle G says the opposite. Therefore, rather than repeat what I have said, I have invented another one of my little examples, for which I apologise in advance.

Let us say that I have won a subsidy to expand my pottery business. As part of the submission, I cite increased employment and increased local sourcing of services as the beneficial effects that investment in my pottery business would bring. Nothing in the schedule or the rest of the Bill says that I have to benefit the environment by using less energy. If I am successful, I employ 30% more people and use 30% more local services, therefore achieving the scheme's objectives, while also using 30% more energy to fire my products. That would appear to be how the Bill will work. Therefore, we need Amendment 24 to include consideration of the environmental impact that that subsidy would bring. It is very simple.

Amendment 68 would allow individual subsidies given under a subsidy scheme to be reviewed. Once again, it is cracking open the monolith and being able to look at the granularity within a scheme. Again, it follows my initial points: we need to be able to see inside these schemes for transparency to be available.

Baroness Bloomfield of Hinton Waldrist (Con): I thank the noble Lord, Lord McNicol, for tabling Amendments 21, 24 and 68. Perhaps it would be helpful if I started by explaining the status of subsidy schemes in the Bill and why the Government have taken this approach.

Public authorities that seek to give multiple subsidies have three options available to them. First, they can consider each subsidy separately and assess its compliance with the principles and the other requirements in the Bill. Secondly, they can set up a scheme—that is to say, they can identify a group of possible subsidies, with defined parameters, and ensure that any possible subsidy within that group complies with the subsidy control requirements. Thirdly, they can use a streamlined subsidy scheme or another scheme where a public authority—perhaps the UK Government or one of the devolved Administrations—has already assessed that defined group of possible subsidies as compliant with the requirements.

Clauses 12 and 13 place a duty on public authorities to consider the subsidy control principles and the energy and environmental principles respectively before deciding whether to give an individual subsidy or make a subsidy scheme. A public authority cannot go on to give the subsidy or make the scheme unless it is of the view that it is consistent with the principles, including the energy and environmental principles the noble Lord, Lord Fox, emphasised. Once created, public authorities can then award multiple subsidies under that scheme with the confidence that they comply with the subsidy control principles.

By making a scheme instead of assessing multiple individual subsidies against the principles, public authorities will save themselves the administrative time and effort—ultimately equating to taxpayers' money—it takes to consider any assessment, even one that is light touch and common sense. Schemes also provide a way for public authorities to grant subsidies with greater confidence and security because anyone wishing to make a challenge in the Competition Appeal Tribunal must do so to the scheme itself within the limitation period of one month following publication of information about the scheme on the transparency database. That one month period can be extended by a pre-action information request. We believe that this strikes the right balance between facilitating proper scrutiny of the scheme and removing any perpetual threat of challenge, which can make public authorities more reluctant to give, and recipients more hesitant to accept, beneficial subsidies.

Noble Lords will be aware that this subsidy control regime presents a new approach tailored to the specific needs of the United Kingdom. I do not believe that it is generally useful to justify elements of the Bill on the grounds that they correspond to how things used to be done in the EU state aid system, but it is helpful to underline that public authorities have been making use of subsidy schemes for the purposes of administrative simplicity for a long time. Although the EU mechanisms for decision-making and challenge were quite different, public authorities that gave subsidies in compliance with pre-approved schemes generally did not need to obtain further approval for each individual subsidy under a scheme and could proceed to give those subsidies with confidence.

I also add, as the noble Lord, Lord McNicol, pointed out, that transparency is very important. Subsidies given under schemes over £500,000 must be uploaded on the transparency database under the Bill as it stands. We believe that the £500,000 threshold represents an appropriate balance between minimising the administrative burden and requiring subsidy transparency in the public interest.

7 pm

Amendments 21 and 24 would require public authorities to assess all subsidies under the principles, even those given under schemes. It would therefore effectively remove the key feature of the schemes in the Bill. There would be no utility for public authorities in creating schemes because they would have to redo their assessments for every subsidy granted within them. As I have set out, I believe these amendments are unnecessary. Any subsidy given under a scheme must be compliant with the terms of the scheme and therefore with the subsidy control principles. There is no disapplying of the principles. I am sure the noble Baroness, Lady Sheehan, will be reassured to hear this. This would create a great deal more administrative burden for public authorities, removing the benefits of individual schemes and of using the streamlined subsidy schemes that this Government will create to allow public authorities to grant subsidies quickly and with confidence in areas that are routine and low risk or aligned to UK strategic priorities.

On Amendment 68, as I have just set out—

Baroness Sheehan (LD): On Amendment 21 to Clause 12, if that amendment was agreed to and the line

"In subsection (1) 'subsidy' does not include a subsidy given under a subsidy scheme"

[Baroness Sheehan]
was taken out, it would have no impact on a public authority's ability to continue to allow subsidies under the subsidy scheme. It would not slow the process up.

Baroness Bloomfield of Hinton Waldrist (Con): I take the noble Baroness's point on that. I would like to discuss it with the team when I have had a chance to look into it more thoroughly.

As I have just set out, under the terms of Clause 70, an interested party may not submit an application for the Competition Appeal Tribunal to review a decision to give an individual subsidy under a scheme. This is to ensure that scrutiny and challenge occur at the scheme level. The noble Lord's amendment would enable applications for review to be made to the Competition Appeal Tribunal for individual subsidies granted under a subsidy scheme without the requirement for the broader subsidy scheme also to be reviewed.

Lord Fox (LD): I am glad that the Minister has come to this point. Earlier on, I think I heard her say that transparency on a subsidy would raise the potential for a challenge to happen, but the whole system of policing this is through challenge, so how can challenge happen if invisibility is the result of this?

The Minister was suggesting that you can challenge only the overall scheme, not the individual granularity of a scheme within it, but that flies in the face of the central principle of the Bill which is that if I am a business and another local business gets a subsidy, I can challenge that through the CMA, assuming that there are grounds for it. If I do not know that my local competitor is getting that money because its subsidy is locked inside one of these schemes, I cannot challenge it. So the Minister is correct: transparency will lead to more challenge and that is the purpose of the systems put in place within the Bill. We need some working through of this from the Minister—it may not be now but perhaps in writing—because it seems that there are two things working in opposite directions.

Baroness Bloomfield of Hinton Waldrist (Con): Given that the whole structure of the subsidy regime is to have the overarching scheme, compliant with all the principles contained in the Bill, and then a series of other subsidies given within that, if you increase the likelihood of challenge and therefore reduce people's confidence in it, why would a local authority or a government body give a subsidy? Why would there be any incentive for them to give a scheme? While we are wholly appreciative of the importance of transparency, there is a balance to be struck here. Perhaps we could make more progress and I can write to the noble Lord.

Lord Fox (LD): It was the Government who chose to put the principle of challenge on the face of the Bill. The noble Lord, Lord Lamont, and I are coming to the idea of creating a body that can police those things. Perhaps that would solve some of the problems that the Minister suggested—but those problems are central to the way in which the Government have decided that subsidies should be policed under the Bill.

Baroness Bloomfield of Hinton Waldrist (Con): I understand the point the noble Lord is making, but I suggest we would do better to continue this discussion with officials, and come back to him and to the whole Committee in writing.

Making individual subsidies granted in line with the terms of a subsidy scheme eligible for review by the tribunal would undermine a key benefit of creating a scheme—which, as I was saying, would be the administrative simplicity for public authorities, including the security that subsidies can be granted under the terms of a scheme without additional challenge or assessment. However, I fully recognise noble Lords' underlying concern that schemes could be used to shield unlawful subsidies from challenge. If a subsidy purports to be part of a scheme but does not comply with its terms, an interested party may indeed bring a challenge. This would be on the basis that the subsidy should not enjoy the protection of the scheme but was instead a stand-alone subsidy where the public authority did not consider the subsidy control principles.

Lord McNicol of West Kilbride (Lab): On that point, how would another business or organisation know the subsidy existed if it was part of the scheme?

Baroness Sheehan (LD): May I intervene too, on the same point? If a business does know about a subsidy and thinks it is unfair, it cannot go to the public authority and ask for a review. The bar is so high that the review can only be at the level of the scheme—which the business had nothing to do with designing. The public authority would have to do it. The business has no comeback.

Baroness Bloomfield of Hinton Waldrist (Con): Every grant made over £500,000 will be visible. Noble Lords may be arguing that that bar is too high, but maybe we will come to that at a later stage.

Lord McNicol of West Kilbride (Lab): The fundamental point remains: how do people know that the subsidy has been given if it is part of a scheme? They cannot challenge it.

Baroness Bloomfield of Hinton Waldrist (Con): If it is over £500,000 it will be visible.

As I was saying, a challenge would be on the basis that that the subsidy should not enjoy the protection of the scheme but was instead a stand-alone subsidy where the public authority did not consider the subsidy control principles. The CAT could be asked to determine that question. If the CAT finds that the subsidy ought to have been treated as a stand-alone subsidy, it could also be asked to determine whether the relevant subsidy control requirements had been met.

It is also important to note that subsidies given under the schemes may be subject to other obligations and other forms of challenge. A public authority that gives a subsidy in breach of its general public law duties may be challenged through the judicial review process in the general courts, even if the subsidy is given under a scheme. And of course, if the scheme is substantially changed beyond the parameters set out in Clause 81 on permitted modifications, it must be

reassessed and uploaded to the transparency database, and can again be challenged. For the reasons I have set out, and with the caveat that we shall return to some of these questions, I ask that, for the moment, the amendment be withdrawn.

Lord McNicol of West Kilbride (Lab): As we have said in the back and forth of the discussion on these three amendments, there are still a number of real concerns about the subsidy schemes: how they operate and, more importantly, how they can be challenged and dealt with. I will withdraw Amendment 21 at this stage, but I seek some conversations with the department and the ministerial team before we progress to Report.

Amendment 21 withdrawn.

Amendment 22

Moved by ***Lord Purvis of Tweed***

22: Clause 12, page 7, line 25, at end insert—

"(c) must not make the scheme without a statement that the scheme will operate, either in full or in part, under this Act or EU regulations."

Member's explanatory statement

This amendment would require a public authority to make a statement that the scheme will operate, either in full or in part, under this Act or EU regulations before it can be made.

Lord Purvis of Tweed (LD): My Lords, I shall speak also to Amendment 53 in this small group, which relates to the interaction between this legislation and EU legislation that will continue to apply to Northern Ireland. I do so in the context of the news today that the Agriculture Minister in Northern Ireland has unilaterally ended the checks on the Irish Sea border at midnight tonight. That will inevitably raise more tension in a situation where we would have hoped that, as a result of the Foreign Secretary's talks with the vice-chair of the Commission, there would be de-escalation of tensions. However, it seems that that the context has changed dramatically.

The Northern Ireland consideration of the Bill is still live. The Government have already taken an approach on the levelling-up agenda that is different from that in Northern Ireland. I am confused about why Northern Ireland was given a distinct status within the levelling-up fund. However, the key element is this legislation. Amendments 22 and 53 are probing amendments and are designed to be constructive because, regardless of any outcome of the negotiations between the Foreign Secretary and Vice-President Šefčovič, EU law will continue to apply in certain areas in Northern Ireland, even if they are limited. There has been a debate about how limited that might be, but in certain areas it may be fairly substantial. Even if the Commission accepts everything in the Government's Command Paper on renegotiating or resetting the Northern Ireland/Ireland protocol and the Government get everything they want—that is a large if and has probably become much larger after the news today—EU law will still operate and Northern Ireland will still operate under two legal systems for certain areas of subsidy control. These were raised at Second Reading, so I do not need to go into detail on what they are.

The Foreign Secretary said that the UK should never have to notify another power—that is the European Commission—on any decision about setting tax. That will still be the case because part of this provision is on revenue and taxation. The guidance published under Section 48 of the United Kingdom Internal Market Act, which was designed to clarify the situation, did not clarify it in many areas. I read it thoroughly. Separate guidance was published on 24 June last year. It included an annexe, *Public Authorities' Assessment of How Individual Subsidies Comply with UK-EU Trade and Cooperation Agreement Principles.* It had a checkpoint system. There are 18 questions that anybody providing a subsidy in Northern Ireland or GB will have to satisfy in order for them to have a greater understanding of whether EU law applies. Some of those questions are almost impossible to answer, but nevertheless there is a process that must be gone through. The Northern Ireland Department for the Economy states that 14 ongoing subsidy schemes are covered within the GBER and are likely to be in the European Union's purview. My reading of this legislation is that, in any new scheme put forward by the European Union, Northern Ireland public authorities will be able to choose to operate under a new European Union scheme. That would be under state aid and the purview of the CJEU so, regardless of any negotiation, we are going to be operating under separate and distinct reporting schemes.

7.15 pm

The Government say that this legislation will then effectively render redundant any of the duplication approaches. Many have suggested otherwise. For example, evidence provided to the sub-committee of the European Affairs Select Committee that the noble Lord, Lord Lamont, and I currently serve on by George Peretz QC has highlighted that there will be a lack of clarity over which regime should apply, which could make public authorities reluctant to give subsidies. We potentially have a situation where there is a chill effect because of the lack of clarity as to whether state aid rules or subsidy control principles apply, in addition to the separate concern about the differential support or likewise to Northern Ireland businesses.

Amendments 22 and 53 are designed to assist in this process and find ways, through the existing mechanisms of the Bill, so that a public authority can make a statement to provide clarity about the scheme it operates under to those who will potentially receive subsidies. Amendment 53 proposes that the CMA should have an additional ability to provide a report on whether state aid or subsidy control rules will apply. I could not think of other options but there may be some, so if the Government wish to bring forward their own amendments now that the dam has broken under the previous scheme, I would certainly welcome discussions with them on this.

I fear that there will be ongoing concern, so suggest we find ways to reduce the tension, as much as possible, in some of these areas for the benefit of schemes that will operate within Northern Ireland or, in particular, for businesses which will operate within GB but have some form of economic relationship with Northern Ireland, including parent companies. Then they would

[Lord Purvis of Tweed]
be able to get clarity at the outset, to make sure that the schemes can be operable. I beg to move Amendment 22.

Lord Lamont of Lerwick (Con): My Lords, the noble Lord, Lord Purvis, has raised a very relevant point; I appreciate that it is a rather awkward point for the Government. As the noble Lord said, it is not simply about the overlap of law and whether EU or UK law applies, but there is also—this is why this is absolutely relevant to this Bill—an issue about state aids, because subsidies are covered in the protocol. Many people in Northern Ireland are afraid that there will be a reach-back and that a subsidy that affects Northern Ireland businesses, even if it originates in the UK, will make that UK subsidy regime subject to EU state aid law. This is potentially a clash of regimes and is extremely important.

The Government's view in the protocol has been that they think that the EU state aid regime should apply only to state aid that is given specifically in Northern Ireland and not to state aid that was designed for the rest of the UK, even if it reaches Northern Ireland businesses. That still leaves the very difficult issue of where the borderline is. You could imagine, for example, a scheme whereby the UK Government gave help to a motor plant in the north-east of England, which was manufacturing cars that were then transported to dealers in Northern Ireland, who then sold them on to southern Ireland. That is where the whole issue arises, because of the EU's fear about the single market being undermined by the back door.

This issue is not going to go away. Somehow, the Government have to find a demarcation between state aids in the UK and state aids in Northern Ireland. As I have just tried to exemplify with the issue of the motor industry and motor cars, it is extremely difficult to draw a hard and fast line. I do not know whether the Minister can say anything about this. This Bill will pass, but regardless of what is finally enshrined in law when it becomes an Act, this issue will remain a very great problem.

Baroness Blake of Leeds (Lab): We are extremely grateful to the noble Lord, Lord Purvis, for tabling these amendments and outlining his thoughts on this incredibly complex and very difficult issue, as the noble Lord, Lord Lamont, stressed. This needs huge sensitivity in dealing with it. I do not think that we have anything to add at this stage, but we welcome the fact that a light has been shone on this issue. The feeling we had was that it is surprising that more amendments have not been tabled on this topic, but we expect that there will be more as the groups progress. For now, having heard from the noble Lords, Lord Purvis and Lord Lamont, we will be extremely interested to hear the Minister's initial response to the matters being raised.

Baroness Bloomfield of Hinton Waldrist (Con): It might indeed be an initial response, because the noble Lord has the advantage of me: I was not aware of the announcement made this afternoon by Northern Ireland's Agriculture Minister, while we have been in Committee. However, I thank the noble Lords, Lord Purvis of Tweed and Lord Fox, for tabling these amendments. I appreciate that they are intended to be helpful and generate some discussion about these issues, which I suspect will be ongoing.

I begin with Amendment 22, which would require public authorities to make an explicit statement as to whether a subsidy scheme falls under the new domestic regime or EU state aid rules before it is made. Clause 48 already makes it clear that the subsidy control requirements do not apply to a subsidy given, or a subsidy scheme made, in accordance with Article 10 of the Northern Ireland protocol, nor do the requirements apply to a subsidy or subsidy scheme to which Article 138 of the EU withdrawal agreement applies.

It follows that, in the very limited number of cases where public authorities determine that schemes are operating under EU state aid law, the required information will be uploaded to the relevant EU databases on the Commission's website. All other schemes, which represent the vast majority, will fall under the new domestic regime and be uploaded to the UK transparency database. As such, we do not consider it necessary to include a requirement on public authorities to make a statement as to whether a scheme operates under the Bill or EU state aid rules.

I thank my noble friend Lord Lamont for his comments. I understand his concerns about the interaction between the state aid regime and the subsidy control regime. I assure him that the EU state aid rules under the Northern Ireland protocol currently apply only in certain circumstances to aid that affects trade in goods and electricity between Northern Ireland and the EU. Such subsidies are within the scope of the protocol only where there is a genuine and direct link to Northern Ireland and a real, foreseeable impact on trade between Northern Ireland and the EU. The Commission's unilateral declaration of December 2020 made it clear that Article 10 could affect a subsidy in GB only if there was a genuine and direct link in Northern Ireland. This would be the case if, for example, the beneficiary had a subsidiary in Northern Ireland.

EU state aid rules also apply under Article 138 of the withdrawal agreement in relation to aid for EU programmes and activities within the multiannual financial framework as a transitional provision. To respond to the concern of the noble Lord, Lord Purvis, that state aid rules would continue to apply even if the UK's negotiating position were accepted, these are specific and limited circumstances. I trust that this will allay the Committee's concerns on this important issue.

Amendment 53 from the noble Lords, Lord Purvis of Tweed and Lord Fox, would require a mandatory referral to the CMA's subsidy advice unit, or SAU, for any subsidy which the public authority believes has a connection to economic activity in Northern Ireland, but where that authority has decided that the proposed subsidy is not within the scope of Article 10 of the Northern Ireland protocol. The SAU would then, as part of its report, determine whether EU rules would apply.

I am afraid that I must reject this amendment as we believe that it is unnecessary. The Government have already provided guidance for public authorities to determine

in advance whether the subsidy they are planning to give will be in scope of the Northern Ireland protocol. A requirement for the subsidy advice unit to make a report in advance would needlessly delay the deployment of a large number of subsidies that are clearly not in scope of the Northern Ireland protocol. It would also significantly increase the workload of the SAU and the cost to taxpayers.

The Government have published guidance for public authorities on the Northern Ireland protocol, making it clear where it does or does not apply. This guidance was last updated in June 2021, and we will continue to update it as needed. This guidance supports public authorities to make an informed decision on whether their proposed subsidy is in scope of the Northern Ireland protocol, and there exists in the department an advisory team that any public authority can contact for additional support. We need not bring delay into the system unnecessarily.

I emphasise that this amendment is at odds with the Bill's position that a measure that would currently fall within the scope of Article 10 of the Northern Ireland protocol should not be subject to the rules and processes contained in this Bill. That is the whole purpose of Clause 48. This means that it cannot be referred to the SAU for any reason, and the SAU will not undertake any evaluation in relation to the protocol or the EU state aid rules. It is the responsibility of central government to ensure that the UK is compliant with those rules. As such, any subsidy in scope of the mandatory referral provisions in Clause 52 is, by definition, not in scope of the Northern Ireland protocol provisions for the application of EU state aid.

The SAU has important advisory and scrutiny functions: to evaluate public authorities' own assessments of compliance with the subsidy control requirements; and to monitor and evaluate the operation of the domestic regime as a whole. However, it is not a regulator with responsibilities for making definitive judgments, including on whether a specific subsidy is in scope of the Northern Ireland protocol.

I therefore ask the noble Lord, Lord Purvis, to withdraw his amendment and other noble Lords not to press theirs.

Lord Purvis of Tweed (LD): I am grateful for the Minister's response. As much as the Government are asserting that there will not be a challenge or confusion, it is necessary to have greater clarity for those who are putting the schemes together and those who will potentially challenge some of the recipients.

I am grateful to the noble Lord, Lord Lamont, for raising the issue of reach-back. It will remain an issue. The fact that the Government state that they will take responsibility for notifying the Commission about subsidies given does not necessarily mean that they will be free from challenge. Given the fact, from our discussions with my noble friend Lord Fox, that this is fundamentally a challenge-based system, greater clarity on this matter will be important—particularly given that there could be areas of dual approach.

We all know that Northern Ireland has a high number of intermediary businesses. These are for both businesses that have activity in Northern Ireland and GB and businesses based in Ireland or the European Union that have some form of manufacturing or processing in Northern Ireland as well as in GB. These enterprises will, by definition, operate under dual systems and potentially apply for either state aid or subsidy control operations; indeed, I would be amazed if they did not. This means, therefore, that any of those applications or schemes are potentially open to challenge.

I did not agree with the Minister when she said that increasing the role to provide that certainty will represent an increased cost to taxpayers. I have read the impact assessment. If the Government are right that this applies to limited areas, I do not think that it will be a massive burden on the 19 people in the CMA who will be operating on this anyway. The Government seem to be relying on the fact that any confusion or uncertainty can be resolved by seeking advice from BEIS or Defra and the department's subsidy control team.

7.30 pm

However, this is in contrast with other parts of the guidance in June 2021 which suggested that one of the solutions to this difficulty, which the Minister, the noble Lord, Lord Callanan, confirmed to me at Second Reading, is for businesses that are parent companies of those working in Northern Ireland to start operating two distinct sets of accounts. The Minister, from his sedentary position, says that he did not say that. I did not want to put words in his mouth for me to agree with, but he did confirm that one of the elements within the guidance was operating two separate sets of accounts. That suggests that the Government consider that there is likely to be an ongoing situation where a subsidy can either be challenged or policed by the Commission, or through the UK bodies.

The guidance is that if there is any doubt about whether the NI protocol applies, advice should be sought from BEIS or Defra subsidy control teams for industrial and agricultural measures respectively. I do not believe that seeking what is likely to be non-legal, non-public guidance from BEIS or Defra will be sufficient in this area. I respect the Minister's response. I believe that there will be more that we must consider on this, and that we will be returning to the issue of Northern Ireland on Report but, in the meantime, I beg leave to withdraw my amendment.

Amendment 22 withdrawn.

Amendment 23 not moved.

Clause 12 agreed.

Clause 13: Application of the energy and environment principles

Amendment 24 not moved.

Clause 13 agreed.

Amendments 25 and 25A not moved.

Clauses 14 and 15 agreed.

Clause 16: Export performance

Amendment 26 not moved.

Clause 16 agreed.

Clause 17 agreed.

Clause 18: Relocation of activities

Amendments 27 and 28 not moved.

Clause 18 agreed.

Amendment 29 not moved.

Clauses 19 to 24 agreed.

Clause 25: Meaning of "deposit taker"

Amendment 30 not moved.

Clause 25 agreed.

Clause 26: Meaning of "insurance company"

Amendment 31 not moved.

Clause 26 agreed.

Clause 27: Subsidies for insurers that provide export credit insurance

Amendment 32 not moved.

Clause 27 agreed.

Clause 28 agreed.

Amendment 33 not moved.

Clause 29: Services of public economic interest

Amendment 34 not moved.

Clause 29 agreed.

Amendment 35

Moved by ***Lord Purvis of Tweed***

35: After Clause 29, insert the following new Clause—

"Subsidies free from political motivation or influence

For the purposes of this Act a subsidy is only lawful if provided free from political motivation or influence."

Member's explanatory statement

This amendment would prohibit subsidies that are not provided free from political motivation or influence.

Lord Purvis of Tweed (LD): Great—we have got here. I rise to move Amendment 35.

"Billions were written off and no one seemed to care but me" was the headline of the *Times* interview with the noble Lord, Lord Agnew, which made for rather depressing reading. We are regrettably in the context of an enormous amount of money that has been lost through fraud, with the bad cocktail of the allegations made by William Wragg MP of blackmail of MPs with projects in their constituencies. That chair of a Select Committee is speaking to the Metropolitan Police about allegations of blackmail. One of the reasons why this is significant for the Bill was highlighted in one of our previous discussions. The default is that information will not be put in the public campaign but will need to be challenged. That creates a poor recipe.

I was struck when I looked at the prospectus for the levelling-up fund. As we discussed before, this is a separate process, but it is linked to the levelling-up agenda. William Wragg has made allegations of blackmail and funds not being allocated to the constituencies of individual MPs. I suspect that the noble Lord, Lord Lamont, will not want to contribute to this group, but I may talk to him separately as he has great experience—I am not making any allegations, I must say. I will clarify that straight away. I have a dossier here but it is nothing to do with him.

The levelling-up fund introduced an unusual concept: Members of Parliament will back a bid under the levelling-up fund, as a priority. The number of bids received by a local authority will relate to the number of MPs in that area. As GOV.UK states:

"Accordingly, local authorities can submit one bid for every MP whose constituency lies wholly within their boundary."

I think it is a novel experience in the UK system to ask an MP to nominate a bid for a government fund. That is why I was interested in hearing separately about the experience of the noble Lord, Lord Lamont. As the allegations from William Wragg are that there has been blackmail by government Whips, who can then use leverage through this process because this fund specifically gives MPs a role, this is a considerable concern. Rightly or wrongly, this Bill opens up even greater flexibilities for public bodies or individual elected representatives.

We know that, from the Prime Minister downwards, we should all operate under the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership; I believe that is still the case. On integrity:

"Holders of public office must avoid placing themselves under any obligation to people or organisations that may try inappropriately to influence them in their work."

On openness:

"Holders of public office should act and take decisions in an open and transparent manner."

For any public body with delegated responsibilities for elected officials, who now could well be directly linked with subsidy schemes whose operations involve billions of pounds, we need a heightened level of audit and transparency so as to avoid political direction, both on individual subsidy decisions under a scheme and on the establishment of the scheme itself—as well as on the power of government Whips.

There is already considerable use of delegated powers for decision-making in local government, on planning and in other areas. Nothing in the Bill would prevent subsidy schemes being operated under local government delegated powers. That could be a positive; the Minister may argue that it would reinvigorate local government. I am not necessarily opposed to the idea, but if that is the case—I think this was the point made by the noble Lord, Lord Lamont, at Second Reading—with these greater powers, for accountability to be effective, there should be greater transparency.

On our discussion on the previous group of amendments, without that transparency and reporting, the job becomes even harder. If the job on accountability is even harder, the vulnerability in operating against the Nolan principles is heightened. The Minister, the noble Baroness, Lady Bloomfield, conceded at the Dispatch Box in Committee that there was a concern about the shield of scrutiny in this area and suggested that there would be further discussions. I wrote that down. We can check *Hansard*, but I did write it down, because I thought it would be useful later in Committee. The Minister should not scold herself, because that is a very welcome development.

The cure for all this will be transparency. Already we know that accounting officers operating under local government have to certify that the decisions being made in many areas have been made under fiduciary duties and are legal. That duty will, I hope, still apply to subsidy schemes. There will be other bodies—local enterprise partnerships, for example—that are not directly elected. There will also be bodies authorised under the Bill that will not operate at the traditional levels of accountability of elected bodies. There should therefore be a heightened provision for working free from political motivation or influence.

Surely we do not want to go back to the situation in which there were bridges to nowhere, and decisions were made that we only found out about through scandal. Clearly, we want to protect ourselves from blackmail, fraud and waste. The Government may wish to change some of the language in the amendment—I am open to discussing that with the Minister—but I hope that we will be able to add to some of the principles, so that any decisions involving public money will not be fraudulent or subject to political interference and those with malign intentions will not be able to hide behind the shield of secrecy.

Baroness Blake of Leeds (Lab): I speak to this amendment with significant experience as a senior local councillor. Obviously, the Nolan principles applied to all of us. Recently, in public-private partnerships such as the LEPs, all members had to declare their interests. Sometimes, because of commercial sensitivity, some of the private sector partners chose to step down from the LEP. That level of transparency is now accepted practice—and quite rightly so. It is an enormous tragedy that the noble Lord, Lord Purvis, had to table such an amendment but it reflects the extraordinary times we are living in.

I have to be honest: standards in public life are being severely scrutinised now and, in many cases, found wanting. It is with huge regret that we are in a position where such a requirement has to be brought forward in this debate, but that is where we are. The noble Lord, Lord Purvis, is absolutely right to draw attention to the current state that we are in.

7.45 pm

The points that my noble friend Lord McNicol raised around the need for transparency are absolutely pertinent here. I know that we will come back to this area, and that Members from across the House will be really keen to look at it in detail, as was raised in debates in the other place. The recording of details is obviously fundamental. That is why all the debates on the database are so crucial. In this area, the public need to have more confidence than they currently do to ensure the decision-making processes, because we are talking about significant amounts of funds here, which make a huge difference to the recipients and to those who are not successful. That is what we have to be mindful of.

That is why we have been so keen to stress in debate that there need to be clear accountability criteria where decisions are made, so that people can follow the thread of fairness throughout the progress. We welcome that subsidies will be awarded and hope they will make a real difference; however, we should not get away from the fact that awarding subsidies is a political process. That is part of what we are doing here but it needs to be set against those criteria.

If an authority comes in having had in its manifesto, when standing for an election, a strategic plan prioritising green transport, for example, then you would expect subsidies to be delivered against that purpose. Unfortunately, we can all look at the awards of public money where the criteria do not seem to have been followed. These are the issues that we raised before: why is it that money has gone into areas of relative affluence and not into areas of high deprivation? This is an incredibly serious issue and the Government have some serious questions to answer on it.

Clearly, the levelling-up fund will have to face scrutiny of an intense kind to ensure that it is levelling up and addressing the life chances of people in those areas which are put as the priority. We hope that safeguards will be built into the schemes that we are discussing. There is a lack of clarity around this and I hope that the measures which exist in this legislation will be clear and honoured. I hope that the Minister can outline the Government's thinking on this and how we can, in a very troubled time, all be reassured and get the clarity that we need so that the highest levels of probity will be followed in the award of subsidies under the provisions.

Lord Fox (LD): My Lords, it is a great pleasure to follow that speech by the noble Baroness, Lady Blake. I was reassured by some of things she said about how the Nolan principles are being applied at the local level—that that is her experience is reassuring. Of course, it brings this Bill into focus again.

To some extent the amendment is idealistic, but look at it the other way round. What is the converse of this amendment? It is that we allow a Bill to go through that will be subjected to huge political manipulation and little transparency. We have already seen that the Government are not averse to using political direction to spend literally billions of pounds. I ask the Minister to put himself in the boots of the Opposition, because the Bill that he is creating is one that future Governments will have to use. If the Minister, if he were listening, were to put himself—

Lord Callanan (Con): I am listening.

Lord Fox (LD): Sorry; I withdraw that. If the Minister were sitting in the opposition seat and opposing this Bill—or, indeed, opposing its use—he would, I am sure, find it very difficult. That is why it is to the enormous

[Lord Fox]
credit of Her Majesty's loyal Opposition that they are standing hard against this Bill. I am sure that they harbour a view that, in time, they will find themselves in government and the temptation for them—indeed, for any Government—to use these powers would be quite high. It is therefore to the Opposition's credit that, together, we are seeking to put some transparency into this.

At Second Reading, I said that the more flexibility and opacity there is in the subsidy system, the more opportunity there will be for subsidies to be directed for political purposes. I did not use the phrase "pork barrel" but I should have, because there is no other way of explaining how almost seven-eighths of the £1-billion English towns fund goes to Conservative-held seats. There is no way to explain how that money goes there other than political direction. I am sure that the Minister will tell me that there is a formula. There is a formula for almost anything; if you know what you want to create, you build the formula to achieve it. We are already seeing that. I assume that schemes like that will be rolled into a subsidy scheme so that we never see the granularity by seat. This is perhaps our last chance to point to that evidence before it all gets rolled up and aggregated so that we cannot disassemble it.

As we look at this Bill, we should look at the future of subsidies in this country, not the short-term gain for a political party. That is what we are seeing at the moment: a short-term gaming, or potential gaming, of the subsidy system. That is why this amendment was moved and why we have had an interesting short debate on it. I will be interested to see whether the Minister decides to engage at all, because sometimes he just does not. If he does decide to engage, I will be very interested to hear what he has to say.

Lord Callanan (Con): It is very unfair of the noble Lord, Lord Fox, to suggest that I would not engage with his amendment. In this debate, I particularly enjoyed the noble Baroness, Lady Blake, using exactly the same argument that I will deploy against the amendment to argue somehow that she is in favour of it.

Anyway, let us explore the amendment as it was tabled, because I think we will all agree that it is a particularly ridiculous amendment. However, I thank the noble Lords, Lord Purvis and Lord Fox, for putting it forward. Essentially, the amendment seeks to prevent subsidies being given where there is a political motivation or influence. I will not engage with some of the broader points noble Lords made about transparency and things like that because we will come on to those points later in the debate, but I will take the amendment as it is printed. I suspect that what both noble Lords actually meant to say is that they seek to prevent improper political influence over subsidy decision-making. On that, we completely agree, of course. However, as I will argue, I do not believe that this amendment is necessary to achieve that.

First, there are already a number of safety nets in the Bill which will help to prevent improper political influence over subsidy decision-making. Any subsidy, unless exempted, must meet the subsidy control principles, including remedying an identified market failure or addressing an equity rationale. In addition, the subsidy must be limited to what is necessary to achieve it. A subsidy which had improper political influence would struggle to meet those principles.

Secondly, Clause 77 prevents the misuse of subsidies, and a public authority may recover a subsidy from the beneficiary where it has been used for a purpose other than the purpose for which it was given. Even outside the subsidy control requirements, a subsidy must meet value-for-money tests, which help to ensure that public spending is being made appropriately. For UK government spending, this is governed by the Treasury Green Book—all those in government who have to engage with the Treasury will know how rigorous it is in implementing that—and, of course, all the principles set out in *Managing Public Money*. They will be generally applicable to all public authorities in the UK, although the devolved Governments have their own detailed rulebooks, as is right. Finally, a subsidy granted for an improper purpose may give rise to judicial review on public law grounds.

More broadly—this comes back to the point that the noble Baroness, Lady Blake, made, even though, bizarrely, she was arguing in favour of the amendment—it is unclear how a public authority might avoid any political motivation whatever. I do not think that that would be desirable. When the noble Baroness, Lady Blake, was in a position of authority on Leeds City Council, her authority, or a devolved Government, for example, was or would have been democratically elected. I assume that when she stood for election with her party she set out her political priorities. She might have said that where a subsidy was appropriate she wanted to stand for election on that basis. It is right and proper that she should have been able to do that where the subsidy met the subsidy control principles. It would be almost impossible for any democratically elected local authority or a devolved Government to avoid any political influence. We are all politicians, some of whom were democratically elected. This applies to central and local government.

All subsidies have a degree of political motivation or influence because they are desired to achieve a public policy objective on which people stand for election and which will have been set by a public authority with democratic accountability. Let us pursue the example from the noble Baroness, Lady Blake. If she stood for election on Leeds City Council with a commitment to, for instance, provide subsidised transport in rural parts of Leeds—I think Leeds has some rural areas—it might have been appropriate to provide a subsidy to a bus operator. That commitment will have been made at a political level as the result of her manifesto in a political election. That would have been a politically motivated subsidy, but I think we would all agree that, in the circumstances, that would have been wholly appropriate and presumably useful for that particular area.

I hope that I have demonstrated that the amendment is unnecessary. The wording is clearly seriously flawed. I therefore hope the noble Lord will be able to withdraw it.

Lord Purvis of Tweed (LD): I am grateful to the Minister and to my noble friend Lord Fox and the noble Baroness, Lady Blake. This very short debate has been illustrative because, some of the flippancy aside,

it addressed the vulnerabilities that could arise from a lack of transparency in certain areas of subsidy schemes. There is absolutely no intention to prevent anybody standing to represent people in their area and to argue the case for their area. That is absolutely fundamental and a positive. I did it. I fought hard to keep structural funds in the south of Scotland. I will fight the fact that that money is now being taken away by the Minister's Bill. That is something I will fight for. I will be very passionate for it, and I will hold the Conservatives to account for taking those funds away from the Scottish borders.

8 pm

When the structural funds were there, I did not seek to direct them to the exclusion of others, after a policy had been set, nor would I seek to favour potential recipients in whom I had an interest. The noble Baroness is absolutely right: that is why we have registers of interest and cannot game the system. It is nothing to do with having political priorities but is everything to do with use. If the Minister took this to its natural progression, the levelling-up fund would not have had a prioritisation of places methodology note; it simply would not. If the Minister's argument held, there would be no need to state that there are certain areas that can get some of the funds, to the exclusion of others. It would just be a general fund that would be open to all.

As the noble Baroness, Lady Blake, said, we are regrettably in a different situation now. I wonder what would have happened if, under this Bill, in another situation of great pressure, the Government had said, "We're going to make the VIP lane for PPE a subsidy scheme." That would have changed quite dramatically the level of transparency and accountability. We have seen that under the VIP lane scheme, in which, suspiciously, only Conservatives were successful, but that is a separate issue. This Bill affords greater openness and should come with greater sense. I take on board the drafting issue raised by the Minister.

We can sort out whether we are doing the next group. I know it is close to dinner time, but let us sort the pork barrel before we have the meal. If it helps the Minister, I can speak for another 25 minutes on this. I could talk for the rest of the Grand Committee on Conservative misuse of public funds.

In the spirit of finding consensus, and taking on board the Minister's reprimand about my drafting, I will accept his amendment to my amendment and change it to refer to improper use. Until I can reword the drafting to take the Minister's suggestion on board, so that we can have a conversation, I beg leave to withdraw the amendment.

Amendment 35 withdrawn.

Clauses 30 and 31 agreed.

Amendment 36 not moved.

Clause 32: Subsidy database

Amendment 37

Moved by ***Lord McNicol of West Kilbride***

37: Clause 32, page 17, line 8, at end insert—

"(aa) the subsidy database and its contents are subject to routine audit, and"

Member's explanatory statement

This amendment would require regular audits of the subsidy database to ensure its contents are of appropriate quality.

Lord McNicol of West Kilbride (Lab): My Lords, I shall speak also to the other three amendments in this group. Without wanting to do the Minister's job for him, let me start by acknowledging that there is a rolling programme of improvements to the subsidy database which I think all sides would acknowledge does not yet meet the standards one would expect a database of this importance to meet. Irrespective of that rolling programme of improvements, the introduction of a new subsidy control regime affords us an opportunity to look again at how subsidies are reported by public authorities so that they can be looked at by possible economic competitors and the public at large and be held to a higher account. The most obvious and effective way of ensuring the database fulfils its purpose is to ensure that it is subject to periodic audits with any recommendations being acted upon within a reasonable timeframe. We see no reason why the Minister would not want to accept Amendment 37. As the Government have freely admitted, the quality of the data has not been sufficient.

I turn to Amendments 44, 45 and 46. I thank the noble Lord, Lord Fox, for putting his name to them. Amendment 44 would require relevant authorities to include in the entry to the database the exact date on which the information was submitted. One of the fundamental differences from the previous scheme, the European state aid scheme, was that agreements were made before the scheme came into effect. The flipside of this is that that obviously speeds it up, but the schemes or the subsidies will already be in place. Putting into the database the specific date on which the information was submitted will again help with the transparency around it. It is hard to think of any case against such a requirement so I hope the Minister will be able to confirm that. It increases transparency and provides clarity for those gathering the information from the database. It may also allow identification of those authorities that are particularly good or bad at submitting their entries.

Amendment 45 would require information on domestically sourced content to be posted on the database. While Clause 17 prohibits subsidies contingent on the use of domestically produced content, nothing in the WTO provisions or elsewhere, including the TCA, would prevent basic reporting requirements. Some organisations, including the GMB trade union, believe that regular reporting of the use of domestic content could drive—but, importantly, not compel—contractors to make better use of UK supply chains. Indeed, in specific cases such as steel procurement, the Government have set a benchmark of 60% domestic content for the offshore wind sector, so some of these requirements already exist. Putting them inside the database and shining a light on them could help encourage more.

Finally, Amendment 46 would require authorities to demonstrate the terms and conditions of their subsidy schemes. When I first read it, I thought Amendment 46 may well have fitted into the group we dealt with three groups previously, but because it is relevant to the database it probably sits within this debate. The argument, however, is very similar to the debate we had three groups ago.

[Lord McNicol of West Kilbride]

All the amendments are intended to improve the quality of the database and the amount of information available to practitioners operating in that field. Interestingly, Chapter 3 of the Bill is headed "Transparency", so a bit more transparency may help.

One point not covered by the amendments, but to which we may well come back, is that the chapter on transparency, especially Clause 34, uses the word "may" a lot. To take one example, Clause 34(3), at line 28, says:

"In relation to subsidy schemes, the regulations may require a public authority's entry to include".

When the Minister responds, I wonder whether he could give us just a bit more detail. These are partly probing amendments but, on the use of "may", when would those regulations and requirements on the public authorities have to be followed and when would they not have to be followed? Again, I think the use of "may" in there does not help. With that, I beg to move.

Lord Fox (LD): My Lords, I rise to speak to Amendments 44, 45 and 46, to all of which I have added my name. It is a pleasure to follow the noble Lord, Lord McNicol. Amendment 44 requires the date a subsidy scheme is entered into to be put into the database, Amendment 45 is about domestically sourced content and Amendment 46 is about other areas of specifying the date. All three of these amendments come together to play to the word that we have been using in these groups, which is "transparency".

I shall briefly focus on Amendment 45 because it is an interesting point. The nature of what we are talking about hinges around Clause 17(1), which I assume is a WTO-driven point that we cannot favour domestic content over external content. I accept that we need to follow WTO rules. However, as the noble Lord, Lord McNicol, said, that does not stop us collecting the data. Why collect the data if you do not have an actionable need to use it? Therefore—never mind the subsidy that is running, for which we are collecting the data—if it turns out that all that subsidy leads to imports only rather than domestic benefit to the supply chain, when we come to extending or repeating that subsidy or using it in a similar way in another sector, I assume that it is perfectly legal within WTO for the Government to take the benefit and the learnings of that data, having of course given themselves the power to collect it through Amendment 45, to modify future schemes which would still be legal within WI and benefit the domestic supply chain. WI? Jam for all. I meant WTO.

It is a legal question. The Minister may not have the answer straightaway. That data having been collected, I assume, and I would like confirmation, that it is perfectly legal to use that data to design repeat or future schemes so that the UK economy benefits more from that subsidy. That is my main question on these amendments.

Lord Callanan (Con): I am grateful to the noble Lord, Lord McNicol, for these amendments. I think we have much more consensus on the principles. I shall start with Amendment 37. I think we agree that the database should be as accurate as possible. There was an extensive debate in the other place about the quality of the database and the requirements on public authorities when uploading to the database. As was set out there, the database is relatively new and, as the noble Lord acknowledged, it continues to be developed. My department has been working on a range of improvements and we continue to review how it operates. I genuinely welcome any feedback that noble Lords have now or in future on how it can be improved.

Since Report in the other place, our officials have launched an initiative to follow up with public authorities where the information on the database is vague or the links provided go to a landing page rather than providing the necessary detail about a subsidy. In addition, where the subsidy control team receives information about schemes that have been made, that information is now cross-referenced with what is on the database to ensure that it is correct. More broadly, the Government are committed to best practice when it comes to public data, and the subsidy database uses the service standards specified by the Government Digital Service.

8.15 pm

This amendment would create a new obligation on the Secretary of State to subject the database to a routine audit. I respectfully suggest that this new obligation is not necessary because the system already incentivises accurate entries. Public authorities may not have fulfilled their obligation to make an entry on the database if that entry is not accurate, which could mean that the limitation period would not start until a correct entry was made. As a result, we expect to carry out less follow-up with public authorities as they become more accustomed to the transparency requirements of the regime. As is the case with transparency elsewhere in government, it is the responsibility of those uploading data to ensure that it is accurate; of course, they are best placed to do so. The data on this database does not need additional verification from my department. An audit such as that envisioned in this amendment would likely be very expensive. We should not forget that, ultimately, this would be a cost on taxpayers.

Turning to Amendment 44, I am delighted to say that I completely agree with the noble Lord, Lord McNicol, that the date of a subsidy upload is fundamental. It should be on the database. As we announced in the other place, a series of improvements to the database have been ongoing, including adding the date of upload to the database; the noble Lord can say that he was successful in that amendment. As of this week, the improvement is now in place, with the publication date clearly shown on the subsidy information page. This will help interested parties to determine when the limitation period will end. This amendment would add this upload date requirement to the list of illustrative requirements that may be added to the regulations made under Clause 34 but, given the operational changes we have already made, I submit that it is unnecessary. It is easier and more straightforward for the database to include the upload date automatically, as it now does. This avoids the imposition of any additional tasks on public authorities and reduces the chance of any error.

The list of illustrative requirements in Clause 34 has been provided to give an overview of the sort of requirements that the regulations on uploading subsidies

will require. However, before the regulations are made, we will look closely at exactly what is or is not needed. As part of this process, we will work with the relevant public authorities to better understand what requirements should be included in the regulations. Again, I genuinely welcome thoughts from Members of this Committee on what other requirements should be considered in this process.

Amendment 45 would require the database to include information on the share of local content of the good or services to which the subsidy relates. I fully share the noble Lord's aim that subsidies given by public authorities in the UK should lead to benefits for our economy and society. The regime already provides the necessary tools for public authorities to assure this, so this amendment is unnecessary. To ensure compliance with the principles, prohibitions and requirements, public authorities need to design their subsidies to ensure that they bring about a change in the beneficiary's behaviour conducive to achieving their specific policy objective, and that there is no condition on the use of domestic goods or services over imported goods or services. As I mentioned earlier, the subsidy control regime does not replace rules on managing public money or obviate the need for contractual agreements between public authorities and recipients, which ensure that monies cannot be used in ways that do not ultimately benefit the British public.

I will respond to the concern of the noble Lord, Lord Fox. It is perfectly legal and, indeed, important to ensure that a subsidy targets a UK-specific policy objective. If he needs more technical information about compliance with international law, I will be happy to write to him. But, importantly, he will understand that I cannot agree that the use of the database proposed by the noble Lord would be an appropriate way to promote subsidies as a tool to facilitate economic growth in the UK. As both noble Lords are probably aware, WTO rules mean that there is a prohibition on subsidies with local content requirements—namely, subsidies contingent on the use of domestic over imported goods. The TCA of course also includes a similar prohibition for both goods and services within its scope. The noble Lord may be about to remind me that the EU has either just commenced or is about to commence action against the UK in the WTO over the contracts for difference scheme on precisely this point, so he will understand why I will need to be careful about that.

Lord Fox (LD): I understand the Minister's sensitivity, and I thank him for his answer. I was putting it the other way around: having had a scheme that, it turns out, really benefits only the international market, as the data tells you, that data can then be used to decide not to have a similar scheme. So it is a question not necessarily of designing a new scheme but of not committing the same mistake again because the data gives you the ability to make those decisions. That was the point that I was trying to make.

On the previous issue, I am sure that the Minister will already know that the impact assessment says that the cost of adding more data points is minimal, so there is no cost in financial terms, although obviously there is some administrative cost.

Lord Callanan (Con): We are not necessarily against adding new data points, but it depends what they are. Of course, as I mentioned earlier, all subsidies will need to benefit the British public and be well delivered. But of course there is the WTO provision that we need to be careful about, particularly in the context of the TCA and the action that is being launched against us. I will not go any further into the prohibition because I see that the noble Lord is going to ask me about it.

Lord Purvis of Tweed (LD): I have a separate point, on the principle of adding on the issue of local content and domestic goods. I understand and entirely agree with what the Minister said about the WTO prohibition of subsidy schemes that are prejudiced against non-domestic or non-local content. But of course the recipients, if they are manufacturers and exporters, will also have to categorise their own goods under the rules of origin, under both the TCA and the WTO, for all our FTA agreements—so that data will be there. I think that there is a great benefit to having, across key sectors where the Government want to identify whether there is market failure, the knowledge base regarding the level of domestic production. It is not a case of directing the subsidy towards it, which would contravene WTO rules; it is building up that knowledge base that will help overall industrial policy, which would be a positive—especially when it comes to regional production and manufacturing in certain areas.

Secondly, while I agree with the Minister about the discrimination, we can of course use countervailing measures, as the Minister knows—so, in relation to that knowledge base for domestic products, the WTO allows us to particularly support domestic production when it comes to countervailing measures. So, again, that would be information that the Government would find useful to have.

Lord Callanan (Con): I understand the noble Lord's point, but I go back to the fact that this prohibition exists for a good reason. I accept his point about additional data points that could be incorporated at very little cost, but of course he is picking on particularly narrow subsidies that might be given to the manufacturing industry. His points about rules of origin are for separate schemes under the TCA. I will think about his points.

But the prohibition exists for a good reason and is reflected in Clause 17. Of course, if all countries were to subsidise local content, world trade would be unduly distorted, and UK firms would suffer as a result, so that is why we as a country have signed up to these agreements at both WTO and EU TCA level. It is essential that all members of the WTO play by the same rules, which include a prohibition of local content and export subsidies. The UK does not provide, and does not intend to provide, subsidies that are prohibited by the WTO or under the TCA. I make that point clear.

I believe in the advantage of global trade—not just the WTO rulebook, but the global connections and markets that promote prosperity and growth worldwide, and specifically in the UK. Global supply chains allow British businesses to use inputs that are the best and most cost-effective in the world. Certain companies

[Lord Callanan]
and industries may in some cases have their own targets for local content or for something similar—that is indeed what we have done under the contracts for difference schemes, but others are watching these commitments closely—or there may be a commitment to use products from the local area. However, those commitments would not be tied to the giving of a subsidy in any way, and as a result should not be included in a subsidy database entry.

I think I have dealt with most of the points raised. I had some additional points I wanted to make to back up what I have said, but my Whip tells me we are on a hard stop for a couple of minutes' time. Are there any particular points raised in the debate that I have not dealt with? I think I have dealt with them all and explained our position—so, as we have agreed with most of his points, I hope that the noble Lord, Lord McNicol, will feel able to withdraw his amendment.

Lord McNicol of West Kilbride (Lab): I thank the Minister for his response. It was really nice to hear him agree with many of the points that we raised. I just need to encourage a bit more of a hard commitment to amend the Bill, rather than a verbal agreement. I do not think anyone on this side was arguing in favour of prohibition. I was simply outlining the idea of getting the information on to the database, not about using it for a prohibition. No one was arguing that point. As for the changes, I suppose I should take one out of four, but I hope we will be able to bring forward some more. I beg leave to withdraw the amendment.

Amendment 37 withdrawn.

Clause 32 agreed.

Committee adjourned at 8.28 pm.