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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

No party affiliation is given for Members serving the House in a formal capacity or for the Lords spiritual.

House of Lords

Monday 7 February 2022

2.30 pm

Prayers—read by the Lord Bishop of Chichester.

Building Safety Defects
Question

2.36 pm

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government, further to their announcement on 10 January that property developers must pay for remedial work to fix unsafe cladding, how the new measures will help residents of properties with building safety defects that are not related to cladding and for which the residents are not responsible.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I am sure the whole House will join me in congratulating Her Majesty on her 70 years on the Throne and her service to our country and the Commonwealth. I draw attention to my interests as set out in the register.

The Minister of State, Home Office and Department for Levelling Up, Housing & Communities (Lord Greenhalgh) (Con): My Lords, industry must fix the buildings that it was responsible for developing. The Building Safety Bill will protect leaseholders from remedial costs beyond the removal of dangerous cladding by providing a legal requirement for building owners to exhaust all ways to fund essential building safety works before passing on costs to leaseholders. Building owners must provide evidence that this has been done. If this does not happen, leaseholders will be able to challenge these costs in the courts.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I have been raising these matters for some considerable time, so I thank the Minister and acknowledge that progress has been made. Having said that, more needs to be done. I heard what he said about the courts, but I want to hear what the Government are going to do. What specific enforcer measures will be deployed to deal with building owners and developers who refuse to take reasonable action to correct mistakes and poor construction, to deal with fire safety failures, to make their buildings safe and to protect the people living in them—whatever tenure they hold?

Lord Greenhalgh (Con): My Lords, I salute the tenacity of the noble Lord. He will understand that next Monday will be a very special day: it will be the day he writes a card to his wife, the noble Baroness, Lady Kennedy, but it will also be the date when we will see a series—a slew—of amendments from, I am sure, the Labour Party, the Liberal Democrats, the Cross Benches, my noble friends behind me and also from the Government as we reach Committee on the Building Safety Bill. We have two objectives in mind: to protect leaseholders and to ensure that the polluter pays. We are starting a process to encourage voluntary contributions, but we are very clear that, if they do not pay up, there will be measures in law to make sure that they do.

Lord Young of Cookham (Con): My Lords, I welcome the very positive statement that my noble friend has just made, and his personal role in making the progress that has just been announced. On 10 January, the Secretary of State said in another place:

"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, 10/1/21; col. 291.]

Can my noble friend confirm that that is the case and that protection extends beyond cladding replacement?

Lord Greenhalgh (Con): My Lords, I do not want to pre-empt 14 February, but it is very clear that, from Florrie's law, which sought to protect leaseholders from high-cost building safety and remedial works, there will be a principle which protects leaseholders. I thank my noble friend for raising this issue.

Baroness Jones of Moulsecoomb (GP): But there is still nothing in law, is there? The Government are talking large and saying, "From round the House, there'll be lots of good ideas and householders can take these companies to court". But why does the Government not set the law? Instead of expecting us to do their work, why not do the work themselves and make the rules?

Lord Greenhalgh (Con): My Lords, I am used to the interventions from the noble Baroness. I had four years of it in City Hall and it is nice to join this great place and continue where we left off in 2016. However, I believe there is a process, which is getting Royal Assent. It is very clear that the passage of the Building Safety Bill is critical to ensure that we have those protections for leaseholders and that the polluter pays.

Baroness Pinnock (LD): My Lords, there is a big difference between protecting leaseholders and ensuring that they do not pay a penny piece for wrongdoings that were none of their making. Will the Minister give an absolute guarantee that leaseholders will not have to pay a penny piece, whether or not it is after the Building Safety Bill has passed into law? As for leaseholders who have been forced into bankruptcy or those who have already paid their bills, will they still have to pay or will there be compensation?

Lord Greenhalgh (Con): My Lords, it is very clear that we must differentiate the need to protect leaseholders from finding the funds to pay for these buildings. That is why my right honourable friend in the other place has sought to raise, voluntarily in the first instance, some £4 billion for medium-rise cladding. But we need to look at how we protect the leaseholder and get the polluter to pay. For the detail, as I say, noble Lords will have to wait until Valentine's Day.

Lord Watts (Lab): My Lords, have the Government learned their lesson about being so dependent on the industry when they are making building regulations?

[Lord Watts]
Is there not a need now to increase the public ability to set these regulations and not depend on the industry itself?

Lord Greenhalgh (Con): My Lords, that is a very good point, in the sense that we need to have a proper relationship with industry. We need to recognise that, in order to build homes—frankly, we do need great developers and good construction companies to do that—but we need to ensure that the regulatory system works. One of the reasons for Grenfell was the total failure in the regulatory system, from Whitehall right through to local authorities. Again, that is why we need the Building Safety Bill.

Earl Howe (Con): My Lords, the noble Baroness, Lady Brinton, has indicated her wish to speak and this may be a convenient moment.

Baroness Brinton (LD) [V]: My Lords, while we all hope that the Government will hold developers and industry to account for paying for the remedial work, not just in due course but promptly, will that include and be backdated for waking watch payments that were and are required because of the unsafe cladding and other safety defects and which do not appear to be covered by the Secretary of State's announcement of £27 million for fire alarms on 27 January?

Lord Greenhalgh (Con): My Lords, I cannot give a guarantee around retrospective application, but through these measures we are ensuring that many hundreds of thousands of leaseholders do not face eye-watering bills. These measures are about ensuring that that does not happen.

Lord Naseby (Con): Is my noble friend aware that this problem has been with us for over four years? Is he confident that this demand that Her Majesty's Government are making on the construction industry is the right way forward? Using the law, as every Member of this place knows, takes an awfully long time. Would it not be better if everyone sat down round the table and found an answer without implying the use of a new law?

Lord Greenhalgh (Con): My Lords, that is an incredibly helpful point, because in fact it is exactly what I did on Friday. On Friday we sat down to a virtual meeting with the developers and sought precisely that: to understand how we could ensure that we brought resolution to this crisis, which has taken over 30 years to evolve. In seeking voluntary contributions, that is precisely what is happening: engagement at every level.

Lord Dholakia (LD): My Lords, has the Minister consulted Barratt Developments? At one time, it found the premises where I live full of cladding defects and, having removed the cladding, found structural defects. The result of all this was that Barratts paid full compensation for almost all 70 tenants who were living on the premises. If it is possible for Barratts, why is it not possible for others?

Lord Greenhalgh (Con): There are examples where Barratt has behaved very honourably and provisioned quite a considerable sum of money. A number of the other major developers have also put provisions forward and acted, to the tune of some £1 billion. But that is not nearly enough—£1 billion will not deal with a crisis that extends far beyond that. Some estimate that there has been £15 billion or more in costs. We have to recognise that this is a failure and that the polluters are very much broader than the Barratts of this world. We have to make sure that they pay.

Lord Davies of Oldham (Lab): Would the Minister accept that many of us in this House would not take the same view that he has taken about the plethora of amendments that the Government feel obliged at this stage to make to their own proposals, or about welcoming the many other amendments that have been presented by other Members of this House? Surely it is the Government's job, when they face a problem as acute and long-lived as this one has been, to produce legislation that is implementable almost immediately.

Lord Greenhalgh (Con): My Lords, I respectfully disagree. The original purpose of the Building Safety Bill, which remains its primary purpose, is to fix the regulatory system that patently failed in 2017 for future buildings, and essentially to create in law a high-risk regime for high-rises, where we have seen these tragedies approximately every 10 years. We also recognise, as has been raised by many noble Lords, that we need to ensure that we protect leaseholders and get polluters to pay. That is why we are bringing forward these amendments at this time. They are two wholly different matters.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, is the Minister aware that, although some progress has been made for England under the sustained and excellent pressure of my noble friend Lord Kennedy of Southwark, there is not the same kind of progress in Scotland, which is falling behind? Will the Minister have a word with Ministers in Scotland and use his—I was going to say use his not inconsiderable weight.

Noble Lords: Oh!

Lord Foulkes of Cumnock (Lab Co-op): There might be some pots and kettles there, especially from me. Will he use his considerable powers of persuasion to see whether Scots Ministers can follow the lead that he has given?

Lord Greenhalgh (Con): My Lords, this problem extends to all four nations. I meet regularly with my counterparts in Scotland, Wales and Northern Ireland. In fact, there is quite a lot to be learned from Wales, I have to say. Indeed, I will engage and take that advice forward.

Oil Tanker "FSO Safer"

Question

2.47 pm

Asked by ***Lord Walney***

To ask Her Majesty's Government what discussions they have had with international partners about the condition of the oil tanker FSO Safer moored in the Red Sea north of the Yemeni city of Al Hudaydah, and the risks it poses to the environment.

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, we continue to work closely with our international partners, including through the UN and in the region, to tackle the environmental threat posed by the FSO "Safer" to the Red Sea region. We have provided technical support and expertise to the UN, and we play a facilitating role between the UN, the private sector and regional actors to drive progress on mitigating the threat. We are also working with partners on contingency planning in the event of a spill.

Lord Walney (CB): I thank the Minister for that Answer. We have been talking about the principle that the polluter must pay. Does he agree with the assessment from environmentalists that, should this ship degrade further, we could be looking at a disaster greater even than "Exxon Valdez"? Will the Government put pressure on the backers of the Islamist Houthi regime, who are pulling the strings and preventing this ship being given the treatment it so urgently needs?

Lord Goldsmith of Richmond Park (Con): The noble Lord is absolutely right. This would be a really colossal disaster—probably four times worse than the "Exxon Valdez" spill. It would cause irreparable damage and require clean-up costing many billions. He is also right that we urgently need the Houthis to allow the UN to make a technical inspection of the vessel. Unless and until they agree to that, the international community cannot make any meaningful progress. Houthi co-operation is therefore absolutely critical if we want to make that progress.

Baroness Northover (LD): My Lords, the UN humanitarian co-ordinator in the region warns that the risk of imminent catastrophe is very real. As the Minister will know, clearly such a spill would disrupt trade through the Red Sea and the Suez Canal, with global effects. Above all, as he has noted, it would be disastrous in the region, closing Yemeni ports, disrupting the food aid on which half the population of Yemen depends, and affecting all sides, including the Houthis. What strategies are being taken forward to try to deliver a safe resolution to this problem?

Lord Goldsmith of Richmond Park (Con): My Lords, in addition to the answer I gave to the previous question, that really is absolutely central. Our hands are tied until there is proper, meaningful co-operation. The UK has put this on the international agenda. UK-funded research identified the threat posed by the tanker and has been used by international partners, including the UN, to underpin their assessments. We have provided £2.5 million towards UN efforts. We are supporting the UN "Safer" working groups by providing a technical adviser to help them develop their mitigation and contingency plans, and much more besides. Fundamentally, we need to stop this happening, because the effects will take many years and costs vast sums of money to recover.

Lord Collins of Highbury (Lab): My Lords, I return to the fundamental question. The United Kingdom is a penholder on the UN Security Council. This ship has been there for five years and is being used as a weapon in itself. We have a responsibility at the Security Council to support the peace process, so can the Minister tell us exactly where we are now? What is the United Kingdom doing to ensure that we end this terrible humanitarian crisis in Yemen and move towards a peace process that works?

Lord Goldsmith of Richmond Park (Con): My Lords, there are numerous moving parts. It is worth pointing out that we remain one of the biggest donors to Yemen, contributing more than £1 billion since the conflict began. We remain very concerned by the situation there and continue to support the UN-led efforts to end the conflict. We believe that a negotiated political settlement is the only way to bring long-term stability to Yemen. To deal with this particular part of the conflict—this potential crisis—the UK is working closely with the UN donor group consisting of the Netherlands, Sweden, Norway, France and Germany to support UN efforts to resolve the risk posed by the "Safer".

Lord Swinfen (Con): My Lords, are any plans in place to offload the cargo to mitigate any potential damage?

Lord Goldsmith of Richmond Park (Con): If I heard the question correctly, plans have been put together with UK support to do precisely that—to try to shift the oil from this tanker to another—but that is not possible without co-operation across the board. I refer the noble Lord to my first Answer.

Lord Teverson (LD): My Lords, to follow on from the noble Lord, Lord Walney, the answer to this possibly lies through those who control the Houthis. We all know that they are dependent to a large degree on Iran. We have diplomatic relations with Tehran; we sometimes forget that. Can the Minister say what representations our ambassador in Tehran has made to the Government there to solve this crisis?

Lord Goldsmith of Richmond Park (Con): My Lords, the UK is using every avenue we can. The noble Lord mentions one; there are others. The UK is now playing an important role in supporting a commercial initiative to resolve the issue. We supported local Yemeni partners to develop a feasible initiative, which they have been negotiating directly with the Houthis in a way that others would struggle to do. Along with the Dutch Government, the UK has been foremost in rallying the international community behind that commercial initiative, including securing support from Saudi Arabia and the Government of Yemen.

Viscount Waverley (CB): My Lords, following on from the two previous questions, it is also worth noting that we must use every endeavour to ensure that no rockets or missiles land in Riyadh or any city in the Emirates. Is the Minister minded to say a word about that situation?

Lord Goldsmith of Richmond Park (Con): My Lords, the noble Viscount makes a very good point, and that is of course foremost in our minds.

Baroness Bennett of Manor Castle (GP): My Lords, the noble Baroness referred to many of the disastrous impacts that will happen if this oil leaks, spills or causes an explosion. I am sure the Minister is aware that the Red Sea is a crucial coral reef area. Indeed, with the warming climate and seas, it is a real area of refuge where, it is hoped, coral reefs could survive even if they die out in other areas. Is the Minister confident that enough is being done to contain the damage? It does not necessarily require Houthi agreement for containment mechanisms to be put in place in the region. More than that, we have heard lots of discussion about "polluter pays". What contribution are oil companies making to the mitigation effort?

Lord Goldsmith of Richmond Park (Con): I will give the noble Baroness an example. There was a false alarm, if she remembers, a little over month ago, on 27 December, of a spill from the pipeline connected to "Safer". The reaction to that—thankfully, false—alarm demonstrated how quickly the international regional community could respond if that were to occur. Due to our close co-ordination with, and support for, our allies, we were quickly able to confirm that there was no leak. I stress that, no matter how good the contingency plan, the disaster would be very real irrespective. Therefore, the priority has to be to try to stop it from happening.

Criminal Justice: Royal Commission

Question

2.55 pm

Asked by ***Lord Ramsbotham***

To ask Her Majesty's Government what progress they have made with the establishment of the Royal Commission on the Criminal Justice System announced in the 2019 Queen's Speech.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, as I said in answer to the noble Lord's Question on 6 July last year, due to the pandemic, we slowed work to establish the royal commission. Significant new programmes of work were established to support recovery and build back a better system. In the last six months, we have undertaken several new programmes, and our focus is on delivering these priorities over the coming months.

Lord Ramsbotham (CB): My Lords, I thank the Minister for that reply. I make no apologies for asking the Question again, because, as I have said before, I regarded it as extremely discourteous of the Government to ask Her Majesty the Queen to make an announcement which they had no intention of implementing. I had no notice of the intention of the noble Lord, Lord Bach, to bring up this matter on Report on the police Bill. I invite the Minister to say what he said in reply to that intervention.

Lord Wolfson of Tredegar (Con): My Lords, since the Queen's Speech in 2019, there has been the small matter of a global pandemic, which has affected the criminal justice system very substantially. We reacted to that: we put in place particular new ways of working. We have taken a lot of that work forward: there is the Second Reading this afternoon of the Judicial Review and Courts Bill, which contains more reforms to the criminal justice system. I therefore think, with respect, that it is a little unfair to say—in fact, it is inaccurate—that we have no intention of implementing that. As to what I said in response to the noble Lord, Lord Bach, in Committee, I stand by that, absolutely.

Lord Thomas of Gresford (LD): My Lords, in the Council of Europe's recent report on penal matters, England and Wales scored very high in a number of categories, including prison population, prison density, suicide rates, the proportion of prisoners not serving a final sentence and the rate of admissions per 100,000 inhabitants. It is almost a world-beating record. Will the Minister ensure that the terms of reference of any royal commission that is set up include an in-depth consideration of sentence inflation in our courts?

Lord Wolfson of Tredegar (Con): My Lords, one of the other things on which we score extremely high internationally is the quality of our judges. That ought to be mentioned as well. So far as prisons are concerned, we published a prisons White Paper in the last six months, which deals with a number of the matters raised by the noble Lord. As to the terms of reference of any royal commission, of course I have heard what the noble Lord has said.

Lord Singh of Wimbledon (CB): My Lords, I refer to my interest as director of the Sikh prison chaplaincy service. Reducing reoffending should be a central aim in any criminal justice system. Does the Minister agree that chaplains of all faiths can play an important role in this by giving purpose and direction to offenders? Does he further agree that there should be equal access to resources and pastoral support for all faiths in a truly multifaith chaplaincy and probation service?

Lord Wolfson of Tredegar (Con): My Lords, I am grateful to have the opportunity to express real gratitude for the work done by prison chaplains, particularly during the pandemic when the chaplaincy had to move from face-to-face to telephone or video conferencing. Access is of course ultimately a matter for prison governors, but if the noble Lord has particular concerns in this area, he knows that he can speak to me; I am very happy to have a discussion with him.

The Lord Bishop of Gloucester: My Lords, disproportionate outcomes for racially minoritised people in the criminal justice system are well documented, including of course in the Lammy review. Does the Minister agree that care should be taken to prioritise these concerns through the royal commission?

Lord Wolfson of Tredegar (Con): My Lords, I have said on a number of occasions from this Dispatch Box that racial inequality in our criminal justice system goes back many decades. We are absolutely focused on it, and I am sure that any royal commission in this area would want to look at it.

Lord Farmer (Con): My Lords, the pandemic demonstrated more clearly than ever the importance to prison morale and effective rehabilitation of family and other significant relationships. Benefits to prisoners of access to video-calling technology have also been proven. Building back better requires sharpening the emphasis on the third leg of the rehabilitative stool of relationships. Will this and access to technology, as an obvious requirement in a world that is being transformed daily, be key principles in the royal commission?

Lord Wolfson of Tredegar (Con): My Lords, we know that prisoners who maintain contact with their families and communities behave better in prison and have lower reoffending rates when out of prison. During the pandemic, we rolled out video-calling technology to all prisons. We have committed to retaining this long term.

Baroness Butler-Sloss (CB): My Lords, when is it intended to start the royal commission?

Lord Wolfson of Tredegar (Con): My Lords, I am afraid that I cannot go further than what I have already said. We are looking at it, and we want to make sure that we maintain our current programmes. In the last six months we have published a victims consultation, the prison White Paper and national criminal justice scorecards. We have the Judicial Review and Courts Bill this afternoon, and there is a consultation on juries in the consultation on human rights. That is not too bad, for the last six months.

Lord Ponsonby of Shulbrede (Lab): My Lords, a significant proportion of people on community sentences report having mental health or drug addiction issues, yet very few of those community sentences include mental health or drug treatment requirements, partly because these services are simply not available in many areas. This must change if we want community sentences to be fully effective in helping offenders turn their lives around. Will the royal commission on criminal justice include a review of community-based sentencing?

Lord Wolfson of Tredegar (Con): My Lords, I am reluctant to write the terms of reference for the royal commission from the Dispatch Box, but we do know that such services are absolutely essential for people who have come out of prison. My department works closely with the DHSC to ensure proper join-up when people leave prison, so that they can access services in the community.

Lord Forsyth of Drumlean (Con): My Lords, might it not have been sensible to write the terms of reference for the royal commission in 2019, when it was announced? I do not see how Covid would have prevented the establishment of a royal commission, or how any of the splendid initiatives my noble friend has mentioned would have prevented the commission operating. This an independent group to look at the whole thing across the board, and which does not reflect the Government's views but looks at all the arguments, surely.

Lord Wolfson of Tredegar (Con): My Lords, as I understand it the royal commission would need significant resource from the department. The people working on the royal commission were deployed on other work during the pandemic, and that is what they are still doing. The last royal commission was one on this House, and it reported in 2000. I hope that that has not put us off royal commissions in principle. We are still focused on having a royal commission on criminal justice in due course.

Lord Bird (CB): My Lords, could we consider the possibility that we are looking at crime and prisons in the wrong way? There is a lovely printing term, arsy-versy—which is not a rude word. Can we not recognise that, for a specific period, we have a captive audience and we could change them? Many people who have come out of prison have been useful to the community. We need learned experience to help us in the world of crime.

Lord Wolfson of Tredegar (Con): My Lords, I can only agree with that. We have recently looked very carefully at our education programme in prisons, which has undergone an absolute revamp. Minister Victoria Atkins in the other place has had a lot to say about that. Prison is an opportunity to turn lives around. In addition to punishment, we must never forget that part of it is about rehabilitation.

Highway Code

Question

3.06 pm

Asked by ***Baroness McIntosh of Pickering***

To ask Her Majesty's Government what plans they have to amend the Highway Code.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, following parliamentary approval, the Highway Code was revised on 29 January 2022 to include alterations to improve safety for cyclists, pedestrians and horse riders. Changes relating to the use of hand-held mobile phones in vehicles were laid before Parliament on 1 February. Further changes covering the use of self-driving vehicles are planned and will be laid before both Houses of Parliament later this year.

Baroness McIntosh of Pickering (Con): My Lords, would it not be a good idea to present all the changes to the Highway Code and consult on them in one go to prevent a piecemeal approach? Do I not have the expectation as a pedestrian to be able to walk safely along a pavement without the risk of being mown down by e-scooters? For what reason are e-scooters still excluded from the Highway Code? When do my noble friend and the department imagine that death and injury caused by cyclists and e-scooters will be put on the same basis as other motoring offences?

Baroness Vere of Norbiton (Con): Many questions, to which I hope to give at least some response; I am grateful to my noble friend. If we could bring everything together and lay it before Parliament all at once, that would be marvellous, but the reality is that these things happen over a period of time. We do not want to delay certain elements that we can get out of the door. For example, noble Lords will know that we changed the Highway Code back in 2021, making some alterations for smart motorways to include red X stoppages. We have changed and will continue to change the Highway Code, because the situation on our roads is developing very quickly. My noble friend raised the issue of e-scooters which, as noble Lords know, are currently illegal except for the temporary trials. That is why they are not in the Highway Code.

Lord Hunt of Kings Heath (Lab): Could the noble Baroness tell the House to what extent she thinks motorists understand the new Highway Code?

Baroness Vere of Norbiton (Con): There has been a huge amount of coverage of the new Highway Code, for which we are extremely grateful, and there will continue to be coverage. But I am afraid there has been an awful lot of hot air as well, because the changes are actually not that significant. If, as a pedestrian, you start to cross the road, you already have priority; there has been no change in that regard. There was already guidance as to where cyclists should ride on the road; we are just clarifying what is reasonable and what is not. I am content that there is an awful lot of coverage at the moment. There will be more paid-for coverage by the department when we launch our campaign.

Baroness Ludford (LD): My Lords, it is reported that the Government are considering, as a so-called Brexit freedom, refusing to implement EU standards on better sight lines for buses and lorries so that they do not crush cyclists and pedestrians, and better braking for cars. Did taking back control mean more dangerous roads and less safe vehicles? This seems in direct contravention to the alleged purpose of the changes in the Highway Code.

Baroness Vere of Norbiton (Con): I am grateful to the noble Baroness for raising that matter. I think what she is talking about—although I suspect there are a few things muddled up there—is the EU safety package. Of course, that has not yet been mandated in the EU. Ministers are considering what we will do, and we will make the right decision for the safety of everybody on British roads. It has got nothing to do with Brexit or otherwise, frankly; we will be deciding for ourselves.

Lord Grade of Yarmouth (Con): My Lords, does my noble friend the Minister agree that smart motorways are one of great oxymorons of the present day?

Baroness Vere of Norbiton (Con): I am grateful to my noble friend for raising one of my favourite topics. He will know that we have done an enormous amount of work on smart motorways. They are one of the most scrutinised types of roads in the country, perhaps even the world. We have committed that we will not continue to construct new smart motorways until we have all the safety data on those opened before 2020m, which will be in 2025. At that point, we will consider where we take smart motorways, but they are as safe, if not safer, in the vast majority of the metrics we use to look at safety on our roads.

Lord Flight (Con): My Lords, the Highway Code has already been amended with a great deal of criticism from those involved, I regret to comment. Are further amendments proposed?

Baroness Vere of Norbiton (Con): Absolutely, and I am not sure I agree with my noble friend about criticism. The reality is that 21,000 people responded, for example, to the most recent change to the Highway Code and 70% of those self-identified as motorists. Between 68% and 96% of them agreed with the various elements that we put in place. I recognise that concerns have been raised. I am happy to address those concerns, but I do not think that this change is a poor one and, to answer my noble friend's question, there will be more changes coming, as I have set out.

Lord Austin of Dudley (Non-Afl): My Lords, can the Minister say why recommendations proposed by British Cycling to explain reasons for cycling two abreast and to protect the right to do it, which were rules 66, 154 and 213, were not adopted in full? Will this omission not lead to many drivers still questioning the right of people cycling side by side, which is safer for all road users? Will the Minister agree to meet representatives of British Cycling and Cycling UK to look at this again?

Baroness Vere of Norbiton (Con): I am afraid that I will not commit to meet the cycling lobby again because there was an opportunity for all the stakeholders to input into the consultation. A correct balance has been met. The motoring organisations were there as well, and we are content with how we have resolved the situation around riding two abreast. We say that you can ride two abreast but be aware of drivers behind you and let them pass. It is about getting all people on our roads to act in a very safe and considerate manner.

Lord Tunnicliffe (Lab): My Lords, I am appalled that the Minister finds the criticism of the Highway Code and particularly how it has been introduced to be just hot air. I am very sorry that she is content; I believe she should be deeply dissatisfied. To dismiss the changes in the Highway Code as not significant is almost as if she has not read them. It is a very important modification. It requires road users to do things differently. It means that different people have different rights of way. The Minister should not shake her head—that is exactly what it requires. Where two road users both believe they have the right of way, it is potentially catastrophic.

The changes to the Highway Code are designed to make the roads safer but they are completely undermined by the lack of public awareness. The Department for Transport said it will begin launching an awareness

campaign in February. Has this now been launched, and why did Minister not begin the campaign prior to the introduction?

Baroness Vere of Norbiton (Con): My Lords, there is hot air and misinformation around this change to the Highway Code; I am not going to lie—that is absolutely true. There are also situations that have existed for decades—as I have pointed out, these are quite minor changes. Where the Highway Code says "should", that does not mean that you are required to do anything, but, if it says "must", you are required to it. There has always been a question, since the start of the Highway Code earlier in the last century, I believe, whereby different people will sometimes have to agree who will go first—that is just life.

The noble Lord will know that we have had quite a lot of coverage on non-paid-for communications channels, which is what we are focusing on at the moment. THINK!, a paid-for £500,000 campaign, will start very shortly, and we will continue over the summer, as various different modes tick up in their usage.

Baroness Hodgson of Abinger (Con): My Lords, what are the Government doing to make it safer for pedestrians? In particular, how are the Government going to enforce stopping at red lights for all road users, particularly cyclists?

Baroness Vere of Norbiton (Con): I agree with my noble friend: some cyclists are absolutely outrageous when they look at red lights and assume that they are not compulsory. The Government are of course doing the roads policing review, which we will publish in due course. But the whole point about these changes to the Highway Code is that they make things safer for pedestrians. As I have pointed out, they already had priority if they had started to cross the road—there was no change there—but there have been some other minor changes that will make things clearer and safer for pedestrians.

Baroness Butler-Sloss (CB): Has a government department considered cyclists riding abreast on country roads? I live in Devon, where the roads are extremely narrow and used by cars, a lot of horses and, of course, vehicles.

Baroness Vere of Norbiton (Con): Many noble Lords will have heard me raise this point before. I am extremely concerned about rural roads: my view is that, sometimes, motorists seem to think that they have precedence on them, but they do not, and that really concerns me. We are very clear about cyclists: if you are riding on a rural road, or indeed any road, ride in the centre if it is quiet, if there is slow-moving traffic or if you are approaching a junction. If you are on a rural road, of course you would move aside at some point, if there were a car waiting behind you. But, if you are travelling in a car at 30 miles per hour behind a cyclist who is travelling at 15 miles per hour and you are delayed for one mile, you have lost just two minutes of journey time. I sometimes think that we need to be more cognisant of the users on rural roads especially—not only cyclists but horse riders.

Northern Ireland

Private Notice Question

3.17 pm

Asked by ***Lord Empey***

To ask Her Majesty's Government what steps they are taking to restore the Northern Ireland Executive following the resignation of the First Minister on 4th February.

The Parliamentary Under-Secretary of State, Northern Ireland Office (Lord Caine) (Con): My Lords, the resignation of the First Minister of Northern Ireland is deeply disappointing. The Secretary of State has spoken to the Northern Ireland party leaders and the Irish Government to urge a return to stable devolved government and ensure the delivery of public services in Northern Ireland. We recognise the problems caused by the Northern Ireland protocol and will continue our intensive talks with the EU to resolve these.

Lord Empey (UUP): My Lords, my noble friend will know that, during the passage of the Northern Ireland (Ministers, Elections and Petitions of Concern) Bill, which is currently before Parliament, it was described as a Bill to strengthen and safeguard the institutions. Actually, it has now facilitated those who are prepared to abuse the situation. Can my noble friend tell us what the Secretary of State has done to avoid this stunt, which was widely anticipated for months, in advance of the elections? Do Her Majesty's Government intend to accede to Sinn Féin demands to bring forward the date of the Assembly elections?

Lord Caine (Con): My Lords, I am very grateful to my noble friend. Unfortunately, I do not share his characterisation of the Northern Ireland (Ministers, Elections and Petitions of Concern) Bill, which I believe will lead to greater resilience and stability for decision-making within Northern Ireland. Over the last few days, my right honourable friend the Secretary of State has been engaging intensively and has had a number of discussions with party leaders, Members of Parliament, Members of the Assembly and the Irish Government in order to seek a resolution of the issues that have led to the collapse of the Assembly. In particular, the Government are deeply committed to resolving the issues around the implementation of the protocol, which have caused so much damage across Northern Ireland. The legislation to which my noble friend referred should, I hope, complete its passage in the other place this evening, and we are working very hard to bring Royal Assent forward for that legislation as quickly as possible. My noble friend will be aware that the election is due to be on 5 May.

Lord Collins of Highbury (Lab): My Lords, I thank the Lord Speaker for granting this PNQ; given how important this issue is, we might have expected the Government to make a Statement. I share the view that the First Minister's resignation is disheartening. We continue to urge the DUP to take up its place in the Executive for the remainder of this mandate. There are immediate challenges to be faced. An official public apology to the victims of historical institutional abuse

[Lord Collins of Highbury]
was due to be delivered by the First Minister and Deputy First Minister on 11 March. What urgent conversations has the Secretary of State had with the victims, the Northern Ireland parties and the Executive Office to ensure that these victims are not let down yet again? Will the Government now take responsibility for their protocol, which the Prime Minister negotiated and put in place? What practical, long-term solutions are the Government looking at? Ministers must now ensure that Northern Irish communities and businesses have a voice in any future negotiations. I hope the Minister will tell us how this will be done.

Lord Caine (Con): I assure the noble Lord that discussions about the protocol have been taking place with the Northern Ireland Executive. I chaired a meeting of the Northern Ireland protocol contact group with the First and Deputy First Ministers only last week, which I think was the seventh such meeting that has taken place. There has been engagement between the Foreign Secretary and the leaders of the Northern Ireland Executive, as well as with the Secretary of State. There has been a lot of discussion around these issues. Regarding long-term solutions, the noble Lord will be aware that the Government produced their Command Paper last July. This set out some practical solutions to the issues of the protocol. The Foreign Secretary has had a number of meetings with Maroš Šefčovič. They had two telephone calls recently—one was supposed to be a meeting but, because of Covid isolation, it had to be done on the telephone. They are due to meet again this week, so the Government are taking these matters very seriously. When I was a special adviser in Northern Ireland, I did quite a lot of work on the issue of victims of historical institutional abuse. I am aware of its importance, but it is primarily a matter for the Northern Ireland Executive to take forward.

Lord Thomas of Gresford (LD): My Lords, does the Minister accept that the British Government negotiated an unworkable deal? This allows the European court—which now has no British judge sitting on it—to apply laws made in Brussels, where the UK no longer has representation. The Minister referred to negotiations. These have been dragging on and on. When will the Foreign Secretary remove these anomalies and act with some flexibility to find solutions to the problem now facing the Northern Ireland Government? This is the cause of the crisis that has just erupted.

Lord Caine (Con): The noble Lord might be aware that, more than two years ago, when the protocol was being negotiated, I asked questions from the Back Benches. Those are a matter of record. Rather than dwelling on how we got into this situation, I would rather focus on how we get out of it. As I said in my earlier answer, the Government are working intensively with Vice-President Šefčovič to try to find a way forward. The noble Lord will know that there is a meeting of the EU-UK joint committee pencilled in for later this month.

Lord Hamilton of Epsom (Con): My Lords, is it not right that, under the protocol, the tariffs on imports into Northern Ireland are a devolved matter?

Lord Caine (Con): I would have to double-check, but that is not my understanding.

Baroness Ritchie of Downpatrick (Lab): My Lords, critical to dealing with the post-pandemic recovery, addressing health waiting lists and making provisions for economic stability in Northern Ireland is the need to set a three-year budget and to have it ring-fenced, which requires executive decision-making and approval. The Minister will know that this cannot happen without an Executive. How will the Government—working with the Irish Government—ensure that there is immediate restoration of the Executive, and that the DUP will be told to stop their stunts and get on with the work of serving the people of Northern Ireland? What discussions did the Government have with the DUP prior to this happening last week?

Lord Caine (Con): I assure the noble Baroness that the Government have been having discussions—not just with one party but with parties across the Northern Ireland Executive—in the run-up to the decision of the former First Minister last week and subsequently. She raises a very important point about the budget and, of course, one of the things that has bedevilled Northern Ireland in recent years has been the single-year budgets rather than the much longer three or four-year spending reviews that we are used to here. So far as the current situation is concerned, my understanding is that the Finance Minister can bring to the Assembly a budget for the next financial year, but she is absolutely right that it is not possible now to do a three-year budget, which would have to be a priority for an incoming Executive after the election.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, the Minister is surely aware that the Northern Ireland protocol is not consistent with the Belfast agreement, the principle of consent or Northern Ireland's constitutional position within the United Kingdom. It does not have the support of one unionist party in Northern Ireland. The Government have been given ample warning of what was going to happen and now they must deal with the problem. I do not mean tinkering with the protocol—it has to go.

Lord Caine (Con): My Lords, the noble Lord, Lord McCrea, raises a number of very important points, many of which are subject to a legal case currently before the Court of Appeal in Belfast, so it would not be appropriate for me to comment in detail on a number of his points. He referred to Northern Ireland's position within the United Kingdom. Northern Ireland is very much a part of the United Kingdom, something which this Government strongly support and I personally passionately support.

Baroness Ludford (LD): My Lords, when will the Government prioritise getting a so-called SPS or veterinary agreement, which would remove a lot of the checks on food and agricultural products crossing from Great Britain into Northern Ireland? Are they not doing so because they want to keep open the option of allowing hormone-treated beef and chlorine-washed chickens into this country?

Lord Caine (Con): Without commenting on detail, I say that it will not surprise the noble Baroness that these matters are currently being discussed between the Foreign Secretary and the European Commission. She will be aware that the Government put forward a number of proposals in the Command Paper last year, but I urge her to await the outcome of the negotiations.

Lord Browne of Belmont (DUP): My Lords, my party leader has continually reminded the Government of promises made in the *New Decade, New Approach* agreement to protect Northern Ireland's place within the UK's internal market. The commitment was the very basis on which the Democratic Unionist Party re-entered the Executive in 2020. Regrettably, to date, this commitment has not been honoured by Her Majesty's Government. Does the Minister agree that the Government now need to act to remove the Northern Ireland protocol, or indeed trigger Article 16?

Lord Caine (Con): The noble Lord, Lord Browne, will be aware—as I have said on a number of occasions—that the Government are strongly committed to remedying the defects in both the construction and the implementation of the protocol, which has led to a distortion of trade, disadvantaged consumers, led to societal problems and placed burdens on business, all of which is deeply regrettable. Yes, he has my assurance that we are committed to making progress and remedying the most obvious defects that we face.

Lord Hain (Lab): My Lords, I remind the Minister, although he probably does not need reminding, that the last time Stormont was suspended it was down for three years, and the time before it was down for five years. I am sure he agrees that this is a very serious situation. It is critical that the Government accelerate the negotiations—I am sure there is a deal to be done—and work with the parties to get Stormont operating properly as soon as possible.

Lord Caine (Con): I am very grateful to the former Secretary of State for reminding me of three very painful and frustrating years of my life after the Assembly and Executive were last in a state of flux and unable to function. It is important to remind the House at this stage that the First and Deputy First Ministers have ceased to hold office, but individual Ministers remain in office and the Assembly is still meeting. I think there are something like 28 pieces of legislation currently before the Assembly, and 15 sitting days before it is supposed to rise for the election in which to try to progress a number of them.

If the legislation to which I referred earlier is to receive royal assent shortly, there will be a period after the next election when Ministers can remain in place while an Executive is formed. So the situation is not—or hopefully will not be—exactly akin to that in which we find ourselves after 2017 and the noble Lord found after the Assembly fell in 2002. There are some important differences, but I entirely take his point about the urgency to get on with things.

The Earl of Kinnoull (CB): My Lords, the Secretary of State was due to travel to Washington tomorrow on what sounded like a very important trip. I wondered whether this trip was still going ahead.

Lord Caine (Con): Yes, my Lords, it is. I know from my experience of having engaged with Irish America over the years—very intensively, I should add—of the importance of American voices in helping to promote and maintain political stability within Northern Ireland. The Secretary of State has a number of very important meetings with US government officials and Congressmen, who I believe can be very influential in these matters.

Baroness Hoey (Non-Afl): My Lords, many of us in your Lordships' House have been warning for some time of the fundamental incompatibility between the protocol, the institutions and the Belfast agreement. Will the Minister make it clear to our Foreign Secretary—who, I think, is trying her very best in very difficult circumstances—that this incompatibility can be dealt with, and we can get the institutions back up and running in Northern Ireland, only when the protocol goes?

Lord Caine (Con): The noble Baroness again takes us into the territory of the court case in which she is involved regarding compatibility with the Belfast agreement, on which the Government have defended their position in court. As I hope I have stressed from the Dispatch Box over the past few minutes, the Government remain deeply committed to remedying the defects which are apparent in both the construction and implementation of the Northern Ireland protocol—absolutely.

Animals (Penalty Notices) Bill

First Reading

3.33 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Glue Traps (Offences) Bill

First Reading

3.34 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Down Syndrome Bill

First Reading

3.34 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Northern Ireland (Ministers, Elections, and Petitions of Concern) Bill

Returned from the Commons

The Bill was returned from the Commons agreed to.

Business of the House

Motion on Standing Orders

3.34 pm

Moved by ***Earl Howe***

That Standing Order 38(1) (*Arrangement of the Order Paper*) be dispensed with on Wednesday 9 February to enable consideration of the Commons Reason on the Advanced Research and Invention Agency Bill, and Report stage of the Dissolution and Calling of Parliament Bill to take place before oral questions that day.

Motion agreed.

Business of the House

Motion on Standing Orders

3.55 pm

Moved by ***Earl Howe***

That Standing Order 44 (*No two stages of a Bill to be taken on one day*) be dispensed with on Tuesday 22 February to allow the Finance (No. 2) Bill to be taken through its remaining stages on that day

Motion agreed.

Building Safety Bill

Order of Consideration Motion

3.35 pm

Moved by ***Lord Greenhalgh***

That it be an instruction to the Grand Committee to which the Building Safety Bill has been committed that they consider the bill in the following order:

Clause 2, Schedule 1, Clauses 3 to 21, Schedule 2, Clauses 22 to 26, Schedule 3, Clauses 27 to 42, Schedule 4, Clauses 43 to 54, Schedule 5, Clause 55, Schedule 6, Clauses 56 to 104, Schedule 7, Clauses 105 to 113, Schedule 8, Clauses 114 to 121, Schedules 9 and 10, Clauses 122 to 128, Schedule 11, Clauses 129 to 143, Clause 1, Title.

Motion agreed.

Leasehold Reform (Ground Rent) Bill [HL]

Commons Amendments

3.36 pm

Motion on Amendments 1 to 5

Moved by ***Lord Greenhalgh***

That the House do agree with the Commons in their Amendments 1 to 5.

1: Clause 1, page 1, line 9, at end insert—

"(but see subsection (5))."

2: Clause 1, page 1, line 16, at end insert—

"(5) Where there is a deemed surrender and regrant by virtue of the variation of a lease which is—

(a) a regulated lease, or

(b) a lease granted before the relevant commencement day, subsection (1) applies as if paragraph (b) were omitted."

3: Clause 6, page 4, line 30, after first "of" insert "premises which consist of, or include,"

4: Clause 6, page 4, line 39, after "period" insert "(if any)"

5: Clause 6, page 5, line 7, after first "of" insert "premises which consist of, or include,"

The Minister of State, Home Office and Department for Levelling Up, Housing & Communities (Lord Greenhalgh) (Con): My Lords, before I turn to the Commons amendments, I will take a moment to remind us all of what the Leasehold Reform (Ground Rent) Bill will do. The Bill will put an end to ground rents for most new residential leasehold properties as part of the most significant changes to property law in a generation. The Bill's provisions will lead to fairer, more transparent homeownership for thousands of future leaseholders.

Throughout the Bill's passage, there have been helpful discussions with Members of both Houses and with key stakeholders in the industry and from consumer groups. This has been crucial and has led to a number of refinements being made to this Bill during its stages in the other place. At our last opportunity to debate this Bill, in September 2021, changes were suggested by noble Lords to help improve it. I undertook to ensure that these would be made; and as promised, this was done. I hope that noble Lords will agree that the Bill returns to this Chamber in an even stronger position than when it left. We meet today to consider these amendments as made in the other place, and I beg to move that the House do agree with the Commons in its Amendments 1 to 9.

Commons Amendments 1 and 2 relate to the process known as a "deemed surrender and regrant." Taken together, these amendments mean that a lease can have a peppercorn rent after it has been regranted, even where no new premium is paid. Especially for the noble and learned Lord, Lord Etherton, I can confirm the provisions in the amended Clause 6, Amendments 1 to 5, are amended also to apply in the case of a deemed surrender and regrant by operation of law where there is an extension of the term of a pre-commencement lease or the addition of further property. Commons Amendments 3, 4 and 5 are also connected to the "deemed surrender and regrant" process. But more specifically, they clarify the matter raised by the noble and learned Lord, Lord Etherton with regard to a lease variation.

As noble Lords may remember, it was pointed out very diligently that the legislation as drafted was perhaps not as clear as it could be in relation to permitted rent within leases where they replace a pre-commencement lease. The noble and learned Lord, Lord Etherton raised his concern that it was unclear whether the Bill as then drafted would require that any existing ground rent in such leases would be reduced to a peppercorn. I thank the noble and learned Lord for bringing this to my attention. I can confirm that the amendments made in the other place make it clear that, where the property demised is changed, the resulting surrender and regrant will not reduce the ground rent on the remaining term of a pre-commencement lease to a peppercorn. Any extension to the term of the pre-commencement lease will be required to be a peppercorn. Crucially, this amendment ensures that freeholders need not withhold consent for a lease variation unnecessarily. I hope noble Lords will agree this is a positive development.

I turn to Commons Amendment 6. Noble Lords will remember that on Report an amendment was passed that inserted a new clause into the Bill, the "duty to inform". It placed a statutory duty on landlords to inform an existing leaseholder of the changes introduced by the Act ahead of commencement and linked this duty to the Bill's enforcement penalty regime, should a landlord fail to comply. Of course, we recognise the importance of leaseholders being aware of their rights

and that they are therefore not rushed into lease extensions before this Bill takes effect. I thank the noble Baroness, Lady Grender, who is not in her place, and the noble Lord, Lord Stunell, for raising the important matter of consumer awareness, which the Government take seriously.

I support the principles behind the original Lords amendment. It is vital that there is transparency in the leasehold system. However, the Government continue to have doubts as to whether placing a duty to inform in the Bill would be the most effective and expedient means of meeting the objective that noble Lords set out to achieve. We remain of the view that this can be accomplished without the need for further primary legislation. The reasons for leaving out the duty to inform include legal and practical considerations that I hope noble Lords will allow me to explain a little.

As drafted, the duty to inform, although well intentioned, is unworkable. The original amendment placed a duty on all landlords, even if they were not residential, and did not specify how each landlord may satisfy their legal duties contained within the clause. Including the clause would require the penalty enforcement process for the duty to inform to align with the rest of the Bill; for instance, the duty to inform clause provided no mechanism for landlords to appeal and did not offer a concrete explanation of the means for enforcement, such as notices and requests for written representations. To make this clause workable would take up further parliamentary time and cause delay to the implementation of the new peppercorn rents that we all want to see. Furthermore, in terms of practicality, the clause related only to the short period between Royal Assent and the peppercorn limit coming into effect. It would therefore place a quite significant burden on enforcement authorities if it was included in the Bill.

Again, I thank both the Labour Front Bench and the Liberal Democrats' spokesperson, the noble Lord, Lord Stunell, for their recent engagement on this matter. As I have said before, they can rest assured that I agree with them on the principle behind the amendment. We all understand how important it is to ensure that these changes to leasehold law are publicised for the good of leaseholders. However, I appreciate that noble Lords may want a little more. We have looked very closely at how to achieve the objectives that informed the original new clause, so I wanted to share some of the detail on measures that we will take ahead of commencement to close the gap.

We are developing a suite of communications activities, from social media to encouraging the broader press to cover these changes. We will work closely with our partners such as LEASE, the body that provides free and independent advice to leaseholders, as well as National Trading Standards and, of course, our industry partners, to do what we can to raise awareness of the coming changes. We will also contact our friends in the Leasehold Knowledge Partnership. Everyone who can help to communicate should be brought on board. We are also preparing updates to existing government guidance for consumers and will publish new detailed guidance for enforcement officers in England. We expect Wales to produce separate guidance, which should mirror any guidance that we publish for England, and we will work closely with Welsh colleagues to ensure that we get this right.

After Royal Assent, we will write to solicitors, legal executives, licensed conveyancers and relevant professional bodies, detailing the new peppercorn restrictions. We should also contact those who represent property agents and managing agents—ARMA—as I mentioned in our discussions. Nigel Glen has a tremendous database, as does the Institute of Residential Property Management, where Andrew Bulmer can also help communicate the message.

I hope that this is reassuring to noble Lords who have raised concerns about the importance of accurate, independent legal advice to leaseholders. More generally, as part of the enforcement of the Bill, National Trading Standards will assist with advising local enforcement authorities. The department will fund National Trading Standards' implementation costs from our budgets. We are in discussions with the Local Government Association on this. As I have stated previously, I am open to working with anyone across the House on any further activities that they believe we should pursue.

I hope noble Lords are sufficiently reassured that the Government are serious about raising awareness of the Bill among consumers ahead of it coming into force and can agree that the suite of actions we are taking represent the best course of action. On this basis, I ask that your Lordships agree to Commons Amendment 6.

3.45 pm

Commons Amendment 7 is a further clarification, in response to concerns raised by the noble Earl, Lord Lytton, about the impact that the newly created definition of a premium would have on properties with a repairing covenant. I thank the noble Earl for raising this on Report. As noble Lords will be aware, we previously amended the Bill to make it clear that it applied only to leases where a premium was paid. This was to ensure that the legitimate practice of longer leases on a rack or market rent could continue.

The noble Earl, Lord Lytton, questioned whether that initial amendment might still risk properties let on a full repairing lease at a rack rent being subject to the peppercorn rent requirement. The risk could arise where repairing covenants might fall within the definition of a consideration for a "money's worth" of repairs. This is not, and never has been, the intention of the legislation. We therefore removed the words "money or money's worth" from the definition of premium and substituted them with "pecuniary consideration". This phrase is preferable as it is broadly any consideration expressed in terms of money and will not capture the actual worth of repairs for such covenants.

Amendment 8 is a standard amendment that removes the privilege amendment inserted in the Lords. The Government made one further amendment to insert "Welsh Ministers" into paragraph 12 of the schedule. This has enabled any proceeds of a financial penalty that have not gone towards legal or administrative costs to be paid to Welsh Ministers in respect of enforcement for leases of premises in Wales.

[Lord Greenhalgh]

In conclusion, I hope that noble Lords will accept all the amendments made in the other place, and I beg to move.

Lord Stunell (LD): My Lords, I rise to speak on the amendment in my name, which refers to Amendment 6, to which the Minister has just spoken. I hope I am fully in order to do that.

The Deputy Speaker (Lord Geddes) (Con): If I could interrupt the noble Lord, the Question to the House was that we agree Amendments 1 to 5 en bloc. We will then come to Amendment 6.

Motion agreed.

Motion on Amendment 6

Moved by ***Lord Greenhalgh***

That the House do agree with the Commons in their Amendment 6.

6: Clause 8, leave out Clause 8

Amendment to the Motion on Amendment 6

Moved by ***Lord Stunell***

Leave out "agree" and insert "disagree".

Lord Stunell (LD): My Lords, I rise to speak on Amendment 6. I should start by saying that I am the joint owner of a leasehold property, but we got our lease extension some seven or eight years ago—outside the scope of the Bill. Also, both now and earlier the Minister has been very generous with his time in discussing the progress of the Bill. I very much thank him for that and for the great courtesy and good humour he has always shown in doing so.

Clause 8 is a duty to inform the tenant. I was very disappointed to find that the Commons, led by the Government, thought that that was an appropriate safeguard to take out of the Bill. I have listened carefully to what the Minister said by way of a substitution and I will cover that in my further remarks.

First, the Minister has accepted the evidence that the noble Baroness, Lady Grender, among others, brought forward in Committee: that there really is a loophole and it needs to be tackled. The loophole is one that may be exploited by unscrupulous landlords—a minority of landlords, certainly, but ones who are well practised in being unscrupulous. It is a real-world issue. Of course, they are often aided and abetted by their in-house or tame lawyers who are helpfully acting for both parties and do not necessarily spend too long explaining what the hapless leaseholder is being invited to sign.

We hope very much that the Bill will outlaw that practice, but it will not do so immediately. The purpose of the original amendment that your Lordships sent back to the other place was to effectively freeze the imposition of any such unfair terms meanwhile. The Minister has understandably exaggerated the difficulties of Clause 8, but it actually requires that, when a tenant and landlord are about to commence negotiations, the landlord has a duty to inform the tenant of the existence of this Act and the fact that, in a short period of time, they would essentially be able to carry out their transaction for free, whereas in the intermediate period they would do so under the existing regulations, where it is commonplace for escalation clauses and so on to be built into a lease, which would then be an enduring one. There is clearly a temptation for the unscrupulous to do that. You can see the marketing pitch: "New lamps for old"—or rather "New leases for old"—an offer of a VIP lane to leasehold extension, with legal fees waived if you do it by 31 July. Unwary leaseholders could well fall for that, perhaps prompted to go for it by the knowledge that they have only, say, 20 more years on their lease, and perhaps overlooking the fact that it would essentially be free if they waited until 31 July.

I have chosen that date purely for illustration, because the fact is that the Minister has not told us when the new provisions will become operational; I hope he will be able to enlighten us on that point shortly. The window of opportunity for this unscrupulous behaviour to carry on is between now and the moment when this provision comes into force. I want to hear exactly what the Government intend to do to shut that window at the earliest possible opportunity.

What is being offered instead? Superficially, it certainly sounds very plausible, and I hope that it will turn out to be as robust as the Minister hopes it will be. I hope that it will reach every leaseholder, because what is being substituted is an intention in Clause 8 that is a transactional one that would come into play only if a particular lease was going to be extended or was thought likely to be extended, for a general one—so we have a popgun firing at every leaseholder rather than simply providing a provision for landlords to act on at a time of leasehold extension.

I am very pleased to hear about what the Minister had to say about getting in touch with legal firms and those who represent leaseholders and others. I find that a very satisfactory part of his reply.

I would say that a couple of press releases in the ordinary course of business are unlikely to be very effective. The Minister might perhaps like to emphasise how this communications plan will take place. Is there a budget for it? Is it a real-life thing or just a piece of ministerial gloss? I know that the Minister does not go in for ministerial gloss, but I would like an assurance that we will see a real effort made to make sure that this is closed.

When exactly will it be closed? Clause 26(2) says that this will come into force

"on such day as the Secretary of State"

determines. Is that soon, shortly, in the summer, this year, next year, sometime or never? The longer the window stays open—the longer the gap between now and when the Bill's provisions come into force—the more the risk and the more difficulty there is.

So I would like to hear an assurance from the Minister. Can he give us a date on which this provision will come into force so that we can hold him accountable? Perhaps he could also comment on whether we will get the second leasehold Bill, which he spoke of frequently,

in the forthcoming Queen's Speech? I look forward to hearing what the Minister has to say in respect of this and will listen carefully. I beg to move.

Baroness Hayman of Ullock (Lab): My Lords, I have not previously spoken in the debates on this Bill, but I will be brief. I start by thanking noble Lords who have done a lot of work to improve this much-needed legislation. The amendment in the name of the noble Lord, Lord Stunell, is a welcome reminder that the Bill lacks any obligation for landlords to alert leaseholders in advance of changes relating to ground rents and leasehold extensions. We fully support the noble Lord's amendment, which seems to be an entirely proportionate measure and in no way presents an obstacle to the core provisions of the Bill.

The Government have been unable to bring forward any safeguards to address this specific power imbalance at the expense of leaseholders. Without it, we believe that the legislation remains flawed. The relationship between leaseholders and landlords should be defined by the principle of transparency and accountability—as, in fact, the Minister agreed in his opening remarks—but this is simply not possible without provisions such as these. So I ask the Minister, even at this late stage, to provide further assurances that have not previously been forthcoming to allay the concerns from across the House.

Lord Greenhalgh (Con): My Lords, I am not sure whether we have moved all the amendments up to Amendment 9—because then I can wind up, so to speak. I can appreciate the—

The Deputy Speaker (Lord Geddes) (Con): If I may interrupt the noble Lord for a moment—we have moved only Amendments 1 to 5. We are now discussing Amendment 6, and we will then come to Amendments 7, 8 and 9.

Lord Greenhalgh (Con): Okay. I am just getting used to this process. On Amendment 6, it is really helpful that the noble Lord, Lord Stunell, raised the issue of timing. Of course, in order to start the gun, if you like, we need Royal Assent, and then there needs to be a commitment around commencement, which means having all the regulations in place. So let us get this Bill on the statute book as quickly as possible. I have already made a commitment—which perhaps goes beyond where I should have gone because I am, perhaps, a little naive—that, within six months of Royal Assent, we will have commencement. So we know what the window is, effectively, because I made that commitment at the Dispatch Box and I do not want to let anyone down. That is the timeframe: let us get Royal Assent and then, within six months, we will have commencement—and that is the period of time we should be concerned about.

We have very genuinely tried to respond to the issues that have been raised to ensure that the greatest number of people are aware of the dangers and the risks of carrying out a lease extension in that window in a way that would be detrimental to their interests. That is why we have that suite of communications measures. I hope, therefore, that with that and a better understanding of the timeframe, the noble Lord, Lord Stunell, will withdraw his amendment.

On the timing, I have now been in post and responsible for leasehold reform for nearly two years—I have survived one reshuffle—and it is fair to say that both Secretaries of State, particularly the right honourable gentleman in the other place, are absolutely committed to the second wave of leasehold reform, which will be far harder than this modest ground rents Bill. I cannot give a commitment about what will appear, but my expectations are that leasehold reform will be front and centre around his ambition for a wider reform of housing.

The Deputy Speaker (Baroness Barker) (LD): My Lords, the Motion is that this House do agree with the Commons in their Amendment 6. As many as are of that opinion will say "Content". Lord Stunell?

Lord Stunell (LD): Well, if that is the Motion being put to the House, that is fine. I beg leave to withdraw my amendment—although I do so a little grumpily and I shall be keeping a very sharp eye on the Minister.

Amendment to the Motion on Amendment 6 withdrawn.

Motion agreed.

Motion on Amendments 7 to 9

Moved by ***Lord Greenhalgh***

That the House do agree with the Commons in their Amendments 7 to 9.

7: Clause 23, page 14, line 13, leave out "consideration in money or money's worth" and insert "pecuniary consideration"

8: Clause 27, page 15, line 25, leave out subsection (2)

9: Clause 27, page 19, line 16, leave out from "paid" to end of line 17 and insert—

"(a) where the penalty was imposed in relation to a lease of premises in England, to the Secretary of State, and

(b) where the penalty was imposed in relation to a lease of premises in Wales, to the Welsh Ministers."

Motion agreed.

4 pm

Lord Greenhalgh (Con): My Lords, I have a few words in conclusion to thank everybody who has worked so hard to get the Bill to this stage. I thank particularly the noble and learned Lord, Lord Etherton, who has been helpful in tidying up this Bill, the noble Earl, Lord Lytton, with his knowledge as a professional surveyor, and my noble friends Lord Young of Cookham and Lord Hammond of Runnymede, who have been extremely insightful.

I probably should put on record, because I forgot to do so until the very last moment, my residential and commercial interests. I want to make sure that I have declared them, although they are properly set out in my declaration of interests.

I also thank the Benches opposite. I have had to deal with changes and am sorry to have lost the noble Lord, Lord Kennedy, who I believe has gone off to be Chief Whip. Then Labour sent the noble Baroness, Lady Blake of Leeds, from Yorkshire. and now we have the noble Baroness, Lady Hayman of Ullock, who has an incredible reputation in the other place for being fair-minded and constructive. It is marvellous to work with her.

[Lord Greenhalgh]

It has been great to work with the Liberal Democrats as well. I will even thank the noble Baroness, Lady Pinnock; she described herself as a Yorkshire terrier, which is why my ankles seem to get bitten quite a bit when she intervenes; she does so on behalf of the interests of leaseholders and fighting their corner, which is appreciated.

The noble Baroness, Lady Grender, who is not in her place, raised the issue of the gap in the first place. I know the noble Lord, Lord Stunell, is representing her, but she raised an important matter, and it is to her credit that the Government have responded to those genuine concerns. I thank everybody—the Opposition Benches, the Liberal Democrats and the Cross Benches—for a very constructive approach to the Bill.

No Minister should ever leave the Dispatch Box without thanking the officials, many of whom are in the Box and have been simply tremendous in supporting me. We should all be proud of what this House is putting forward in legislation, which is much improved because of the contributions of noble Lords. I commend the Bill to the House.

National Insurance Contributions Bill

Report

Relevant documents: 11th and 19th Reports from the Delegated Powers Committee

4.04 pm

Clause 1: Zero-rate contributions for employees at freeport tax sites: Great Britain

Amendment 1

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

1: Clause 1, page 1, line 22, leave out "regulations under" and insert ", or in regulations under,"

Member's explanatory statement

See the explanatory statement for the first amendment tabled in the Minister's name to Clause 8.

Viscount Younger of Leckie (Con): My Lords, this group of government amendments in my name responds to the recommendations of the Delegated Powers and Regulatory Reform Committee report and sets the upper secondary threshold, the so-called UST.

I thank the committee for its diligent care in scrutinising the Bill and noble Lords for their thoughtful comments in Grand Committee. The Government have further reflected on these views and have tabled Amendments 12, 13 and 14 in response to the report of the DPRRC and noble Lords' comments in Committee.

Clause 10 provides an exemption from self-employed NICs in respect of self-isolation payments provided to support those on low incomes so that they can self-isolate and help stop the spread of coronavirus. Clause 10(2)(d) currently provides that the Treasury may, in relation to any part of the United Kingdom, designate new schemes that are corresponding or similar to the schemes specified in Clause 10(2)(a) to 10(2)(c). Payments under schemes designated in that way will benefit from the exemption in Clause 10(1) and will not be taken into account for the purposes of computing the amount of profits in respect of which class 4 and 2 contributions are payable. The committee recommended that the power in Clause 10(2)(d) be subject to the negative procedure rather than no procedure. The amendment in my name to Clause 10 makes this change.

Secondly, Clauses 3(1) and 6(6) allow the Government to extend the period for which the freeport and veterans relief are available. The committee recommended that the power to extend the relief for freeport employers and employers of veterans should be subject to the affirmative procedure rather than the negative procedure. The Government have taken on board the DPRRC's recommendation and agree that it is appropriate that these powers are subject to the draft affirmative procedure. The two amendments to Clause 12 make these changes. In summary, the Government take the work of the DPRRC very seriously, and Amendments 12, 13 and 14 go a long way towards accepting its recommendations.

I turn to the amendments that set the upper secondary threshold for these measures. Government Amendments 1, 4 and 7 to 11 simply put on the face of the Bill what secondary legislation is out of time to do. This is not new policy or a change to public expectation. Ordinarily, rates and thresholds are set annually through a rerating exercise, which involves the Government of the day laying affirmative regulations. The debates for the 2022-23 rates and threshold will take place in this House on 23 February. However, due to the timing of this Bill and to ensure that the thresholds are in place for 6 April, the upper secondary thresholds for these measures need to be set in primary legislation.

I will now explain what an upper secondary threshold is. It is the threshold up to which employers can claim a zero rate of NICs. After this point, employers will be liable to secondary class 1 NICs at the standard rate. Without an upper secondary threshold, employers would be eligible for unlimited relief. There is a threshold for freeport employers and a separate threshold for employers of veterans.

The upper secondary threshold for the freeport measure is £25,000 per annum and was first announced in the *Freeports Bidding Prospectus* published in November 2020. The upper secondary threshold for the veteran measure is £50,270 per annum and was first announced when the policy was consulted on in July 2020. Both these figures have been reconfirmed by Ministers in this House and in the other place during the passage of this Bill. The Chancellor also confirmed these thresholds at the Autumn Budget 2021.

There are justified policy reasons for the different thresholds. The freeport measure has been designed to support growth in underdeveloped areas, so general support is required. The veteran measure has been designed to support veterans as they transition into civilian life, and therefore a targeted, more generous annual threshold is required to help them to overcome the barriers to employment.

I trust that noble Lords will recognise that this is a formality and will vote in favour of this amendment. I beg to move.

Baroness Kramer (LD): My Lords, this group of amendments includes government Amendments 13 and 14, which, as the Minister described, respectively change Clause 3(1) on freeports and Clause 6(6) on veterans, so that any extension to the zero rating of employers' NICs in these schemes is subject to the affirmative, rather than the negative, resolution procedure. Changing negative to affirmative for both these clauses was an important recommendation of the Delegated Powers and Regulatory Reform Committee. The noble Lord, Lord Tunnicliffe, and I both asked for the changes that it recommended to be enacted, and I thank the Government for delivering them on Report.

As the Minister knows, I was particularly exercised by the original drafting of Clause 10, which designates that payments under certain "self-isolation support schemes" should not be included in computing NICs. I have no problem with the principle but, unamended, the clause would have allowed new schemes to be added without any change to the regulations or any reference to Parliament. The Delegated Powers Committee objected that this offered far too much leeway, and recommended that any designation under the relevant parts of Clause 10 should be "contained in regulations" and subject to the negative resolution procedure. Again, I thank the Minister for delivering on that.

I read the remaining amendments in this group as being technical, and we have no objection. The Delegated Powers Committee will not be fully satisfied by these amendments because certain recommendations have not been agreed by government—for example, the recommendation that the power to modify the criteria for the schemes in freeports should be affirmative, not negative. But we have made progress on some important points, and I hope that the Minister will make sure that the message goes back to those who draft Bills that it is important to take note of the appropriate constitutional balance. He has done so, and I thank him for it.

Lord Tunnicliffe (Lab): My Lords, I am grateful to the Minister for bringing forward these amendments. As he outlined in his introduction, several of the texts clarify the upper secondary limit for the 2021-22 and 2022-23 tax years, with future amounts to be set in regulations. Given our proximity to the new tax year, it seems sensible to include these figures on the face of the Bill, rather than rush to lay regulations following Royal Assent. Oh, I should take my mask off; that is much better.

The remainder of the Minister's amendments address three of the five recommendations put forward by the Delegated Powers and Regulatory Reform Committee. It is disappointing that the Government have chosen not to constrain the powers conferred by Clause 3(3), which the DPRRC labelled "inappropriate". However, we have got quite a bit further than anticipated, following the Minister's remarks in Committee. We thank him for this but, as a generality, we hope that the Government will get back to the convention of taking the DPRRC's recommendations more seriously; I think that is a fair comment. However, the concession on Clause 10 is important, and I look forward to the short debates that will follow regulations made under Clause 3(1) and Clause 6(6).

Viscount Younger of Leckie (Con): My Lords, I will reply very briefly to the comments of the noble Lord, Lord Tunnicliffe, and the noble Baroness, Lady Kramer. I simply say that I am grateful for their support for our amendments. Perhaps more than that, I thank them and others who contributed, particularly in Committee, on these amendments. I also thank the DPRRC; the comments that I made in my opening remarks say it all in terms of my view on it.

Amendment 1 agreed.

Clause 2: Freeport conditions

Amendment 2

Moved by ***Baroness Kramer***

2: Clause 2, page 2, line 26, at end insert—

"(e) the freeport governance body of any freeport tax site in which the employer has business premises maintains a record of all the businesses operating, or applying to operate within the tax site and this record—

(i) contains information, which the freeport governance body must make reasonable efforts to verify, about the beneficial owner of the business; and

(ii) is easily accessible to relevant enforcement agencies and to the general public."

Member's explanatory statement

This amendment adds an additional condition whereby the relief would only be available if the freeport maintained a public record of the beneficial ownership of businesses operating on the site.

Baroness Kramer (LD): My Lords, I am afraid that I carry responsibility for Amendments 2 and 3. I will start with Amendment 3, because it is one that I will not move today. It would provide for a review of the effectiveness of the NIC exemption for employers in freeports. Is it delivering additional jobs and economic growth, rather than displacing jobs and growth from other areas? How much is it costing in lost NIC payments at a time when we are requiring the lowest-paid workers to pay higher NI contributions? Are the big companies benefiting rather than SMEs? Those are the issues that we hope a review would look at and report back to this House. I will not repeat the evidence that suggests that freeports deliver few new jobs, mostly of low quality, but I am putting the Government on notice that we will look at these issues and demand evidence from them as the policy on freeports is implemented.

4.15 pm

Amendment 2 addresses a problem that, sadly, could not be more topical. Russia's gathering of troops on the Ukraine border has put on the front pages of newspapers the concern that kleptocrats and oligarchs use the UK as their money laundering centre of choice—the London laundromat, which allows autocrats, among others, to shrug off economic sanctions. I and others talked about the evidence for this in some detail last week in Grand Committee, so I will not rehearse all the facts and figures. I will just say that the Government themselves estimate that £100 billion of new corrupt money flows into the UK each year.

[Baroness Kramer]

Freeports are notorious for attracting crime, because the customs and tax declarations that usually underpin transparency are absent. Our freeports will provide the added lure of tax-free processing to enhance the money laundering process. The Government insist that the freeport governing bodies will have to keep registers of beneficial ownership of operations and make reasonable attempts to verify their accuracy. That is their attempt to try to contain and limit this form of crime. But, importantly, they are refusing so far to make those registers public. Frankly, this is almost mind-blowing, since every Conservative Chancellor since George Osborne has stressed that registers must be public to be effective. We regularly lecture every country around the world on this issue, including the overseas territories and the Crown dependencies.

Civil society groups and activists across the globe can examine records and registers when they are public, and can alert the enforcement and regulatory agencies. I think we all acknowledge that those enforcement and regulatory agencies have far too few staff and resources to do the work alone without the information flow from civil society and activist groups. I could send your Lordships to many sources that describe the shortage of resources in enforcement, but I will simply quote the National Crime Agency's inspection by Her Majesty's Inspectorate of Constabulary in July 2021—only seven months ago. It says very clearly:

"There is insufficient capacity in the investigations command to meet the demand".

We cannot rely solely on enforcement to keep freeports clean.

Amendment 2 would require that registers of beneficial ownership are not only held, verified and available to enforcement agencies but made public. This is not a time to step backwards in the work we do to try to bring an end to money laundering. If the Minister cannot accept this—it is beyond me why not—I will seek to divide the House.

Lord Tunnicliffe (Lab): My Lords, we welcome the tabling of these amendments by the noble Baroness, Lady Kramer. It is fair to say that there is huge scepticism around the Government's freeports policy. This was reflected at Second Reading. There is no need to go over these arguments again. Sites are coming on stream and time will tell whether the many promised benefits are realised. I was very pleased to sign Amendment 2, and I hope the Minister will respond positively in his remarks.

The topic has taken on additional significance in recent weeks but these concerns are by no means new. Promises of increased transparency have been made year after year. Some limited reforms have come but the level of ambition has been low. We are all aware of the risks involved in freeports. If the Government are serious about mitigating these risks and moving towards a public register of beneficial ownership in a wider sense, why not start here? It feels like an easy win. If the Minister is unable to give the noble Baroness, Lady Kramer, the assurances she seeks, we will join her in any Division she calls.

We are also supportive in principle of the review clause, which would enable us to see the practical impacts of freeport tax relief. Freeports are a leap of faith. The Government hope that they will bring both local and national benefits, but we cannot be sure on either front. The Government will no doubt be keeping all these things under review—to do otherwise would be inconceivable—but can the Minister assure us today that we will get to see the data? I am sure that he will want to shout from the rooftops if their predictions on job and wealth creation are correct, but what if they are not? Sadly, we cannot always expect transparency and honesty from this Administration. If the Prime Minister is serious about turning over a new leaf, perhaps we can start here.

Viscount Younger of Leckie (Con): My Lords, I start by directly addressing Amendment 2, which seeks to create an additional condition whereby freeports relief would be available only where the freeport maintained a public record of the beneficial ownership of the businesses operating on the freeport site. I thank the noble Baroness, Lady Kramer, for raising this important issue. Before I go any further, I would like to broaden the debate, as the House will be aware of the considerable interest that continues to be shown in related matters—as the noble Baroness touched on—taking account of the register of overseas entities' beneficial ownership, economic crime in general, illicit finance and money laundering. Because of this, I hope that the House will forgive me if I give a full and considered response to the noble Baroness and, indeed, the noble Lord, Lord Tunnicliffe.

The Government are taking firm and co-ordinated action to crack down on economic crime and are determined to go further. We will not tolerate criminals profiting from illicit money and will do whatever is necessary to bring these criminals to justice. The Home Office and the Treasury lead the policy response for government. We have well-established governance structures that oversee activity across the system, building on the landmark Economic Crime Plan, which brought the public and private sectors together to tackle economic crime.

The ever-evolving nature of economic crime means that it cannot be combated by law enforcement alone; the capabilities, resources and experience of a wide range of partners from across justice agencies, government departments, regulatory bodies and, of course, the private sector, are required. The Government are bringing forward significant investment to tackle these crimes, including through legislating for the Economic Crime (Anti-Money Laundering) Levy. The upcoming fraud action plan and second Economic Crime Plan this year will further enhance the public and private sector's response in cracking down on economic crime and fraud.

In recent years we have taken important actions to strengthen our fight against economic crime. Let me give noble Lords some examples. The first was the creation of the new National Economic Crime Centre to co-ordinate the law enforcement response to economic crime. The second was the establishment of the Office for Professional Body Anti-Money Laundering Supervision to improve oversight of anti-money laundering compliance in the legal and accountancy sectors. The third was the Criminal Finances Act 2017, which introduced new

powers, including unexplained wealth orders and account freezing orders. Finally, we introduced a global human rights sanctions regime.

The UK is fully committed to coming down firmly on entities which contravene the UK's robust counter-illicit finance regime, as demonstrated by the actions of our anti-money laundering supervisors. This is apparent in the FCA's recent success in securing its first criminal prosecution against NatWest bank under the money laundering regulations. NatWest pleaded guilty to three offences of breaching the regulations, resulting in a £268.4 million fine. Similarly, in April 2019 the FCA fined Standard Chartered bank £102.2 million, which was the second largest financial penalty ever imposed by the FCA for anti-money laundering control failings.

The noble Baroness touched on Russia, as I thought she might. The UK has also taken decisive action to tackle Russian illicit finance. We have acted, in unison with our key partners, most notably the European Union and the United States, against Russia directly on issues that have arisen in areas such as anti-corruption. We have introduced the global anti-corruption sanctions regime and have already sanctioned 14 individuals involved with the $230 million tax fraud in Russia, perpetrated by organised crime groups and uncovered by the brave Sergei Magnitsky. The Government are also bringing forward investment to tackle economic crime. The combination of this year's spending review settlement and private sector contributions through the economic crime levy, as mentioned earlier, will provide funding to tackle economic crime totalling around £400 million over the spending review period.

Let me now return to corporate transparency. The UK is a global leader in beneficial ownership transparency. The Financial Action Task Force's 2018 assessment recognised this: the UK is one of only five advanced economies to have achieved a pass mark for beneficial ownership transparency. The UK is the only G20 country with a free, fully public and easily accessible beneficial ownership register. The people with significant control register—the so-called PSC—at Companies House has more than 5.6 million names of people with significant control over nearly 4.4 million UK-registered companies. As well as the PSC, the Government intend to implement a register of beneficial owners of overseas entities that own or buy property in the UK. This register will be one of the first of its type in the world and will go further to bring transparency to the UK property market. This, in turn, will make it easier for regulators, legitimate businesses and the general public to know who the true owners of UK property are, and enable law-enforcement agencies to carry out effective investigations.

We are also committed to leading international reform efforts on beneficial ownership. Last year, under the UK's leadership, all G7 countries committed to strengthening and implementing beneficial ownership registers. This builds on discussions we are driving forward at the Financial Action Task Force to bolster wider international standards on company beneficial ownership. Our actions are helping to ensure there are no weak links in the global financial system. The Government's proposed reforms to Companies House will further strengthen our position as a world leader in corporate transparency, therefore enabling us to tackle economic crime and protect the UK from hostile actors, thereby enhancing the attractiveness of the UK as a place to invest.

The Companies House reforms will deliver more reliable information on the companies register via verification of the identity of people who manage, control or set up companies; greater powers for Companies House to query and challenge the information submitted to it; and the removal of technological and legal barriers to allowing enhanced cross-checks on corporate data with other public and private sector bodies. To ensure that these changes can be delivered as swiftly as possible, at last year's spending review the Government committed to an additional £63 million to facilitate Companies House reform. These reforms require primary legislation and, as noble Lords will have heard from the Prime Minister last week, we are committed to bringing this legislation forward. However, in anticipation of any questions on this, I am not in a position, I am afraid, to announce timings or refer to any Queen's Speech.

I turn now to freeports, which are really the subject of the remarks of both the noble Baroness, Lady Kramer, and the noble Lord, Lord Tunnicliffe. We have gone further: throughout the bidding process and subsequent business case processes, prospective freeports have been required to set out how they will manage the risk of illicit activity, with those plans being scrutinised by officials in the Border Force, HMRC, the National Crime Agency and others.

On beneficial ownership specifically, I start with a reminder that the freeports bidding prospectus stipulated that each freeport must agree a governance structure with the Government. The precise governance structure is tailored to each freeport's needs but it must be consistent with the requirements set out in the publicly available freeports bidding prospectus.

The Government already require each freeport governance body to undertake reasonable efforts to verify the beneficial owner of businesses operating within the freeport tax site and to make this information available to not only HMRC but law enforcement agencies and other relevant public bodies. This is a condition of freeport status. It is a proportionate approach which means that local area law enforcement can take effective measures to ensure the security and propriety of operations within the freeport.

4.30 pm

Specifically on Amendment 2, tabled by the noble Baroness, Lady Kramer, the difference between this and the existing requirement on freeport governance bodies is that the amendment would require the freeport governance body to make its record of beneficial ownership available to the general public as well as to law enforcement. Given the nature of the information, we do not think it would be appropriate for the freeport governance body to release this information publicly. After all, the freeport governance body is a third party. It does not have the locus to release such information about a business to the general public. For example, it would be inappropriate for a port operator, sitting on a freeport governance body, to make public the details of the beneficial owner of a manufacturer operating elsewhere in the freeport. Such a requirement would

[Viscount Younger of Leckie]
also duplicate and undermine the people with significant control register at Companies House. The onus is already on the company itself.

The amendment, although well-meaning, is not necessary. The broad requirement is already in place. It would be inappropriate because, as mentioned earlier, it would place a requirement on the freeport governance body to release to the public information about a third party. It would duplicate the wider work that I have set out. I hope that the measures this Government have taken more widely in relation to anti-money laundering, to free ports and to beneficial ownership more broadly, will reassure the House.

I note that the noble Baroness said that she was minded not to move Amendment 3. However, I owe it to her to give an explanation from our side about the amendment that she tabled. Amendment 3 would require the Government to conduct a review into the effectiveness of the policy 18 months from the date at which this Act receives Royal Assent. The Government acknowledge the importance of monitoring reliefs of this nature and of evaluating ambitious programmes such as these freeports. For this reason, the Government have already committed to reviewing the use and effectiveness of this relief before deciding whether to extend it further. This review will look at the data available through HMRC's systems.

With this brief response, I again thank the noble Baroness and the noble Lord for their contributions. I hope that the noble Baroness will agree to withdraw her amendment.

Baroness Kramer (LD): My Lords, the Minister has not persuaded me. In fact, if anything, most of his speech reinforced my position. We already have a public register of ownership of companies in the UK. We hope that this will be strengthened through verification when we next see this legislation. The Government have committed to a public register of the beneficial ownership of property in the UK. We think that the legislation is sitting somewhere in the department. We hope that it will see the light of day very soon.

Last week, the Minister, the noble Lord, Lord Ahmad, assured us that he had brought the overseas territories to the point at which they were committed to public registers of beneficial ownership by 2023, but here we have a new register which is suddenly not public. We do not need this anomaly or backward step. I do not understand the Government's resistance. I am afraid that, although I very much respect the Minister, his arguments reinforced my conviction, as I hope that it will have reinforced the conviction of this House, that we need to divide on this issue.

4.34 pm

Division on Amendment 2

Contents 195; Not-Contents 179.

Amendment 2 agreed.

Division No. 1

CONTENTS

Aberdare, L.
Addington, L.
Adonis, L.
Alderdice, L.
Allan of Hallam, L.
Alli, L.
Alton of Liverpool, L.
Anderson of Ipswich, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Blackstone, B.
Blake of Leeds, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Boycott, B.
Bradley, L.
Bragg, L.
Brinton, B.
Brooke of Alverthorpe, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Burt of Solihull, B.
Campbell of Pittenweem, L.
Campbell of Surbiton, B.
Cashman, L.
Chakrabarti, B.
Chandos, V.
Chapman of Darlington, B.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Corston, B.
Crawley, B.
Davies of Brixton, L.
Davies of Oldham, L.
Davies of Stamford, L.
Desai, L.
Dholakia, L.
Donaghy, B.
Doocey, B.
Drake, B.
D'Souza, B.
Dubs, L.
Elder, L.
Faulkner of Worcester, L.
Featherstone, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
German, L.
Goddard of Stockport, L.
Golding, B.
Grender, B.
Grey-Thompson, B.
Grocott, L.
Hacking, L.
Hain, L.
Hamwee, B.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Haskel, L.
Hayman of Ullock, B.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Hendy, L.
Henig, B.
Hogan-Howe, L.
Hollick, L.
Hope of Craighead, L.
Howarth of Newport, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones of Whitchurch, B.
Jones, L.
Jordan, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Khan of Burnley, L.
Kingsmill, B.
Knight of Weymouth, L.
Kramer, B.
Lawrence of Clarendon, B.
Lennie, L.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Londesborough, L.
Loomba, L.
Low of Dalston, L.
Ludford, B.
Mackenzie of Framwellgate, L.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
McConnell of Glenscorrodale, L.
McIntosh of Hudnall, B.
McNally, L.
McNicol of West Kilbride, L.
Merron, B.
Monks, L.
Morgan, L.
Murphy of Torfaen, L.
Northover, B.
Oates, L.
O'Loan, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Pannick, L.
Parminter, B.
Pendry, L.
Pinnock, B.
Ponsonby of Shulbrede, L.
Prosser, B.
Purvis of Tweed, L.
Quin, B.
Radice, L.
Ramsay of Cartvale, B.
Randerson, B.
Razzall, L.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Ritchie of Downpatrick, B.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Russell of Liverpool, L.
Sawyer, L.
Scott of Needham Market, B.
Scriven, L.
Sentamu, L.
Sharkey, L.

Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Newnham, B.
Snape, L.
Stansgate, V.
Stoneham of Droxford, L.
Strasburger, L.
Stunell, L.
Taverne, L.
Taylor of Bolton, B.
Taylor of Warwick, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thurso, V.
Tomlinson, L.
Tope, L.
Touhig, L.
Triesman, L.
Truscott, L.
Tunnicliffe, L.
Turnberg, L.
Tyler of Enfield, B.
Wallace of Saltaire, L.
Walmsley, B.
Watkins of Tavistock, B.
Watson of Invergowrie, L.
Watts, L.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Wilcox of Newport, B.
Wood of Anfield, L.
Woodley, L.
Young of Old Scone, B.

NOT CONTENTS

Altmann, B.
Altrincham, L.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Balfe, L.
Barran, B.
Benyon, L.
Berridge, B.
Best, L.
Bethell, L.
Black of Brentwood, L.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Brady, B.
Bridgeman, V.
Bridges of Headley, L.
Brougham and Vaux, L.
Brown of Eaton-under-Heywood, L.
Brownlow of Shurlock Row, L.
Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Carrington of Fulham, L.
Chadlington, L.
Choudrey, L.
Colgrain, L.
Courtown, E.
Craigavon, V.
Crathorne, L.
Cruddas, L.
Davies of Gower, L.
Deighton, L.
Dobbs, L.
Dodds of Duncairn, L.
Duncan of Springbank, L.
Dundee, E.
Eaton, B.
Eccles of Moulton, B.
Empey, L.
Erroll, E.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Fall, B.
Farmer, L.
Faulks, L.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Fox of Buckley, B.
Framlingham, L.
Frost, L.
Garnier, L.
Geddes, L.
Gilbert of Panteg, L.
Godson, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goodlad, L.
Grade of Yarmouth, L.
Greenhalgh, L.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Harding of Winscombe, B.
Harlech, L.
Haselhurst, L.
Hay of Ballyore, L.
Hayward, L.
Henley, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hoey, B.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Kamall, L.
Keen of Elie, L.
Kirkhope of Harrogate, L.
Laming, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lang of Monkton, L.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lucas, L.
Mancroft, L.
Manzoor, B.
McColl of Dulwich, L.
McCrea of Magherafelt and Cookstown, L.
McIntosh of Pickering, B.
McLoughlin, L.
Meacher, B.
Mendoza, L.
Meyer, B.
Mobarik, B.
Montrose, D.
Morrissey, B.
Moylan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Nicholson of Winterbourne, B.
Noakes, B.
Norton of Louth, L.
Offord of Garvel, L.
Parkinson of Whitley Bay, L.
Patel, L.
Penn, B.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Reay, L.
Redfern, B.
Risby, L.
Robathan, L.
Rock, B.
Rowe-Beddoe, L.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Sheikh, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Tugendhat, L.
Tyrie, L.
Vere of Norbiton, B.
Wei, L.
Wellington, D.
Willetts, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

4.55 pm

Amendment 3 not moved.

Clause 6: Zero-rate contributions for armed forces veterans

Amendment 4

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

4: Clause 6, page 4, line 34, leave out "regulations under" and insert ", or in regulations under,"

Member's explanatory statement

See the explanatory statement for the first amendment tabled in the Minister's name to Clause 8.

Amendment 4 agreed.

Amendment 5

Moved by ***Lord Tunnicliffe***

5: Clause 6, page 4, line 35, at end insert—

"(3A) Relief under this section may apply in respect of any employment of an earner who meets the veteran conditions, irrespective of whether it has applied to a concurrent or previous employment of that earner."

Member's explanatory statement

This amendment clarifies that employer zero-rate relief when employing veterans may apply to multiple employers, in cases where a veteran has more than one form of employment during the eligibility period.

Lord Tunnicliffe (Lab): My Lords, I will also speak to Amendment 6 in this group, which brings us to the issue of zero-rate relief for employers of new Armed Forces veterans. I am grateful to the noble Baroness, Lady Kramer, for her support on this issue at Committee, and for signing Amendment 6, which is in this group.

As we discussed in Grand Committee, many veterans make a smooth transition back to civilian life. They will find stable accommodation and a job within a year, becoming happy and productive members of society. However, while this applies to a clear majority of ex-service personnel, there are a sizeable number who struggle with the process of adaptation. The reasons for this are varied and complex. Some veterans simply are not adequately prepared for life outside the forces. This is an area where improvements have been made in recent years, but individual experiences of leaving active service suggest more needs to be done.

Others may find themselves contending with issues in their personal lives: living in temporary or sub-standard housing, facing difficulty reintegrating back into their family or friendship group, or dealing with mental or physical health issues. Any one of these would make the process of finding and holding down a job more difficult; a combination may make it impossible.

Many veterans will eventually settle, although they may not do so within 12 months. They may find that their first job or two do not suit them. These challenges cannot be fully addressed in the Bill—we know that. But we are generally supportive of the NIC relief being offered to employers of veterans. I continue to be of the view that if this policy helps just a single person, it will have been worth it.

The question before us today is whether—and how—we can make the relief work for as many veterans as possible. The Treasury's policy note is clear that the relief can cover multiple periods of employment—concurrent or subsequent—within the qualifying period. However, as drafted, the Bill is silent on this point. I do not wish to be a cynic, but policy notes can change. Paragraphs of text can mysteriously disappear with no explanation. Amendment 5 has been tabled with this in mind, to protect that important point of clarification. I hope the Minister can accept the text. If the wording is not quite right, it can be addressed at Third Reading.

I also hope the Minister will feel able to accept Amendment 6, which would grant the Treasury the power to change the one-year period specified in Clause 7(1)(c) of the Bill. In Committee, we argued for three years of relief. This would have ensured consistency with the relief offered to employers in freeports, while affording veterans more time to adjust. The Treasury seems certain that a single year's relief will do the job. We hope it does, but that will become apparent only with time. If it becomes clear that a longer period of 18 months, two years or perhaps longer would have a beneficial impact on the employment and retention of veterans, Amendment 6 would allow that change to be made quickly and simply, and—crucially—outside the Budget and Finance Bill cycle. The Government would not be compelled to use the power, but the option would be available to Ministers should the scheme be extended.

I hope that noble Lords—and the Minister—respond positively to these amendments. They are offered in a spirit of co-operation. We want to be helpful to the Government and we want the Government to be helpful to the men and women who have defended this great nation. It is our duty to serve the interests of those who have served us. I beg to move.

5 pm

Baroness Kramer (LD): My Lords, we on these Benches fully support these Labour-led amendments. The noble Lord, Lord Tunnicliffe, has made the arguments in powerful terms, and I will not repeat what has been said so well. Most service men and women return smoothly to civilian life, but it is often those who have experienced the most trauma on our behalf who find themselves in a difficult place. Nothing would be more frustrating than putting in place a scheme such as that proposed in the Bill and then finding that, in many cases, the support does not last long enough as life events throw people temporarily off course. Frankly, the cost of providing a longer employment incentive for this group would cost the Treasury next to nothing, so we find it a privilege to support these amendments.

Viscount Younger of Leckie (Con): My Lords, the veterans' relief legislated for in the Bill and consulted on publicly has been introduced to support veterans as they transition into civilian life, and to encourage employers to utilise the considerable and often formidable skill sets of veterans. Between 10,000 and 15,000 leave the regular Armed Forces each year, whose employers will be able to benefit from this measure. This measure fulfils the Government's 2019 manifesto commitment and builds on the UK-wide *Strategy for our Veterans* launched in November 2018, which includes specific commitments to support veterans to "enter appropriate employment".

Amendment 5 tabled by the noble Lord, Lord Tunnicliffe, seeks to clarify that multiple employers can claim that relief on behalf of the same veteran. However, the amendment is not necessary as this is already the policy intent, and the legislation, as drafted, supports this. It may be helpful to explain exactly how the relief works. Any employer can claim the relief during a veterans' first 12 months in civilian employment. That period is calculated by taking the veteran's first day of civilian employment after leaving the Armed Forces and adding 12 months. Concurrent and subsequent employers can claim the relief in that period. That approach ensures that a veteran does not use up access to the relief if they take on a temporary role immediately after leaving the Armed Forces. Where the first day of civilian employment is before 6 April 2021, the period for which an employer can claim the relief will be from 6 April 2021 to 12 months after the first day of civilian employment.

It may help the House if I provide it with an example. Veteran A starts their first civilian employment on 30 August 2022. On 30 November 2022, veteran A enters into a separate employment with employer B. Employer B will also qualify for this relief, and both employers can continue to claim this relief until 29 August 2023. That approach has been communicated publicly

to employers in the Government's response, published on 11 January 2021, to the policy consultation; in the tax impact and information note that accompanies the Bill; in guidance for employers published ahead of this measure being available from 6 April 2021; and in speeches made by Ministers in both this House and the other place. I hope that the noble Lord is reassured about the policy and withdraws his amendment.

Amendment 6, tabled by the noble Lord and supported by the noble Baroness, Lady Kramer, gives the Treasury a power to extend the qualifying period of this relief, as defined at Clause 7(1). The Government have considered this measure in detail and consulted extensively on the relief, including a policy consultation which ran from July to October 2020 and a technical consultation which ran from January to March 2021. A significant number of respondents agreed that the relief is a positive step towards supporting the recruitment of veterans and could help to break down the barriers and negative perceptions surrounding veterans. After considering the responses, we felt that a 12-month qualifying period struck the right balance between supporting veterans as they transitioned to civilian life and wider taxpayers' interests. Noble Lords may want to note that employer representatives such as the Federation of Small Businesses welcomed the 12-month relief when it was announced.

This policy provides employers in the 2021-22 tax year with up to £5,500 of relief and is one part of the Government's broader strategy to support veterans. The Government recently published the veterans' strategy action plan for 2022-24, which contains over 60 policy commitments worth over £70 million in a diverse range of areas, reflecting the varied streams of government support offered. Furthermore, at the 2021 Budget and spending review, £10 million was provided to support mental health via charity provision and £5 million to the Health Innovation Fund. In August 2021, £2.7 million was provided to further strengthen veteran health support, including facilitating the expansion of Op COURAGE, and a further £5 million in September 2021 for those struggling after the Afghanistan withdrawal.

Furthermore, the Bill already contains other levers to increase the generosity of this relief if needed, such as increasing the upper secondary threshold, as debated earlier, and extending the overall period of the relief. These proposed additional powers are therefore not necessary. With these reassurances, I hope that the noble Lord and noble Baroness will not press their amendments.

Lord Tunnicliffe (Lab): My Lords, I thank the noble Lord for his response. I hope that I am wise in not pressing Amendment 5 any further. I will, however, be pressing Amendment 6 to a Division. The Government believe that this process is good, and we agree. There is consensus that the NICs relief is a benign piece of legislation and, if it is successful and cost effective, it may need to be extended. This amendment permits extension without further primary legislation. It is entirely within the control of government. It can do no harm and may do some good. I commend Amendment 6 to the House. In the meantime, I beg to withdraw Amendment 5.

Amendment 5 withdrawn.

Clause 7: Veteran conditions

Amendment 6

Moved by ***Lord Tunnicliffe***

6: Clause 7, page 5, line 24, at end insert—

"(3) The Treasury may by regulations amend the period specified in subsection (1)(c) where it believes this will contribute to improved employment and retention rates among veterans."

Member's explanatory statement

This amendment would grant the Treasury a power to extend the eligibility period attached to zero-rate relief for armed forces veterans, should that be deemed desirable to improve the ability of veterans to find long-term employment.

Lord Tunnicliffe: I beg to move.

5.07 pm

Division on Amendment 6

Contents 197; Not-Contents 175.

Amendment 6 agreed.

Division No. 2

CONTENTS

Aberdare, L.
Addington, L.
Alderdice, L.
Allan of Hallam, L.
Alli, L.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Bach, L.
Bakewell of Hardington Mandeville, B.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Benjamin, B.
Bennett of Manor Castle, B.
Blackstone, B.
Blake of Leeds, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Bowles of Berkhamsted, B.
Boycott, B.
Bradley, L.
Bragg, L.
Brinton, B.
Brooke of Alverthorpe, L.
Brown of Cambridge, B.
Browne of Belmont, L.
Bruce of Bennachie, L.
Burt of Solihull, B.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Carter of Coles, L.
Cashman, L.
Chakrabarti, B.
Chandos, V.
Chapman of Darlington, B.
Clancarty, E.
Clark of Windermere, L.
Clement-Jones, L.
Coaker, L.
Collins of Highbury, L.
Corston, B.
Craigavon, V.
Crawley, B.
Davies of Brixton, L.
Davies of Oldham, L.
Desai, L.
Dholakia, L.
Dodds of Duncairn, L.
Donaghy, B.
Doocey, B.
Drake, B.
D'Souza, B.
Dubs, L.
Elder, L.
Empey, L.
Faulkner of Worcester, L.
Featherstone, B.
Flight, L.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
German, L.
Goddard of Stockport, L.
Golding, B.
Grender, B.
Grocott, L.
Hacking, L.
Hain, L.
Hamwee, B.
Hanworth, V.
Harris of Haringey, L.
Harris of Richmond, B.
Haskel, L.
Hayman of Ullock, B.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Hendy, L.
Henig, B.
Hollick, L.
Hope of Craighead, L.

Howarth of Newport, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Janke, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Moulsecoomb, B.
Jones, L.
Jordan, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Khan of Burnley, L.
Kingsmill, B.
Kinnoull, E.
Knight of Weymouth, L.
Kramer, B.
Lawrence of Clarendon, B.
Lea of Crondall, L.
Lennie, L.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Low of Dalston, L.
Ludford, B.
Mackenzie of Framwellgate, L.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
Maxton, L.
McConnell of Glenscorrodale, L.
McCrea of Magherafelt and Cookstown, L.
McIntosh of Hudnall, B.
McNally, L.
McNicol of West Kilbride, L.
Merron, B.
Monks, L.
Morgan, L.
Murphy of Torfaen, L.
Northover, B.
Oates, L.
O'Loan, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Parminter, B.
Pendry, L.
Pinnock, B.
Ponsonby of Shulbrede, L.
Purvis of Tweed, L.
Quin, B.
Radice, L.
Ramsay of Cartvale, B.
Randerson, B.
Razzall, L.
Rebuck, B.
Redesdale, L.
Reid of Cardowan, L.
Rennard, L.
Ritchie of Downpatrick, B.
Robertson of Port Ellen, L.
Rooker, L.
Rosser, L.
Rowe-Beddoe, L.
Sawyer, L.
Scott of Needham Market, B.
Scriven, L.
Sentamu, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Sikka, L.
Smith of Newnham, B.
Snape, L.
Stansgate, V.
Stoneham of Droxford, L.
Strasburger, L.
Stunell, L.
Taverne, L.
Taylor of Bolton, B.
Taylor of Warwick, L.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thornton, B.
Thurso, V.
Tomlinson, L.
Tope, L.
Touhig, L.
Triesman, L.
Tunnicliffe, L.
Turnberg, L.
Tyler of Enfield, B.
Wallace of Saltaire, L.
Walmsley, B.
Warwick of Undercliffe, B.
Watkins of Tavistock, B.
Watson of Invergowrie, L.
Watts, L.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Wilcox of Newport, B.
Wood of Anfield, L.
Woodley, L.
Young of Norwood Green, L.
Young of Old Scone, B.

NOT CONTENTS

Altmann, B.
Altrincham, L.
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Attlee, E.
Balfe, L.
Barran, B.
Benyon, L.
Berridge, B.
Bethell, L.
Black of Brentwood, L.
Blackwood of North Oxford, B.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Brady, B.
Bridgeman, V.
Bridges of Headley, L.
Brougham and Vaux, L.
Brown of Eaton-under-Heywood, L.
Brownlow of Shurlock Row, L.
Buscombe, B.
Caine, L.
Caithness, E.
Callanan, L.
Carrington of Fulham, L.
Chadlington, L.
Choudrey, L.
Colgrain, L.
Courtown, E.
Crathorne, L.
Cruddas, L.
Davies of Gower, L.
De Mauley, L.
Deighton, L.
Dobbs, L.
Duncan of Springbank, L.
Dundee, E.
Eaton, B.
Eccles, V.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Farmer, L.
Faulks, L.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Framlingham, L.
Frost, L.
Garnier, L.
Geddes, L.
Gilbert of Panteg, L.
Godson, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goodlad, L.
Grade of Yarmouth, L.
Greenhalgh, L.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hannan of Kingsclere, L.
Harding of Winscombe, B.
Harlech, L.
Haselhurst, L.
Hayward, L.
Henley, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hoey, B.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Johnson of Marylebone, L.
Jopling, L.
Kakkar, L.
Kamall, L.
Keen of Elie, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Laming, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lang of Monkton, L.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Londesborough, L.
Lucas, L.
Mancroft, L.
Manzoor, B.
Maude of Horsham, L.
McColl of Dulwich, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Mendoza, L.
Meyer, B.
Mobarik, B.
Montrose, D.
Moore of Etchingham, L.
Moylan, L.
Naseby, L.
Nash, L.
Nicholson of Winterbourne, B.
Noakes, B.
Norton of Louth, L.
Offord of Garvel, L.
Pannick, L.
Parkinson of Whitley Bay, L.
Patel, L.
Penn, B.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Rawlings, B.
Reay, L.
Redfern, B.
Risby, L.
Robathan, L.
Rock, B.
Sanderson of Welton, B.
Sandhurst, L.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Shackleton of Belgravia, B.
Sharpe of Epsom, L.
Sheikh, L.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Stewart of Dirleton, L.
Stowell of Beeston, B.
Stroud, B.
Sugg, B.
Taylor of Holbeach, L.
Trenchard, V.
True, L.
Tugendhat, L.
Tyrie, L.
Vere of Norbiton, B.
Verma, B.
Wei, L.
Wharton of Yarm, L.
Willetts, L.
Williams of Trafford, B.
Wolfson of Tredegar, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

Clause 8: Upper secondary threshold for earnings

Amendments 7 to 11

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

7: Clause 8, page 5, line 26, at end insert—

"(A1) For the purposes of section 1, for the tax year beginning with 6 April 2022—

(a) the upper secondary threshold is £481, and

(b) the prescribed equivalent for earners paid otherwise than weekly is—

(i) where the earnings period is a month, £2,083;

(ii) where the earnings period is a year, £25,000;

(iii) where the earnings period is a multiple of a week, £25,000 divided by 52 and multiplied by the multiple;

(iv) where the earnings period is a multiple of a month, £25,000 divided by 12 and multiplied by the multiple;

(v) in any other case, £25,000 divided by 365 and multiplied by the number of days in the earnings period.

(A2) For the purposes of section 6, for the tax years beginning with 6 April 2021 and 6 April 2022—

(a) the upper secondary threshold is £967, and

(b) the prescribed equivalent for earners paid otherwise than weekly is—

(i) where the earnings period is a month, £4,189;

(ii) where the earnings period is a year, £50,270;

(iii) where the earnings period is a multiple of a week, £50,270 divided by 52 and multiplied by the multiple;

(iv) where the earnings period is a multiple of a month, £50,270 divided by 12 and multiplied by the multiple;

(v) in any other case, £50,270 divided by 365 and multiplied by the number of days in the earnings period.

(A3) Amounts determined in accordance with—

(a) subsection (A1)(b)(iii) or (iv), or subsection (A2)(b)(iii) or (iv), if not whole pounds, are to be rounded up to the next whole pound;

(b) subsection (A1)(b)(v) or (A2)(b)(v) are to be calculated to the nearest penny, and any amount of a halfpenny or less is to be disregarded."

Member's explanatory statement

This amendment, together with the other amendments tabled in the Minister's name to Clause 8, and the amendments tabled in the Minister's name to Clauses 1 and 6, set upper secondary thresholds and prescribed equivalents for the purposes of Clause 1, in relation to the tax year 2022-23, and Clause 6, in relation to the tax years 2021-22 and 2022-23, and make consequential amendments.

8: Clause 8, page 5, line 29, after "year" insert "after the tax year 2022-23"

Member's explanatory statement

See the explanatory statement for the first amendment tabled in the Minister's name to Clause 8.

9: Clause 8, page 5, line 32, leave out subsection (3)

Member's explanatory statement

See the explanatory statement for the first amendment tabled in the Minister's name to Clause 8.

10: Clause 8, page 5, line 35, leave out subsection (4) and insert—

"(4) The regulations may prescribe an equivalent of an upper secondary threshold in relation to earners paid otherwise than weekly (and references in any Act to the "prescribed equivalent", in the context of an upper secondary threshold for the purposes of section 1 or 6, are references to the equivalent prescribed in reliance on this subsection in relation to such earners).

(4A) The power to prescribe an equivalent includes power to prescribe an amount which exceeds, by not more than £1.00, the amount which is the arithmetical equivalent of that threshold."

Member's explanatory statement

See the explanatory statement for the first amendment tabled in the Minister's name to Clause 8.

11: Clause 8, page 5, line 38, at end insert—

"(5) The regulations may amend this section."

Member's explanatory statement

See the explanatory statement for the first amendment tabled in the Minister's name to Clause 8.

Amendments 7 to 11 agreed.

Clause 10: Treatment of self-isolation support scheme payments

Amendment 12

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

12: Clause 10, page 6, line 24, after "paragraph" insert "in regulations made"

Member's explanatory statement

This amendment provides for the designation of schemes for the purposes of Clause 10 to be by regulations.

Amendment 12 agreed.

Clause 12: Regulations

Amendments 13 and 14

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

13: Clause 12, page 7, line 8, at end insert—

"(za) section 3(1);"

Member's explanatory statement

This amendment provides for regulations under Clause 3(1) to be subject to the draft affirmative procedure.

14: Clause 12, page 7, line 10, at end insert—

"(ba) section 6(6);"

Member's explanatory statement

This amendment provides for regulations under Clause 6(6) to be subject to the draft affirmative procedure.

Amendments 13 and 14 agreed.

Levelling Up

Statement

The following Statement was made in the House of Commons on Wednesday 2 February.

"Madam Deputy Speaker, I would like to make a Statement on the Government's plans to level up and unite our country.

The White Paper we are publishing today sets out our detailed strategy to make opportunity more equal and to shift wealth and power decisively towards working people and their families. After two long years of Covid, we need to get this country moving at top speed again. We need faster growth, quicker public services and higher wages, and we need to allow overlooked and undervalued communities to take back control of their destiny.

[Viscount Younger of Leckie]

While talent is spread equally across the United Kingdom, opportunity is not. Our country is an unparalleled success story, but not everyone shares in it. The further a person is from one of our great capitals—whether it is London, Edinburgh, Cardiff or Belfast—the tougher life can be. For every local success, there is a story of scarring and stagnation elsewhere, and that must change. We need to tackle and reverse the inequality that is limiting so many horizons and that also harms our economy. The gap between much of the south-east and the rest of the country in productivity, in health outcomes, in wages, in school results and in job opportunities must be closed. This is not about slowing down London or the south-east, or damping down animal spirits, but rather about turbocharging the potential of every part of the UK. This country will not achieve its full potential until every individual and community achieves everything of which they are capable. Our economy has been like a jet propelled by only one engine, now we need to fire up every resource that we have.

The economic prize from levelling up is potentially enormous. If underperforming places were levelled up towards the UK average, unlocking their full potential, this could boost aggregate UK GDP by tens of billions of pounds each year. So, how do we achieve success? First, we do so by backing business. The economic growth that we want to see across the UK will be generated by the private sector, by businesses and entrepreneurs investing, innovating, taking risks and opening new markets. We will support them every step of the way, by cutting through the red tape, by making it easier to secure investment and, as our White Paper today outlines, by creating the right environment on the ground for business.

As the Chancellor laid out in *The Plan for Growth*, we need to invest in science and innovation, improve infrastructure and connectivity, and extend educational opportunity to underpin economic success. This White Paper makes clear our commitment to improve education, investment and connectivity fastest in those parts of the country that have not had the support that they needed in the past. We have set out clear, ambitious missions, underpinned by metrics by which we can be held to account to drive the change that we need.

On productivity, science and innovation, our mission 1 is that, by 2030, we pledge that pay, employment and productivity will have risen in every area of the UK, with each containing a globally competitive city; closing the gap between top performing areas and the rest. Mission 2 will see a massive increase in domestic public investment in research and development outside the greater south-east, increasing by at least a third in the next three years, and we will use the shift in resources to leverage private sector investment in the areas that need it most.

On infrastructure and connectivity, we will have better local transport, bringing the rest of the country closer to the standards of London's transport system. We will also improve digital connectivity, with billions of pounds of investment, bringing nationwide gigabit-capable broadband and 4G coverage to the whole UK, and we will expand 5G coverage to the overwhelming majority of the population.

On education and skills, we will effectively eradicate illiteracy and innumeracy, with investment in the most underperforming areas of the country. There will be 55 new education investment areas in England alone, driving school improvement in the local authorities where attainment is weakest. Our sixth mission is to have new, high-quality skills training, targeted at the lowest-skilled areas, with 200,000 more people completing high-quality skills training annually.

We know that, to achieve these missions, we will need smart, targeted government investment. That is why we are investing more than £20 billion in research and development to create a science and technology superpower. Today, we are allocating £100 million specifically to three new innovation accelerators in the West Midlands, Glasgow and Greater Manchester. It is also why we are investing £5 billion in bus services and active travel, with new bus investment today in all our mayoral combined authorities and the green light for bus projects in Stoke-on-Trent, Derbyshire, Warrington and across the country. It is also why we are investing in new academies, new free schools and new institutes of technology. Today, we are establishing a new digital UK national academy—just as the UK established the Open University to bring higher education to everyone, we are making available to every school student in the country high-quality online teaching, so geography is no barrier to opportunity.

We will also use the freedoms that we now have outside the EU to reform government procurement rules to ensure that the money that we spend on goods and services is spent on British firms and British jobs. We will unashamedly put British workers first in the global race for investment. Economic opportunity, spread more equally across the country, is at the heart of levelling up, but levelling up is also about community as well. It is about repairing the social fabric of our broken heartlands, so that they can reflect the pride we feel in the places we love. That is why we are investing in 20 new urban regeneration projects, starting in Wolverhampton and Sheffield and spreading across the Midlands and the north, with £1.8 billion invested in new housing infrastructure to turn brownfield land into projects across the country like Stratford and King's Cross in London.

By regenerating the great cities and towns of the north, we can relieve the pressure on green fields and public services in the south. A more productive, even prouder and faster-growing north helps improve quality of life and well-being in the south, which is why we are refocusing housing investment towards the north and Midlands.

Our housing mission is clear: we will give renters a secure path to greater home ownership, we will drive an increase in first-time buyers and we will deliver a tough focus on decent standards in rented homes. A new £1.5 billion levelling-up homebuilding fund will give loans to small and medium-sized builders to deliver new homes, the vast majority of which will be outside London and the south-east. Our housing plans will set a decent minimum standard that all rented properties must meet.

Our White Paper this spring will include plans to cut the number of poor-quality rented homes by half, address the injustice of 'no fault' evictions and bear

down on rogue landlords, thereby improving the life chances of children and families up and down the country.

We will also take action in law to tackle the problem of empty properties and vacant shops on our high streets. Building on the work of my honourable friend the Member for Stoke-on-Trent North, Jonathan Gullis, we will ensure that properties cannot remain unloved and unused for months, dragging down the whole high street. Instead, we will put every property to work for the benefit of the whole community.

Also central to improving quality of life for all will be further investment in sport, culture, nature and young people. That is why we are investing £230 million extra in grass-roots football and using the community ownership fund to help fans take back control of clubs such as Bury FC. It is also why every extra penny of Arts Council spending will now be allocated outside London, from celebrating ceramics in Stoke to supporting pride in British history in Bishop Auckland. There will also be another £30 million allocated to improving parks and urban green spaces, as well as plans to re-green all of our green belt.

We will also invest an additional £560 million in activities for young people, and we will invest in reversing health disparities, tackling obesity and improving life expectancy. We will also ensure that the communities in which we are investing are safer and more orderly. Fighting crime and anti-social behaviour is essential to giving communities new heart, so we will invest an additional £150 million in our safer streets fund and ensure that those who drag down our communities through vandalism, graffiti and joyriding pay back their debt to those communities. They will be set to work on improving the environment, cleaning up public spaces, clearing away the drug debris in our parks and streets and contributing to civic renewal.

Critical to the success of our missions will be giving communities not just the resources but the powers necessary to take back control. That is why our White Paper sets out how we will shift more power away from Whitehall to working people. We will give new powers to outstanding local leaders such as Andy Street and Ben Houchen—and, indeed, Dan Jarvis. We will create new mayors where people want them, we will give nine counties including Derbyshire and Durham new powers as trailblazers in a programme of county deals and we will strengthen the hand of local leaders across the country.

We will also take back control of the money that the EU used to spend on our behalf, ensuring that local areas can invest in their priorities through the new UK shared prosperity fund. With power comes responsibility, so we will also ensure that data on local government performance is published so that we can hold local leaders to account.

Central government will report back to this House on our progress against our missions and on the impact all our policies have on closing geographical inequalities. Because building long-term structures matters, we will also create the institutions, generate the incentives and supply the information necessary to drive levelling up for years ahead.

This White Paper lays out a long-term economic and social plan to make opportunity more equal. It shifts power and opportunity towards the north and Midlands, Scotland, Wales and Northern Ireland. It guarantees increased investment in overlooked and undervalued communities, in research and development, in education and skills, in transport and broadband, in urban parks and decent homes, in grass-roots sport and local culture and in fighting crime and tackling anti-social behaviour. It gives local communities the tools to tackle rogue landlords, dilapidated high streets and neglected green spaces, and it demonstrates that this people's Government are keeping faith with the working people of this country by allowing them to take back control of their lives, their communities and their futures.

I commend this statement to the House."

5.26 pm

Baroness Hayman of Ullock (Lab): My Lords, if the Statement and the paper with it are the sum total of the Government's ambition, their legacy will be to have held back the aspirations of towns, cities and villages across the UK. Britain is the birthplace of industry and of towns, villages and cities with huge plans for their future. But over the 11 wasted years of Conservative Britain, our country has stalled.

This paper was meant to mark a turning point, but instead, we have more of the same: no new funding, no new ideas and certainly no new plan. Instead, we have 332 pages, which show just how divorced the Government are from the ambitions of the local communities that make up this country. Above all, what we needed from the Government was a strategy to bring jobs and prosperity to the places that need them most. People should not be expected to leave their home towns to build a successful career, but there are no credible solutions to end this in the paper, only recycled slogans.

The Government need to come forward with a plan to rebuild British industry—buying, making and selling more at home and giving public contracts to UK companies, both big and small. What plans do the Government have to encourage high-skilled industries to move to the areas that the IFS has determined to have the highest net loss of graduates? And how will Ministers reverse the sharp decline in people aged 16-24 studying apprenticeships?

Our town centres have the potential to once again be local hubs of growth, but since this Government came to power over a decade ago, British high streets have lost 10,000 shops, 6,000 pubs and more than 7,000 bank branches. If the Government are serious about reversing this trend, they need to completely reform and replace the system of business rates, which is burdening businesses of all sizes. The solution is not just to tackle the tax burden but to incentivise investment and provide more security to small businesses, which will themselves face the consequences of the Government's cost of living crisis. Does the Minister accept the warning of many high street chains, which have called for the wholesale reform of business rates?

As much as the paper falls short because it lacks ambition, it also relies on the broken idea that towns and villages only exist to feed off cities. So much of the narrative still relies on the notion that investing in

[Baroness Hayman of Ullock]
cities is enough to spur growth in nearby towns. For example, look at how any talk of building new transport links is about bringing people from towns into core cities, rather than connecting the towns together. Look at the focus on the largest cities in each region.

No one would doubt that cities deserve the Government's support to grow, but towns should also be seen as distinct places with proud identities, and the Government really should respect that. Towns and villages need their own industries, jobs, culture, good quality homes and high streets. They should not be the places people are expected to leave if they are to live well. So, what assessment has the Minister made of the recent findings of the House of Commons Public Accounts Committee, which has called for greater transparency in the awarding of levelling-up funding to towns?

Ultimately, the only way that cities, towns and villages will be able to realise their ambitions is if the Government give them the power to do so. That is why the Government need a new, place-based approach, up-ending the current settlement so that local areas have real powers and resources to make long-term investment decisions that work for their own communities.

The Statement also makes no mention of net zero, green jobs or the climate crisis, while the full White Paper dedicates just three pages exclusively to net zero—two of which are entirely picture based. The Government have failed to detail any new green economy funding beyond previous commitments. Just how serious are this Government about tackling climate change and investing in the green jobs of the future?

One theme is staggeringly absent from the Government's paper: safety and security. People deserve to feel protected in their town, their village, their city, but the fear of violence and crime casts a shadow over millions of families. Across the UK only one in 20 crimes leads to a charge; that is half the figure since 2015. Today violent crime is at record levels, with nearly 2 million violent offences last year, and an epidemic of violence against women and girls, with only 3.3% of sexual offences leading to charges.

This is why the Government urgently need to introduce new police hubs and new neighbourhood prevention teams to tackle anti-social behaviour and put more police on the beat in local communities. Does the Minister agree that, if levelling up is to have any meaning, it must include addressing the threat of violent crime, which disproportionately impacts different areas across Britain?

I finish by drawing the Minister's attention to the words of one of his party colleagues, the deputy leader of Shropshire Council, as reported by the BBC's Jo Gallacher. Councillor Potter, who represents the county which witnessed the birth of the Industrial Revolution, said that the report shows that Shropshire is

"overlooked, unrecognised, taken for granted and completely undervalued"

by the Government. Those words will ring true across England, Wales, Scotland and Northern Ireland, because the publication of this report shows what many already knew—that levelling up is a slogan, and behind it are only empty promises.

Baroness Pinnock (LD): My Lords, I remind the House of my interests as a member of Kirklees Council, a vice-president of the Local Government Association and someone who lives in a part of west Yorkshire where there are significant areas of deprivation; I see it every day.

Nearly three years have passed since the levelling up slogan was first used. It is good at last to read some definition of what it may mean. It is good that there is a recognition that deep-seated economic and social deprivation can be tackled successfully only through long-term sustained change. Batley in west Yorkshire, has, for example, been the recipient of City Challenge and Single Regeneration Budget funding—the earlier iterations of levelling up. Yet, sadly, Batley remains an area of considerable deprivation, partly because this earlier funding failed to deal with the basic issues of a lack of well-paid jobs, poor transport links and health inequalities. Therefore, a commitment to sustained and very long-term investment for change is welcome.

However, the challenge for the Government is that of investment—or, in this case, the lack of it. Fundamental and continual gradual change such as that described in the White Paper takes many years to achieve. Without substantial additional funding, change will be imperceptible to those who live in the towns and cities described. Further, any additional funding is on the back of huge cuts to the very local services in the so-called 12 missions.

Let us take public transport. We already know that HS2 to Leeds has been axed, HS3 is a pipe dream and even basic electrification of the trans-Pennine route is to be partial. What about bus investment? Even today, mayors and council leaders in the Midlands and the north have exposed a 50% cut to improving bus services. Access to jobs and opportunities are rightly emphasised in the White Paper. Will the Minister explain how mission 3, on public transport, can be realised when the starting point is even more cuts to services?

Then there is the issue of enabling all children to reach their potential, especially in the crucial areas of numeracy and literacy. It is a great metric to measure, but the widespread closure of Sure Start children's centres due to major cuts in funding, combined with schools funding falling, is hardly the backdrop to enabling school improvement. At this point I ought to bring the House's attention to my interest as a local school governor. Does the Minister agree, and will he point to an increase in funding that would enable the skills, literacy and numeracy targets to be reached?

A key metric, which I was genuinely pleased to see, is narrowing the gap in healthy life expectancy. This is such an important measure because it is linked to many key determinants of health: quality of housing, affordability of healthy food, access to skills providers and the quality of local health services and the environment. Perhaps the Minister can say how the Government will improve access to GPs for residents in my area, which has many fewer GPs per capita than the average.

Access to dental health is also vital. Yet Dentaid, a dental charity that operates in developing countries, also provides services in my area due to the lack of

NHS dentists. It is shameful. Will I be able to assure those residents that the Government will provide easy access to NHS dental care for all who need it?

The creation of skilled, and thus better-paid, jobs is a basic requirement for improving the economic well-being of areas such as mine. Perhaps the Minister can explain how inward investment can be achieved and combined with providing local people with the skills to take up the higher-skilled jobs that are created. Seeing cities as the centre of development is insulting to the local towns that are supposed to be providing the jobs for these cities.

Finally, the governance issues are not highlighted but are slipped in almost under the radar. I have come to the conclusion that the Government despise local government. They want to abolish district councils and create more mayoral authorities without any evidence that reducing democratic representation and involvement leads to better decision-making and accountability.

Levelling up, however desirable, will not be effective without also levelling up funding. The shared prosperity fund, for example, shows the direction of travel the Government are going in. The north of England loses over 50% of that replacement funding for EU structural and regional funds. In total, it amounts to nearly £100 million lost money for the north. Will the Minister commit to levelling up funding through fair funding for councils, equivalent transport funding with the London area, and the shared prosperity funding for the north of England that fulfils the promises made during Brexit? Until any of that can be agreed to be a starting point, levelling up will remain a pipe dream for most of us.

The Minister of State, Home Office and Department for Levelling Up, Housing & Communities (Lord Greenhalgh) (Con): My Lords, it is difficult to follow those two speeches because we have had a speech that is more balanced from the noble Baroness, Lady Pinnock, and, I am afraid, quite a pointed speech from the noble Baroness, Lady Hayman of Ullock.

As a relatively new Minister, I understand that there are so many examples of government policy that never get published. Those who have served in government will know that there are very many areas where policy is discussed, debated and raised but never sees the light of day. The first thing I want to do is to pay tribute to my right honourable friend the Secretary of State, as well as one of the most tireless, policy-heavy and thoughtful Ministers I have had the pleasure of working alongside: Neil O'Brien. Minister O'Brien has even signed my copy of the levelling-up White Paper, which, in decades to come, will be worth a lot of money.

I think it is a tremendous document with a very clear plan to level up this country. As someone who spent 20 years in local government, with some of the most deprived areas alongside some of the wealthiest, I believe in the mission to level up without levelling down. That is not to forget the technical annex of this plan, which, I have to say, I have not read yet but I am happy to say that I will be reading it, probably after this Statement.

There is no single policy or intervention that can achieve change on its own. This is a plan for England, Wales, Scotland and Northern Ireland. Levelling up across the United Kingdom does not mean levelling down, as I have said; it means boosting productivity, pay, jobs and living standards by growing the private sector. We on this side of the House recognise the importance of the private sector and spreading opportunities and public services, especially in those places where they are weakest, and restoring that sense of community.

I am very interested that both the Opposition and the Liberal Democrat Front Bench accuse this of being a White Paper without the necessary resources to level up. I did a word count of this document—that is the kind of thing I did. In first place, mentioned nearly 1,000 times—994 times—were "fund", "funding pot" and "grant": plenty of opportunities to channel the money that was committed in the spending review at the end of the last year into the means by which we will level up. In second place, with only 31 mentions, was "tax" or "taxation". This is a plan with plenty of opportunities to channel that money precisely to ensure that we level up this country.

I want to deal with the two specific points around skills and an area I feel very strongly about—as a former deputy mayor for policing and crime at City Hall, serving the then mayor and our current Prime Minister—that is, ensuring that we reduce violent crime and that our cities are safe. It is fair to say that if we do not feel safe walking around and being part of our community then there is no chance for some forgotten areas to regenerate and to revive. I take very seriously that commitment around public safety.

Surely, if you have a clear mission around crime, which is safer streets by 2030—homicide, serious violence and neighbourhood crimes will have fallen—focused on the worst-affected areas and you back that up with money channelled into the safer streets fund, you are doing precisely that. You are ensuring that communities that are riven by crime and violent crime have the funding they deserve on top of their existing funds to tackle the very thing that has been raised.

There is a very clear mission on skills—how we can improve skills and therefore see the productivity improvement that this nation really yearns for. I discussed this today with Rob Halfon, who is very much a champion of skills in the other place. He said it was so great to see skills front and centre in an agenda and see it with its own mission statement. Interestingly enough, when we want specific examples about how skills will be improved, we should look at the plans in Blackpool and Walsall, two of the three pathfinder areas that bring employment and skills provision together. Bringing employment and skills provision together will enable people to get into work and to get on in their lives.

Frankly, it is quite hard to stomach the idea that this is an empty vessel when there is so much detail in here. I could spend the next 45 minutes—although time eludes me—explaining point by point what levelling up means and how we can deliver those 12 missions. This is a Government who want to deliver—not over a couple of years; these missions are set to 2030. This is clearly a Prime Minister who does not want to be

[Lord Greenhalgh]
elected again but again and again. That is why this levelling up is precisely what this Government will achieve. It will take time but here is the mission and we will deliver it in due course.

5.47 pm

Lord Young of Cookham (Con): My Lords, I hope my noble friend will sign my copy of the levelling-up White Paper. The Public Services Committee, ably chaired by the noble Baroness, Lady Armstrong, produced a report on levelling up last year and I am delighted that the Government have responded to two of its recommendations: first, that there should be clarity about what levelling up means; and, secondly, that there should be regular milestones so that we can see whether progress is being made. We also commented on transparency and I wonder whether my noble friend will recognise that under the levelling-up White Paper very substantial sums of central grants will continue to be allocated to local areas. So I ask my noble friend whether there will be total transparency about the basis of those decisions.

Lord Greenhalgh (Con): I always thank my noble friend for his comments and his probing in the right areas. I failed to mention in my response to the Front Bench that, of course, there will be an annual report that will measure progress on that mission to 2030 and beyond. The point that my noble friend raises is precisely right. We need to have transparency. It is important to track the money. I think a policy that was actually delivered under, I believe, the Blair Government, the Total Place agenda, is a very important one to ensure that we get the money into the right areas across the piece, whether it is funded by central government, regional government or, indeed, local government and make sure that the money gets to the people who need it most. Transparency is a key part of achieving success and we will take that point on board.

Baroness Armstrong of Hill Top (Lab): My Lords, the Minister has somewhat depressed me today.

Lord Greenhalgh (Con): Oh, I am sorry.

Baroness Armstrong of Hill Top (Lab): We are fed up with joyous optimism which does not have much underpinning. Can we have real attempts to tackle the things that are affecting people fundamentally? In the north-east, the difference between those who are doing well in schools and those who are not has increased over the last two years. When does the Minister expect that they will be able to get the same sorts of opportunities because of them being levelled up to what, for example, young people in Surrey Heath will be able to expect? When, on behalf of my noble colleague from Darlington, will they have the jobs that they were promised by the Treasury—300 within the next month, or six weeks, I am told? They have not arrived at all. On transparency, I urge the Minister to look at what the National Audit Office has said and then come back to the House and tell us that the Government are following the advice of the National Audit Office on transparency.

Noble Lords: My Lords—

Lord Greenhalgh (Con): My Lords, can I answer?

Noble Lords: My Lords—

Lord Greenhalgh (Con): Sorry, maybe noble Lords do not want to hear my response. I was pretty depressed at leading a council from 2006 to 2012 in one of the most deprived parts of the country, according to the index of multiple deprivation: White City—

Baroness Armstrong of Hill Top (Lab): [*Inaudible*.]

Lord Greenhalgh (Con): Can I respond? I listened to the noble Baroness, and I hope that she can listen to me for just a moment. I was depressed to watch the grant farmers at work, filling in forms and collecting the money—whether it was local, regional or national money—and not making a blind bit of difference. That was during the Labour years; I saw no progress at all, so I was depressed. But here we have 12 key missions, all measurable, backed up by an annual report. Admittedly, this is not the end of the programme and plan for levelling up—I would say that we are at the end of the beginning—but it is now a substantial plan, with 12 clear missions set out and milestones to get there, which will be measured in an annual report. I do not think there has been a Government who have tried to be more transparent than this one.

The Lord Bishop of Chichester: My Lords, I am grateful to the Minister for the enthusiasm of his presentation but also for looking forward to the rest of this decade. I also want to speak about those communities in which I have served that are the inheritors of decades of deprivation and need. I was intrigued to see in the executive summary that, even in the affluence of Sussex, where I serve, there are deep pockets of deprivation and need which are recognised. What I do not see recognised here is the vital importance of the social capital of faith groups, of which the Church is one, which make a significant contribution not only to sustaining life in those areas of deprivation but to sustaining hope for a better future.

When I was newly ordained and serving in Devonport in Plymouth back in the late 1980s, in those days, it was recognised by the statutory agencies that were our partners that funding to Church-monitored projects by the statutory agencies—such as the probation service, mental health service and social services—enabled those projects to be delivered in the most acute areas of need through a voluntary agency, the Church, which already had levels of trust that enabled the services to be more easily received than they would be from statutory agencies, for a wide range of reasons. I hope that the Minister will reassess the place of those faith and community organisations, which are part of our social capital. It has been the privilege of the Church to be a co-ordinator with other groups in that respect.

Finally, the focus here has been, understandably, on our towns—we have mentioned our cities and the balance between them—but I am also responsible for an area of huge rural deprivation, and looking at how levelling up in those rural areas can occur is another major need. I hope, once again, that the social capital of faith groups such as churches will be recognised.

Lord Greenhalgh (Con): My Lords, I thank the right reverend Prelate for bringing up two very important points, the first of which is the role of faith communities in helping us to bring about opportunity and enable and support people to get on in life. I saw that for myself as the leader of Hammersmith and Fulham Council, where we saw the extension of a church in Hammersmith, which was particularly active in providing skills training and reaching parts of the community that, frankly, the statutory agencies never got to. We do recognise that, and it is a very important point to build on that insight.

I am told by my ministerial colleague Danny Kruger, who is a PPS in the department, that he will be looking at building on the narrative because apparently this thinking is tucked away in the technical annexe, which, as I say, unfortunately I have not yet read. Some of that needs to be brought out—the importance of working with faith groups and the wider community in helping to level up the country. Of course, poverty does not happen just in cities and towns but in rural areas. That point is well made, and that is why we need to ensure that the levelling-up agenda embraces those rural communities as well.

Lord Sentamu (CB): My Lords, I first declare an interest: I used to be the convenor of One Yorkshire. At the last general election, the Labour Party and the Liberal Democrats committed themselves to bringing in One Yorkshire, if elected. The Conservatives were slightly equivocal. In the light of the Secretary of State for Levelling Up saying that we need mayors of the type that we have in London, and, given that the need that quickly comes up is to have one for the whole of Yorkshire because of its economy, people and geography, will the Minister give the House his further thoughts on One Yorkshire, because it is still committed to that dream and ideal?

Secondly, the Prime Minister has told us that the pandemic has been the biggest challenge we have faced since the Second World War. At the end of the war, there was a huge social impact on the people of the United Kingdom. Most noble Lords will remember that it was the Beveridge report that began the work of transforming this great nation. Beveridge said there was want, caused by poverty; ignorance, caused by the lack of education; squalor, caused by poor housing; idleness, caused by a lack of jobs or inability to gain employment; and disease, caused by inadequate healthcare provision, which resulted in the National Health Service and social welfare. I read the whole report. What are the giants that the Minister thinks need to be slain so that we can get to where we ended up at the end of the Second World War, when the Beveridge report led to real transformation?

Finally, the greatest thing that has been bedevilling a lot of people who feel left behind is the great gulf of income inequality, but I did not hear or read it—maybe I have missed it, but I did not see it in the report. Will the Government continue to pursue the whole question of income inequality? If that is not dealt with, I am afraid you may level up some people, but you will leave a lot in poverty. Maybe I could give the Government the motto of Barnsley to become the motto for levelling up. It is in Latin, but I will give noble Lords the translation in English: spectemur agendo—let us be judged by our actions. That is what we are looking for in levelling up, not big words.

Lord Greenhalgh (Con): The noble and right reverend Lord raised three principal points. The first is whether, as part of levelling up, there is still enthusiasm for One Yorkshire. My name is Greenhalgh, a Lancastrian name, and when I look at the map, Lancashire seems to have almost disappeared; it has disappeared to Cheshire and Greater Manchester, and there is a little county called Lancashire. Meanwhile, Yorkshire on a map looks absolutely humongous. I am not sure that creating a humongous entity called "One Yorkshire" will necessarily accelerate the levelling up. Maybe it will ensure the independence of Yorkshire from the rest of the country, but I am not sure that it will help us in any way.

However, there is a huge commitment to help mayors who represent functional economic areas. We have the mayor of South Yorkshire, Dan Jarvis, who is part of the education investment areas; there is regeneration of one of the 20 places in Sheffield. We are extending brownfield and bus transformation funding, exploring further flexibilities to raise CA funding thorough business rates, and looking at further and deeper devolution. There are also measures in West Yorkshire with Tracy Brabin, who is far keener on this levelling-up White Paper than the noble Baroness, Lady Hayman, who managed to dredge up some person I have never heard of in the Conservative Party—an individual in Shropshire. Tracy Brabin welcomed it. She is receiving education investment areas, extended brownfield funding, support for family allocations and bus transformation funding—all of it seems to be going into West Yorkshire. There is a commitment to, at least, parts of Yorkshire that shows a true commitment.

I am not going to say that this is the Beveridge report—even though it is a signed copy—but it is a substantial document with technical annexes, and only time will tell whether we deliver against our missions.

On the third point, on income inequality, I do not think that is an end point. I do not think we are all equal; I believe that the starting line needs to be equal. Everyone needs an opportunity and we need to equalise opportunity, but some of us will take that opportunity and go further in life, and that is why I am a Conservative.

Baroness Scott of Needham Market (LD): My Lords, I declare an interest as the president of the National Association of Local Councils. It is good to see a recognition of the role of parish and town councils in developing improvements in their localities and creating a better quality of life, but is the Minister aware that most of the funds that have emerged from the shared prosperity fund are not available for parish and town councils to bid for, even though they are delivering the services? Will he undertake to have another look at that, so that they can really do a good job instead of having to recreate structures especially for bidding purposes?

Lord Greenhalgh (Con): My Lords, I thank the noble Baroness for raising that on behalf of parish and town councils. I think she is saying that they are

[LORD GREENHALGH]
excluded from the UK shared prosperity fund, as things stand. The UK shared prosperity fund money has not yet been spent. There has been the community renewal fund, which is like a pathfinder. I will take that away, go back to my department and understand some of the thinking; it is a fair point. Another fair point is that we need to make it easy for people to apply. We do not want to see a lot of money spent on the bureaucracy of grant applications; we want to help people back into work and to get on with their lives.

Baroness Wyld (Con): My Lords, I declare my interest as a non-exec at Ofsted. I am far less depressed than the noble Baroness, Lady Armstrong, although I was on her committee. I was delighted to see education as a mission in the Statement. That key stage 2 ambition is highly ambitious, and so it should be. What I cannot quite see is how early years fits into that and how the foundation years have been addressed. Given that they are quite literally the foundation years, can my noble friend please say a bit more about that?

Lord Greenhalgh (Con): My Lords, I first pay tribute to my current boss, the Secretary of State, for his role in building on the substantial achievement of the noble Lord, Lord Adonis. I served in local government when the noble Lord pioneered the academy programme, and I worked very hard to open up the first academy in my council, which transformed the lives of people in Hammersmith. Then the free school programme, like a lot of government policy, built on that thinking. We know that schools are the engines of opportunity, and in this White Paper we see a real commitment to continuing that programme of introducing more academies and more free schools.

My noble friend is quite right: it is far harder to achieve success if you do not have that strong foundation in early years. People's potential is often almost set for them. If you do not get—

Sorry, I just heard a bit of chuntering. I am not sure it was adding very much.

Lord Boateng (Lab): Sure Start.

Lord Greenhalgh (Con): The noble Lord is throwing out words such as "Sure Start". That was an example of how not to govern: to throw loads of money in an incontinent way, set things up and then see it slowly withdrawn. That is not the way to transform people's lives.

I will respond to my noble friend in writing on how we deal with the issue, because it obviously involves DfE and others.

Lord Knight of Weymouth (Lab): My Lords, 2030 will be 20 years since Michael Gove became Secretary of State for Education. Two-thirds of pupils currently achieve the expected standards in literacy and numeracy at the end of primary, which the noble Baroness, Lady Wyld, just referred to. Mission five of the White Paper anticipates this jumping magically to 90% by 2030. The child who takes those SATs in 2030 starts reception this September. What is going to change for that child's journey through primary school? The Minister talked about the details earlier. Let us have the details on the transformation of primary school that is coming.

Lord Greenhalgh (Con): Okay, test the Minister's knowledge on the details of a policy area he is not Minister for—I am not sure that is very constructive. It is important to measure progress; that is a start point. I remember schools in my part of London at which 50% did not meet the minimum standards of employability, so we start in a better place and are setting a mission to be in a far better place by 2030. As I said, the commitment in this White Paper—and I am sure there are many other commitments—is to continue ensuring that there are schools of choice in local areas to which parents want to send their kids to give them the best possible start in life.

Lord Kakkar (CB): My Lords, I thank the Minister for taking questions on this Statement, and in so doing declare my interest as chairman of the Office for Strategic Coordination of Health Research. I welcome the focus on health and extending healthy life expectancy as part of this levelling-up agenda. Are the Minister and Her Majesty's Government content that the opportunities afforded by the passage of the current Health and Care Bill through your Lordships' House and this Parliament are being fully exploited and addressed in terms of the levelling-up agenda for health, with particular reference to the co-ordination between local government and institutions providing healthcare with regard to addressing the disparities that drive inequalities in health outcomes and the research agenda at a local level, which needs to be addressed to achieve these objectives?

Baroness Armstrong of Hill Top (Lab): Good question.

Lord Greenhalgh (Con): My Lords, it is an incredibly good question from someone who actually knows what he is talking about. I thank the noble Lord for raising this. I declare an interest as the son of a vascular surgeon who ran his service for more than 30 years in our local hospital. One of the great frustrations, of course, is the Berlin Wall between health and social care, which this Bill is trying to address. As someone who spent 20 years without becoming a vice-president of the Local Government Association—it did not give that to me, so I cannot declare that interest—I can say that it is important to address that. The systems need to come together, which is the commitment, to ensure that we do not have that friction between the two and that we get the care organised in the most efficient way possible to give people the best possible start and a healthy lifestyle so that they can reach their potential.

Elective Care Recovery

Commons Urgent Question

6.07 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Kamall) (Con): My Lords, I shall now repeat in the form of a Statement the Answer to an Urgent Question made in another place:

"Mr Speaker, the Covid-19 pandemic has had a huge impact on healthcare systems everywhere. The NHS has performed incredibly, caring for Covid and non-Covid patients alike and delivering the vaccination

programme that has helped us to open up this country once again. Throughout the pandemic, we had to take steps to make sure that we could treat those with the greatest clinical need and that we provided a safe environment for those who needed Covid care.

As a result, there is undeniably a huge Covid backlog that needs urgent attention. The number of people waiting for care in England now stands at around 6 million, and we know that this figure will get worse before it gets better. Not only that, but our current best estimate is that 8.5 million people who would normally come forward for treatment have not done so during the pandemic. But we are pulling out all the stops to help the NHS recover and to make sure that patients are receiving the right care at the right time.

Honourable Members will be aware that the Government have invested more than £8 billion in the NHS in the three years from 2022-23 to 2024-25. As part of the new health and social care levy, we will be putting huge levels of investment into health and social care over the coming three years. All the time we are announcing new solutions for how we can make sure that the NHS is on the firmest footing for the future.

On Friday we launched a call for evidence that will inform an ambitious new vision for how we will lead the world in cancer care. As the Prime Minister announced earlier today, we are setting out some tough targets on cancer. We want to ensure that 75% of patients are diagnosed with cancer or have cancer ruled out within 28 days of a GP referral, and to get the backlog of people waiting more than two months for their cancer treatment to pre-pandemic levels by March 2023. Today the NHS has also announced the launch of a new platform, My Planned Care, which will provide patients and their carers with relevant and up-to-date information ahead of planned treatment. This includes information on waiting times for their provider.

I am under no illusions about the fact that our health system is facing an enormous and unprecedented challenge. That is why we are doing everything in our power to support the NHS and its patients, recovering services to reduce waiting times and deliver more checks, operations and treatments. We are faced with a once-in-a-generation challenge. We know that we must get this right. We are working with the NHS and across Government to deliver a targeted and far-reaching plan for elective recovery, and we will update the House at the earliest possible opportunity."

6.10 pm

Baroness Thornton (Lab): I thank the Minister for repeating that Answer; I am very glad that he did not bash the Dispatch Box. I remind noble Lords that this Urgent Question is only 10 minutes, so let us have quick questions. The facts that 1.1 million people are waiting for scans and tests, and that the House of Commons Library says that half a million people with suspected cancer will wait longer than the two-week target, mean that it is a shame that the Government's plan to deal with this, which was due to be published today, was pulled late last night. I will not speculate about whether this was an argument between the Prime Minister and the Chancellor of the Exchequer, but I really hope that the Government are not playing political games with our NHS while 6 million people wait for care. Will the Minister please tell us when the elective recovery plan is now due to be published? Not that long ago, the Prime Minister announced a new target that no one should wait more than two months for a diagnosis. Is that an example of lowering standards because this Government have failed to meet them, or is it a temporary measure?

Lord Kamall (Con): I thank the noble Baroness for not speculating. All I can say about the elective recovery plan is that there have been active discussions between my department and the Treasury, and we expect to publish it very soon. On waiting lists, we are looking at how we can best target the backlog. We know that about 75% of patients do not require surgical treatment but require diagnostics. About 80% of patients requiring surgical treatment can be treated without an overnight stay in hospital. Around 20% of patients are waiting for either ophthalmology or orthopaedic services. We are quite clear about what the issue is, and we hope to publish the elective recovery plan very soon.

Baroness Barker (LD): My Lords, the Government have set out in some detail the scale of the waiting list for elective surgery in secondary care, but are absolutely silent on the backlog in primary care. Is that because there is no plan to deal with the backlog in primary care, which has an inevitable knock-on effect on hospital care?

Lord Kamall (Con): We are looking at elective recovery all the way through; some of that will be in secondary care but, clearly, some of that will be in primary care. One of the issues that we want to be sure of is that we have more and more diagnoses, which is why we have rolled out many community diagnostic centres. We are looking to tackle the complete backlog, which is why we have committed an additional £2 billion this year and £8 billion over the next three years and why we will publish the elective recovery plan very soon.

Lord Patel (CB): My Lords, there are 20,000 more cases of cancer in the deprived population compared to other populations. Deprived people not only get cancers at a higher incidence but have late diagnoses, find it difficult to access the services and die earlier. What plans do the Government have to address this inequality in cancer outcomes?

Lord Kamall (Con): The noble Lord raises an important point. He may well have seen coverage last week about the cancer plan as well as the Secretary of State's commitment to what he called a "war on cancer", given his own experience and how many people have experience of losing a relative or loved one to cancer. That shows that diagnosis and treatment of cancer remain the top priority, and they will be prioritised with increased elective capacity. We encourage anyone with potential cancer symptoms to come forward. On health inequalities, the systems will be expected to analyse their waiting-list data by relevant characteristics, including age, deprivation and ethnicity, and by speciality. The aim is to develop a better understanding of local variations in access to and experience of treatment and to start developing detailed operational action plans to address any inequalities in treatment.

Lord Hunt of Kings Heath (Lab): My Lords, will the plan contain workforce assumptions? In particular, what will it say about the retention of current staff, the recruitment of more staff and more training places?

Lord Kamall (Con): The noble Lord rightly raises the issue of our brilliant workforce, who are at the heart of our plans for recovering services. The NHS's delivery plans are focused on how we can transform these services and do things differently, not just asking staff to do more of the same. The monthly workforce statistics for November 2021 show that a record number of staff are working in the NHS, with over 1.2 million full-time-equivalent staff, which is over 1.3 million in headcount. This includes record numbers of doctors and nurses. In addition, we are recruiting new staff and focusing on different recruitment programmes and on retention, which many noble Lords have raised. We want to make sure that the excellent staff in our health system are happy and kept happy.

Lord Kakkar (CB): My Lords, I declare my interest as chairman of King's Health Partners. The Minister rightly identified that an important proportion of this increased waiting list is those requiring elective surgical intervention. How does he propose that the additional capacity will be created to address this important demand, beyond the question on an appropriate workforce just raised by the noble Lord, Lord Hunt of Kings Heath, as well as infrastructure and, beyond that, the development of novel models of care that ensure that elective surgery can be delivered safely and to a high standard?

Lord Kamall (Con): We hope that the funding will deliver around 9 million more checks, scans and procedures, and we hope to support our aim for the NHS to deliver around 30% more elective activity by 2024-25, compared to pre-pandemic levels. As part of that, we have allocated £2.3 billion to increase the volume of diagnostic activity, and we are rolling out at least 100 further community diagnostic centres by 2024-25 to help with the backlogs of people waiting for clinical tests such as MRIs, ultrasounds and CT scans. These increases will allow the NHS to carry out 4.5 million additional scans by 2024-25, increasing capacity and enabling earlier diagnosis.

Baroness Bennett of Manor Castle (GP): My Lords, today I received a message from a member of the public who said that a relative had been told by their NHS doctor that they could not even give them a timeframe for when treatment would be available, but that they could ring a private hospital where treatment would be available in a couple of weeks. Does the Minister acknowledge that there is a real conflict in resources between private and public? What will the Government do to deal with people left in that really difficult situation?

Lord Kamall (Con): The Government clearly recognise that there is a backlog, which is why we have announced the additional funding. We hope to announce the elective recovery plan very soon. The other measure that we have taken is launching My Planned Care, which allows NHS providers to upload supportive information to the platform to help patients to manage their conditions while they wait for treatment. There will also be personalised support, including advice on prevention services et cetera. We also hope that, eventually, it will have more data on expected waiting times, for example, so there will be more information for the patient. At the same time, we hope that the additional investment that we have announced will help to tackle the backlog in elective recovery.

Lord Patel (CB): My Lords, the 10-year cancer plan makes no mention of what new investment the Government will make towards achieving this world-beating plan. Compare that to what President Biden had said: that he intends to invest $2 trillion to find cures for cancers in a new, DARPA-style health ARPA. What investment are we going to make?

Lord Kamall (Con): If you look at international comparisons, the situation is clear, and my right honourable friend the Secretary of State has made it clear that he does not think it is good enough. That is why we have the cancer plan, which we will target. We understand the importance of speed and efficiency in dealing with potential cancer patients. That is why the Prime Minister announced the ambitious target to ensure that 75% of patients who have been urgently referred by their GP for suspected cancer will be diagnosed or have cancer ruled out within 28 days.

All the conversations I have had in the department about investing in research—an issue that many noble Lords have rightly raised—have been about the importance of research being not a bolt-on but integral to what clinicians do, and of it feeding in to better treatment for patients. Given that cancer is one of the Government's priorities, I hope that far more research will feed in to better clinical outcomes.

Judicial Review and Courts Bill

Second Reading

6.21 pm

Moved by ***Lord Wolfson of Tredegar***

That the Bill be now read a second time.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, the Judicial Review and Courts Bill comprises important measures dealing with both areas. I shall start with judicial review, but before getting to the detail of what is in the Bill, and especially for those few non-lawyers who have ventured into this legal bearpit, let me say a few words about what judicial review is and what it is not.

Judicial review is a means of holding those in public office, or those using public powers, to account. It is there to ensure that those who exercise public office or public powers had legal power to do what they did, and that they exercised such power in the manner and for the purpose the power was conferred.

The clue is in the title: judicial review. It is a judicial function that is exercised by judges; but it is a review mechanism that assesses the lawfulness of the decision-making process, not the merits of any decision that a public authority has taken. It is not for the courts to review—or, to put it more tendentiously, second-guess—the economic or social merits of government policy.

That is for good reason. Ministers are politically answerable to Parliament and, ultimately, to the people. Judges are politically answerable to no one, and that is how it should be. If people do not like a Government, they can vote them out. But they cannot vote the judges out—or indeed vote them in—and, again, that is how it should be. If the decision-maker had legal power to act as it did and acted in accordance with the law and in a procedurally proper manner, the fact that the judge might think the decision was wrong is—or should be—neither here nor there.

I have heard it said in some of the commentary on the Bill that it is somehow inappropriate for the Government and Parliament to intervene in the field of judicial review. That is a contention I cannot accept, for two reasons. First, as a matter of basic principle there cannot be any field of law in which it is wrong for Parliament to tread. Parliamentary sovereignty, like judicial review, means what it says on the tin. Secondly, and relatedly, Parliament is the proper forum in which the social and economic aspects of government policy are to be scrutinised.

So Parliament has a role—indeed, I would say, a duty—to intervene when the law takes a wrong turn or when it is not operating as effectively as it might. It was for this reason that the Government committed in their 2019 manifesto to look at the way in which judicial review is operating. It is the reason why we established the Independent Review of Administrative Law, with an eminent panel chaired by the noble Lord, Lord Faulks, in 2020, and why the measures in this Bill are before the House today. The excellent work of the noble Lord and his eminent panel is the bedrock of Part 1 and the sensible and practical reforms that the House will consider.

Let me now turn to the detail of some of the measures. Clause 1 addresses concerns about the lack of remedial flexibility currently available to the courts, which was identified as an issue by the independent review. At present, when a decision is quashed—that is, struck down—the effect of that quashing is typically immediate and retrospective. It operates ab initio and deprives the decision of ever having had legal effect. This means that a quashing order can be a blunt instrument which is too often applied to nuanced problems.

Clause 1 provides courts with greater flexibility, allowing them to deal more practically with the ramifications of quashing while delivering justice to claimants. That is achieved by allowing courts to suspend the effect of a quashing order or to limit or remove its retrospective effect. Suspending a quashing order means that courts can, when appropriate, allow a decision-maker to make a new decision before the unlawful act is quashed, or put in place transitional arrangements. Making a quashing order prospective-only enables the court to consider the interests of those who have relied on a decision which is being struck down and prevent a regulatory vacuum arising when secondary legislation is quashed. Individuals or families may in good faith have taken actions that they thought were lawful, and, without the ability to make a quashing order prospective-only, would have acted on the basis of a regulation which would be ruled never to have legally existed.

An example of when a suspended quashing order may have been of great benefit is the case Ahmed v Her Majesty's Treasury. I refer to this decision with respect to the noble and learned Lords who sat on the case, and I am conscious that there was not unanimity of view among the Bench on this issue. In Ahmed, the court ruled that orders freezing suspected al-Qaeda terrorist assets were ultra vires, requiring Parliament to rush through emergency legislation or risk suspected terrorists being able to access their funds. Had the court considered that it could, on the facts of the case, suspend the effect of the quashing order, it could have allowed the Government better to protect British citizens and Parliament would have had the time to carry out proper scrutiny of the replacement legislation.

An example of where prospective-only remedies would be beneficial is the British Academy of Songwriters, Composers and Authors' challenge to the private copying exemption in copyright law. This exemption allowed individuals to copy works they had purchased for their private use. For the assistance of the House, I will give a more familiar, if perhaps not technologically bang-up-to-date, example: making a mix tape or copying the contents of a CD on to a computer. When the exemption was struck down, a prospective-only remedy would have protected actions individuals had previously taken relying on the private copying exemption. Although, in that case, the court was able to take other action to protect the historic actions of individuals, it was unable to rule that the regulations themselves were previously lawful.

I want to make it absolutely clear that the decision whether to use these remedies in any particular case will ultimately be for the court. The Government acknowledge that the new remedies may not always be appropriate and that in those circumstances, the court will be under no obligation to use them, either because they would not offer adequate redress or for some other good reason.

The important point is that we are putting two new tools into the judicial toolbox. We are doing so because there are circumstances where these new remedies will allow the court to provide a remedy that better serves the interests of justice and promotes good administration. Clause 1 includes a list of factors that courts must consider when determining the appropriate remedy. They are intended to provide consistency in the decision-making process.

Clause 2 implements another recommendation of the independent review: it ousts the supervisory jurisdiction of the High Court and Court of Session over the Upper Tribunal under certain circumstances. This overturns a Supreme Court judgment in 2011 that established what is now commonly known as a Cart judicial review, or an Eba judicial review in Scotland.

Let me set out the relevant background. Assume a claimant has been unsuccessful at the First-tier Tribunal and wants to appeal to the Upper Tribunal. The claimant would need permission from either the First-tier

[Lord Wolfson of Tredegar]

Tribunal or the Upper Tribunal. Assume that the claimant has been refused permission to appeal that decision by the First-tier Tribunal and has also been refused permission to appeal by the Upper Tribunal. A Cart judicial review is the claimant asking the High Court, or the Court of Session in Scotland, to review the Upper Tribunal's refusal to allow the claimant permission to appeal.

If the House is still with me, it will appreciate that the first objection to this form of judicial review is that it involves three different courts deciding on a permission to appeal application. That is striking, especially when the Upper Tribunal is a specialist senior court broadly equivalent to the High Court. Indeed, many of those sitting in the Upper Tribunal are themselves High Court judges. The words of the noble and learned Lord, Lord Brown of Eaton-under-Heywood, in the original Cart judgment are most relevant:

"The rule of law is weakened, not strengthened, if a disproportionate part of the courts' resources is devoted to finding a very occasional grain of wheat on a threshing floor full of chaff."

Secondly, even in cases where the High Court finds in favour of the applicant and grants judicial review, it does not necessarily mean that the underlying appeal will be successful. Although Cart judicial reviews occur on a range of issues, the majority concern immigration cases. Only around 3.4% of the underlying appeals are successful, compared to a general success rate of 30% to 50% for other judicial review cases.

The ousting of supervisory court jurisdiction contained in Clause 2 is clear in its intent and narrow in scope. It still allows for some oversight by the supervisory court in the very unlikely event the Upper Tribunal acts in bad faith or commits a fundamental breach of the principles of natural justice. In this regard, I commend the work of Policy Exchange's Judicial Power Project, which has highlighted the problems associated with the Cart judgment for a number of years and produced several illuminating papers more broadly in the area of judicial review. Taken together, those two clauses deliver on the Government's manifesto commitment in a sensible and measured way.

I will take a few moments to outline some of the other provisions in the Bill dealing with courts and tribunals against the background of the Covid pandemic.

In the criminal courts, the Bill introduces new measures to modernise court processes and improve efficiency by updating procedures and avoiding unnecessary hearings. Clause 3 will enable the swifter resolution of specified low-level offences, such as travelling on a train without a ticket, by giving adult defendants who intend to plead guilty the option of entering their plea and accepting a conviction and pre-determined penalty entirely online. But there are safeguards: there is a cooling-off period and the courts will have the power to set aside any conviction that appears unjust.

Defendants prosecuted for either-way cases will always be given a specified first hearing date at a magistrates' court, but Clause 6 enables defendants to have the additional option to indicate a plea and proceed with the trial allocation procedure online. They can do that only with the support of a legal representative. Any online indication will become binding only when they appear at a subsequent court hearing to confirm it.

Clause 9 gives magistrates' courts powers to proceed with a trial allocation decision in the absence of a defendant who fails to appear without good reason and where the magistrates consider it in the interests of justice to do so. Again, there are special provisions for children and to make sure that adult defendants who do not understand what has been going on have an opportunity later in the process to elect for jury trial.

Clause 11 helps to speed up court recovery by enabling the Crown Court to return more cases to the magistrates' court where appropriate. That is estimated to save 400 Crown Court sitting days a year.

We have made changes to magistrates' court sentencing powers. We are extending the sentencing powers from a maximum of six months' imprisonment to 12 months for a single triable either-way offence. We will do that by commencing existing provisions in the Sentencing Act 2020 and the Criminal Justice Act 2003.

We have a number of measures that will streamline and simplify coroners' court procedures, which will speed up the inquest process for bereaved families and reduce unnecessary distress. The coroner measures in the Bill have been designed to support the Chief Coroner and coroners as they implement their post-pandemic recovery plans and address the backlog of inquest cases which have accumulated due to the pandemic in many coroner areas.

Moving to employment tribunals, the Bill will introduce measures to transfer rule-making powers for the employment tribunals and Employment Appeal Tribunal to the Tribunal Procedure Committee. Transferring these powers to an independent judge-led committee will provide a swift and efficient rule-making process for these tribunals and deliver greater alignment within the unified tribunal system.

We are also setting up an online procedure rule committee, which will create rules for online procedures in the civil and family courts and in tribunals. That will ensure a consistency of online rules across the jurisdictions. However, that will not mean that users cannot engage with the court in more traditional ways. Although digital services will undoubtedly become the default, we understand that not everyone will choose to participate in a hearing by electronic means or will be able to use digital services to pursue their legal rights. The measures in the Bill will ensure that paper forms will remain available for citizens participating in proceedings. An offline option will always be available for those who need it.

Finally, the Bill will enable the development of a new, purpose-built combined courthouse in the City of London. Not only will the new courthouse provide 10 additional courtrooms but court users will also benefit by having access to more modern facilities.

In summary, the Bill, which is short but focused and wide-ranging, will enable sensible and practical reforms to judicial review. It will streamline and improve processes across the Courts & Tribunals Service. I look forward to discussing the Bill during this debate and henceforth, and indeed to continuing discussions I have already had with many Members of the House. For those essential reasons, I beg to move.

6.37 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, I open by welcoming back to this House my noble friend Lord Hacking. He last spoke in this House on the Contracts (Rights of Third Parties) Bill. I thought I might read out his final paragraph:

"Finally, some noble Lords have noticed that I am sporting an enormous black eye. As no one appears to have accepted my domestic explanation for it, and as a number of theories have been developed among noble Lords to whom I have spoken, perhaps I may put on record that I have not been whopped by an angry hereditary Peer who failed in the ballot! On the contrary, I believe that all hereditary Peers are seeking to leave this House with great dignity, and I am sorry that my own appearance is a little undignified."—[*Official Report*, 10/11/1999; col. 1363.]

I welcome my noble friend's return to this House.

Although the Labour Party welcomes elements of this Bill, it does not support the judicial review measures proposed in it. We would support removing them entirely. We believe that the Ministry of Justice is trying to fix something that is not broken. The Government should be spending their time tackling the record court backlog, protecting victims of serious crime and strengthening community-based sentences.

The Government's reforms go beyond what was recommended by their own expert panel, with no evidence to back up this overreach. The Independent Review of Administrative Law, chaired by the noble Lord, Lord Faulks, did not recommend prospective-only remedies, a presumption for suspended quashing orders, imposing on the courts a list of factors to determine their use, or ouster clauses.

Clause 1 creates new powers for courts to remove or limit the retrospective effect of a quashing order. It will also create a presumption that a judge issuing a quashing order should make it suspended or prospective only. As a result, courts would have less power to provide redress or to compensate those affected by past uses of the unlawful decision. On the face of it, that might seem quite a small change to judicial review, but we believe that the effects could be profound and chilling.

Numerous organisations, such as the Public Law Project, Friends of the Earth and the Law Society, are concerned that the statutory presumption in Clause 1 seeks to remove swathes of government decision-making from challenge via judicial review, and to limit the effectiveness of remedies granted to those challenges that are successful. The Government's own consultation paper conceded that a prospective-only quashing order would

"impose injustice and unfairness on those who have reasonably relied on its validity in the past."

I shall also quote some points raised by the Public Law Project, which has said that the statutory presumption would, first,

"place victims of unlawful actions in an unfair position; remedies which are prospective only may leave individuals without redress at all."

Secondly, it said, these remedies would

"insulate Government from scrutiny and make it more difficult for decision makers to be held to account."

Thirdly, they would

"make it more—rather than less—likely that judges will be forced to enter the political realm."

Fourthly, they would remove the current simplicity of quashing orders and make it more difficult, and costly, to bring a judicial review claim. Fifthly, they would shift the scales of justice too far in the direction of the Executive at the expense of the individual.

Clause 2 of the Bill would abolish Cart—or, in Scotland, Eba—judicial reviews. These are most often used in serious asylum and human rights cases. We believe that Cart is a vital safeguard against incorrect decisions made by the Upper Tribunal. There is already a high threshold for bringing them and the proposed saving is tiny compared to the human cost of abolishing them. The Labour Party is also concerned that the Government will use abolishing Cart judicial reviews as a precedent to abolish other types of judicial review in the future.

At the consultation stage of the review of administrative law, the Immigration Law Practitioners Association provided the panel with 57 case studies of when Cart judicial review had been used to put right an incorrect decision made by the Upper Tribunal. Those case studies included parents' applications to be reunited with their children, a child's application to remain in the UK to receive life-saving treatment, the asylum claim of a victim of human trafficking and female genital mutilation, and many other deportation and asylum decisions where, if deported, individuals would face persecution or their lives would be put at risk. The same applies to other kinds of cases heard in the tribunal system, such as cases about access to benefits for disabled children. The Government have recognised in their impact assessment that the majority of those affected by this change will be those with protected characteristics.

Part 2 of the Bill consists of five chapters, which contain provisions relating to criminal procedure, online procedure, employment tribunals, coroners and other court provisions. Many of the measures contained here were previously in the 2017 Prison and Courts Bill, which fell at the Dissolution of Parliament. In general terms, we are in favour of measures that make our courts more accessible, fairer and, if appropriate, more cost-effective. I remind the House that I sit as a magistrate in London and, over the past two years, I have done my fair share of remote hearings in the adult jurisdiction, including single justice procedures, and in the Family Division. I have also done youth hearings where we have had to make difficult decisions about the appropriateness—whether for the victim or the defendant—of proceeding with a remote hearing. So, I do understand the practicalities and limitations of working remotely.

The amendments that we will put forward for this part of the Bill will focus on improving safeguards for young people and vulnerable people, and on preventing people inappropriately pleading guilty online without properly understanding the implications of their plea. It is a real fear that, to make life simple, people will just plead guilty to get the issue out of the way. We also support publicly funded legal representation for bereaved people at coroner's inquests and we will move amendments to this effect at later stages of the Bill. I also welcome the increased sentencing powers for magistrates' courts for either-way offences, from six months to 12 months for a single charge. I cannot

[Lord Ponsonby of Shulbrede]
help noting that, if this measure had been introduced at the beginning of the pandemic, it might have partially ameliorated the current Crown Court backlog.

In conclusion, the Government's proposed changes to judicial review would deter members of the public from bringing claims against public bodies and leave victims of unlawful actions without legal redress. Governments may, at times, find judicial review to be inconvenient, but that is no justification for attempting to avoid judicial scrutiny. As the Opposition, we will oppose Part 1 of the Bill but will work to improve Part 2. I thank the Minister for introducing this legislation.

6.46 pm

Lord Thomas of Gresford (LD): My Lords, I too welcome the noble Lord, Lord Hacking, back to his place. We worked together in the latter part of John Major's Government; subsequently, when he occupied the Benches opposite, I am sure that we would have been on the same side on the Human Rights Bill, devolution and matters of that sort. It is very pleasant to see him back.

My first encounter with the prerogative writs was an application for leave to move for certiorari—what today is called a "quashing order", to obtain the reversal of a decision to refuse a war pension to my client. He was suffering from what today would be easily recognised as PTSD, as a result of experiences he suffered in Montgomery's push from El Alamein to Tunis. The Government were represented by the noble and learned Lord, Lord Woolf, who I am very pleased to see is in his place. Modesty forbids me from saying who won the case, but I would have been incensed if my client had been denied arrears of his war pension to the date of the decision—that would be the effect of the prospective quashing order proposed in this Bill—or denied it to some indeterminate point in the future to give the Government time to correct the defect in the decision, which I had established was unlawful; that would be the effect of the proposed suspended order. If the court had exercised a power to make a suspended and prospective order combined, my client would have won the case but received nothing.

Ubi ius, ibi remedium: where the law has established a right, there should be a corresponding remedy for its breach. The right to a remedy is a fundamental right, historically recognised in all legal systems. It would also have been unthinkable if those not parties to my case, but who benefited from the court's declaration that the Government had acted unlawfully, had been denied their rights. Of course, we abolished the word "certiorari" some time ago—"too much Latin", as my grandson, in his first year studying law in Cardiff, would say. It was out of date, too redolent of 800 years of history when, under the British Constitution, the High Court could insist that a Government, public body or inferior court had acted within the law. We called it the rule of law. Today, the rule of law is mocked, privately and publicly, by our own Prime Minister. But what under this Bill would be the point of any person taking proceedings against any public body if, when he had won the game at full time, that body were given extra time until it managed to score the winning try?

Another glaring defect is that the Bill markedly tilts the judge's hitherto untrammelled discretion in determining the appropriate remedy in the Government or the body's favour, even though the judge has found that it has acted unlawfully. Under new subsection (9), the court must make a prospective or suspended order or both,

"unless it sees good reason not to do so".

I ask the Minister to explain and illustrate what he envisages is a "good reason". New subsection (8) sets out a list of factors that the judge must consider in making an order. Is it intended that one of those factors would suffice to be a good reason?

Let me move on to Clause 2. The Minister has explained the Cart case. The Government have decided to prevent an appeal against refusal of leave to appeal from the first tier to the Upper Tribunal and endeavour to oust the supervisory jurisdiction of the High Court. However, it is not just that. The Government seek in the Bill to forge a template for an ouster clause—they freely admit it—which they hope will in the future be used in other Bills.

Let us look at the terms of that. Under the title of "Finality of decisions", new subsections (2) and (3) declare that

"The decision is final, and not liable to be questioned or set aside in any other court … In particular … the Upper Tribunal is not to be regarded as having exceeded its powers by reason of any error made in reaching the decision … the supervisory jurisdiction"

of the Hight Court

"does not extend to, and no application or petition for judicial review may be made or brought in relation to, the decision".

It is stamp, stamp, stamp. It is like someone is trying to put out a fire with a broom on the hillside.

I move on to Part 2. On the issue of online court proceedings, I am certainly in favour in principle, but there are concerns to be explored in Committee over the rights of those who have no facility for the use of, or access to, online technology. Similarly, I am concerned, as was the noble Lord, Lord Ponsonby, that young people will not have the same access to interventions available in the criminal justice system to match the problems which have caused them to offend in the first place. As for inquests under Chapter 4, it is essential that we do not miss this opportunity to enshrine the principle of equality of arms into coroners' proceedings. I have appeared in a number of inquests, sometimes funded by insurance companies, where there was a possibility of the insured being sued for negligence. On other occasions, I have appeared pro bono for relatives of the deceased. It is unconscionable that police forces, hospitals and the like should be fully funded by the state for representation by counsel, or perhaps by solicitors, while grieving relatives with no experience of any sort of court should be left to fend for themselves.

Finally, I shall want to explore the rationale in the 21st century for Rule 27 of the Coroners (Inquests) Rules 2013. This might sound a little exotic, but that rule reads in this way:

"No person may address the coroner or the jury as to the facts of who the deceased was and how, when and where the deceased came by his or her death."

I have always considered it an anomaly that family representatives may not make submissions, either in person or by their lawyer, to a coroner or a coroner's jury as to what their verdict should be.

Time and again, this Government have shown a tendency to try to rig the system in their own favour. In areas like mandatory and minimum sentences, and in this Bill, concerned with determining the lawfulness of government action and decision-making, they muscle in to usurp the discretion of that other essential limb of a liberal democracy, the judiciary. It refuses to let judges do their job. It must be resisted.

6.54 pm

Lord Anderson of Ipswich (CB): My Lords, there is quite a bit to welcome, and quite a bit to debate, in the Bill. I am going to speak at this stage only on Clause 1. A court in which I used to appear regularly—the European Court of Justice—has, for many years, had the habit of occasionally granting each of the remedies envisaged by Clause 1: what have been called the suspended quashing order and the prospective-only quashing order. I understand that the same is true of courts in some other countries, both in Europe and further afield. Perhaps because I have become used to these remedies in practice, I believe that each has its place, if not at the top of the judicial toolbox, then certainly somewhere within it.

I will give a couple of illustrations to add to those provided earlier by the Minister, starting with the suspended quashing order. In the well-known case of Kadi v Council, the sanctions imposed without due process on Mr Kadi—suspected at the time, although no longer, of having funded al-Qaeda—were quashed in 2008 with effect from three months in the future. This gave the Council a strictly time-limited chance to correct its error if it had the wherewithal to do so. As Mr Kadi's advocate, I wondered whether the court would have had the courage to issue a quashing order at all, given the possible security consequences, if the option of a suspension had not existed. The chosen remedy seemed an effective compromise.

Prospective-only rulings have their origins in the Defrenne case of 1976, in which the court declared the treaty principle of equal pay for equal work to have direct effect. Having taken into account many of the factors now set out in new subsection (8), the court declared its ruling to be prospective only, except for those who had already brought legal proceedings or made an equivalent claim. In the relatively few cases that have followed of prospective-only quashing orders, a similar exception has been applied. Perhaps that exception will find favour with our courts too: it would seem to qualify as a condition within new Section 29A(2) of the Senior Courts Act 1981 and as a factor to which the court must have regard under new subsection (8)(c).

Not so welcome, at least to me, is the presumption in new subsection (9), particularly as glossed by new subsection (10), with its vague reference to action "proposed to be taken". The institutions of the EU do not seek to dictate to its independent court the circumstances in which these remedies should be used, and I am not so far persuaded that this attempt at long-range micromanagement is appropriate here either.

The saving grace of the presumption, if it has one, is its limited scope. No presumption applies when, to suspend a quashing order, or to make it prospective only, would, in the opinion of the court, not offer "adequate redress". That phrase will, no doubt, be much debated. I take it to include the concept of an effective remedy, not only for the claimant in the case but for other existing or potential claimants. Yet redress is a broader concept than that of remedy: Mr Justice Sedley, as he then was, said in the Kirkstall Valley case that

> "Public law is concerned not only with the vindication of positive rights, but with the redress of public wrongs wherever the court's attention is called to them by a person or body with sufficient interest."

Where the redress of public wrongs requires a decision to be quashed, in other words, the courts should not be hamstrung by any presumption in favour of the specialist remedies provided for by Clause 1.

Current Supreme Court guidance does not encourage the judges, when construing Acts of Parliament, to have regard to our debates. None the less, I should be glad to know if the Minister agrees with what I said about the scope of the presumption. If I am right, new subsections (9) and (10) are a good deal less toxic than Section 38(8) to (10) of the Environment Act 2021, which despite the best efforts of your Lordships inhibits the High Court on environmental review from granting any useful remedy at all. However, we should have better reasons for waving through new subsections (9) and (10) than their only limited toxicity.

The Minister, James Cartlidge, said in Committee in another place that

> "removing the presumption from the Bill would not necessarily prevent the new modifications to quashing orders from operating effectively".—[*Official Report,* Commons, Judicial Review and Courts Bill Committee, 4/11/21; col. 127.]

Who knows? Perhaps, after proper debate, we will need to put that proposition to the test.

6.59 pm

Lord Faulks (Non-Afl): My Lords, as the House has heard, I was chair of the Independent Review of Administrative Law, a panel made up of a number of academics and practitioners. We spent six months quite closely studying the law and endeavouring to assist the Government with some recommendations. It is difficult to encapsulate that in the five minutes that I have been permitted. Perhaps I can simply say that Clause 1 and Clause 2 broadly reflect what we recommend, and so I support the Bill. Clause 1 is intended to give greater flexibility to the courts and to smooth over the rough edges that quashing orders can cause. However, I look forward to the debates as to whether any improvements can be made in the drafting.

Clause 2 is in effect a reversal of Cart, as the House has heard. For some time, the wisdom of that decision has been questioned by the authors of the Policy Exchange Judicial Power Project, Professor Ekins and Sir Stephen Laws, in their submissions to our panel. However, the panel also considered a lecture given by Lord Carnwath, a former Supreme Court judge, in December 2020. He quoted an experienced administrative court judge who said:

> "I would say that for every 10 days that I sit in the Administrative Court one day is occupied with dealing with spurious Cart applications. The rate of grant of permission … is minuscule".

[LORD FAULKS]

Lord Carnwath pointed out that a Cart JR

"represents a third bite of the cherry … the litigant"

previously would have been

"refused permission to appeal by the First-tier and the Upper Tribunal."

He said:

"Having been closely involved in the preparation of the relevant legislation, I can confirm that our intention was that the Upper Tribunal should, within in its specialist sphere … be immune from review by the High Court."

The statistics came second when it came to our recommendation. There was some difficulty in establishing precisely what the success rate was; we endeavoured to get all the statistics we could from all sources that were available. However, less controversial—see page 67 of our report—is the number of applications for a Cart JR. At a five-year average of 779 per annum, it was the most popular judicial review in all areas of the law. If you read the Supreme Court judgment in Cart, it is clear that any application was expected to be most unusual. Some 779 per annum jurisdictional errors by a specialist court—I respectfully submit that that the matter speaks for itself.

I will say something briefly about JR in general. The IRAL was a fulfilment of a manifesto commitment. I was a bit surprised to be accused by a distinguished Peer from the Labour Party, not currently involved in this debate, of being a party to constitutional vandalism by agreeing to be part of this panel—and that was before our first meeting. We were genuinely independent, with not obviously similar initial views on the issues. However, we reached the conclusion that JR was a fundamental part of the rule of law, and we had no desire to recommend radical reform. It is of course a vital part of the checks and balances that exist in our constitution. However, that does not mean that Parliament, after careful consideration, cannot reverse a court's decision. Judges get things wrong; our appeal system is based on that principle. Our judges deserve considerable respect but, as with Parliament, from time to time, experience indicates that a different course is appropriate. No senior judge who made submissions to us took any issue with this. There was certainly no suggestion of constitutional vandalism.

Possible amendments to the Bill have been advanced by Professor Ekins in a remarkable paper in which he identifies a number of cases which arguably were decided wrongly. Others may want to develop these amendments—I do not know. I simply identify the case of Adams as being very questionable. It was a decision of the Supreme Court which rode roughshod over the Carltona principle, which of itself will cause considerable practical problems for government. That may be well worth further consideration, as would others.

I conclude with one observation on a different part of the Bill: the online courts Bill. I welcome the development, which has been quite some time in coming. The benefits of online proceedings were particularly apparent during Covid. I am somewhat concerned about access to online procedure for the media—here I wear my hat as the chair of the Independent Press Standards Organisation. It is most important, the axiom being "Justice should be seen to be done", that nothing done online is not capable of being seen and observed and commented on by the media, of course, and indeed by anybody else. Therefore, in our desire to make rules, I hope that the Government can reassure me and the House that there will be a proper provision for access to the media so this online justice will not in any way be secret justice.

7.05 pm

Lord Garnier (Con): My Lords, my public law experience as a member of the Bar is not as extensive as that of other noble and learned Lords or other noble Lords who are lawyers. However, alongside the noble Lord, Lord Pannick, who is in his place, I appeared in Miller 2, the prorogation case, which was decided unanimously against and which, it seems, encouraged the current Prime Minister, the defendant in that case, to demand that access to judicial review be severely curtailed. In any event, the Independent Review of Administrative Law, chaired by my noble friend Lord Faulks, followed not long after and published its report in March last year. It is a pleasure to follow him in this debate.

I suspect that my noble friend's and his fellow panellists' recommendations were not wholly to the Prime Minister's liking as they did not go nearly far enough for him. However, I have lost no sleep whatever over that. It was a measured and thoughtful report that suggested some limited and specific changes to the law relating to judicial review. As the Prime Minister goes through a period of intense political Sturm und Drang, the report wisely states that while the reviewers understood the Government's concern about recent court defeats, they considered that disappointment with the outcome of a case or cases was rarely sufficient reason to legislate more generally. The report is rational and evidence-based and, I am happy to acknowledge, Part 1 of the Bill is surprisingly restrained in its objectives as regards judicial review. If that is a consequence of anything done by the Minister he is to be congratulated, because at times like this a cool head and a steady hand are essential in government.

The change in the law set out in Clause 2 reversing the Cart decision, will, I hope, enable the tribunal system in immigration cases still to do justice without unfairness to applicants. I agree with what my noble friend Lord Faulks just said on Clause 2. Paragraph D16 on page 162 of the report notes that in 2019, the number of immigration judicial review cases was

"higher by nearly a factor of four to the number of immigration cases in 2000. Proportionately, immigration used to be about half of all judicial reviews … and it now makes up the vast majority of all judicial reviews (82%)."

Further relevant detail is set out in Appendix D of the report.

Despite what the noble Lord, Lord Anderson, said about his experience in the European Court, and what the Minister described, in that delightful way, as remedial flexibility, as well as his wider arguments, I am a little more sceptical about the proposal in Clause 1 which provides for prospective quashing orders. I accept that Clause 29A(9) of the new clause to be inserted into the Senior Courts Act 1981 gives the court some slight leeway not to make a prospective order and, in their response to the consultation, the Government said

that prospective orders are likely to be rare. They may be, but we need to guard against the predicted and predictable unfairnesses that may come with prospective quashing orders. No doubt we will discuss this further in later debates on the Bill, as we will the other technical and less controversial provisions in Part 2.

That said, I welcome the proposal flowing from Clause 43 for a new combined courthouse on Fleet Street to deal with economic and financial crime cases. It will be a valuable addition to the court estate.

7.09 pm

Baroness Whitaker (Lab): My Lords, it is a pleasure to follow the noble and learned Lord, Lord Garnier. Indeed, I rise with great trepidation among such distinguished and learned speakers. I will make a brief contribution from a different perspective: that of a former civil servant whose advice was liable to judicial review, and that of a former member of the employment tribunal whose decision was similarly placed.

There are some useful reforms in the Bill, but in the time allowed I shall confine myself to those proposals which make me uneasy, where I hope amendments can be negotiated. My starting point, as we were taught in the Civil Service, is that judicial review is the way in which an ordinary individual—a citizen—can remove a state action that was illegally made. We had a very well-written booklet, *The Judge Over Your Shoulder*, which set out the procedures necessary for a legal and democratic government or administrative decision to be reached, and how the court would examine them in a review. Proper consultation was often a key factor. I should emphasise that it was reassuring to know that damaging mistakes could be rectified and that the courts could legitimately pay attention to how we did things, although naturally we tried to avoid this happening. However, officials work under pressure much of the time, and so do Ministers. It is to be expected that mistakes are made and that political purposes can override legitimacy. While national policy is about aggregates, justice is for individuals.

Clause 1 immediately raises questions: the incentives for suspended and prospective quashing orders would be a problem for the aggrieved citizen because, as I understand it, the alleged wrong could not be righted while it was actually happening. The range of powers of the court to decide would be more constrained, and it would have to take into account some arguably extra-legal factors like the convenience of administrators. What might have happened if the proposed reforms were in place over the outfall of raw sewage into the rivers? I wonder if our ratification of the Aarhus convention is now in question.

Clause 2 also makes me uneasy. Removing one of the powers to appeal against a tribunal decision carries an obvious risk of injustice. There have been cases of abused tied domestic employees and deportation which succeeded under the current system, which would not have been allowed under the Bill.

I have one last question. When I was a magistrate, it was clear that many defendants were people who could not grasp the legal system we live in. That is not to say that they might not also have intended to do wrong, but among them were people who could not cope with the requirements of an orderly life and who were in several ways vulnerable. What arrangements will the Government make for people who cannot manage or have no access to the digital communication which would be obligatory under the Bill?

The Bill needs very careful scrutiny. Administrative law affects the public in a very direct way. We should be extremely careful about impairing the ability of communities and individuals to call the state to account, whether it is about protecting the environment, asylum, depriving people of benefit, or any condition the state imposes. I do not see the democratic or constitutional argument for fettering judges in the way the Bill proposes. We should allow their discretion to decide proportionate remedies. It is surely the birthright of citizens of a democracy for the rule of law to have enough force to maintain that democracy.

7.14 pm

Lord Beith (LD): My Lords, I think even the Government sometimes concede that judicial review is a vital protection for the citizen against the unlawful abuse of power by the Executive, other public authorities and, in some circumstances, by private sector organisations. It provides a powerful system of scrutiny of the fairness and integrity of the decision-making process, which the Executive ignore at their peril, as someone who has worked in the Civil Service will be aware—the noble Baroness clearly was.

The use of judicial review has increased significantly over the years, but so has the range of government activity which impacts on the citizen and therefore makes it necessary for it to be open to challenge. Most of the Bill, of course, is nothing to do with judicial review. After its first few pages, it is the reincarnated and revamped courts Bill, which fell at the 2017 election—it should have been introduced sooner to avoid that fate—plus a few very limited clauses about coroners which are a missed opportunity to address the inequality of arms which occurs in some very significant inquests to which my noble friend Lord Thomas of Gresford referred. It is not the full-frontal attack on judicial review that some in the Government hoped for. Instead, I would liken it to guerrilla tactics against judicial review.

We must go back to the publication of the review of administrative law by the noble Lord, Lord Faulks, to understand what is going on. The noble Lord and his expert committee carried out a thorough study and, based on the evidence, reached conclusions but they were not the conclusions that the Government intended it to reach—at least in part. Following publication of the report, I had a revealing letter from the then Lord Chancellor, Robert Buckland, in which he commended the group's use of empirical evidence but added:

> "However, I feel that the analysis in the report supports consideration of additional policy options to more fully address the issues they identified."

That is pure Sir Humphrey, straight out of "Yes Minister". A consultation followed, but my belief is that Robert Buckland's approach—I not seeking to be critical of him because he had many qualities—became one of rejecting any general attack on judicial review and favouring instead the more selective inclusion of ouster clauses in some future Bills. There is a natural concern that even this unwelcome development might

[LORD BEITH]

not be enough to satisfy the incoming Lord Chancellor once Sir Robert, as we know, was removed. Mr Raab has form on this issue. That is the context of the judicial review provision.

I have two particular concerns, echoing those of others, about the impact or potential impact of the Bill on the direction of policy on judicial review once the Bill is enacted. The first is the ouster clause tactic to which I referred, and it must be seen alongside the ouster clause in the Dissolution and Calling of Parliament Bill going through the House. The Ministry of Justice gave the game away in the press release which launched this Bill, saying:

"It is expected that the legal text that removes the Cart judgment will serve as a framework that can be replicated in other legislation."

My Lords, you have been warned.

There is a debate to be had about whether the Cart provisions in the Bill are necessary or will prevent some meritorious challenges to areas of law. I think we must look at them very carefully in Committee. However, I am more seriously concerned at this deliberate creation of a precedent for similar ouster clauses in unspecified future legislation. In what fields? Is it going to become the framework for a standard clause like the commencement clauses, which come on the end of a Bill and which every Bill—or a significant number—is going to have?

My second serious concern is that a reasonable proposal that the court should have an option of suspended quashing orders has been distorted into little short of a direction to the court that prospective or suspended quashing orders should be the norm. In the words of subsection (9) of proposed new Section 29A to be inserted by Clause 1, the court must exercise its power to suspend the effect of its order unless it sees

"good reason not to do so."

There is always a good reason to quash illegal action by the Executive. It is the basis on which people in the public service know that they need to get things right or risk their action being quashed or nullified.

There are sometimes practical and sensible reasons why the full remedy is best not used—for example, when it would leave other citizens without a valid licence or with their status changed without time to make alternative arrangements. However, the court can assess the balance of those arguments without a massive statutory presumption in favour of weakening the wider discipline to the public service that comes from potential exposure to judicial review.

There are notional but understood boundaries between the role of the courts and the role of the Executive. There are judgments that are for an accountable Executive to make, such as the allocation of resources or the making of treaties. Courts are aware of these boundaries and have articulated them in a range of cases. Sometimes the Executive would disagree and be discomforted, but that is no excuse for them to remove or shift the boundary that protects the citizen's ability to rely on the court to make sure that the Government obey the rule of law. If we were not already concerned about the maintenance of the rule of law in government, recent events have reinforced that it cannot be taken for granted.

7.19 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, I do not and never did take the view expressed by some that the Government in their stated aim of rebalancing the relationship between the Executive and judiciary were intent on a power grab and on destroying the courts' supervisory jurisdiction. The Faulks review was a model inquiry producing a model report. Frankly, I had little problem with Robert Buckland, the then Lord Chancellor's response to it, even though I recognised that in certain respects it went rather further than the Faulks recommendations.

In short, I do not, for the most part share the concerns expressed by the noble Lord, Lord Ponsonby, on behalf of the Labour Party—rather, I support Part 1 of the Bill. It introduces in Clause 1 flexibility and greater discretion in the courts' supervisory jurisdiction and, at last, will get rid of the troublesome doctrine that a flawed decision, if successfully impugned is null and void to be regarded therefore merely as "a purported decision". That explains the use of that term, both in this clause and again in Clause 3 of the Dissolution Bill. In short, Clause 1 would give the quietus to what has been called the "metaphysic of nullity"—the constraining theory that any legal error makes a decision or instrument not merely voidable but void ab initio.

I make three brief points. First, there are those who object to the presumption, the word "must" in new subsection (9). The requirement for the court to suspend, or on the rare occasions it does so, make prospective only a quashing order, if that would on appropriate conditions give "adequate redress" unless there is "good reason not to do so". Such good reason, I suggest in answer to the noble Lord, Lord Thomas, would exist if, for example, an order or instrument was made in bad faith, if the maker recognised that it could well be unlawful. Personally, I am agnostic about new subsection (9), but it seems no more objectionable than Section 8(3) of the Human Rights Act, which I will not read out. Anybody interested can look it up.

Secondly, by being encouraged to make suspended orders, it seems to me the courts would be the readier to find flaws in decisions impugned—this point was hinted at by the noble Lord, Lord Anderson—if in doing so they would then avoid the administrative chaos that can otherwise all too easily flow from annulling ab initio various decisions or instruments, regulations or by-laws.

Finally on Clause 1, as was pointed out in the Faulks report, in paragraph 3.64, the power to make suspended orders,

"would be especially useful in high-profile constitutional cases, where it would be desirable for the courts explicitly to acknowledge the supremacy of Parliament in resolving disagreements".

I will not read the rest. It is neither healthy nor helpful to have in some quarters potential concern about what is being called "judicial over-reach" or "supremacism". Clause 1 would go some way to alleviate that.

Turning more briefly to Clause 2, I should mention that I was one of the seven justices in Cart, which is now being over-turned. One knows what we did. In my judgment, as quoted by the Minister on opening, I pointed out that the limitation of the review we were permitting in that case was to conserve judicial resources.

Even that formula, however, proved altogether too wasteful of judicial resources. For that reason, it is now best to narrow it down still further to the formula to be found in Clause 2(4).

Of course, Clause 2 is an ouster clause, but not, I suggest, an intended model for future clauses wherever there is legislation. It admirably illustrates that such clauses can in various circumstances be both entirely justified and desirable and, secondly, that they can be limited in their effect, tailormade to the context, as I suggest is Clause 2 here and, in a radically different context, Clause 3 of the Dissolution Bill we come to on Wednesday.

In conclusion, I support Part 1 on the basis that each clause strengthens rather than weakens the judiciary: Clause 1 by increasing powers and discretion; Clause 2 by conserving resources.

7.25 pm

Lord Howard of Lympne (Con): My Lords, it is a pleasure to follow the noble and learned Lord, Lord Brown, with whom I crossed swords in the courts on a number of occasions many moons ago. I join others in welcoming the noble Lord, Lord Hacking, with whom I often debated in the Cambridge Union even longer ago.

I shall restrict my remarks to the first part of the Bill. I should perhaps give an advance warning that I shall, as is often my wont, strike a discordant note in your Lordships' deliberations on these issues. I want to preface what I say by making one key distinction, which I am afraid puts me at odds with my fellow Petrean, the noble Lord, Lord Thomas of Gresford. Those of us who have reservations about the growth in judicial review in recent years are sometimes accused of attacking the rule of law. That criticism is entirely misconceived. I yield to no one in my respect for the rule of law, as I hope I demonstrated in my opposition to the Governments internal market Bill. The issue to which the growth of judicial review gives rise is not the rule of law but rather who makes the law. Who is to have the final say on the laws which govern us? Is it to be Parliament, the traditional repository of sovereignty, and, at least as far as the other place is concerned, democratically elected and so accountable to the people, or the judges of the Supreme Court, unelected, unaccountable and the product of a process which in many ways resembles a self-perpetuating oligarchy?

There can be no doubt that judicial review has increased beyond recognition in size and scope over the last 50 years. Both the report of the Review of Administrative Law and Professor Richard Ekins, in one of his many persuasive papers for Policy Exchange's Judicial Power Project, quote from the introduction to De Smith on administrative law, the standard textbook, which says:

"Public authorities are set up to govern and administer, and if their every act or decision were to be reviewable on unrestricted grounds by an independent judicial body the business of administration could be brought to a standstill. The prospect of judicial relief cannot be held out to any person whose interests may be adversely affected by an administrative action".

Those words may be regarded as a classic description of what judicial review used to be. But the last time they appeared in De Smith's book was in 1973. Indeed, as early as 1980 its editor noted,

"a steady increase in the readiness of the courts to intervene".

Since then, there has been in the words of words of the noble and learned Lords, Lord Neuberger and Lord Clarke, and the noble and learned Baroness, Lady Hale, an explosion of judicial review, and one that has taken place without any parliamentary authority. That this explosion has led the Supreme Court into conflict with Parliament cannot be in doubt. My noble friend the Minister and others have dealt with the Cart case and the Bill makes provision for its reversal. But the case of Privacy International is very similar. In that case it was the Investigatory Powers Tribunal, a specialist court set up to make decisions on sensitive issues relating to national security, which Parliament had sought to protect from judicial review. The Supreme Court set aside that protection and the case is particularly noteworthy for the speech of Lord Carnwath, with whom I once shared a set of chambers. Lord Carnwath said that, if an ouster clause is expressed so clearly as being incapable of being interpreted not to prevent judicial review, it would be open to the courts to decline to give effect to such legislation. A more direct or naked challenge to the principle of parliamentary sovereignty it is difficult to imagine.

Then, of course, we have the two Miller cases, in which the Supreme Court paid lip-service to the supremacy of Parliament and even claimed to be ensuring that Parliament had a say. But Parliament does not need the intervention of the courts to have a say. If the other place had wished to prevent the Prime Minister from exercising the prerogative to prorogue Parliament, it could have done so. If the other place had wished to insist on a vote on Article 50 before it was activated, it could have done so. Of course, the court, in its prorogation case, was only able to reach its decision by the most blatant distortion of the Bill of Rights, which provides that

"proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament."

Prorogation is an event that takes place in your Lordships' House and which Members of the other place are invited to witness. It is clearly a proceeding in Parliament. The judgment of the Supreme Court stated that the Bill did not apply because prorogation did not involve any decision of Parliament. I venture to suggest that the drafters of the Bill of Rights had as great a command of the English language as Lady Hale. If they had wanted their prohibition to apply only to those proceedings which involved a decision, they could and would have said so. There are many other cases in a similar vein which I do not have time to mention.

Why does all of this matter? It matters because accountability is the key to democracy. Members of the other place are accountable to the electorate. Judges are not. I stood for election to the other place on eight occasions—twice unsuccessfully, six times successfully. On each of the five occasions when I stood for re-election, I had to account to my constituents for the actions I had taken in the previous Parliament. The judges are accountable to no one.

So, given that the only decision the Bill seeks to reverse is the decision in Cart, I find it deeply disappointing. The noble Lord, Lord Pannick, with whom I rarely agree on these matters, described it as minimalist. He was spot on. The Minister, in the other place, said that

[LORD HOWARD OF LYMPNE]
the Bill was not necessarily the Government's last word on these issues. I certainly hope that is the case, but I am not holding my breath.

7.32 pm

Lord Trevethin and Oaksey (CB): My Lords, it is a great pleasure to follow the noble Lord, and I agree with what he said about the glorious success of the noble Lord, Lord Pannick, assisted by the noble and learned Lord, Lord Garnier, in Miller 2, but I will not go into that now. I agree also with what the noble Lord, Lord Faulks, said about the very dubious Adams decision. If the Minister were to pick up the gauntlet in relation to that decision, he might find that quite a few of the legally qualified Members of the Chamber—who normally disagree with each other about such things—speak with one voice about the demerits of that decision.

I want to say a few words about—and solely about—Clause 2 and the reversal of the Supreme Court decision in Cart. The ouster clause in the Bill restores the position established by the decisions of the Divisional Court and the Court of Appeal in Cart. They were strong courts. The judgments were given respectively by the late Sir John Laws and Sir Stephen Sedley. They concluded that a refusal by the Upper Tribunal to grant permission to appeal was susceptible to JR, but only in two cases: first, on the ground that the Upper Tribunal had been guilty of what one may call "true"—or using the Court of Appeal's terminology, "outright"—excess of jurisdiction, or, secondly, on the ground of some serious procedural irregularity—for instance, actual bias—which amounted to a fundamental denial of justice. The Bill, as drafted, reflects those two grounds quite properly. As Sir Stephen Sedley put it in the Court of Appeal: "Outright excess of jurisdiction"

or

"denial … of fundamental justice … represent the doing"

of something by the Upper Tribunal

"that Parliament cannot possibly have authorised it to do."

What is "true" or "outright" excess of jurisdiction? Sir John Laws described it well in Cart: it denotes the case where the court—or tribunal, or executive decision-taker—

"travels into territory where it has no business."

Such a case is different to the case where the court, tribunal or decision-taker has got it wrong, or is alleged to have got it wrong.

The Supreme Court in Cart overturned the decision of the lower courts. It observed that their approach led back to and, in a sense, reinstated, the distinction between "true" jurisdictional errors and other errors which had been "effectively abandoned" after the House of Lords' decision in the Anisminic case in the late 60s. It was implicit in the Supreme Court's judgment, I think, that this was considered a retrogressive and undesirable move.

However, as the Government said in their response to the report of the committee of the noble Lord, Lord Faulks, there are real distinctions between three different things: "true" excess of jurisdiction; serious procedural error or abuse; and all other errors, whether of law or fact. Paragraph 55 of the Government's response to the committee report states that the ouster clause in this Bill may be used as an example to guide the development of effective legislation in the future. Some will regard that as ominous. I am not sure; that will depend upon the context in which any such attempt is made. It does seem to me—at least—that the Government are right to bring these distinctions that I have mentioned into sharp focus.

Anisminic is an example of judges interpreting words to mean something they clearly do not mean in order to achieve a desired outcome. The relevant statute provided that determinations made by the relevant tribunal should not be called into question in court. The House of Lords held that a determination based on error of law is not a real determination but a nullity and, therefore, was not within the statutory provision. Given that only arguably erroneous determinations are likely to be called into question in court, this may diplomatically be described as a very strained construction indeed. Sir Stephen Sedley, who is not opposed to judicial activism in this field, has described the reasoning as

"close to intellectual sleight of hand"

and "a masterpiece of equivocation". The noble and learned Lord, Lord Brown of Eaton-under-Heywood, used the term "troublesome doctrine" and the "metaphysic of nullity" when discussing related concepts.

In the recent Privacy International decision, both the judges who spoke for the majority and those who dissented recognised the highly unsatisfactory nature of Anisminic. Lord Carnwath said something to that effect. In the interest of saving time I shall move to Lord Wilson, dissenting, who said that the Appellate Committee

"picked a fig-leaf with which it attempted to hide the essence of its reasoning … The committee thereby set up 50 years of linguistic confusion for all of us who have been heirs to its decision."

As the Government's response to the Faulks report says at paragraph 55, legislation is communication. The text cannot speak for itself; obviously, it has to be interpreted by the courts. Effective communication requires a common and stable language—a point made elegantly by Professor Ekins in his book on legislative intent. Linguistic sleight of hand of the type deployed in Anisminic in undesirable. It generates not merely confusion but an unnecessary degree of tension between the executive and the courts.

If, as I think may be the Government's intention, the formulation of the ouster clause in this Bill accelerates the retreat from Anisminic and promotes effective communication between Parliament and the courts in what is certainly a delicate area, it may be regarded as a good thing.

7.38 pm

Lord Hacking (Lab): My Lords, as I stand in this House for the first time after 22 years of absence, I was particularly touched by the words of welcome by the noble Lords, Lord Ponsonby, Lord Thomas and Lord Howard. Of course, I remember those faraway days jousting with Lord Howard in the Cambridge Union when we were at Cambridge together. This is a speech which is a kind of maiden speech but is not a maiden speech. The reason is very simple in that the maiden speech that I did make in 1972 has counted in.

Let me set the scene. It was during the Edward Heath Government, when the Leader of the House was Earl Jellicoe, the son of Admiral Jellicoe of Jutland fame. The Leader of the Opposition was Lord Shackleton, the son of the great Antarctic explorer. We had one Cabinet Minister in the Lords—Lord Carrington, Secretary of State for Defence—and Lord Hailsham, after his sojourn in the House of Commons, returned to sit on the Woolsack and gave audible asides to the Bishops, saying nothing complimentary about anybody. When the Bishops were no longer there, on the Bench beside him, he turned to his left, to the Liberals, and gave the same asides to them. So it was that I made my maiden speech on 26 April 1972.

Rather unbelievably, when we get to April 2022 it will be 50 years since I first spoke in the House, but I remember it as though it was yesterday. The debate was on a UK population policy and was moved by Lord Vernon. On the Government Front Bench was Lord Aberdare and on the Labour Front Bench was Baroness Serota. I particularly remember Baroness Gaitskell, widow of Hugh Gaitskell, and Baroness Summerskill, who, as Edith Summerskill, was a very feisty Member of the House of Commons. The feature that I particularly remember was that they came to this House wearing rather good hats, and they were not the only Peeresses who felt that they were in a state of undress unless they came into the House with a hat. It is somewhat of a disappointment for me now to find a lot of very welcome life Peeresses but no hats at all.

I would like to take a slightly different approach from that of other noble Lords and look at the changes that have come to this House and how they impact on our work on Bills such as this one. When you have been away for 22 years you notice significant changes. The first and most welcome change is the presence of many more—and a high quality of—life Peeresses, who clearly are now major contributors to the work of this House, which provides a massive benefit. Another noticeable change is that the House is now much more proactive and busier. It has a contemporaneous Chamber, which I notice is still at business, in the Grand Committee in the Moses Room. One can identify other features of the House today, such as the much greater use of Oral and Written Questions, and the number of speakers that take part in each debate. I understand that when we got to 25 speakers for this debate a stop was put, but there would have been others if they could have listed themselves.

The other change is the number of amendments that this House moves. The Minister remembers well the Police, Crime, Sentencing and Courts Bill, which is a bit heavy to hold in the hand, and the Marshalled List of amendments, which I also hold in my hand. I was interested in, and asked the Legislation Office, how many amendments had been tabled and moved on Report, and I got the astounding figure of 730.

The worry is that while it is a great achievement to get Bills such as that one through the House, it is also cascading on to the user countless new laws and cascading them on to the lawyers who must interpret them, which is not altogether easy. Take Clause 1 of the Bill. It is only when you get to Clause 1(9) and the two sentences resting beneath that you begin to understand the objective of that provision. Judges and numerous other users, such as the police, and health workers and so forth with the Health and Care Bill, have these responsibilities. I have a first cousin, now retired, who is a very distinguished professor in criminology at the University of Ottawa. He wrote a book, *Less Law, More Order*. I suggest that we should be thinking about that when we have any Bill such as this in front of us, because there is a grave danger that this Bill could become a victim of more law and less order.

On the Bill itself, I declare an interest. I am on the council of Justice, the legal charity that is actively involved in access to justice and the preservation of justice. I will leave all comment on Part 2, which can be done in Committee. However, as do other noble Lords, I have a grave concern over Part 1. As a matter of principle, we should not be providing a statutory block in the judicial review appeal processes. As identified, many of them asylum and immigration appeals. These people are the most vulnerable people entering our courts system. As Lord Dyson said in Cart:

> "In asylum cases, fundamental human rights are in play, often including the right to life and the right not to be subjected to torture."

I hope very much that when we get to Committee and Report we recognise that in the processes which now exist, and through the First-tier Tribunal and the Upper Tribunal, meritorious applications do get further consideration and the non-meritorious applications are dismissed. For those practical reasons, we need not interfere with the structures that are now in place, particularly under the Tribunals, Courts and Enforcement Act 2007. We are taking a step back if we start interfering with that.

7.48 pm

Lord Etherton (CB): My Lords, it is a great privilege for me as a relatively new Member of this House to follow such a long-standing and distinguished person as the noble Lord, Lord Hacking. I am very pleased to do so.

In my five minutes I would like to deal with four matters. The first is quashing orders. It is advantageous for the court to have the remedies open to it increased. The problems here arise under the mandatory provisions of Clause 1(9). There are two problems, in my view: first, that there is no need, and it is unhelpful, to circumscribe the discretion of the court; and, secondly, that it will be unclear in many cases how the court should apply the phrase

> "would as a matter of substance offer adequate redress in relation to the relevant defect".

I predict that there will be a plethora of satellite litigation and appeals in relation to the court's approach to those words in many cases.

The second matter is the abolition of the Cart jurisdiction. This area of consideration is bedevilled by the lack of published statistics. Based on my own experience as Master of the Rolls and Head of Civil Justice for over four years until January last year, I agree with the IRAL report of the noble Lord, Lord Faulks, that the Cart judicial review jurisdiction has been abused in many cases.

[LORD ETHERTON]

The filter on abusive cases should—and, I assume in the absence of any specific published statistics, would—be dealt with at the stage of permission to apply for judicial review. That is dealt with, or can be dealt with, on paper, and if permission is refused, there is no right for the applicant to renew the application at a substantive hearing of the judicial review.

What concerns me particularly, from my own experience, is that if the Cart jurisdiction is unsuccessfully invoked, at that stage or subsequently—the leave stage or the substantive hearing—the matter rarely terminates with the administrative court of the Queen's Bench Division. Inevitably, the applicant will then seek permission to appeal to the Civil Division of the Court of Appeal, either from the refusal of permission to bring judicial review proceedings or from the dismissal of any substantive application. I rely on my own experience and knowledge to say that the success rate of applications to the Court of Appeal for permission to appeal is minuscule and diverts the Civil Division of the Court of Appeal from addressing other appeals, which causes delay and so injustice and imperils the international standing of the court. So, there are, in fact, false potential stages to consider when considering whether permission to appeal should be given back at the tribunal stage.

What is to be done about this? The noble Lord, Lord Ponsonby of Shulbrede, points out that there are cases where injustice would result from a refusal of a Cart review. A middle course, which I ask the Government to consider carefully, would be to retain the judicial review jurisdiction of the Queen's Bench Division but provide that there shall be no appeal to the Court of Appeal from either the refusal of permission to bring judicial review proceedings or an unsuccessful substantive application.

Thirdly, on the Online Procedure Rule Committee, it will be many years before full digitisation of court processes. Even then, it is likely that many cases will be excluded from online procedures, whether because of litigants in person, the inability of one of the parties to master digital processes, the nature of the case, or other reasons. Co-ordination between standard rule-based proceedings and online processes is currently achieved by both of them falling within the remit of the Civil Procedure Rule Committee, the Family Procedure Rule Committee, the Tribunal Procedure Committee, or the stand-alone digital steering committee, which I set up, between all of which there is an overlap in membership. The provisions of the Bill dealing with online rules and the establishment of the Online Procedure Rule Committee contain no express provisions to ensure co-ordination of any kind with the standard civil, family and tribunal rule-making committees. I suggest that consideration be given to amending the Bill to facilitate such co-ordination.

My final point is on pro bono costs. I am grateful to the Minister for sympathetic consideration of my proposal to include in the Bill a provision to amend Section 194 of the Legal Services Act 2007 to enable tribunals, as is currently the case in the civil court, to order an unsuccessful, legally represented party to pay pro bono costs to the Access to Justice Foundation, where the successful party has been represented pro bono. I will bring forward an appropriate amendment in Committee.

7.53 pm

Lord Moylan (Con): My Lords, being still relatively new in your Lordships' House, it seems impertinent of me to start by welcoming the noble Lord, Lord Hacking, to his place, but I do so heartily. I add only that, from the pictures hanging in the corridors, there are many precedents that men used to wear hats in the Chamber as well, so perhaps we should make it a universal ambition to restore that for everybody.

Obviously I am speaking in the company of many distinguished lawyers, and not being myself a lawyer, distinguished or otherwise, it is likely that I am going to go tramping off the narrow path that has been trodden so far. I intend to do that, because I propose to use my few minutes to talk about airports, about which I do know something. My complaint is, as noble Lords will hear, not that the Bill goes too far but that the Bill is far too narrow.

Let me start by reminding noble Lords that when the Roskill commission reported in 1971, recommending the siting of London's third airport at Cublington in Oxfordshire, it took the Government of the day 30 months in total to reject the recommendation, adopt another plan altogether and legislate for that other plan through the Maplin Development Act. By contrast, the Airports Commission chaired by Sir Howard Davies reported in June 2015, recommending a third runway at Heathrow, and it took the Government three years, until June 2018, to prepare and bring forward the national policy statement for designation by Parliament. Part of the reason for that delay is no doubt that the Government, or their civil servants, were paying close attention to the book mentioned by the noble Baroness, Lady Whitaker, called *The Judge Over Your Shoulder*, with the mistitled subtitle *A Guide to Good Decision Making*.

In June 2018, Parliament designated the national policy statement. That did not give it the force of statute, but it did give it a statutory force. None the less, campaign groups then got together and brought judicial review proceedings, which were rolled up and heard by the High Court. By my recollection, 17 points of objection were made to the process followed by the Government. All of them were dismissed by the High Court. Nothing daunted, the campaigners headed off to the Court of Appeal. All 17 points were considered again. Of course, the objectors had to win only one point to gain their objective, and they did. The Court of Appeal stubbed its toe on the question of what the definition of "policy" was in the phrase "government policy". The NPS was then suspended by the Court of Appeal until the Government redid their homework.

I will cut to the chase: that did not actually happen. Instead, the case proceeded to the Supreme Court, which, in December 2020, five and a half years after the Airports Commission had submitted its recommendation, reversed the Court of Appeal decision and effectively, as I understand it, rejected all the objections that had been made. That merely brought the Government and Heathrow Airport to the point where they could then start to submit a development consent order for consideration by inspectors to be appointed.

The third runway is now moot in any event because of the pandemic, just as Maplin fell before a change of government and the massive hike in oil prices that

occurred in the early 1970s. So neither of those is particularly a live case at the moment, and I am not here to argue Heathrow's case. Far from it: I have spent 20 years campaigning against the expansion of Heathrow. My concern is broader than that. It is that the third runway was to be—and if it goes ahead, is to be—financed by private capital. The delay and uncertainty added by this lengthy, constantly shifting response in judicial review, have a real cost on the cost of capital, which we all have to pay. It has a chilling effect on foreign investment in UK infrastructure. This is not the vindication of citizens' rights spoken of by certain noble Lords; this is the continuation of politics in the judicial forum. Different noble Lords will react differently to this. Some will see it as the law doing its job. I do not. I see it as a distortion of the balance of our constitution compared with 1971. I put this down as a challenge to those who have suggested so far in this debate that everything is more or less beyond improvement in the judicial review garden.

7.59 pm

Lord Hope of Craighead (CB): My Lords, it is a pleasure to follow the noble Lord, Lord Moylan. I will say a few words about the provisions in Part 1 of this Bill as I have had some experience of the issues raised by both clauses in it.

I refer first to Clause 1, on quashing orders. The Minister was kind enough to refer to the case of Ahmed v HM Treasury. In that case, the Supreme Court held that an Order in Council made under the general wording of the United Nations Act 1946 freezing the assets of people suspected of terrorism should be set aside because such an extreme step should be taken only with the express authority of Parliament.

I found myself in a minority of one against six in holding that our order should be suspended to give time for the matter to be corrected before the assets were dissipated. Those against me said that to suspend the order would undermine the credibility of the decision we had taken, but I found myself unpersuaded by that argument. In the event, Parliament was able to pass emergency legislation in time, but it was a close call. I think it would have been easier for me to carry the rest of the court with me if the power to hold that the quashing should not take place until a later date had been written in statute. There are, no doubt, other examples of situations where the power to do this would be desirable.

I am inclined to agree too with the proposal to enable the court to provide a prospective-only remedy where it holds that an order should be quashed. I gave a judgment some years ago in which I indicated, in agreement with Lord Nicholls of Birkenhead, that I was in favour of that remedy. We were dealing in that case with a common law rule, but the flexibility that this provision offers in the case of the quashing of orders made by the Executive, under which decisions of all kinds may already have been taken, is to be welcomed. But I share with others some concern about the wording of Clause 2(9), where the word "must" appears. Much will turn on the precise meaning of that word in the overall context, but one has to be careful. One should not deprive victims of the illegality of an effective remedy; there may be situations where that would be unjust. There is a question of balance here, which is best left to the judiciary, taking case by case.

Turning to Clause 2, I was a member of the panel of the Supreme Court in the Cart case, which it seeks to reverse, and I wrote the leading judgment in the Scottish case of Eba. In holding that decisions of the Upper Tribunal should be open to judicial review, we set the bar as high as we could when we were defining the test that should be applied. I appreciate that there may be a question as to whether the Government are right in saying that experience has shown that our choice of remedy has not worked, although the noble Lord, Lord Faulks, has given us much of what was in his report to indicate that that is the case. If that is so—and I am inclined to follow the noble Lord—it seems to be time to end this type of judicial review.

We would, in the result, be returning to the original recommendation by a committee chaired by Sir Andrew Leggatt, to which I referred in my judgment in Eba: that the appeals system should be used and that judicial review should be excluded. Some support from that recommendation can be found for making this change.

I add two other points. First, to describe the provision in Clause 2 as an ouster clause seems just a little bit too strong. It is reversing the decision in Cart and, taken in its context, the wording has to be as clear as it is to make it clear that there can be no return to the Cart decision. As the noble and learned Lord, Lord Brown of Eaton-under-Heywood, said, the Clause seems tailor-made to the context. It is certainly very far removed from the ouster clause in the Dissolution and Calling of Parliament Bill, in the context of the use of prerogative powers which causes some of your Lordships concern.

The second point relates to the extent provision in Clause 47(6). Coming from Scotland as I do, I tend to look at these clauses to see how much of the Bill I need read. If I am told that a part does not apply, then I need not trouble with it. The problem in this case is that one finds that Chapter 1 of Part 2 deals with criminal procedure, none of which applies in Scotland at all. I wonder why Clause 47(6) does not say so; it is saying, in effect, that it applies to Scotland. That really does seem to be a very strange way of legislating. There may be points to be made about Chapter 2 of Part 2 as well. I would be grateful if the Minister could assure me that the issue we have already discussed will be looked at again, in case some correction should be made.

8.05 pm

Lord Pannick (CB): My Lords, I declare my interest as a barrister who has practised in the field of judicial review for 40 years, representing clients as diverse as asylum seekers, the Reverend Moon and the noble Lord, Lord Howard. I fear I am at least partly responsible, wearing that hat, for what the noble Lord described in his most entertaining and provocative speech as the discordant note he expressed about judicial review. I had the pleasure, though rarely the success, of frequently acting on his behalf when he served as Home Secretary in the 1990s and was—how shall I put it—a regular customer in the judicial review courts.

[LORD PANNICK]

Your Lordships will recall that the Government announced in last year's Queen's Speech that they would be bringing forward legislation to

"restore the balance of power between the executive, legislature and the courts."—[*Official Report*, 11/5/21; col. 3.]

I am therefore surprised that Clause 1 seeks now to confer on the judiciary a very wide new power to absolve unlawful acts. This includes, as expressly stated in proposed new Section 29A(4) and (5), a power for the court to say that an act unlawful when it was carried out shall be treated as if it were lawful at that time. This is a remarkable power to confer on the judiciary.

I am not sure about the metaphysics of nullity to which the noble and learned Lord, Lord Brown of Eaton-under-Heywood, referred. I am more concerned about the nuts and bolts of this. If exercised, this power would mean that people who have suffered loss and damage by reason of unlawful government action would be denied compensation or damages for that wrong. It would mean, as the organisation Justice has pointed out in its very helpful briefing paper, that people who have had to pay tax under an unlawful regulation would be unable to require a refund. It would mean that people who had been prosecuted under an invalid statutory instrument, perhaps for a driving offence or a breach of the coronavirus regulations, would be unable to have their criminal record altered.

It cannot be right that a court should have a power to decide that something that is unlawful shall be treated as lawful despite such implications. That is why the Faulks committee, to which the Minister rightly paid tribute, recommended only what would be new Section 29A(1)(a)—that is, a power for the court to suspend a quashing order for the purpose of allowing time for Parliament to intervene if it thinks fit; no constitutional vandalism there.

By contrast, to give the judge a discretion to say that what was unlawful shall be treated as lawful is to encourage judges to enter into very treacherous waters. It requires the judge to assess the merits of competing policy factors that it is entirely inappropriate for the judiciary to assess. In his opening speech, the Minister rightly emphasised that judicial review is not concerned with judges deciding the merits of a decision or a policy. This new power will encourage and require judges to do precisely that. All of this is even more objectionable when one takes into account the fact that there is to be a presumption of "no retrospective effect" for the quashing, as some noble Lords have mentioned.

I say to my noble friend Lord Anderson of Ipswich that I am not minded to look more favourably at this "no retrospective effect" power, because, as he rightly points out, the Court of Justice of the European Union has claimed, and sometimes exercised, such a power. I have less experience of that court than my noble friend Lord Anderson, but I have enough experience to know that its practices are far from a model to be copied.

I look forward to debating the Bill, Clause 1 and other points that have been raised with the Minister and other noble Lords in Committee.

8.11 pm

Baroness Chakrabarti (Lab): My Lords, it is an absolute privilege to follow my learned friend, the noble Lord, Lord Pannick, with his unrivalled experience in this area. I have had the pleasure to work with him for not 40 but 25 years, including in defence of the noble Lord, Lord Howard, and against the interests and decisions of previous Labour Governments. I also declare my interest as a council member of Justice, and I join others in welcoming and congratulating my noble friend, who, like a maiden, is introduced for the very first time.

Each new week brings another briefed or otherwise-exposed attack upon the rule of law from a Government neither conservative nor liberal in their instincts towards a once-treasured value. This populist pattern is as wearing on the soul as it is corrosive to vital institutions of good governance, without which trust in democracy cannot be sustained. Yet however soul-destroying the exercise, we in your Lordships' House cannot afford to let up in our scrutiny, even of measures that appear—perhaps at first glance, to the lay or naked eye—to be slightly less offensive than entrenching discrimination against Travellers, putting down peaceful dissent, repelling refugees or engaging in voter suppression. Attacks upon judicial review, obtaining criminal convictions online with insufficient safeguards and having fewer jury trials and inquests need to be seen in that broader context, with an eye to millions of hidden victims of the arrogant, indolent and ignorant Government whom the noble Lord, Lord Agnew, has recently left.

Judicial review of administrative action is a vital protection in a system founded upon the rule of law. It cannot be conflated with civil disputes between individuals or commercial litigation between corporations. It exists to level the playing field between citizens and the state to prevent oppression of the former and corruption of the latter.

Individual cases must be seen not as nuisances to be swatted away by an omniscient Executive. The independent "judge over your shoulder" is as much a check and balance upon government as is your Lordships' unelected House. Indeed, legislature and judiciary work in tandem to ensure that Ministers and officials respect the letter and spirit of both the rules and the discretion accorded to government by a sovereign Parliament—not a sovereign Executive. A single successful judicial review finding of illegality against the Administration need not result in an avalanche of claims, as long as the Secretary of State or another public authority halts unlawful practice and the court possesses adequate discretionary remedies in relation to both the claimant and all others in the affected class.

Clauses 1 and 2 need to be seen in this light. Binding or attempting to bind the hands of courts with a presumption towards prospective-only quashing orders could have the following consequences, as we have heard. Criminal convictions under unlawful emergency regulations could go unquashed. Unlawful taxation or deprivation of benefits could go unrectified, to the detriment of hundreds of thousands of innocent citizens who might be driven into debt or destitution. Unlawful and even corrupt government grant schemes could be struck down by the courts but with millions or billions in unjust enrichment unrecoverable by the state.

People unlawfully removed from the country, including British nationals, would be dependent on the largesse of the Government who unlawfully removed them for a route home. Ousting or excluding the court's jurisdiction over Upper Tribunal permission decisions could deny review to those denied asylum on the basis of fundamental errors of law. It could deny scrutiny of flawed tax or benefit regimes or decisions affecting millions of pounds and people.

Perhaps the Minister will reassure us that such things just do not happen here or with the overarching protection of the Human Rights Act. After all, it is his name on the statement. Would he like to respond to rumours that the Government have already begun drafting a Bill to scrap the Human Rights Act?

The papers report that it will take a "Panzer division" to remove the Prime Minister from No. 10. That phrase is surely worthy of the Jimmy Carr joke book and the Donald Trump playbook combined. This Bill, however, is no joke, because no one is above the law.

8.17 pm

Baroness Jones of Moulsecoomb (GP): It is a pleasure to follow the noble Baroness, Lady Chakrabarti, and I agree with everything she said. I am the 17th speaker but only the third woman, which says a lot about our society's past but, I hope, absolutely nothing about its future. I have no legal training, so the Minister will have to hear me as a voice from the street; actually, that sounds a bit louche: the voice of common sense—of the common people.

A couple of months back, I said that every single Bill the Government brought to this House was worse than the last, but this is an exception. It is not as bad as I expected, so well done to the Government for bringing such a puny Bill that we can probably throw most of it out. The Bill continues the Government's piecemeal approach to constitutional change: a little bit is tweaked here and a little bit there, but no overview is taken and so nothing coherent comes out.

We need an opportunity to look at how government and power should operate in a modern democratic state—not that we have a modern democratic state, but we really should have one. The proper way forward is obvious: we need a constitutional convention made up of experts and members of the public to determine how and why government should work. Instead of that, we have these scrappy little bits of legislative change.

The Bill is pretty empty. After what the Government said about judicial review, I expected something quite hefty—a big attack on judicial review—but this is really not very serious at all. All we have in this Bill is a new remedy for the High Court to award a weakened form of quashing order, although it is difficult to envisage many circumstances in which a judge might find this to be relevant.

More concerning is the scrapping of the Cart judicial review, of which we have had some wonderful explanations. I have enjoyed it very much; I felt I should be taking notes at various times, but I can read *Hansard*. Scrapping the Cart judicial review would be a mistake. It is an important legal avenue for people going through the Asylum and Immigration Tribunal. I hope that the opposition can join together on Report to remove Clause 2.

That is it for judicial review; the rest of the Bill is about the courts. Surely this should have been the "courts and judicial review Bill", because there is so much more on the courts.

The procedural stuff in the Bill is an attempt by the Government to save money in the justice system and to unclog the backlog in the courts, which have been atrociously underfunded. Their budgets have been slashed by this Government, who are now trying to mop up a bad situation that they have caused themselves. It is a win for everybody who believes in the rule of law and checks and balances against executive power, but it is not enough. These procedural changes might help. For example, things such as the written indications of plea might seem to try to take lessons from other places but, quite honestly, if there is not proper investment in staffing all these things, it could easily fail and exclude a lot of people.

It was a pleasure to listen to the noble Lord, Lord Hacking. I assure him that, in spite of our tabling 700 amendments to the police Bill, as soon as it gets back to the Commons the Government will throw them all out. In fact, there are not really many extra laws at all, after all our work.

There are risks of injustice in the Bill. The Minister will not want that, so I am sure he will listen to this House when we point them out.

In summary, these measures might help but are no replacement for proper investment in the justice process. The most likely cost savings will be from people pleading guilty, as the noble Lord, Lord Ponsonby, pointed out, when they should have defended their case. That injustice will be inflicted by this Government.

Contrary to what some in government have made out, lawyers are officers of the court who play an essential role in making the justice system function effectively. Cutting them out with paper proceedings will be like taking a pair of scissors to the whole principle of justice. I have cut my speech massively to fit into five minutes—almost—but I will of course be back in Committee and on Report.

8.22 pm

Lord Sandhurst (Con): My Lords, it was a pleasure to hear the speech of the noble Lord, Lord Hacking, and his tour d'horizon of the giants and giantesses of old. I shall speak only in respect of the proposals relating to judicial review. My focus will be on the suspended quashing orders.

The elegant report from the independent review chaired by my noble friend Lord Faulks had these concluding observations. I point to two in particular. First, it said:

> "It is inevitable that the relationship between the judiciary, the executive and Parliament will from time to time give rise to tensions … On one view, a degree of conflict shows that the checks and balances in our constitution are working well."

Well, they are working well at the moment. Secondly, it said that

> "the government and Parliament can be confident that the courts will respect institutional boundaries in exercising their inherent powers to review the legality of government action. Politicians should, in turn, afford the judiciary the respect which it is undoubtedly due when it exercises these powers."

The Bill gives judges sensible new powers to address errors in legislation and administration.

[LORD SANDHURST]

The panel concluded that suspended quashing orders would bring benefits. It explained why. It identified concerns that, in certain cases, the courts have overstepped constitutional boundaries in ruling against legislation. The report said that such concerns

"would have been substantially allayed had the remedy in those cases consisted of a suspended quashing order."

That is because such an order could have indicated that the impugned exercise of public power would be automatically quashed at a fixed point in the near future unless Parliament legislated in the meantime to ratify the exercise of that power. It is giving Parliament a choice.

As the panel explained, such a suspended order would have made it clear that the court acknowledged the supremacy of Parliament in resolving conflicts between the Executive and the courts as to how public power should be employed. Such orders will go further than issuing a mere declaration that a Secretary of State has acted unlawfully. That approach has been used where to quash regulations would cause undue and unmerited disruption, but some people feel that it is a bit of cop-out. A suspended quashing order will have more teeth than a declaration. It could indicate that regulations will be quashed within a certain time from the date of the judgment unless the Secretary of State has in the meantime properly performed his or her statutory duties and considered, in the light of that exercise, whether the regulations need to be revised.

I suggest that the criteria under new Section 29A(8) give the court ample scope to avoid injustice. The courts will be free to decide whether or not to treat an unlawful exercise of public power as having been null and void from the outset. In reality, its discretion will not, I suggest, be unduly fettered. The ability to make such orders will be especially useful: first, in high-profile constitutional cases where it would be desirable for the courts explicitly to acknowledge the supremacy of Parliament; and, secondly, in cases where it is possible for a public body, given time, to cure a defect that has rendered its initial exercise of public power unlawful. Finally, I note with a little gratification that the Bar Council, which I once chaired, has said that it has no significant concerns about these provisions in the Bill as drafted.

I commend this provision. I also support the provision to overturn the decision in the case of Cart. As the panel—and other noble Lords—explained, the continued expenditure of judicial resources on considering applications for a Cart judicial review cannot be defended. The practice of making and considering such applications again and again must be discontinued. The ouster clause is carefully crafted and does not set a dangerous precedent for the future.

8.27 pm

Lord Judge (CB): My Lords, I welcome the noble Lord, Lord Hacking. He and I used to hack around the Bedford Quarter Sessions, appearing in front of that terrifying tribunal, the then Geoffrey Lane QC. We learned a good deal in that court. Judges were much tougher in those days than they are now.

I also draw the House's attention to the amazingly stalwart, stout-hearted support that the noble Lord, Lord Howard, gave to those of us who were attacking the legality of the internal market Bill. I was personally very grateful to him throughout that process, and the House should continue to be grateful to him for it. I was also interested to note his anxiety that the Bill does not go far enough, so let me take something completely different that nobody else has spoken about yet.

I ask your Lordships to consider Clauses 17 and 29, which give the Minister lovely Henry VIII powers, which will enable him, by regulation, to go back to the other place and offer the strengthening that the noble Lord, Lord Howard, would welcome, and to do so by way of subsidiary regulation. Please can we watch out for that? It is a double Henry VIII clause: one for Chapter 1 and one for Chapter 2.

Beyond that—and trying not to repeat what everybody has said—let us look at Clause 1(8), which reads:

"In deciding whether to exercise a power under subsection (1), the court must have regard to—".

There is one astonishing omission. What is wrong with the interests of justice? It is a simple concept; we all understand it. The words

"any other matter that appears to the court to be relevant"

do not do the trick. What about the interests of justice?

I hope that the Minister will kindly confirm that "good reason" in Clause 1(9) may be found if the order would not provide adequate redress. I think he said so. If that is the case, will he confirm it at the Dispatch Box? If that is the case, why purport to add a whole series of discretionary elements to what starts off as a discretionary remedy? We do not need it.

As to Clause 2, I support the view that Cart should be overruled, but I wonder whether we need the words

"and not liable to be questioned or set aside in any other court"

and then, "In particular" (a) and (b), because the whole of Cart is remedied by simply going from "the decision is final" to the "supervisory jurisdiction" text as set out in new subsection (3)(b). If that comes into force, the judicial review proceedings in Cart cannot be repeated. I think that I have spoken long enough.

8.30 pm

Lord Marks of Henley-on-Thames (LD): My Lords, it is always a great pleasure to follow the noble and learned Lord, Lord Judge. He told me yesterday that he would speak briefly, but he says in a brief moment what most of us would take a great deal longer to say. It has been a fascinating debate, enlivened by the returning maiden speech of the noble Lord, Lord Hacking —at once entertaining and instructive—as well as by the powerful speeches of the many noble Lords who have spoken. However, I believe that the significance of this important Bill has been underplayed by the Government. The Minister described the provisions in Part 1 as just sensible tidying-up measures; additions to the judicial toolbox, as he put it. It is on those that I will concentrate.

It is not always easy to express concerns that reflect not only what a Bill actually says but, just as much, what it might lead to—its direction of travel. However, we on these Benches have always been concerned that the Government do not like JR, that they see it as an unwarranted interference with the Government's right to govern, and that they resent the courts stepping in

to constrain government action on grounds of unlawfulness. We saw that in the two Miller cases, over triggering Article 50 without parliamentary authority and the unlawful prorogation—the latter mentioned by the noble and learned Lord, Lord Garnier, and both objected to in round terms by the noble Lord, Lord Howard.

For us, the rule of law is paramount and, in response to the noble Lord, Lord Howard, that generally means the law as passed by Parliament. When the Administration exceed their powers and get it wrong, the citizen is entitled to have the error put right, and, most importantly, so are others who have in the past been affected by the same error. We saw considerable risk in the Conservative manifesto commitment to ensure

"that judicial review is available to protect the rights of individuals against an overbearing state, while ensuring that it is not abused to conduct politics by another means or to create needless delays."

It was that commitment that led to the Faulks review, specifically tasked to consider what powers should or should not be justiciable. To the credit of the noble Lord, Lord Faulks, who has spoken eloquently today, he and his panel produced a careful and well-balanced report, which effectively gave judicial review a clean bill of health, but recommended that the court should have the power to suspend the operation of quashing orders and the ending of Cart JRs—hence Part 1 of this Bill.

The Clause 1 power should be limited to suspending the operation of quashing orders to enable the Government or other authority to put defective decisions right before a quashing order takes effect. The argument goes that it is unnecessary and sometimes unjust for the court to have to resort to the somewhat blunt instrument of a quashing order when the authority could, and should, instead be given the opportunity to put right its flawed decision first.

Along with the noble Lord, Lord Anderson of Ipswich, and the noble and learned Lord, Lord Hope of Craighead, we would not in principle oppose that possibility. There is nothing wrong in principle with the High Court, on judicial review and on finding that an authority has acted unlawfully, having the power to give that authority an opportunity to correct the unlawfulness rather than quashing the decision altogether. But the power of suspension in the Bill is more extensive than that, as the noble Lord, Lord Pannick, pointed out.

Clause 1 goes much further. It is entirely retrograde to propose that a quashing order may remove or limit the retrospective effect of a quashing, and it is not just an option, as my noble friend Lord Beith and others pointed out. New subsection (9) imposes an obligation on the court to suspend a quashing order and remove or limit its retrospective effect if the modified order offers what the Bill styles "adequate redress". The court must then exercise its powers to suspend and remove or limit retrospective effect. Yes, there is a qualifier, in the words,

"unless it sees good reason not to do so",

but that does not relieve the court of its proposed primary obligation—a point made by numbers of noble Lords. As the noble Baroness, Lady Whitaker, argued, the Bill fetters judicial discretion. I fear that the agnosticism of the noble and learned Lord, Lord Brown of Eaton-under-Heywood, on this wording is overoptimistic.

I see the danger that the effect of a JR may, in time, come to be limited to the immediate complainant, and that others affected by past unlawful action will not be able to bring cases arising out of their unlawful treatment. They will be too late to bring JR proceedings of their own, but it may become too easy for Governments to say: "It's too late to change it now. It's water under the bridge. There are too many people potentially affected. It would be too expensive to give them all relief". Let us consider a small unlawful charge levied by a department which may affect a wide class of people, most of whom will have no idea of the unlawfulness. How far would the court, now or in the future, decline to make a quashing order retrospective in those circumstances—a point persuasively made by my noble friend Lord Thomas of Gresford? The concern is that this legislation could be—or could become—a dangerous shield for unlawful action. The noble Baroness, Lady Chakrabarti, expressed similar concerns about the future.

Turning to Clause 2, the proposal to do away with Cart JRs, the Government's argument is that a JR by a divisional court of the High Court to set aside a decision of the Upper Tribunal, generally also presided over by a High Court judge, is irrational, unnecessary and also wasteful of resources, because it is, or should be, a last resort and rarely ever used successfully—a success rate of 0.22% was originally quoted, now revised to 3%-plus.

As against the Government's argument, the overwhelming majority of Cart JRs—some 92%—are immigration and asylum cases. The stakes are often very high: deportation is frequently involved, often to very hostile countries where there is a serious risk of torture or maltreatment, as mentioned by the noble Lord, Lord Hacking. There is no exception in the Bill for such cases, and the cases that give rise to Cart JRs are often paradigms of circumstances that affect hundreds of other cases, so a low number of successful JRs may have a disproportionately broad effect.

The low success rate of Cart JRs is unsurprising, but the overwhelming majority of cases are weeded out as hopeless at the permission stage on the papers. Large numbers of others are either settled by the Government or reheard by the Upper Tribunal by agreement. The proposal of the noble and learned Lord, Lord Etherton, to limit the process deserves serious consideration, but with this provision and its dangers, as so often, the sting is in the drafting. My noble friend Lord Thomas mentioned new subsection (2), which states:

"The decision is final, and not liable to be questioned or set aside in any other court."

New subsection (3) says:

"In particular … the Upper Tribunal is not to be regarded as having exceeded its powers by reason of any error made in reaching the decision"—

any error. The exceptions in new subsection (4) cover a tribunal acting "in bad faith" or

"in such a procedurally defective way as amounts to a fundamental breach of … natural justice."

[LORD MARKS OF HENLEY-ON-THAMES]
But what is fundamental in this context, and does the exception cover a tribunal acting in a way which is tainted by apparent bias—that is, where although not actually biased, a fair-minded and informed observer might well believe that the decision was influenced by bias?

I believe this is an ouster clause, pure and simple—the effect of which, bluntly, is to put government above the law. In that, I disagree with the noble Lord, Lord Sandhurst. I say that in particular because of the precedent it sets. I suggest to the noble Baroness, Lady Jones of Moulsecoomb, who made some very powerful points, that we should avoid complacency about the puniness of the Bill.

In a Cart JR, the impugned decision is that of an Upper Tribunal chairman, often a High Court judge, and the abolition of review of such a decision may be of restricted effect. But the danger is far wider. As my noble friend Lord Beith pointed out, the Government's press release stated, chillingly, that

"the legal text that removes the Cart judgment will serve as a framework that can be replicated in other legislation."

In other words, the Government intend to use the wording in subsections (2) and (3) as a template to outlaw judicial review in other legislation when they do not want the courts to interfere with their legislative purpose. That is a threat of a direct and permanent attack on the rule of law. It was not foreshadowed, still less sanctioned, by the report of the Faulks review. It should be a cause of grave concern to this House.

I have spent some time on JR, and I will not spend time considering the other parts of the Bill. We broadly support the modernisation proposals in it. We are determined to see that the move to greater use of online procedures maintains protection of those who are digitally excluded for whatever reason, be that lack of equipment, of broadband or of digital skills. We appreciate the Minister's assurances in that regard given today, and to me in a meeting the other day, for which I was grateful.

My noble friend Lord Beith has voiced concern about the proposals for coroners' proceedings. We have other concerns about a number of other details in the Bill, but I look forward to coming to those in Committee.

8.41 pm

Baroness Chapman of Darlington (Lab): My Lords, I apologise to noble Lords for not being here for the opening speeches of this debate. I informed the Minister earlier today, and he was generous enough to accept that.

I congratulate my noble friend Lord Hacking on his entertaining speech—I do not know whether we are calling it a maiden speech; I am new here, and it struck me that he made his maiden speech before I was born. I had not previously heard the term "Peeress", so that was a new one. I do not have a hat, although I am very happy to explore the option of wearing a hat in the Chamber. I look forward to seeing him in a hat of his own in the future.

Unfortunately, we on these Benches do not agree with the Government on the need for many of the sweeping changes that they are proposing in the Bill. Colleagues in the Commons tell me that the Ministers there worked collaboratively with us but, unfortunately, were unable, at those stages, to agree the changes that we had hoped to see and that, we maintain, would vastly improve the Bill.

I will be completely straightforward about it: we do not quite understand why changing the judicial review process is a government priority at this point. The Ministry of Justice is trying to fix something that is not broken, and, as my noble friend Lady Chakrabarti said, judicial review is a vital protection, founded on the rule of law. The Government are doing this while failing to deal with issues that are a problem, such as the horrendous backlog in access to justice. We are concerned that the Government's changes to judicial review could deter members of the public from bringing claims against public bodies, leaving many victims of unlawful actions without redress.

It is always interesting to think through how we get to places. An expert panel was set up to advise us, and we have heard from the leader of that process this evening. It seems to me that Ministers were not completely satisfied with the conclusions of that process. Many of us can detect that the reforms now proposed are not as far-reaching as initially heralded, and we wonder whether, in the near future, there is to be another Bill that the current Secretary of State will initiate. We sincerely hope that that will not be the case.

The proposals are based on figures that the Government have accepted are inaccurate in that they underestimate the number of successful cases. With the Government's review of the Human Rights Act on the horizon, as others have referred to, this is only the latest proposal to make it harder for ordinary members of the public to hold public institutions to account.

Where the Bill deals with coroners, we are optimistic that reforms will help, but the Government have missed the opportunity, as the noble Lord, Lord Beith, observed, to take sufficient advantage that this Bill allows. Particularly, we want to return to the issue of support for bereaved families at inquests where the state is represented. At the moment it is not justice: it is justice denied, and we will be returning to this.

As we have heard, there are reservations—if I can put it that way—about the Bill. If the noble and learned Lord, Lord Etherton, were to bring forward an amendment, as he outlined, we would be minded to support it.

The equalities statement that the Government very recently produced—it was only published after the conclusion of the Commons stages—states on page 5 that

"the removal of the Cart JR route is applied uniformly to any attempt to challenge a permission to appeal decisions of the tribunal, regardless of the subject matter at issue, the chamber of the First-tier Tribunal, from which the appeal originates or the protected characteristics of the claimant. We acknowledge, on the basis of the evidence and analysis, that there will potentially be a large number of claimants with certain protected characteristics of race and religion or belief in the affected group—i.e. those who are presently entitled to bring Cart JRs and would no longer be able to."

The Government said that these indirect impacts are likely to be very small, given the low number of cases in which the claimant achieves a successful outcome.

It may be true that the number of people affected is small, but if the consequence of the impact on that individual is as serious as imprisonment or worse, we would argue that it is right for the Government to consider this further.

The Law Society president has said that

"removing the option of recourse to judicial review in any area, let alone one as complex as immigration, risks injustice, not only for those people whom the court would have found in favour of, but also for the much larger number of cases where settlement is achieved only under the threat of judicial review."

These are not reflected in the figures to which the Government have been referring.

We are concerned about access to assistance with digital procedures for those who may struggle. We want to know how this will be done and what safeguards the MoJ intends to put in place to ensure that nobody is disadvantaged. The Government say they are aware that some users might not have the means or the skills to access digital services and that they are going to provide assisted digital support designed to prevent those who have difficulty engaging with digital service being excluded. This is welcome, but it is vital that this good intention is supported by well-planned and accessible support, available at the appropriate time and of sufficient quality. We are yet to be convinced that the Government have properly thought through, in sufficient detail, how this is going to happen.

We do not want to stand in the way of improving our courts. We know that there needs to be substantial improvement, but overall, we are not persuaded that the Bill addresses the right issues or delivers the right solutions. We will seek to remove Part 1 and improve Part 2. We look forward to working with noble Lords on all Benches and, I hope, with the Government as well in this endeavour.

8.49 pm

Lord Wolfson of Tredegar (Con): My Lords, I am very grateful to all Members of your Lordships' House who have contributed to a wide-ranging and, if I may say so, extremely good debate.

The noble Lord, Lord Ponsonby, referred to a number of pressure groups which had put out various press releases dealing with the judicial review measures. I have received those as well—I have even read them—and nothing in the Bill justifies the charge levelled against the Government of putting whole swathes of government policy or decision-making beyond the scope of review. The fact is that for some groups, any legislation in the field of judicial review is treated as necessarily improper and wrong in principle. Too many groups, I am afraid, wrote their press releases first and then read the Bill. That also goes, I have to say, for the Twitter feed of one Member of your Lordships' House, who unfortunately cannot be with us this evening. This is not, to use the words of the noble Lord, Lord Beith, a full-frontal attack on judicial review. It is not even guerrilla tactics. What it is is a proportionate and sensible response.

I agree with the noble Baroness, Lady Chapman, that if it ain't broke, don't fix it—that is good Conservative philosophy—but my noble friend Lord Moylan showed us that there are improvements we can make and it is quite right for this House to look at judicial review, and that is even before we get to the jurisprudential niceties of what a quashing order actually is, what the difference is between a quashing order and a declaration, and why if you can get a declaration you need a quashing order at all. All those joys await us in Committee, when we get to what the noble and learned Lord, Lord Brown, referred to as "troublesome doctrines". If it is troublesome for the noble and learned Lord, it is probably way beyond my—unpaid—pay grade.

Prospective-only quashing was raised by a number of noble Lords. The relevant point seems to be that there are plainly circumstances where a prospective-only quashing order is, and will be, in the best interests of justice and good administration. That is particularly relevant for individuals, businesses and families who may in good faith have taken actions based on regulations which are to be quashed. The noble Baroness, Lady Whitaker, referred to some very serious circumstances in some hypothetical examples. Those circumstances might well provide a good reason not to use a prospective quashing order, but the point is that the courts are not obligated to do so. What we want to do in the Bill is to provide the courts—I will use the metaphor again—with new tools in the toolbox but it is ultimately up to the judge to decide whether to take them out. To support this, Clause 1(8) lists factors which courts should consider when determining whether the new remedies are appropriate. The interests of justice is the overriding objective which governs everything the court does and that is, frankly, taken as read in anything the court does in any circumstances. But I say to the noble Lord, Lord Thomas of Gresford, that this does not limit the flexibility of the court. Clause 1(8) and (9) are there to ensure a consistent but rigorous approach to identify the appropriate remedy in each case.

I was grateful to the noble Lord, Lord Anderson of Ipswich, for his reference to other courts. It might perhaps be a first for a Conservative Minister to pray in aid the approach of the European Court of Justice. I am not going to fall into that particular elephant trap. But it is at least a response, and we will continue this in Committee, to the point made by the noble Lord, Lord Pannick, who seemed to say that the courts would end up in the position of having to deny compensation or damages, even in circumstances where it would be appropriate to do so. I respectfully say that that is not the case because ultimately the remedy is discretionary. However, I have to acknowledge the genius—if I may say—of the noble Lord in managing to get the names of the Reverend Moon and the noble Lord, Lord Howard, into the same sentence in *Hansard*. That must surely be a first.

The presumption in Clause 1 is properly circumscribed. The court is able to make a suitable order in each case. Therefore, I respectfully disagree with the approach of the noble Baroness, Lady Chakrabarti. New subsections (8) and (9) make that clear.

I am very happy to pick up the gauntlet that the noble Lord threw down about the Human Rights Act and to restate this Government's commitment to the European Convention on Human Rights, which is the foundational underpinning of the Human Rights Act. I therefore take the comments of the noble Baroness,

[Lord Wolfson of Tredegar]
Lady Jones of Moulsecoomb, to heart: "It is not as bad as it could have been"—words last seen on my school report.

We want the judiciary to consider in each case the benefits that these remedies can bring. There will be cases in which they are appropriate and cases in which they are not, but ultimately the judge will decide. I therefore gratefully adopt the point, made by my noble friend Lord Sandhurst, that this will enable courts better to fashion a suitable remedy in each case.

My main response to the noble Lord, Lord Marks—we will continue to discuss this—is that the courts will look at all relevant circumstances when considering what remedy to provide. I got the impression that the noble Lord was tilting not so much at what is in this Bill but at what he fears might be in some future Bill. I respectfully encourage both him and the House to consider the legislation before us; we can consider any other legislation at the appropriate time.

The noble Lord, Lord Anderson of Ipswich, asked me the difference between adequate redress and effective remedies. I am sure we will discuss that in Committee. I have a note here; I will not have time to read it all out, but I am alive to the point and we will continue to discuss it.

The noble and learned Lord, Lord Judge, raised the Henry VIII powers. The powers being given to the Online Procedure Rule Committee and the Lord Chancellor are consistent with those given to other rule-making committees. There are checks and balances built into the legislation: the concurrence requirement, the affirmative resolution procedure, and the requirement for a majority of the committee to agree on changes to the rules. We have provided an explanation for the delegated powers in the Bill, including the criminal measures. We have published that online and sent it to the Delegated Powers and Regulatory Reform Committee.

I now turn to the Cart judicial review and whether the ouster, if we are to call it that, is a template for other Bills. The noble Lord, Lord Beith, said the Ministry of Justice had given the game away. I thought we had given a clear and straightforward answer to a question. The Government have made it clear on a number of occasions that there is nothing wrong with an ouster clause in principle; Parliament is able to do it. The real questions are whether it is suitable for the particular case and, critically, whether Parliament has used sufficiently clear words.

The history of the case law in this area is that there has been something of a legal arms race between the courts and Parliament. Parliament says something. The court says, "Are you sure you meant that? Maybe you meant something slightly different." "Oh no", says Parliament in the next Act, "We actually did mean that." "Maybe it's something else", says the court. You have a judicial arms race ranging from Anisminic all the way up to Privacy International and culminating, as the noble Lord, Lord Howard, said, in a remarkable—I say with respect—obiter dictum, in the situation that there may be some clauses that the court simply will not enforce. This clause is in the form it is in because jurisprudential history has told us that if Parliament is to have an ouster clause, we need to be clear and precise.

So far as the figures are concerned—the success rate of Cart judicial reviews—the Government's methodology is clearly set out in Annexe E to the consultation response. We are confident that the 3.4% figure is correct but, frankly, whether it is 0.2%, 3.4% or 5%, the critical point is that this is all very low compared with the 30% to 50% success rate in other types of judicial review.

Far from the sky falling in—the classic phrase, "fiat justicia ruat caelum"—the sky is not falling in here. As the noble and learned Lord, Lord Hope of Craighead, reminded us, we are going back to the recommendation of the Leggatt committee—and for those who did not know the Leggatt in question, that is Leggatt father not Leggatt son—and the idea that Lord Justice Leggatt would have proposed anything that amounted to a denial of justice is frankly fanciful. Therefore, I suggest that the ouster clause is entirely appropriate. My noble friend Lord Trevethin and Oaksey mentioned some of the exceptions to the ouster clause, and I am sure we will come back to that in Committee. There is nothing wrong with an ouster clause in principle and an ouster clause does not involve the Government in an attack on the rule of law. The two things are really quite different.

Before I leave the topic of judicial review, I am caught somewhere between my noble and learned friend Lord Garnier, who praised me for a cool head and a steady hand, and the implication from my noble friend Lord Howard, who urged me to go much further and mount a greater attack on judicial review. The measures in this Bill are sensible and appropriate, but my noble friend cited my colleague Minister Cartlidge in the other place in saying that this Bill is not necessarily the last word on judicial review. No doubt this House and the other place will consider any other measures that the Government may bring forward in due course.

I say in particular, and underline the point, that there is nothing wrong with Parliament acting to reverse particular decisions of the courts. That happens at the moment but we do not really see it because it is contained in Clause 187(3) of the fisheries Bill. Parliament can do it much more expressly. There is nothing wrong in our constitutional system, as the noble Lord, Lord Faulks, said—with Parliament acting to reverse particular court decisions. I am well aware of the Adams decision in principle and the problems that it has caused in Whitehall.

So far as what I may respectfully call the halfway house approach of the noble and learned Lord, Lord Etherton, on Cart, I will reflect on what he said. However, our assessment is that we would save 180 days of judicial time in putting forward our proposals. That is based on the resource expended in the Administrative Court in considering the high volume of Cart judicial review permission applications.

I turn to the criminal court measures. The noble Baroness, Lady Whitaker, asked about defendants who have no access to digital communications. Defendants would need actively to opt into the new online procedures introduced under Clause 3. They could choose at any

point prior to accepting the conviction to have their case heard in court instead, including if they did not feel comfortable engaging online.

In response to the noble Lord, Lord Ponsonby of Shulbrede, who asked what happens if people accept a conviction under the automatic online procedure but do not know the consequences. The defendant is provided with all the information necessary to understand what is going on but, as I said in opening the debate, the Criminal Procedure Rules will provide a cooling-off period to allow defendants to change their minds and withdraw their plea on accepting a conviction under the new procedure, and the court will always have the power to set aside the conviction in the event that the defendant simply did not understand the procedure with which he was engaging.

Online justice is important. It does not amount to a denial of justice or justice being done in secret. Indeed, the days of local newspapers sending reporters to sit at the back of the magistrates' court are long gone. It is far more likely that local newspapers will be able to follow those proceedings if they are broadcast online. That is why last week I introduced a statutory instrument to broadcast the Competition Appeal Tribunal online. I do not necessarily recommend it to your Lordships' House, unless your Lordships are having trouble getting to sleep. It is a somewhat esoteric—with the greatest of respect to those who practise in it and administer justice. The underlying point is important: all our tribunals and courts should be available because we do justice in public. Online justice can also be public justice.

On the subject of tribunals, the noble and learned Lord, Lord Etherton, raised the proposal of legislating to allow pro bono cost orders to be made in tribunal proceedings. He was kind enough to share a draft of the proposed amendment with me. We support pro bono work as a means of enhancing access to justice for those who need it. We therefore support in principle measures which would allow cost orders to be made in tribunal cases where a party is represented pro bono. We have some concerns about the scope of the amendment because it is very wide—it applies to tribunals outside the unified tribunal structure. But we will certainly work with the Access to Justice Foundation and the noble and learned Lord on the proposed amendment.

Turning to the Online Procedure Rule Committee, I assure the noble and learned Lord, Lord Etherton, that it will work in co-ordination with other committees. Again, online justice can improve access to justice. Let us take a small trader who has a small debt to recover in the county court. Will they give up a day's work and sit there waiting for their case to be called on in a face-to-face hearing? Perhaps not. Will they tune in, so to speak, to an online hearing, where they can stop where they are working and go on their laptop or iPad for an online hearing for one hour, vindicate their legal rights and get a judgment? Online justice can improve access to justice for those for whom the current justice system provides obstacles.

I do not want to unduly delay the House, but there were a couple of questions on coroners' proceedings. I am sure we will debate those in Committee. The essential point when it comes to coroners is that we want to reduce unnecessary processes in the coroners' courts. We want to maintain the distinction between a coroner's court and other courts. A coroner's court is inquisitorial, fact-finding, and ought not to be adversarial. We have to bear in mind that what is good for courts normally may not be good for coroners' courts.

I am grateful to my noble and learned friend Lord Garnier, who welcomed the City of London courthouses. Whether that was a subtle request to be invited to the opening, I am not sure. But, in all seriousness, they will be a very valuable addition to the court estate. We are committed to maintaining London's position as the pre-eminent dispute resolution city in the world.

Finally, on the territorial extent of the Bill, the point made by the noble and learned Lord, Lord Hope of Craighead, I am grateful to him for engaging with me; we have had a few conversations about this already. At the moment we think that the extent clause of the Bill is correct, but we are in discussions and of course we need to get it right. I assure him that we will continue to discuss that further with him.

Before I sit down, I hope that I too can take a moment to say how wonderful it is to see and hear from the noble Lord, Lord Hacking. In my tradition we have something called a second bar-mitzvah, which happens when you are 83—70 years plus 13. It seems that this House has introduced a similar idea of a second maiden speech 50 years after your first. I am sorry that the hats have gone. I remember full-bottomed wigs in this House, which sometimes usefully doubled as ear muffs. I do not know whether they will come back but I will certainly resist any amendment to the Bill which would seek to introduce them.

I am sure we will have very interesting and important discussions in Committee. I am very grateful to everyone who has contributed this evening but, for the moment, I commend the Bill to your Lordships' House.

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

Judicial Review and Courts Bill

Order of Consideration Motion

9.10 pm

Moved by ***Lord Wolfson of Tredegar***

That it be an instruction to the Committee of the Whole House to which the Judicial Review and Courts Bill has been committed that they consider the bill in the following order:

Clauses 1 to 16, Schedule 1, Clauses 17 and 18, Schedule 2, Clause 19, Schedule 3, Clauses 20 to 30, Schedule 4, Clauses 31 to 33, Schedule 5, Clauses 34 to 49, Title.

Motion agreed.

House adjourned at 9.10 pm.

Grand Committee

Monday 7 February 2022

Subsidy Control Bill

Committee (3rd Day)

3.46 pm

Relevant document: 17th Report from the Delegated Powers Committee

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): My Lords, Members are encouraged to leave some distance between themselves and others and to wear a face covering when not speaking. If there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes. For the Committee's information, we have no Members taking part remotely today.

Clause 33: Duty to include information in the subsidy database

Amendment 38

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

38: Clause 33, page 17, line 19, leave out paragraphs (a) and (b)

Member's explanatory statement

This amendment removes the declaration exemption for individual subsidies given under a scheme, meaning those subsidies would have to be entered into the subsidy database.

Baroness Blake of Leeds (Lab): My Lords, Amendment 38 stands in the name of my noble friend Lord McNicol. I declare my interest as vice-president of the LGA.

Just to revisit the context of this, I believe, very important group of amendments, we are looking at the broader context of accountability, probity and transparency in all things to do with public money, making sure that we do not leave any room at all for corruption or cronyism as we take the Bill forward. We will be considering the whole issue of individual subsidies under £500,000 being excluded from the database. Huge concern was expressed in the other place, at Second Reading and in Committee last week—across all parties, to be fair—and representing a range of different interests which had their comments noted through the consultation exercise that has taken place. We are very concerned at the lack of scrutiny provision also, bearing in mind that we are talking about a system depending on challenge without all necessarily having all the information.

I am extremely grateful to the noble Baroness, Lady Humphreys, and the noble Lord, Lord Lamont, for supporting various amendments in this group. I am very glad to continue discussions on transparency, as I have said, reflecting, as I am sure we all have, on the very interesting exchanges on related subjects in the last meetings. Taken collectively, these amendments will allow us all to see whether BEIS and the Government have updated their thinking on the transparency thresholds and exemptions since the Bill went through the Commons. I think we are all approaching this in a spirit of hope that some serious reflection has taken place on these very important matters.

If we are to have confidence in this new regime and the public authorities that use it, transparency measures will be hugely important. We all have personal experience in this area; every one of us will be familiar by now with the need for regular reporting requirements around official meetings, travel and gifts. All this is done in the spirit of making sure that none of us is above the scrutiny of the public, particularly where public money is a point of consideration. This is not down to any particular group or party; it is simply a practical demonstration of the importance of knowing how public funds are being utilised.

Amendment 38 was tabled as a probing amendment but has taken on a new significance following last week's discussion where my noble friend Lord McNicol and the noble Baroness, Lady Bloomfield, were at odds on how an unpublished subsidy made under a scheme could be challenged by an interested party. The simple answer is that, if information is not published, then there is no right of recourse should one business or public authority feel undermined by a subsidy awarded to another business and/or by another authority. The Government insist that we do not need to worry since any subsidy over £500,000 will be published, but is it not the case that in many circumstances a subsidy one-tenth of that value can have significant differential impact on the fortunes of two businesses operating in the same field?

Amendments 39, 47 and 48 are to different provisions in the Bill and vary slightly in the burdens that would be placed on public authorities, but they are premised on the same basic point: a threshold of £500 is consistent with transparency rules already followed across much of the public sector. We are talking about consistency, clarity and transparency. If the Government are serious about having a transparent and evidence-based subsidy regime, should we not be able to see the detail of the subsidies being handed out? As with domestically sourced content, having extra data would allow more informed analysis of what schemes are effective and where future efforts should be focused.

We can of course pre-empt some of the Minister's arguments—for example, that this would place unfair burdens on smaller awarding bodies and that these subsidies have a less distortive effect—but on balance we do not find these compelling, and neither did a number of Members of Parliament or expert witnesses in the House of Commons. I would point out that cost is not an excessive burden; because of the systems that already exist, the burden is estimated to be relatively small, around £20,000 a year. Bodies such as Transparency International and the Centre for Policy Studies are equally putting their weight behind arguments to take this forward.

Amendment 49 is designed to probe why certain SPEI services are excluded from reporting requirements while others are not.

I suspect that we will end up seeing some movement on the matter of monetary thresholds, but I wish to sound a warning on this: we may not be able to settle on £500, but I ask that we do not choose too large a sum or the incentive for authorities just to knock off £1 to get below the threshold and thus sneak in under the regime will remain too tempting. I beg to move.

Baroness Humphreys (LD): My Lords, I wish to speak to Amendments 39, 47 and 48 in the name of the noble Lord, Lord McNicol of West Kilbride, to which I have added my name; I also support the other amendments in this group. Taken together, these amendments would improve transparency in the awarding of subsidies and help to spot harmful ones. They would show where the new subsidy spending is working and give businesses the information they need to challenge potentially unlawful subsidies.

As the Bill stands, individual subsidies of less than £500,000 will be excluded from transparency in the subsidy database. As I said at Second Reading, if these rules continue to exist, they will allow for the possibility of multiple subsidies of less than £500,000 to be received by an enterprise. None of that would be published and there would be little other scrutiny.

Amendment 39 would reduce the threshold for entering subsidies into the database to £500 and would bring the subsidy scheme into line with transparency thresholds elsewhere in the public sector. Local authorities, for example, must publish all expenditure over £500, and grants by all government departments and arm's-length bodies are now published annually by the Cabinet Office.

It has been argued that, in the case of these subsidies, a threshold of £500 is low—perhaps too low—but it is vital that the threshold is set at this level. According to the Centre for Public Data,

"a threshold of, for example, £100,000 would still create distortive incentives for authorities to cluster awards just below the threshold, still allow authorities to make unpublished multiple awards just below the threshold, and would exclude useful evidence for no reason."

Sometimes, it seems that Governments believe that they own the funds they spend but, in reality, it is the taxpayer who will fund these subsidies. Lowering the transparency threshold will demonstrate to the UK taxpayer that harmful and wasteful subsidies will be identified.

Crucially, it would allow public bodies to answer this important question: how many subsidies of less than £500,000 have they awarded? They could answer the question openly and honestly, with facts and figures. Under the Government's proposed system, the same question could be met with a vacant stare, as the figures will not be readily available or will not exist. The total of funds awarded would also be unclear.

As the noble Baroness, Lady Blake, said, the Government estimated in their impact assessment that operating the lower threshold would come with a cost of about £20,000—a small price to pay for transparency. However, savings would also be made in the reduction in the number of FoI requests, for example, and fraud risk and fraud recovery costs would be reduced as transparency enables public scrutiny. A transparency database already exists within BEIS for public authorities to report their subsidies, so merely uploading another few rows on to each spreadsheet could provide the transparency that this amendment seeks. All these reasons for this call for transparency also apply to Amendment 48.

I appreciate that Amendment 47 will probably be viewed as problematic by the Minister's department because, in seeking to introduce transparency into the SPEI financial assistance process, it could create new burdens on authorities. I have no wish to do that. I will listen with interest to the Minister's response, and reserve the right to bring back on Report an amendment that would deal with the transparency issue alone but would still deliver the flexibility that the Government wish to see.

The 2018 figures show that some £8 billion was allocated to government subsidies in the UK. With levelling up on the agenda along with net-zero targets and R&D, it is very likely that this figure will increase—substantially, we hope. Using the £8 billion as a basis, it is estimated that if the Government's proposals in this this Bill were enacted, about 50% of the subsidies would not be transparent, so how would the Government be able to account for at least £4 billion-worth of spending of public money?

With transparency comes accountability. In an era of accusations of cronyism and corruption, our ratepayers demand both. I hope that the Minister will understand their demands and be prepared to accept these amendments.

4 pm

Baroness Bennett of Manor Castle (GP): My Lords, I rise briefly to offer Green group support for all these amendments, to which we might well have attached our names were we not caught in this massive legislative pile-up. I should declare my interests as a vice-chair of the LGA and of the NALC. With the amendments having been so comprehensively and effectively introduced by the noble Baronesses, Lady Blake and Lady Humphreys, I shall make just a few additional points.

One of the most popular hashtags in my rather busy Twitter feed is #LandofCronies. There is grave public concern about corruption, cronyism and the nature of decision-making on government spending. Indeed, I put it to the Minister that these amendments collectively could be a great protection for Ministers in future, enabling them to say, "Here's the transparency. What we're doing is very clear and very obvious." I note that in the other place such diverse and broadly respected organisations as the Centre for Policy Studies, the Adam Smith Institute and Transparency International backed similar amendments and that the *Financial Times* has warned that the new planned flexible regime could pose a "significant risk" and

"On the altar of speed, it has sacrificed scrutiny"—

it being the Government.

We are in a very interesting situation whereby the subsidy regime, having been under the control of EU rules and the UK having traditionally provided much less public funding than most other countries—around £8 billion a year—is now about to increase dramatically just as the controls utterly fall away. This is about showing people what is done; it is democracy and transparency in action. There is broad support for these amendments, so I would be delighted to hear the Minister express that the Government are moving in this direction.

Baroness Altmann (Con): My Lords, I support these amendments. I support the aim of a more flexible scheme than the EU has, and I welcome the Government's

commitment to introduce transparency to their new subsidy scheme, but, as others have explained, this Bill potentially reduces transparency.

The amendments in this group had strong support in the other place, not least from our honourable friends John Penrose and Kevin Hollinrake. I also thank the Centre for Public Data, which has worked with them to provide information to help the Government achieve what they want to achieve perhaps in a better way, which is what these amendments may enable to be done.

I support the use of subsidies to achieve the levelling-up agenda and the net-zero agenda. I think that we all realise that regional growth and infrastructure need an extra boost now. However, can the aim of reducing central control of subsidies and relying on transparency, so that interested parties can challenge subsidies that they believe are unlawful, be achieved by a process whereby those interested parties will not know that there is a subsidy unless it is more than £0.5 million and there could be a series of subsidies just below that which could amount to quite substantial sums? It would help me understand how this aim could be realised if the transparency that I think we could rely on cannot be achieved because the database does not include a record of those very subsidies that are meant to be challenged. I suggest that this seems somewhat illogical, and I urge my noble friend either to bring back his own amendments on Report or to consider accepting these amendments.

Lord Thomas of Cwmgiedd (CB): I just want to add one very brief word. In a number of the amendments today and on Wednesday, we are really concerned with the movement from the regime that has existed in the EU to a regime more of self-policing. All these amendments interlock, and at the end of the day we will need to pull them together and see how we effect for this country a proper and workable regime.

This amendment deals with one court—the court of public opinion—and we shall turn to the CAT and the Competition and Markets Authority in due course, but it seems to me that, on each of these, the Government have an option. They have to do something to make the move away from the control of state subsidies in the way that the EU did to a more liberal and generous regime. But experience ought by now to have told this Government that, unless there are clear transparency and other mechanisms in place, we will end up with something that will cause more of a problem than we had under the old system. I warmly support these amendments.

Lord Wigley (PC): My Lords, I shall speak to these amendments very briefly. This has been a bipartisan debate, and there is a consensus across the Committee that amendments along these lines can improve the working of the Bill and make it more acceptable in the court of public opinion. I urge the Minister, if he cannot accept the amendments as they stand today, to consider at least bringing forward his own amendments at the appropriate time.

Lord Fox (LD): My Lords, I was not intending to speak to this set of amendments until I received the Minister's letter—this time before the Committee started rather than during it, which is a great step forward. Unfortunately, the letter creates a problem for me because what I understand from the debate seems not to be represented in this letter, so perhaps the Minister can explain.

On the issue of subsidy schemes, the letter states:

"As my noble friend Baroness Bloomfield stated during the Committee session, all schemes must be uploaded to the transparency database"—

and I understand that to be true, so the scheme will go up on the database. The letter continues:

"This database will be freely accessible and is a key part of the new subsidy control regime, enabling the public and any interested parties to see which subsidies have been awarded, and to whom."

But my understanding is that people will be able to see only those subsidies that exceed the limit, whereas the implication of the letter is that all subsidies will be accessible to everyone freely via the database. I would like the Minister to acknowledge that that is not the case, whether they are within a scheme or stand-alone, and this letter is therefore incorrect.

Lord Purvis of Tweed (LD): My Lords, further to that point, I wish to ask a couple of questions. First, on a factual issue—I have been struggling to find this—what has the typical award been for relatively small schemes that will operate under the Bill? I am familiar with schemes in my former constituency, either under LEADER+ or a number of other schemes, where there was not a single award over £500,000 but there was transparency as to who received it, because that is basically along the principles on which local authorities operate. So my question, really, is: what piece of legislation will trump the duty that the noble Baroness, Lady Blake, referred to? If a local authority has a duty to publish, then ordinarily if it receives a grant through, for example, the levelling-up fund—on which the Minister wrote to me; I thank him for his letter and look forward to the answer to the question on a separate occasion, as I have replied to his office to highlight an omission from it—what will be the primary duty on the local authority as far as making that information public is concerned? Will it be under the duty on the local authority to publish subsidies greater than £500,000, or, if it is defined as a subsidy scheme, will it not be under such a duty?

However, my specific question is: how will this Bill interact with the Freedom of Information Act? The only way that any enterprise or anybody would be able to find out what the award is if it is under £500,000 would be to submit a freedom of information request. I have not seen anything in this legislation which excludes elements of the Freedom of Information Act, and I therefore assume that all elements of the Freedom of Information Act will apply. If that is the case, it is rather pointless having a £500,000 limit for publication if you can get all this information by issuing an FoI request. If the Minister's response is, as I expect, that the whole thrust is to have less burden on our public bodies for the administration of this scheme, I wonder which is less burdensome: simply publishing what is already used under the e-claims scheme—I understand that most applicants under these schemes will be through the e-claims schemes, and therefore it is a press of a button to publish the information for an award—or

[Lord Purvis of Tweed]
responding to an FoI request. If I were a member of a public body, I know which one would be far less burdensome for me. I wonder whether the Minister agrees.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): I am grateful to the noble Lord, Lord McNicol, for his amendment, which was moved so ably by the noble Baroness, Lady Blake. I am delighted that the noble Lord, Lord Fox, received my letter before the Committee this time. I will have to learn the lesson that it prompts more questions from him during the debate. It is obviously better if the noble Lord receives the letter after the debate has taken place—I am joking, of course. We always endeavour to get him the information he has looked for as early as possible.

The amendments, taken together, seek to introduce a common threshold for transparency for subsides that are not challengeable on subsidy control grounds because they are not subject to the main requirements in the Bill. They include subsidies given under schemes, minimal financial assistance and subsidies for services of public economic interest.

I say at the start that I am well aware of the debates that occurred in the other place on this important issue, which were alluded to by a number of speakers, and I recognise the strength of feeling behind the calls for greater transparency. I am sure noble Lords are aware that my colleague Minister Paul Scully committed the Government to review the evidence collected as part of the consultation alongside that provided by witnesses to the Committee about the transparency provisions. Officials continue to review the available evidence base and I commit to updating the noble Lord, Lord Fox, and all other Members of the Committee before Report about where we have got to in that review, and I will update Members on the cost impact of the different options as soon as possible.

Transparency of subsidy awards is an important part of this control regime and is a key tool to support the enforcement provisions. It is essential that interested parties are able to see subsidies to determine whether they may be affected and whether they wish to challenge the subsidy award or subsidy scheme to which the noble Lord, Lord Purvis, referred. Of course, the database is a vital tool in providing this transparency. The aim of the database should always be to enable interested parties to see those subsidies that they may wish to challenge. However, it has not been, and should not be, designed to be a general database of public authority spending. Other tools for general public authority financial transparency exist elsewhere, and I think the noble Lord, Lord Purvis, would accept that uploading additional data represents a cost to public authorities, and of course that is ultimately borne by taxpayers.

It is important that the database requirements find the right balance to ensure that appropriate, accurate and timely information is available to the public on the database about subsidies that they may wish to challenge. To respond directly to the concerns of the noble Lord, Lord Fox, I am happy to clarify and confirm that the subsidies on the database are primarily those that are subject to challenge under this regime. I apologise if there was any ambiguity in my letter.

I turn to the amendments put forward by the noble Lord, Lord McNicol—

4.15 pm

Lord McNicol of West Kilbride (Lab): I thank the Minister for giving way. Just on the point about challenge and that if a subsidy is below the £500,000 it will be part of a scheme, I think he said before that if it was given as part of the subsidy scheme, it would have to meet the seven principles; it would be good if that could be clarified. Probably more importantly, however, is whether a one-off subsidy that is less than the individual subsidy limit—the £315,000—has to meet the principles. My understanding from some of the earlier discussions in the other place is that that was not confirmed or clarified. Can the Minister clarify whether a subsidy that is less than £315,000 has to meet the seven principles or the other energy principles?

Lord Callanan (Con): Yes, of course. All subsidies need to meet the principles—this discussion is about what parts of those are published. If a subsidy is awarded under the scheme, then the scheme principles would also need to comply with the subsidy control principles.

Lord McNicol of West Kilbride (Lab): So, just to be absolutely clear, if a subsidy is awarded that is less than £315,000 as an individual subsidy, it says in the Bill that it needs to meet the seven principles and possibly the energy principles.

Lord Callanan (Con): My understanding is that, yes, that is the case. If that is not correct I will certainly clarify that to the noble Lord, but my understanding is that that would be the case.

Baroness Altmann (Con): I apologise to my noble friend, but may I ask for clarification from him as well? He mentioned a cost to implementing this; can he confirm that the Government's estimate of the cost is £20,000 and that local authorities already have such databases right now?

Lord Callanan (Con): Just to clarify the points from the noble Lord, Lord McNicol, yes, it would need to meet the scheme requirements if it was given under a scheme. If the subsidy is not minimal financial assistance —so it exceeds £315,000 accumulated over three years—it does have to meet the principles; if it is MFA, it does not need to meet the principles. Reviewing the cost as an impact assessment does not necessarily cover all those options.

Lord McNicol of West Kilbride (Lab): So, if it is under the £315,000—sorry, forget the scheme, I confused things by talking about the £500,000 for the scheme. If an individual subsidy is less than £315,000—this is quite important for transparency—it does not have to meet the principles that are laid out in the Bill?

Lord Callanan (Con): I will come back to the noble Lord in writing. It is a complicated area to clarify the exact legal position on that. Sorry, can my noble friend Lady Altmann remind me of her question?

Baroness Altmann (Con): Can my noble friend confirm that the Government's estimate of the cost in relation to the subsidy scheme—which he referred to as a potential reason why the Government might not accept these amendments—is £20,000 and that local authorities do already have databases that could be used?

Lord Callanan (Con): That returns to the point that I made earlier. The commitment given by Minister Scully in the other place is that we will review the costs; I committed to return to the Committee with the relevant cost provisions, which I will do before Report.

Amendment 38 would remove, for the purposes of transparency, the distinction between a subsidy awarded under a scheme and a stand-alone subsidy. The amendment seeks to have one, uniform threshold for all subsidies. Taken together with Amendment 39, this new uniform threshold would be just £500.

Subsidies given under a published scheme are currently required to be uploaded to the database if they are more than £500,000. This threshold is set at that level because the database will already include information about the scheme under which these subsidies are given. In our view, this information will be sufficient for others to understand whether their interests will be affected by any subsidy given under that scheme and whether they should therefore seek to challenge the scheme.

The Bill provides for various reasons why a subsidy or scheme cannot be challenged on subsidy control grounds. For example, a subsidy award given under a published scheme cannot be judicially reviewed in the Competition Appeal Tribunal on subsidy control grounds. This is because it is the scheme that is assessed against the principles and is challengeable, rather than the individual award made under that scheme. As such, this Bill does not provide for the possibility to challenge subsidies given under schemes in the Competition Appeal Tribunal. The scheme itself should be challenged, not the individual awards.

Additional information about small subsidies would therefore have very limited value for those concerned about potentially distortive subsidies and would detract from the core purposes of the database. These requirements would lead to additional red tape for public authorities—well beyond the requirements they had to fulfil under the EU state aid regime—and in a great many cases, as I said earlier, the information would simply duplicate what those authorities already publish in appropriate formats elsewhere.

Lord Purvis of Tweed (LD): I have been reviewing the code on the publications from local government; local authorities must publish on a quarterly basis any expenditure that exceeds £500, including grant payments, grants, grant-in-aid and credit notes over £500. Public bodies will publish this quarterly already, unless this Bill means they are excluded from doing so if the payment is through a subsidy scheme. If this completely takes away the duty to publish that the public body already has, it makes no sense whatever. I do not understand where the additional burden comes in, given that the local authority publication code is already there for quarterly publication.

Lord Callanan (Con): Nothing in this Bill affects the existing duties of local authorities and others to publish any financial information that they already do. This Bill concerns the information that needs to be published on the subsidy database. The same point applies to the earlier question from the noble Lord, Lord Purvis, about freedom of information. I hesitate, given the trouble I got into last time, to return to the FoI principles, but nothing in this Bill affects the original FoI legislation or the principles contained in it.

I turn to Amendment 47, which seeks to introduce a transparency threshold of £500, above which subsidies granted as minimal financial assistance would need to be uploaded to the database. As noble Lords will be aware, the MFA exemption allows public authorities to award low-value subsidies of up to £315,000 per recipient over three years, with no requirement to consider the subsidy control principles or other requirements, and no need to upload on to the subsidy control database. I think that clarifies what the noble Lord, Lord McNicol, asked about—what I said earlier on this was probably incorrect, so my apologies for that. The Government have taken this approach to ensure that public authorities can deliver smaller subsidies quickly and easily without undue administrative burden, since they are very unlikely to have any appreciable distortive effects.

This amendment, by seeking to require the addition of low-cost subsidies to the subsidy control database, would certainly introduce an additional burden for public authorities. Introducing a low-value transparency threshold for such low-value subsidies would require additional staff time and costs as the volume of entries would be expected to increase significantly—for what gain, bearing in mind that these subsidies are those that, by their very nature, are unlikely to have any appreciable distortive effects?

On this basis, I do not believe that the amendment would introduce the appropriate balance between sufficient transparency to allow for meaningful scrutiny and an efficient allocation of resource to identify those subsidies that are most likely to harm our economy, either locally or nationally.

Turning to Amendments 48 and 49, as we have discussed before, the Committee will be aware that services of public economic interest—SPEI—are vital services that, without public subsidy, would not be supplied in the appropriate way by the market or, in some cases, would not be supplied at all. This clause exempts certain SPEI subsidies from the transparency requirement in Clause 33 to upload the subsidy on to the database. There are two categories of exemption: first, for subsidies of less than £14.5 million; and, secondly, subsidies for one of the activities listed in subsection (1)(b). In response to the question posed by the noble Baroness, Lady Blake, the reason for the difference is that, in our view, subsidies in the second group are even less likely to distort competition.

These amendments would mean that all SPEI subsidies of £500 or more would need to be uploaded on to the database. I submit that this would represent a significant

[Lord Callanan]
burden on public authorities, yet it is generally agreed in the Committee, I think, that these subsidies, granted for public services, are unlikely to be unduly distortive.

The same arguments put forward for not setting a transparency threshold of £500 for MFA apply equally here, in that doing so would not represent a balanced or proportionate outcome for our domestic regime. Although noble Lords are right to challenge the Government on the issue of transparency, I would like to set out why reducing the exemption from transparency requirements for SPEI subsidies to £500 would not result in a stronger regime.

First, by its nature, granting subsidies for public services is unlikely to be unduly distortive. This is because the very reason they are needed is that other providers are unable or unwilling to provide the necessary service at a reasonable cost. This goes back to the example we discussed last time, when the noble Baroness, Lady Blake, referred to bus services in rural areas: granting a public subsidy there is unlikely to be distortive because the reason why the public authorities have to provide that service is because nobody else in the market does so. The lower risk of distortion therefore justifies a higher transparency threshold.

Secondly, Clause 29 sets out that the award of a SPEI subsidy must be given in a transparent manner, which means that the subsidy must be being given through a written contract or other written legally enforceable arrangement. As the noble Lord, Lord Purvis, noted, public authorities normally publish these contracts, and it is good practice to do so.

Thirdly, a public authority providing SPEI subsidies must be satisfied that the subsidies are limited to what is strictly necessary in providing that service, with regard to costs and reasonable profit, and must keep that under review. This means that the SPEI enterprise should not gain an unfair advantage over other enterprises; consequently, again, there is unlikely to be undue distortion to competition.

The Government do not share the view that requiring public authorities to upload SPEI subsidies with a value as low as £500 would contribute to a more robust regime. SPEI subsidies are, and will continue to be, subject to appropriate safeguards where public authorities actively ensure that this is the case so that contracts deliver value for money for the citizens in that particular area.

Although I understand the objectives of the noble Lord, for the reasons I have set out, I cannot accept this amendment. I hope, therefore, that he will feel able to withdraw it.

Lord Fox (LD): I have a brief question because £14.5 million is a curious number. There is no reason why it should be a round number in millions, but it is strange. Can the Minister explain the genesis of that particular number? Also, could I be cc'd into the Minister's reply to the important question asked by the noble Lord, Lord McNicol, on the subject of what is in and what is out?

Lord Callanan (Con): Indeed. The noble Lord, Lord Fox is clearly not tired of receiving letters from me, so I will happily copy him into the letter that I send to the noble Lord, Lord McNicol. I will have to come back to him on his question about the £14.5 million. I will include that in yet another letter—or maybe even the same one.

4.30 pm

Baroness Blake of Leeds (Lab): I thank the Minister for his very full response, as always. The level of detail means that we will indeed require letters. Maybe the simplest way forward is for us all to receive the same response on the issues that we have all raised in Committee, so we are all on the same page.

I do not want to prolong this debate too much. I note that the Minister in the other place, Mr Scully, undertook to review the consultation, including the debates that we have had in this House. I go back to the spirit of hopefulness that I mentioned earlier—or maybe naivety perhaps, but we are all allowed to be naive for a little while, I hope—because this is a serious issue, and it is fairly unusual for such issues to get such cross-party and cross-sector support.

I have a question. When we talk about burdens and costs, I am always intrigued. Could the Minister perhaps write to us with an estimate of the costs if things go wrong—that is, when there is a challenge and it ends up in court in arbitration? That sort of thing happens regularly if you do not have a robust system that is clear and transparent. Burdens work both ways.

There is already a system in place that is tried and tested. Public authorities, whether local authorities, combined authorities, LEPs or devolved Governments, have been working on these matters for a long time, and there is established good practice out there. It troubles me that some of the provisions in the Bill could undermine an enormous amount of work.

Going back to the principles, we are talking about the need for consistency and clarity and, most of all, the fact that we should do everything we can to ensure that every pound of public money is accounted for and accountable and can be followed as it goes through.

Lord Callanan (Con): If I may interrupt the noble Baroness, I am trying to save my letter writing to the noble Lord, Lord Fox, who was concerned that my workload would be unduly increased: for his information, apparently the £14.5 million figure comes from the TCA.

Baroness Blake of Leeds (Lab): It only remains for me to beg leave to withdraw the amendment.

Amendment 38 withdrawn.

Amendment 39 not moved.

Amendment 40

Moved by ***Lord McNicol of West Kilbride***

40: Clause 33, page 17, line 24, leave out "one year" and insert "three months"

Member's explanatory statement

This amendment would require subsidies or schemes to be entered in the database within three months of being made, rather than one year, if given in the form of a tax measure.

Lord McNicol of West Kilbride (Lab): My Lords, I am just waiting for the noble Lord, Lord Lamont, to rejoin us as he has helpfully signed these amendments with me. I shall also speak to Amendments 41, 42 and 43. This is a straightforward group of amendments that, along with the next two sets, deal with the whole issue of transparency. I am grateful to the noble Lord, Lord Lamont, for signing these four amendments. The Bill is interesting in that it throws up some unusual alliances, but that should make for an infinitely better piece of legislation by the end of this process. As we heard in the last group, these are not party-political issues; they are issues aimed at improving the legislation.

4.35 pm

Sitting suspended for a Division in the House.

4.45 pm

Lord McNicol of West Kilbride (Lab): My Lords, this is a straightforward group of amendments and I thank the noble Lord, Lord Lamont, for signing them. My very first reading of these clauses left me with a real sense of confusion and, while I have tried my very best to get into the head of the Minister, or at least those drafting the Bill, I am not sure I have achieved that.

Amendment 40 would require subsidies or schemes to be entered in the database within three months of being made, rather than one year, if given in the form of a tax measure. Amendment 41 would require subsidies or schemes to be entered in the database within one month of being made, rather than six months, if given in any form other than a tax measure. Amendment 42 would require that modifications to subsidies or schemes entered into the database are made within three months of that modification, if given in the form of a tax measure. The final one, Amendment 43, would require that modifications to subsidies or schemes entered into the database are made within one month of that modification, if given in any form other than a tax measure.

This proposed new system is fundamentally different from the previous EU system of state aid and, more importantly, different from pre-authorisation of the subsidies. All parties have welcomed that change, and we do on these Benches; however, the proposed new system of post-award disclosures, monitoring and/or possible challenges will work only if there is complete transparency, or at least a nod towards transparency, be that, as we heard on the previous group, on the amount or, on this group, on timing, or, in future groups, under systems that are put in place to allow those challenges. These amendments are important as the balance in the Bill as it is written does not feel right—the balance between those being able to challenge or look at our businesses or organisations and see what is out there and those who will have already received those subsidies.

As it stands, authorities are being afforded between six months and a year to make their entries to the subsidies database, depending on the form of relief they are offering. Much of the public sector, as we heard in the previous debate, is accustomed to fulfilling transparency requirements within a month of the end of a quarter, so these amendments, similar to the financial ones, are already being adhered to. The financial management through local authorities already adheres to very similar systems to what we are looking to amend here. One might have some sympathy for the Government's approach if they were equally as generous in the time given to refer matters to the Competition Appeal Tribunal, the CAT, but as we will discuss later, this is not the case. The time limits on appealing are tighter.

Last Wednesday, the Minister rightly took pride in the number of changes being made to the subsidies database, arguing it was now simpler than ever for public authorities to meet their reporting requirements. If that is the case, why would somebody be given a full calendar year to upload their reporting of subsidies? We do not accept that reducing the time limit would place an unacceptable burden on authorities; we believe it would greatly assist efforts to improve transparency and ensure proper accountability for decision-making.

On 26 October, at the first witness session in Committee in the other place, Professor Rickard said on this issue:

> "I think six months is too long. If it is a tax break for 12 months, after 12 months a competitor might be out of business".—[*Official Report*, Commons, Subsidy Control Bill Committee, 26/10/21; col. 21.]

This group of amendments would rebalance a perceived or real inequality between those receiving the subsidy and those who may be affected by it, and their ability to challenge that subsidy. I beg to move.

Lord Lamont of Lerwick (Con): My Lords, I added my name to these amendments in the name of the noble Lord, Lord McNicol. I shall not weary the Committee by repeating the points that he made, but I strongly agree with him. I added my name just because I was puzzled and regard as unfair the imbalance between the time given to public authorities to list subsidies and the very short timetable for people to object to them. I do not see why it should take six months to make public what has been done, while one month seems an extraordinarily short time for somebody to challenge it. As may have been said when I was unfortunately out of the room trying to get on PeerHub, one could easily imagine circumstances where perhaps the website was not working very well, and a few days were missed. "It never happens," the Minister says. Well, we shall see. That would be a first in public sector computers.

There seems to be an imbalance here. What is sauce for the goose ought to be sauce for the gander—or is it the other way round? Six months is certainly far too long and one month is far too short. I agree with everything that the noble Lord, Lord McNicol, said.

Lord Fox (LD): My Lords, during the debate on the previous group, the noble Baroness, Lady Altmann, asked, "How will they know?" This amendment seeks the answer to the question: how will they know in time? As the noble Lord, Lord McNicol, said, because of the limits of reporting, we are talking about very sizeable subsidies that could exist with a competitor company for up to a year before a person is able to find out what their company is competing against.

[Lord Fox]
I am sure that the Minister would understand that that is not a fair situation, and it is within the gift of the Government to make it fairer.

Both noble Lords spoke about the imbalance; that is, a long time to report it and a short time to appeal it. One would almost think that the Government were seeking to discourage the process of challenging subsidies. I am sure that that is not the Minister's aim and therefore the best way of expressing that aim is to redress that balance.

Reflecting on the last debate and this one, I think that we are in a bit of a mess around reporting—or, indeed, we are not but the Government are. On the one hand, we have the database with the six-month time limit and a very high ceiling; on the other hand, we have local authority websites with a three-month time statute and a much lower ceiling, and potentially we have FoIs—although the problem is that you need to know something exists before you can FoI it. The Government have therefore knowingly or unknowingly set up a multiple market for information.

If I am a business and I need to know what is happening in my sector, the Minister will say that this information is freely available. It is freely available on a pull basis. I shall have to employ someone to go out there regularly to check whether the information exists, where it is and what is happening in my sector. If I am a small business in a market where the receipt of subsidy could affect my business, I shall have to employ an extra person or part of an extra person to do that. This does not seem a sensible way of dealing with the issue. A central database with a shorter time span and a lower value ceiling would be the best way to help businesses thrive.

Lord Callanan (Con): I thank the noble Lord, Lord McNicol, and my noble friend Lord Lamont for these amendments, which seek to reduce the time available to public authorities to upload their subsidies to the database. I note the comments made by the noble Lord, Lord McNicol, on the limitation period, which I look forward to discussing in our next Committee session.

As is the case with the thresholds on transparency, our objective here in setting the upload deadlines has been guided by the fine balance between minimising bureaucratic burdens while ensuring that accurate information is available promptly for interested parties to enable them to consider whether to launch a challenge. We agree that subsidies should be available to be seen on the database as soon as is practical. However, there are good reasons why public authorities require longer than the one and three months put forward in these amendments.

First, let me note that public authorities have an incentive to upload subsidies as quickly as possible. The sooner a subsidy is uploaded to the database, the sooner the clock for the limitation period starts to run, and therefore the sooner the public authority and the beneficiary will gain certainty that the subsidy will not be challenged. Public authorities also have a strong incentive to upload subsidies accurately first time round to avoid the possibility of having to amend entries later on.

Upload deadlines as short as one and three months may result in more public authorities needing to amend their entries at a later date. Although this is of course possible on the database, it creates an unnecessary burden for those authorities. This means that the initial period where the subsidy has been uploaded is more likely to contain inaccuracies, which will not help an interested party to know whether they wish to challenge. Surely we agree that, although we all want prompt uploads to the database, upload speed should not come at the expense of accuracy.

Lord Purvis of Tweed (LD): Can the Minister confirm that, as we discussed in the debate on the previous group, if this scheme is run by a local authority in England, its duty to publish in three months still stands under the code? If so, this will have to be published within three months anyway, but that is just in a local authority area, not on the national database. So there is this rather ridiculous period of between three months and six months in which it would be uploaded on to the subsidy database. If the Minister's argument is that doing this in three months will mean having a lot of mistakes in it, he needs to go back to the local authority code, not make assertions here in Committee.

Lord Callanan (Con): As I said, none of the provisions in this Bill change any of the requirements on local authorities, but the transparency requirements are different in each case depending on what the award is and whether it is under a scheme. Sometimes, if it is a generally approved scheme, there are literally thousands of small grants, for instance. Sometimes the recipients are not identified under local authority transparency but may need to be identified under a particular scheme, depending on the size of the award. The noble Lord is correct that none of the requirements in the Bill change the requirements on local authorities; we are talking about different information for different purposes.

I understand the point made by noble Lords that, in most cases, one month should be sufficient to avoid excessive mistakes that could cause confusion for interested parties. None the less, I note that public authorities face a great many administrative obligations. Therefore, there would be an increased risk of error, or an increased cost in avoiding error, resulting from a deadline of one month—particularly for authorities that give a large number of subsidies in possibly quite complex formats.

Furthermore, the inaccuracies may not result from avoidable human error. To take another example, many subsidy schemes, particularly but not only those in the form of tax measures, are created with estimates for the value of the budget or the individual awards, but the final amounts may vary from that estimate. Sometimes the subsidy award is variable—it could be a performance-related grant—and if the beneficiary exceeds its estimates for the subsidy objective, it may be entitled to a proportionately larger subsidy. In other cases, such as subsidies in the form of tax measures, which I am sure my noble friend would never have been responsible for when he was Chancellor, the variation may be a result of higher or lower than expected expenditure—for example, on research and development—which will in turn affect how much tax subsidy that beneficiary would be entitled to.

5 pm

This means that a public authority would be able to upload only an estimate initially, which may then need to be revised. These revisions would generally be considered a permitted modification within the meaning of Clause 81, where the budget can be increased, for example, by up to 25% and the subsidy duration by an additional six years. Otherwise, a new entry for the subsidy would need to be made. Where that new subsidy entry needs to be made, the limitation period would start again. For these sorts of subsidies, deadlines as short as those proposed by the noble Lord could lead to poorer-quality data, greater confusion and, potentially, more disputes.

As I have mentioned, subsidies in the form of tax measures are more likely to have performance-related conditions or other variables, and therefore it could take longer to determine the exact amount of the subsidy. Although the public authority will have an estimate for the purposes of establishing compliance with the principles, this may be an upper limit and ultimately not an accurate reflection of the subsidy award amounts.

These final amounts will not be known until the tax declaration has been completed. Even when a tax declaration has been completed, taxpayers can amend it, so the final amount could still change in a 12-month period following the tax declaration's submission. For these reasons, we have provided public authorities with 12 months from the date of the tax declaration to calculate the exact amount and upload the subsidy to the database.

It is worth pointing out that tax subsidies are already extensively scrutinised, as they are normally given in the form of primary legislation, so each scheme will almost certainly have come before this House before it even starts to dispense funding. As with all primary legislation, full impact assessments will be produced which will give the public and interested parties an opportunity to estimate the subsidy in advance.

It is also worth noting that the consultation we carried out in 2021 included the approach we have now taken in the Bill, including the six-month deadline. Of the responses we received to it, 74% agreed with the Government's approach, which suggests that respondents agreed with our proposed balance between speed and accuracy. In the light of that, I hope the noble Lord will feel able to withdraw his amendment.

Lord McNicol of West Kilbride (Lab): Before the Minister sits down—I ask this as I genuinely do not know—he stated that 76%, or however much it was, of those who responded to the consultation supported the deadlines of six months and a year. Does he know what the consultation said about the other side of this, with regards to the timescales for challenge?

Lord Callanan (Con): The figure I used was 74%, not 76%. I do not have that information, but I can certainly get it for the noble Lord—I will supply it in writing.

Lord Lamont of Lerwick (Con): My Lords, the Minister was very persuasive about tax measures. I quite follow what he said about the uncertainties that would surround trying to calculate the cash value of tax subsidies, but he did not spend very much time talking about the one-month period, which is the one that seems a bit unreasonable. It seems as though they are paying more attention to the compliance costs of the public sector than to the costs of the challenger, which ought to be equally kept in mind. Surely one month is a very short period to challenge a subsidy which may have suddenly arrived out of the blue and may require a private sector company to take legal advice on whether it is challengeable. Four weeks to get legal advice, mount a challenge and go through all the formalities seems a very short period of time.

Lord Callanan (Con): I understand the point that my noble friend is making. As I mentioned in my reply to the noble Lord, Lord McNicol, the limitation period is the subject of separate amendments, so we will have a further opportunity to discuss that in the next Committee session. Again, it is a balance between wanting to provide certainty so that the schemes can proceed and the beneficiary can proceed with some certainty, but I understand the point that my noble friend makes. The whole regime is designed to be as flexible as possible, and probably more permissive in many respects than the EU state aid regime. As I say, we will have a longer period to discuss the limitation period and the challenge on a future occasion.

Lord Purvis of Tweed (LD): With regard to companies or interested parties, Clause 76 allows an interested party to make a request to a public authority for information about a subsidy or a subsidy scheme that the authority has given or made, and there has to be a response within 28 days. Presumably, that covers all the subsidies that are then issued under that subsidy scheme by the public authority, in advance of them being uploaded on to the database. Is that correct?

Lord Callanan (Con): If the information is available, perhaps in other formats, my understanding is that they can start the challenge immediately, but the formal period for challenge starts after the subsidy is uploaded to the database.

Lord Purvis of Tweed (LD): I am grateful, but that was not my question. Regardless of the period of challenge after the subsidy has been updated on the database, Clause 76 allows an interested party to make a request to a public authority for any information about a subsidy or a subsidy scheme that the authority has given or made. That does not state that it is uploaded on the database. It would basically require the interested party to make a request of the public authority for any subsidy issued under that scheme by that public body at any stage. They would have to do it blind, because it would not be on the database, but if they believe that there is a subsidy scheme that they have an interest in, within that certain local market, and they ask for information about that subsidy, that information would have to be provided by the public authority before it has been uploaded to the database. Any greater efficiency or lack of bureaucracy has completely gone if they are able to do that under Clause 76 anyway.

Lord Callanan (Con): The position in the clause is fairly transparent; they will be able to ask for information on the scheme and the authority would have a duty to provide it. That is separate from the provisions for uploading it to the database.

Lord McNicol of West Kilbride (Lab): My Lords, I thank the Minister for his response. As the noble Lord, Lord Lamont, picked up, he very much focused on Amendments 40 and 42, rather than Amendments 41 and 43. The Minister is absolutely right that there will need to be a balance between bureaucratic burden and proper transparency and oversight. As the Bill sits just now, I do not believe that the balance is in the right place. I am sure that we will come back to this—after the Division.

5.08 pm

Sitting suspended for a Division in the House.

5.12 pm

Lord McNicol of West Kilbride (Lab): I had nearly finished. I reiterate that we are going to have to come to some sort of agreed position on the bureaucratic burden, which the Minister understandably comes back to, and the issues of transparency, fairness and proper oversight. The last place we want to be is a situation where the Bill—as we believe it does as it is written just now—leaves open the possibility of some businesses being supported and those subsidies unable to be challenged properly. I beg leave to withdraw the amendment.

Amendment 40 withdrawn.

Amendments 41 to 43 not moved.

Clause 33 agreed.

Clause 34: Information to be included in the subsidy database

Amendments 44 to 46 not moved.

Clause 34 agreed.

Clause 35 agreed.

Clause 36: Minimal financial assistance

Amendment 47 not moved.

Clause 36 agreed.

Clauses 37 to 40 agreed.

Clause 41: Exemption for certain subsidies given to SPEI enterprises

Amendments 48 and 49 not moved.

Clause 41 agreed.

Clauses 42 to 46 agreed.

Clause 47: Financial stability

Amendment 50 not moved.

Clause 47 agreed.

Clause 48: Legacy and withdrawal agreement subsidies

Amendment 51

Moved by ***Lord Dodds of Duncairn***

51: Clause 48, page 27, line 13, at end insert—

"(3A) The subsidy control requirements under the Act do not apply if they have the effect of causing any unfair economic disadvantage to Northern Ireland as a result of the implementation of Article 10 of the Northern Ireland Protocol."

Lord Dodds of Duncairn (DUP): My Lords, I have tabled this amendment, to which the noble Baroness, Lady Hoey, has added her name, in order to probe the Government's understanding of the application of the state aid rules which will apply to Northern Ireland and those which will apply to rest of the United Kingdom as a result of the Bill. I know that on previous days in Committee there has been consideration of the relationship between the different rules. When I looked at the Bill, I sought to put down an amendment which would have brought Northern Ireland into line with the subsidy regime for the rest of the United Kingdom, but I was told that because of the provisions of Article 10 of the Northern Ireland protocol, an international treaty, it is not possible to amend the Bill to have the effect that I would have wished to bring Northern Ireland into line with the rest of the United Kingdom.

My Lords, there appears to be some echo in the Room, and I am not sure what is causing it. I shall stand further back from the microphone—I shall pretend that we are in the Ulster Hall—though I am tempted to do without a microphone altogether. I hope that noble Lords can hear me clearly now.

The subsidy control regime in the Bill would apply to only about 50% of the financial support that will be provided to Northern Ireland with the remainder continuing to fall within the scope of EU state aid rules—those applying to goods and wholesale electricity markets. Northern Ireland will be forced to adhere to the strict rules and conditions of EU law on things such as no expansions, maximum grant rates, only new establishments and so on, and when the projects are large or outside the scope of the exemption regulations Northern Ireland will have to seek European Commission approval. Effectively, we have two regimes which are very different in policy terms and practical effect. Under the UK scheme, things will be automatically approved unless specifically prohibited. In Northern Ireland, we are subject to EU rules under which everything is prohibited unless approved, effectively. They are very different policies, and two different systems are applying in one country.

From time to time, the Government have set out their views on the effects of the operation of Article 10 of the protocol. In their May 2020 Command Paper, they were of the view that the provisions of the protocol

would apply only in Northern Ireland. However, they later acknowledged that there was a risk of a maximalist interpretation of Article 10 by the EU, which could give the European Commission extensive jurisdiction over subsidies granted in the rest of the UK—an issue that the Government sought to address by tabling amendments to the United Kingdom Internal Market Bill, but we know how that ended. The European Commission also published a notice to stakeholders in January 2021 setting out its guidance. I would be grateful if the Minister could tell us whether or not, as things stand, he is concerned about the conflicting guidance on the scope of subsidies that would be covered by Article 10.

In July 2021, as we know, the Government published a significant Command Paper arguing that the TCA and the provisions of this Bill

"provide a more than sufficient basis to guarantee that there will be no significant distortion to goods trade between the UK and EU, whether from Great Britain or Northern Ireland, thus making the existing provisions in Article 10",

referred to in Section 48(3),

"redundant in their current form."

When the noble Lord, Lord Frost—the Minister responsible—resigned, he said in his statement on 17 December, regarding the negotiations with the EU in this regard, that there had been

"some limited discussions on subsidy control"

but made it clear that:

"The rules need to evolve to reflect this new reality"

of the trade and co-operation agreement and the UK's subsidy control regime. He said:

"Northern Ireland businesses are facing unjustified burdens and complexity, and the Government cannot deliver aid to Northern Ireland, for example for Covid recovery support, without asking for the EU's permission."

Since assuming responsibility from the noble Lord, the Foreign Secretary has said that the UK's position on the protocol, and with regard to the issue of Article 10, has not changed.

So the Government's position appears to remain as set out in the Command Paper of July 2021, which states that the aim of their negotiations, their policy objective, is to erase Article 10 from the protocol. I should be grateful if the Minister could therefore indicate what progress has been made in the discussions, particularly on this issue. It is an area that is not discussed much. There is a lot of talk about phytosanitary checks and customs, which are important issues in their own right, but little discussion of the subsidy control regime. However, it is significant for Northern Ireland and I would be grateful for an update.

If negotiations do not result in the objectives set out in the Government's Command Paper, will the Minister indicate what action they will take on their own account to protect Northern Ireland's economy and what the timescale is? If action is not taken to resolve this matter, either through negotiations or by action on their own account by the Government, there will be no level playing field across the UK when it comes to the subsidy control regime. Northern Ireland will be at a disadvantage, according to the Department for the Economy in Northern Ireland, compared to other parts of the UK when competing for inward investment, for example. Other parts of the UK could be much more attractive as a location for investment as a result of not having to wait for the Commission to grant formal approvals. In Northern Ireland, approvals will take significantly longer than the new timescales envisaged in the Bill for the rest of the UK; they could have far fewer conditions or restrictions and might well receive greater levels of funding than would be possible under the EU regime in Northern Ireland, which prohibits subsidies greater than 50%, whereas under the Bill subsidies may be proportionate but no maximum is specified.

When these issues were raised in the other place, the Business Secretary responded by pointing to the changes to the protocol being sought by the Government in the negotiations, which would bring all subsidies within the domestic regime. Can the Minister confirm that there is not really any solution other than that indicated by the Business Secretary? If EU law applies, it is hard to envisage that there can be any mitigation. There is certainly nothing in the Bill that would ease the problems that Northern Ireland will face in this regard.

The reality is that the interaction of the protocol with the Bill before your Lordships has the potential to impact negatively on the development of the economy of Northern Ireland, and I hope sincerely that the Government will implement the necessary measures to avoid that bad outcome. I beg to move.

Baroness Hoey (Non-Afl): My Lords, I was pleased to add my name to the amendment in the name of the noble Lord, Lord Dodds. It is particularly because of the situation now in Northern Ireland that many of us want to raise this issue at every opportunity—it was raised also at Second Reading. I accept from the beginning that the Government are trying to deal with some of the problems that have come about. They were perhaps seen some time ago, but the Government are now trying to deal with the realities. The noble Lord, Lord Dodds, has given a clear outline of the detail of how the current situation will affect business in Northern Ireland. I want to speak more from the point of view of morality—the idea that, once again, Northern Ireland is being treated so differently and so separately from the rest of the United Kingdom.

At Second Reading, the Minister said—it was said a number of times:

"We are seizing the opportunities of Brexit."—[*Official Report*, 19/1/22; col. 1712.]

As someone who was a passionate supporter of Brexit, I want to seize those opportunities, and I want the people of Northern Ireland to be able to seize them, but it is clear that we will have a different regime and that businesses will lose out, whatever happens, unless this is changed. It is a pity that we could not have a real debate and a vote on Article 10 at some stage in your Lordships' House, but I accept that we cannot do it in this Bill.

We have a form of colony in Northern Ireland at the moment. Northern Ireland now has a foreign market, a foreign customs regime and a foreign VAT regime adjudicated by a foreign court, and now we will have foreign state aid. I know that the negotiations that are going on are slightly above the Minister's pay grade, but I hope that he will do his bit as the Business

[Baroness Hoey]
Minister to realise and understand just how unfair this is for the people of Northern Ireland. I hope that he will be able to give us some comfort as to how the Government are going to take this forward if the negotiations with the European Union get nowhere, as I expect.

Lord Empey (UUP): My Lords, the issue of state aid goes beyond even the points that have already been made, because there is theoretically a possibility of reach-back into Great Britain depending on whether a product was subsidised before it left Great Britain and was part of, or added to, another product of a business in Northern Ireland. The truth is that the Minister does not know the answer to these questions.

I do not understand why there is surprise. The Minister may not wish to comment, but the situation in which we find ourselves is a direct consequence of the proposals made by the Prime Minister to the European Union. He proposed the protocol. When I hear the phrase "Let's get Brexit done", it drives me mad. Brexit is done for 97% of the United Kingdom; we are still in the European Union for as much as half of our activities.

This was entirely anticipated, but it was not worked out. So, the protocol came along in late 2019 as the deathbed plan to get Brexit done in a couple of months, and this is one of the pickles we are left in. I may have some issues with the wording of the amendment in the name of the noble Lord, Lord Dodds, but its heart is in the right place. He said, if I picked him up correctly, that it is a probing amendment to try to get answers. I totally support that; it is the right thing to do.

5.30 pm

However, let us not mess about as to where the genesis of this issue lies. The fact is, if I am correct, that this is now part of domestic as well as international law. Therefore, we do not know because no cases have been taken. We do not even know in which courts they will be heard because it would appear that we now have a choice. Part of our economy is ruled by a foreign power while another is ruled by the national courts, so we in Northern Ireland are to some extent an EU protectorate for a large part of our activities. I have no doubt that this was not the intention of what a lot of people sought in the referendum but, sadly, that is where we are.

In responding to the amendment in the name of the noble Lord, Lord Dodds, might the Minister set out for us whether there is a pathway to finding out exactly how this will work? Until a case is taken, which has not yet happened, it is hard to know. There is also no guarantee that there will be no reach-back into the rest of the United Kingdom with regard to these issues. There can be connections: what if a company happens to be a subsidiary in Northern Ireland? What happens if products are moved to Northern Ireland and become part of another product that is then exported to the European Union? There is a whole range of areas where we could be going.

The Minister will probably struggle with this because, I believe, nowhere in the Government do they have a clue as to how to get us out of it; we will be faced with this problem for a long time to come because, as the noble Lord, Lord Dodds, mentioned, divergence will grow over time. I hear people say, "We have the best of both worlds: we can be in both markets." That is all well and good until somebody takes a case. If they lose it, it may well prove a barrier to investment. It could do the Province a lot of harm. So, because of the fact that we are in uncharted waters, this will not go away. It will be here for a long time. I wish the negotiations with the European Union well.

I see where the Command Paper is trying to come from, but let us look briefly at this. I hear people say, "Get rid of the protocol"; they said it in the House earlier when we discussed the Private Notice Question. The Government are not even trying to do that. I have here a letter from the Minister; it is about two weeks old. I also have an answer from the noble Lord, Lord Frost, to a Parliamentary Question about Article 16. This is to safeguard it, not get rid of it. They are looking to make it more worker-friendly, but they are not even trying to get rid of it. People need a sense of reality. I hope that, when he replies, the Minister will be able to give us chapter and verse to clear up all the ambiguities—and away we go.

Lord Purvis of Tweed (LD): My Lords, it is a pleasure to follow the noble Lord. I was thinking that it is not usual for us to have difficulty hearing what the noble Lord, Lord Dodds, says: it was down to technology and I am glad it got sorted. I welcome his amendment because it is another opportunity for the Minister to address these serious points. As the noble Lord indicated previously in Committee, on my Amendment 53, we have tried, as the noble Lord, Lord Empey, asked us to do, where there are difficult areas, to navigate a way forward. Because he is absolutely right: before his resignation, the noble Lord, Lord Frost, said in the Chamber—I think it was in reply to the noble Lord, Lord Hannan—that the Government's intention was not to replace the protocol but to improve it.

So, we are in a situation where the noble Lord and I come, perhaps, from a different starting point but reach the same conclusion: we find ourselves in an undesirable situation but it is one of the Government's making, and if there are ways to ameliorate the position, the Government have to come up with the solutions, because what is not really in question, as the noble Lord, Lord Empey, said, is that the Government are not looking to replace the protocol. We are, then, tasked with trying to remove one of the barriers that the Department for the Economy in Northern Ireland has indicated, which is that uncertainty is itself a barrier, and that has to be recognised. That uncertainty is ongoing, which is already one of the damaging impacts, as the noble Lord, Lord Dodds, indicated.

We are, I think, in month four now of a three-week process that Boris Johnson promised to Jeffrey Donaldson of a short, sharp negotiation on the protocol. Four months in, it might just be that Boris Johnson is not so reliable in the commitments he gives—it is a suspicion of mine, but it may well be the case. Nevertheless, as the Minister, the noble Baroness, Lady Bloomfield, indicated to me last week in Grand Committee, when I asked if it was the case that, if the Government secured everything they asked for in the negotiations, then EU state aid rules will continue to apply:

"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."—[*Official Report*, 2/2/22; col. GC 244.]

It really comes down to "specific and limited". "Specific and limited" will mean that there is the ability for reach-back. It will mean that, for parent companies, the guidance will stand that they will now have to start to run two sets of accounts. It will mean that there will be dual reporting, depending on whether it is state aid or subsidy control. It will mean that there will potentially be dual challenge mechanisms. It will mean that the CJEU will still define the state aid component elements of it. Whether or not there are streamlines, whether or not it is more efficient, whether it is less bureaucratic, as the Government's Command Paper said, or whether it is "specific" or "limited", it still means that it is different; it still means that it is not the UK approach. That, I think, is symbolic, but it is also important in content.

I will not use any of the language of "territorial nature" et cetera; that is not for me to say. I will close with one element, though. In the 100-page document *The Benefits of Brexit*, there is not a single independent reference to Northern Ireland at all. That was published on the day that the Northern Ireland First Minister resigned. We are in difficulty, Minister, and I think that taking what has been offered by some as a way of making the situation better is something the Government should consider very carefully indeed.

Lord McNicol of West Kilbride (Lab): My Lords, it is a pleasure to follow the noble Lord, Lord Purvis, and his detailed analysis, especially picking up and bringing back some of the issues from last week. With his contribution and the others, I will be short. I am grateful to the noble Lord, Lord Dodds, for tabling this probing amendment and facilitating discussion on this hugely important topic. I will focus my short remarks on the bigger picture rather than the specific details, which I think have been covered well enough.

Regardless of where people stand on the Northern Ireland protocol and the Government's negotiations to reform it, it is a part of international law, as we have heard. This legislation therefore needs to be consistent with it. There are different legal opinions on the matter and, while some are favourable to Her Majesty's Government's approach, others suggest that decisions relating to Northern Ireland will at best be complex but at worst be subject to challenge or litigation. Neither of these outcomes would be good for firms, businesses or the authorities operating in Northern Ireland.

When this Bill was in the Commons, the Government were asked if they would pause to allow room for negotiations to continue. The answer was no. Despite the passage of those months, we appear to be no closer.

With that, I will leave my comments and look forward to the Minister's response.

Lord Lamont of Lerwick (Con): My Lords, without endorsing what the noble Lord, Lord Purvis, said, I think this is a very important issue—without going into the wider Brexit questions to which he referred—and it is extremely worrying.

I would like the Minister to confirm whether the Government's position as stated in this Bill, and which was reaffirmed by my noble friend last week when she replied to the debate, is the final interpretation or is an interpretation that is subject to change. As the noble Lord, Lord McNicol, said, there are different legal interpretations of the protocol, and there certainly seem to be different interpretations between the European Union and the UK Government. Does that not therefore affect the assurances that Ministers can give? What certainty can be attributed to the opinion of Ministers as to what is the meaning of subsidies under Article 10 or subsidies under Article 138, and which subsidies are subject to European Union law and which are not?

Last time, I raised with my noble friend Lady Bloomfield the question of reach-back and what would happen if a subsidy was being given to a company in the north of England that was exporting goods to Northern Ireland and whether that would come under the EU regime or the UK regime. She replied by saying:

"The Commission's … declaration of December 2020 made it clear that Article 10 could affect a subsidy in GB only"—

I stress the word "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."—[*Official Report*, 2/2/22; col. GC 244.]

Is that the only case? If there were no subsidiary, would that be a different outcome?

Lord Callanan (Con): My Lords, let me first thank the noble Lord, Lord Dodds, and the noble Baroness, Lady Hoey, for this amendment. I know that the noble Lord has strong feelings on the protocol and he and I have discussed it many times before. I have also discussed it with the noble Lord, Lord Empey, throughout the progress of our various pieces of Brexit legislation. I know the issues that are involved, and I will hopefully be able to update the noble Lord on our interpretation of the provisions and where I think we have got to—although there is a limit, as I am sure the noble Lord will understand, on what I can say.

I start by emphasising that preventing undue distortion or economic disadvantage to any part of the United Kingdom is one fundamental objective of this regime. Subsidies are inherently distorting, but this Subsidy Control Bill exists to ensure that public authorities minimise those distortions and economic disadvantage, ensuring that the benefits of the subsidy outweigh any negative effects.

Public authorities will need to consider this in making their decisions about whether the subsidy should be given and how it should be designed. That particularly affects any negative effects in parts of the United Kingdom other than the target area of the subsidy, but it also includes the effects on international trade or investment where the public authority may have less incentive to take those disadvantages into account in its ordinary decision-making processes.

5.45 pm

As the noble Lord is aware, Clause 48 makes clear that in specific, limited cases EU state aid rules apply to subsidies that affect trade in goods and wholesale electricity between Northern Ireland and

[Lord Callanan]
the European Union. Subsidies for services will ordinarily comply with the more flexible UK domestic subsidy regime that we are discussing here. In answer to the questions from the noble Lords, Lord Dobbs and Lord Empey, and my noble friend Lord Lamont, and to the concerns about when a subsidy given in Great Britain is in scope of the Northern Ireland protocol, I can confirm that subsidies in Great Britain will, as my noble friend Lady Bloomfield said, be subject to the terms of the protocol only if there is a genuine and direct link to Northern Ireland, which cannot be hypothetical or presumed. Indeed, a subsidiary could be an example of such a link.

This was underlined in the Commission's unilateral declaration of December 2020. Our position is set out in our statutory guidance first published on 31 December 2020. These subsidies are entirely exempt from the domestic subsidy control regime, so where a subsidy that currently falls within scope of the Northern Ireland protocol is given, it will not have to follow the processes outlined in this Bill, but we recognise that even this does not go far enough. In respect of certain subsidies, Northern Ireland faces a disadvantage.

Therefore, as noble Lords are aware, for this reason, and despite the Northern Ireland protocol applying only in the limited circumstances that I outlined, we are currently in intensive discussions with the EU with the aim of delivering significant changes to the Northern Ireland protocol, including to Article 10. I understand, and I hope the noble Lord will accept, that I cannot comment on the detail of these talks at this time, but it is worth pointing out that the status and applicability of Article 10 at the time the Bill is passed will heavily depend on the outcome of these talks. The guidance on Article 10 and Clause 48 will keep pace with the outcome of those talks. Going back to the point made by the noble Lord, Lord McNicol, I do not believe that there is any utility in pausing the passage of the Bill.

The Government are seeking to prevent any unfair economic disadvantage to Northern Ireland in two ways: first, by proposing this new domestic subsidy control regime, which requires public authorities to consider distortions and economic effects in Northern Ireland or any other part of the UK before giving a subsidy, and, secondly, by negotiating with the European Commission with the intention of establishing that only one set of rules should apply across the entirety of the United Kingdom.

Finally, the way that the noble Lord has phrased this amendment means that it would disapply the subsidy control requirements of the Bill applying in Northern Ireland when certain conditions are met, which I am sure was not his intention as he said that this is a probing amendment. This disapplication would not be permitted under the existing trade and co-operation agreement, and therefore I hope that the noble Lord will understand that I currently cannot accept the amendment.

Lord Empey (UUP): Before the noble Lord sits down, the noble Lord, Lord Dodds, said that this is a probing amendment, so we all may have issues with the phraseology but that is not the point. Never mind subsidiaries, which I can understand; if a product is supplied to a company in Northern Ireland as part of creating another product which would then be sold into the European Union, whether or not it is supplied from a subsidiary should not really be relevant. It does not matter where it comes from, if it is subsidised in Great Britain. Surely that is how the European Union will look at it, rather than simply saying that it must be a subsidiary. The Minister might be underestimating the potential for reach back or for the subsidy to be challenged by a competitor within the European Union. The Government are taking too narrow a definition of what may be at risk.

Lord Callanan (Con): I understand the point the noble Lord is making but, to return to the words I used, there must be a genuine, direct link to Northern Ireland—it cannot be hypothetical or presumed. We have issued detailed guidance on the subject, but we accept that the current situation is not good enough, which is why we are attempting to renegotiate the terms of the protocol, particularly Article 10.

Lord Purvis of Tweed (LD): I have the text of the Command Paper in front of me. I heard the Minister say that the Government are negotiating for a single scheme to apply for all businesses across the UK. That is not what the Command Paper argues for in paragraphs 63 to 65. I have raised this before in the Chamber and in Committee. The Government are asking for a dual system, where there will be

"enhanced referral powers or consultation procedures for subsidies within scope, to enable EU concerns to be properly and swiftly addressed."

The Government are not seeking a single system; they are seeking two systems with a streamlined approach for applicants to go to the EU system. Can the Minister clarify that?

Lord Callanan (Con): We are seeking to have a single regime—the regime we are discussing now—that applies across the whole of the United Kingdom. As I said, this is the subject of negotiation. Intense discussions are going on. I and other Ministers will update the House as soon as we conclude those agreements.

Lord Dodds of Duncairn (DUP): My Lords, I thank the Minister very much for his response to the debate and all noble Lords who have taken part in this short but important exploration of the issues surrounding subsidy control in Northern Ireland as a result of the application of Article 10 of the protocol. Sometimes people say that they are not being listened to, but I did not think that the technology would conspire to try to prevent us being heard. However, I am grateful for noble Lords' consideration of these important matters.

The noble Lord, Lord Empey, was rightly pessimistic about the Minister's ability to answer some of the questions raised, although he made a stab at it. However, while he was confident about the interpretation of Article 10—particularly in relation to the scope of its application, which remains to be seen—it will be tested in court. The trouble is that the uncertainty around all this will have a chilling effect. There is no doubt that reach back is a very important issue, but many businesses in Northern Ireland will say, "Yes, this is an important issue, but if you solve it, it will not particularly help us

as Northern Ireland will still be subject to the EU regime. It may provide some help and certainty to companies in England, Scotland and Wales, but it does not resolve our difficulties." There is a bit of danger in seeing reach back as the problem; it is a problem, but this does not resolve the issues in Northern Ireland. That is why I am grateful that the Minister has indicated that the Government's purpose remains to negotiate changes.

The noble Lord, Lord Purvis, rightly pointed to the wording of the Command Paper. It merits very careful reading to compare what is stated to be the Government's position and the actuality of the basis of the negotiations. It is something that I have pointed out on a number of occasions in Northern Ireland. I also agree with the noble Lord that, whatever the origins of how we got here, the problem remains to be sorted for Northern Ireland. This is a real predicament.

I therefore urge the Government to take this matter extremely seriously. I know that they do but this is a matter of urgency because, as was stated by the noble Lord, Lord Purvis, when he mentioned short, sharp negotiations—I recently reminded the Prime Minister of this fact—that this was supposed to be a three-week negotiation, beginning in September. Sadly, we have almost reached the middle of February and the inevitable crisis that some of us predicted has happened, in terms of the stability of the institutions in Northern Ireland. Time is in short supply.

I am grateful for this debate. It has been useful. With that, I beg leave to withdraw the amendment.

Amendment 51 withdrawn.

Clause 48 agreed.

Clauses 49 to 51 agreed.

Amendment 52

Moved by ***Baroness Randerson***

52: After Clause 51, insert the following new Clause—

"Agriculture

The subsidy control requirements in Part 2 of this Act do not apply to—

(a) the giving of an agricultural subsidy, or

(b) the making of a subsidy scheme, so far as it relates to the giving of agricultural subsidies."

Member's explanatory statement

This new Clause would exempt agricultural subsidies from the subsidy control requirements.

Baroness Randerson (LD): My Lords, I decided to table Amendment 52 having read the detailed concerns expressed by the Welsh Government and NFU Scotland. In this Bill, the Government propose incorporating agricultural subsidies into the same scheme as subsidies for other businesses. That is not the usual approach to agricultural subsidies. The WTO and, of course, the EU have separate and distinct agricultural subsidy regulation.

My amendment does not refer to them specifically, but there are similar concerns about fisheries subsidies. I read the Minister's comments at Second Reading with care. He said that the Government believe that having agriculture and fisheries in a single scheme

"will help to protect competition and investment."—[*Official Report*, 19/1/22; col. 1748.]

However, he did not mention levels of production or the supply of food. That is an important omission because it is the reason why the WTO and the EU treat agriculture separately. Agriculture is subject to the vagaries of weather and disease and is prone to much greater market volatility than other products. If we do not manufacture our own TV sets in the UK, it does not have the fundamental significance that not growing our own wheat would have. For well over 100 years, regular supplies of domestically produced foods at reasonable prices have been regarded as fundamental to our national security. That applies even in the modern world of global markets.

At Second Reading, the Minister also said that the Government's decision

"was supported by the majority of the respondents to the UK Government's consultation who answered the question on agriculture and fisheries."—[*Official Report*, 19/1/22; col. 1749.]

I have three things to say about that. First, the pattern of agriculture is different in one part of the UK and another. The devolved nations have a very different view on this, and that needs to be reflected.

Secondly, the Government's response reveals a worryingly majoritarian approach. England is always the majority in any consultation of this nature by sheer weight of population size. This does not mean that it fully reflects the different requirements of the country.

Thirdly, the Government's justification is that 81% of people who responded to the question in the consultation were in favour of one or both—agriculture or fish—being included. That is tempered by the fact that only 20% of respondents answered that question, so only 80% of 20% were in agreement. That support does not look so great now, does it?

6 pm

There are good reasons why agricultural subsidies are separated; they have a much broader base, and in some ways they are very different. Unlike almost all other fields of business and production, agricultural subsidies are accepted as normal and necessary. If a devolved Government or local authority, or indeed the Secretary of State acting as an English Minister, decides to subsidise a car plant, then one large flat empty space is much like another. Infrastructure problems can be overcome, roads built, 5G installed, local employees upskilled and suitable courses run at local tertiary colleges and universities.

It is very different with agriculture. You cannot grow peas for the frozen food industry, or strawberries or wheat, on top of a Welsh mountain, but you can grow sheep. Unlike skills and infrastructure, you cannot create new large flat fields in the middle of Wales; you have to live with what you have. Both Scotland and Wales have large areas where farming is, at best, marginal and difficult. The devolved Governments need to be able to take that into account in agricultural subsidy policies. They cannot be expected to compare and compete with the benign climate and landscape of southern England. I would like to make a similar point about, for instance, Cumbria because England has the same variation in its type of countryside that needs to be taken into account.

[Baroness Randerson]

Farms do not come alone; they need the processing infrastructure to support them. There are profound environmental impacts that flow from farming techniques, and social structures must be maintained. Depopulation undermines agricultural communities and the ability to conduct farming. Agricultural subsidy schemes have to take all that into account.

I would be grateful if the Minister could set out how agricultural subsidy schemes would avoid breaching the restrictions on local content subsidy. The audio-visual sector is already exempt on this point, and surely agriculture should be too. The prohibition on relocation would make a nonsense of efforts to develop associated food processing industries.

There is another distinct reason why the special circumstances in the UK after Brexit dictate that it is important to be able to keep track of funding specifically for agriculture. Very specific promises were made during the Brexit referendum about the advantages for farmers of leaving the EU. More generous schemes were promised, and schemes free from what was criticised as an overly bureaucratic EU-sponsored system. Many farmers became supporters of Brexit—although their unions were very much more sceptical—so it is an item of faith for the farming community that the Government must be clearly accountable for delivering on those promises. That can happen only if a separate and distinct scheme exists for agriculture. It would of course be more difficult to track if it were all part of one grand scheme.

Both the Welsh Government and NFU Scotland make it clear that they accept the need to replace the basis of the EU schemes that have governed agriculture since 1973, but they challenge the approach taken. Existing schemes may be covered by grandfathering rights and legacy schemes from the EU regime, but there is an urgent need for much more detail on how exactly agriculture will be supported against the seven principles that the Government have set out. It is essential that the devolved Governments are properly consulted and agree to the arrangements, whatever they are, because agriculture is devolved, so the mechanism for financial support must be effective as well.

I recall somewhere along the line reading that the Government would outline further information specifically on agricultural principles. I look forward to the Minister's explanation, as well as an explanation of how all this will fit within WTO rules.

Lord Bruce of Bennachie (LD): My Lords, I am very happy to support my noble friend on this amendment, to which I have added my name. She has explained quite accurately and in detail why we believe this is necessary.

My first point is about the consultation, which is slightly disturbing. The Minister, the noble Lord, Lord Callanan, wrote to me after Second Reading having said in response to my intervention that 81% of consultees had supported the inclusion of agriculture. My noble friend had pointed out that that was 81% of a much smaller percentage, but more fundamentally, the Minister failed to acknowledge two things. First, if 100% of consultees from Wales or Scotland were against—I am not saying it was quite that close—to suggest that 81% were in favour, which just about represents the imbalance of population between England and the rest of the United Kingdom, is exactly the wrong approach to devolution. Devolution has to recognise that if the devolved Administrations are sufficiently different from the rest of the UK, there has to be some real effort to accommodate that difference. Citing UK statistics is the wrong way to do it.

The other issue is much more fundamental. There was quite a bit of debate within the Conservative Party a few years back about whether subsidising agriculture was justified at all—whether free market economics should be let rip—but, as my noble friend has said, food production is a little bit more important than that. Food security has always been recognised by successive Governments as relevant.

The common agricultural policy aimed for self-sufficiency across the European Union. Its climatic variation meant that that was in a much higher proportion of food consumed than would be the case with the United Kingdom, but that makes us even more vulnerable once we withdraw. What percentage of our food should be produced from our own capacity at home surely has to be an article of serious discussion. Now that we have left the European Union and the Government are actively negotiating trade agreements around the world, some people seem to argue that all that matters is that the food should be cheap—not that it should be secure; it should just be cheap. The consequence is that we have concluded agreements with New Zealand and Australia which many farmers and food producers, particularly in Scotland and Wales, feel have substantially disadvantaged them in terms of what their farming methods are about.

When we move to the next phase, if farming and agricultural support are devolved, presumably they are devolved to allow divergence—because divergence exists. Grandfathering is all very well but it does not look forward far enough, to where land use could change quite radically. On this occasion, I note that the Green representatives are not here; I think they might have something to say.

At Second Reading, I mentioned that the issue of rewilding is beginning to create some degree of tension. Yes, there is a lot of excitement about the idea of trying to return things to nature, and that it might be helpful in terms of climate change, but what will its social impact be? What will its impact on employment be? What will it do to communities? Will it reduce access? Will it reduce the employment opportunities that farming currently provides? Those are real questions. Wales and Scotland—and Northern Ireland, for that matter—want to pursue a policy that determines, for their benefit, what the right balance is.

I have no particular animus for or against Ed Sheeran, but he claims that he wants to spend £200 million of his fortune rewilding as much of the UK as possible. I want to know how much sensitivity he has. What is fine in Suffolk might be a bit different in Inverness-shire or Montgomery or wherever. It is important that he understands that the land use regime in Wales and Scotland is a matter for the people there, not a pop singer in Suffolk. He can do it as long as it fits with that policy.

I say this to the Minister: it is not clear what five, 10 or 15-year idea the UK Government have. Grandfathering existing regimes does not allow for divergence later as we change our use. Basically, it is not consistent for the Government to argue that they support devolved agricultural policy but wish to take control of the subsidy regime that is essential to the delivery of that policy.

It is also not good enough to say that subsidy control is a reserved matter. Of course it is—I acknowledge that—just as the internal market is, but if the conclusion of that is UK Ministers, who are also English Ministers, saying, "What we really mean is that we will do as we please and the devolved Administrations will just have to lump it", that is no way to secure the future of the United Kingdom. It is also no way to ensure that the devolution settlement can continue to work when it is under so much pressure. The Government need to understand that there is real concern that including agriculture in this Bill has implications that are bad for not just agriculture but the United Kingdom.

Lord Wigley (PC): My Lords, I am grateful to the noble Baroness, Lady Randerson, for moving this amendment. I am delighted to follow the noble Lord, Lord Bruce; I agree with his comments. At this point, I should declare my registered interest as a member of the Farmers' Union of Wales. I am one of the last great landowners of Wales, with six acres of land, so I have a direct interest in the outcome of these debates.

There are at least two dimensions to this issue. The first is whether this sort of legislation is appropriate for application to agriculture in general. Over my lifetime, the question of subsidy in agricultural terms has been related to the security of the supply of food and the price of food. Those are somewhat different considerations to those that may be apposite if we were considering subsidy for the steel industry or other industries. We need a system that is fine-tuned to the agricultural reality, which is different in terms of not only the nature of the product but the scale of the operation; that is particularly true in Wales—and in Scotland as well, I suspect—where there are many small farmers. They are small farmers in terms of their turnover and investment compared with the massive investment one might have in the manufacturing industry.

In Wales, farming is more than just a livelihood, it is a way of life—and a way of life that sustains the community. Therefore, consideration of the impact of subsidy, the relevance of subsidy and when it should and should not be available has many more dimensions to be taken on board than if it were a straight manufacturing subsidy question. My background was in the manufacturing industries, as I have explained before, but I am acutely conscious of the difference that exists between agriculture and the manufacturing industries

6.15 pm

The other question that arises—it has already been touched on by the previous two speakers, with whom I agree—is of how one relates UK legislation to the different set of circumstances and the different legislatures of Wales, Scotland and Northern Ireland. If there is a different structure of decision-taking and legislation, a different structure of provision of financial support and a different structure in terms of the reality of the land and the type of produce coming from that land, then quite clearly there may be circumstances where a subsidy programme and legislative framework may be absolutely appropriate for England, but not appropriate in Wales, Scotland or Northern Ireland. I would suggest that it is perhaps not appropriate in parts of England either, such as the Lake District or the south-west, where agriculture is quite different. The question therefore arises as to whether we should have any of this in this legislation. It is something that is valid and needs to be discussed and to have a framework, but it is a very different framework from what exists under this Bill.

It is for that reason that I am delighted to support these amendments and I hope that we will have a substantive answer from the noble Baroness the Minister, who knows the circumstances in Wales well. I hope that she will concede that there are issues here that need to be addressed in the context of Wales or Scotland or other parts of the United Kingdom and that, if this question cannot be resolved at this point, it is certainly one to which we should return in a substantive manner on Report.

Lord Whitty (Lab): My Lords, I add my voice to the concern about how agriculture is being treated under this Bill. Of course, under the old European system, agriculture was excluded because all agriculture subsidy had to be consistent with the common agricultural policy. We are now moving into a situation where all four nations of the United Kingdom are considering how to change their agricultural policy from one being primarily to produce food on a competitive and effective basis to one that, while food production will still be important, also makes its contribution to the environmental demands, in particular in carbon reduction and management of water and soil.

That is very different from many of the other industries that will operate under this regime. We have a multiple problem here with agriculture. We have no previous history of consistency—well, the consistency was at the European level—and all other aspects were always devolved. We are going to have four different approaches to the new era in agriculture and all of them in their different ways will have a very heavy environmental dimension, so that the way in which the land is managed provides nature-based solutions to reducing carbon and to producing a food balance within the population that is more conducive to reducing carbon and for water and soil management.

Agriculture's total exclusion from the regime—as this amendment appears to suggest—may not be necessary, but special treatment will be necessary. Before this Bill passes this House, I hope that the Government will respond by indicating that there will be different treatment for agriculture and respect for the four different nations and their different approaches.

Lord McNicol of West Kilbride (Lab): My Lords, it is a pleasure to follow my noble friend Lord Whitty. I agree with all his comments. I am grateful to the noble Baroness, Lady Randerson, for tabling this amendment to enable further and deeper discussion on another of the many concerns that were raised by colleagues across the House at Second Reading.

[Lord McNicol of West Kilbride]

As we have already debated, although relatively briefly, the new subsidy regime will operate alongside certain legacy schemes, including, but not limited to, basic payments given under the EU's common agricultural policy. As we have heard, the Government's decision to include agriculture and fisheries in the scope of the new subsidy regime is an interesting one. BEIS asserts that there is logic in applying the same rules across the board. While that might make sense in some areas, doing so raises other significant issues. As we have heard from my noble friend Lord Whitty, agriculture is fundamentally different and therefore so are the issues relating to the subsidies and the subsidy control systems. That is before we even touch on the issue of devolved responsibilities.

As we know from many hours following debates on the Agriculture, Fisheries and Environment Bills, these are areas of devolved competence. Some of those matters have been addressed in discussions on the UK-wide common framework arising from the Brexit process. However, due to Her Majesty's Government's treatment of subsidy control as an entirely reserved matter, there is no common framework on this topic, something that we have already touched on in Grand Committee and will be returning to in later groups.

Specific nations and regions of the UK have very different interests from those of their neighbours. Public authorities will of course be able to do what they deem appropriate in the context of overarching subsidy control principles, but this is one of the areas where we may end up seeing subsidy battles and/or legal appeals. If we can reach agreement in your Lordships' House, then we may be able to reduce the chances of some of that happening. One potential solution to some of these issues may be for the Secretary of State to establish one or more streamlined subsidy schemes covering agriculture. I ask the Minister: is that one of the department's intentions?

I want to ask a couple of practical questions that have been subject to initial exchanges between my advisers and the Minister's office. I thank her office for that information, but it raises some questions. Is it the case that schemes already made under the Agriculture Act, for example, will be treated as legacy schemes for the purposes of this legislation? If the environmental land management scheme, which has already been rolled out, is treated as a legacy scheme but the Defra Secretary of State later introduces a separate agricultural scheme using powers under either Act, will that new scheme be subject to the subsidy controls? If the answer is yes, will that not make it harder for everyone involved to keep track of which requirements apply and when? If so, how exactly does the decision to include agriculture in the new subsidy control regime meet the target of making the new process more straightforward and less burdensome?

A number of other issues arise around devolved authorities, many of which have been touched on. We will come on to them when we look at the CMA but, if we do not make changes to the Bill as it is currently written, we could end up with a situation in which the devolved authorities have responsibility for these delegated areas but no oversight in the Bill—no engagement with the CMA or the subsidy advice unit—and will not be at the heart of the decision-making. I look forward to the Minister's response.

Lord Fox (LD): My father spent half his working life milking other people's cows and the other half milking cows in a small, tenanted farm. Farming is a way of life across the United Kingdom. You must be committed to it to make it work, so people are anxious when they see this subsidy scheme in such turmoil.

At Second Reading, the Minister said that including agricultural subsidies in the subsidy control regime would

"help to protect competition and investment"—[*Official Report*, 19/1/21; col. 1749.]

in agriculture and fisheries. First, will the Minister acknowledge that the agricultural subsidy scheme has much wider objectives than simply competition and investment? There is a range of social and other economic benefits that the schemes are supposed to be designed to protect. Secondly, how does including agricultural and fisheries subsidies in the subsidy control regime protect competition and investment better than leaving them where they are: outside the scheme?

Lord Purvis of Tweed (LD): My Lords, I wish to ask the specific question of how, if this Bill includes all agricultural support without the delineated areas we have discussed previously in Committee—such as for upland farmers and areas with less favoured status—it will interact with the internal market Act.

My noble friend Lady Randerson specifically referenced hill farmers. I represented many hill farmers; I will debate with my noble friend separately the merits of Welsh lamb as opposed to Scottish Borders lamb, but it is fairly obvious which is the superior product. The point is that specific subsidy support for the type of production rather than the end product is allowed under the subsidy scheme because upland farms have less favoured area status. It was delineated.

However, the Government proposed under the internal market legislation that no discrimination would be allowed on any of the end product—the lamb. We allowed that discrimination because of the less favoured area status for hill farming. I question whether, if all this is now wrapped into the subsidy Bill, this is open to challenge in terms of competition and non-discrimination, as specific support for the production of one product—lamb—will be provided to certain farmers in certain areas but will not be available to others who do not have less favoured area status.

This Bill removes all those delineated areas. Presumably, all that is now within scope of the internal market Act. That means, I think, that none of this area of support can have the assured status that it did beforehand. I strongly support my noble friend's efforts to get clarity on this.

Baroness Bloomfield of Hinton Waldrist (Con): I thank the noble Baroness, Lady Randerson, and the noble Lord, Lord Bruce of Bennachie, for tabling this amendment and for their concern for the agricultural sector. This amendment seeks to exempt agricultural subsidies and schemes from the requirements of the

new domestic regime. I appreciate that the devolved Administrations are particularly concerned about the inclusion of agriculture in the new domestic regime. This issue has come up during our regular engagement, both at ministerial and official level. We have worked hard to understand concerns here, particularly in relation to existing schemes and how they might be considered under the new regime, as well as in relation to the development of guidance on the principles. We have sought to reassure that existing schemes and subsidies will be able to continue indefinitely.

6.30 pm

There is good reason for including agriculture in the new regime. Having agriculture covered by the same single, coherent set of rules as other sectors will protect competition and investment within agriculture while ensuring consistency for public authorities and subsidy recipients. The Bill's design ensures that public authorities are empowered to give subsidies that best fit their local needs. The purpose of a subsidy control regime is to provide common subsidy control rules for all authorities in the UK, allowing devolved authorities and all other public authorities to spend and carry out their own policy principles.

I know that the noble Lord, Lord Whitty, was concerned about agriculture in the EU. It is not quite right to say that agriculture was entirely exempt from the EU subsidy control mechanisms. Although most activity under the CAP was carved out from state aid rules, the CAP itself aimed to minimise distortions of competition and trade in the agriculture and forestry sectors, alongside state aid block exemption rules. Some activity was notified under the general state aid rules.

In response to the point made by the noble Baroness, Lady Randerson, it is also not entirely right to say that agriculture was fully exempt. This regime will impose far fewer constraints on public authorities, including the devolved Administrations, to give agricultural subsidies compared to the CAP. This approach elicited a strong response in the public consultation on the future subsidy control regime with, as I know we have mentioned, 75% of the respondents who answered the question on agriculture agreeing that it should be included in the scope of the new domestic regime. As the noble Baroness set out, not every respondent answered every question in the consultation; that is absolutely clear from our consultation response.

The subsidy control principles and other requirements in the Bill are sensible and straightforward and should apply equally to agriculture as they do to other sectors. I do not believe that any public authority should seek to give a subsidy that does not comply with these common-sense principles. I believe that these rules will allow public authorities to tailor subsidies to local needs and agriculture-specific market failures, which, as the noble Baroness, Lady Randerson, and the noble and learned Lord, Lord Thomas, emphasised, is so important. The duty on public authorities with respect to the subsidy control principles helps to protect competition and investment within the UK and ensures good value for the taxpayer. In response to the noble Lord, Lord Fox, this is the key benefit of their inclusion.

As the noble Lord, Lord Bruce, pointed out, the new regime is the most important aspect of the Bill. I believe that it will empower the UK Government and the devolved Administrations to design agricultural subsidies in ways that meet their policy needs and particular circumstances, whether that is a different legislative framework, a different financial support mechanism or a different type of land—for example, for hill farmers, as the noble Lord, Lord Purvis, pointed out. I am happy to confirm that, with specific market failures based on specific conditions, such as type of land, there is no requirement to treat every farmer in the same way. None the less, in response to the noble Lord, Lord McNicol, it is worth noting that the Bill also makes provision so that any subsidy schemes that are already in place at the time the Bill comes into force, such as rural development programmes or basic payment schemes, are considered legacy schemes and can continue on the same terms as before.

Finally, in response to the query of the noble Lord, Lord McNicol, we are keeping streamlined routes for agriculture under consideration. I hope noble Lords will recognise the importance of including agriculture within the regime, but also the provisions in the Bill that ensure that existing schemes, even with some permitted modifications, are able to continue as they do now. To respond to the noble Lord, Lord Wigley, now that the UK has left the EU, agriculture is no longer subject to EU state aid rules or the common agricultural policy. This has created a regulatory gap, which is best addressed by including agriculture in the new UK domestic regime.

Lord Wigley (PC): I am grateful to the Minister for her response on the points that I raised, but does she accept that agriculture is a very different industry from the others covered by this sort of Bill and should have its own legislation? She mentioned consultation. What was the response to consultation from the agriculture industry and the farming unions?

Baroness Bloomfield of Hinton Waldrist (Con): While I absolutely accept that the agriculture industry is completely different from others that will be covered by the Bill for many of the cultural reasons that have been brought up by others, I do not have the information that the noble Lord requests, but we will write, because we undoubtedly have it back in the department.

Lord Bruce of Bennachie (LD): Less favoured area status was mentioned by my noble friend. In Scotland, 86% of the land has less favoured area status. If we have gained, as we have over many years, a reputation for prime Scotch beef, for example, it has been done by an integration of finishing farmers and suckler cow premiums on the hills. The Minister said that that could be a legacy scheme, but we are doing trade deals with New Zealand and Australia, which may want to challenge that. I think that people want reassurances that such schemes, legacy or adapted in future, will not fall foul of the implications of the Bill. That is the sort of concern that our farmers are facing at the moment.

Baroness Bloomfield of Hinton Waldrist (Con): I register those concerns. Consultation with the devolved Administrations continues, but I repeat that the subsidy

[Baroness Bloomfield of Hinton Waldrist]
schemes of each devolved Administration can be devised in the context of the particular differentiation between each separate authority.

Lord Purvis of Tweed (LD): I do not think the Minister addressed the point regarding the interaction with the UK internal market Act, which has also given rise to some concerns. She said that the Bill would be able to focus on agriculture-specific market failures. As my noble friend indicated, it is not market failure as such; it is the circumstances in which the industry operates. Is the Minister saying that, for all these schemes, the CMA will be the unique body that now determines the viability of all the geographical areas? The CMA is the body that has the authority under this Bill to consider whether the schemes are operating according to the principles. Defining what market failure would be within agriculture, on the different types of land, will now ultimately be for the CMA, which is a ridiculous situation to be in.

Baroness Bloomfield of Hinton Waldrist (Con): I reassure the noble Lord that the CMA has an advisory function; the tribunal will be the body that decides. The subsidies will be devised by the local authority, or the devolved Administration, so that they can use the CMA for advice.

To go back to the earlier point, the Bill will allow the Scottish Government to provide subsidies to less favoured areas should they so wish.

To reiterate, the CMA has only an advisory function. It is the responsibility of the public authority to decide.

Lord Purvis of Tweed (LD): We have to read this debate in the context of the previous debates. As the Minister has previously said, the Government want to move away from delineating support for geographical areas, so it is utterly pointless to say that a scheme for less favoured area status could be devised, because the flexibility from this Bill means that Glasgow could provide any agricultural subsidy to any farm anywhere, which is frankly ridiculous.

If it is not the CMA's responsibility under this Bill, it is the competition tribunal's. How on earth will the competition tribunal have the capacity to judge all the areas for geographical support, for agricultural support and for industry support? It seems a bit of a nonsense.

Baroness Bloomfield of Hinton Waldrist (Con): The public authorities can devise their own schemes according to their own policy priorities, as long as they comply with the principles of the Bill.

Lord Fox (LD): Let me give a specific example. Herefordshire County Council decides, within the seven principles of the Bill, to subsidise the production of beef in Herefordshire, brands it "Herefordshire beef from Hereford animals", and then markets it in Aberdeenshire at a rate that undercuts Aberdeen Angus or whatever it is that my noble friend Lord Bruce is peddling in his area. It seems to me that this Bill puts in place a chaotic situation that cannot be managed. We do not know what an area is, we are allowing flexibility for any authority to take action as long as it sits within the seven principles, and then we are going to rely on the CAT to adjudicate. Is this really what the Government have in mind?

Baroness Bloomfield of Hinton Waldrist (Con): I think a lot of this overlaps with the internal market Act, which we will debate at length on a later group of amendments. All I can say is that the set of principles will cover the position of the Herefordshire farmer.

Baroness Randerson (LD): This has been an interesting debate. The noble Lord, Lord Wigley, will understand my point when I say that, as a former Assembly Member for Cardiff Central, I did not think I would be leading on a debate on agriculture—at one point I still had a farm in my constituency, but they built on it.

I learned a lot about agriculture as a Minister in two Governments. I learned about the concept, which comes up time and again, that farming is a way of life. It is a way of life wherever you are a farmer. I have lived in East Anglia and it even applies there where you have the grain barons, because if your farm fails, you lose your home. That is what makes things different from most other occupations. All speakers, with the exception of the Minister, have echoed my concerns.

I want to pick up a couple of points very briefly. Clause 41 refers to a specific amount of money for subsidy below which you will not have transparency. That amount of money is astronomical in relation to subsidies for farming and totally inappropriate. If those figures are used, there will be no transparency even for subsidies of the largest order for the largest farms. That cannot be right.

This is, of course, a probing amendment and I am specifically seeking information on how the special circumstances of agriculture will be dealt with. I hope the Minister will send us some very long letters to explain the situation because there are so many complexities and contradictions in the Government's position. The EU treated subsidy as exceptional, in general, and something that must be justified, but it treated agricultural subsidy as normalised within a strict policy structure. The WTO treats agricultural subsidy as normalised, but the Government are now apparently applying the approach where subsidy is exceptional for agriculture. That is the basis of the seven principles. You cannot apply those seven principles in the same way that you do to other industries and businesses. Agriculture is not subsidised because of market failures; it is subsidised to ensure supply of a basic requirement of life at a reasonable price. The complexity of the Government's situation is made worse because of the uncertainties already being felt within the market from the trade deals with Australia and New Zealand which provide additional hurdles.

6.45 pm

The Minister has emphasised the importance of consistency, but you cannot apply consistency across very different agricultural landscapes and climates. Can she please write to us and provide information on whether the consultation responses were broken down by the Government across geographical location? I am not just talking about the percentage of responses

from Wales or Scotland; I think it should also be broken down across England, because hilly and mountainous areas in the north of England face the same issues.

The Minister spoke about legacy schemes. That reassurance is helpful in the short term but not in the long term, because farming develops and schemes will have to change. How will it be regarded by the Government if a devolved Government decide to base a new scheme entirely on a legacy scheme? If you do not do that, of course you will get allegations that you are applying unfair sets of rules—one set of rules to one and another set of rules to the other. But if you do that, you are immediately lapsing into a system where subsidy of agriculture is to be the norm.

Can the Minister also write to me to explain whether the processing of agricultural products—which is of course an essential part of developing an agricultural market—will be included and given the same rules as the rest of agriculture?

Will the Minister please now accept that, as written, this Bill just does not fit agriculture? I can see she wishes to respond.

Baroness Bloomfield of Hinton Waldrist (Con): There are a couple of points I would like to address now, and obviously I will cover the other points in greater length in writing. Just to reassure the noble Baroness, on the minimum financial assistance in the Bill that she referred to, for most subsidies, including agriculture, it is £315,000 rather than the figures in Clause 41. If the figures are far too high for agriculture, then they will simply be exempt from the requirements and none of those concerns will apply. We are looking at whether the £315,000 is set at the right level, and we have the power to change it for specific sectors.

In answer to the noble Baroness's question, I am afraid that we did not ask respondents to the consultation where they were based because it is a UK-wide regime, but we will write with more detail if we have it back in the department.

Lastly, as the noble Baroness brought up the difference between the WTO and the EU regimes, I just say that the Agreement on Agriculture within the WTO and the new subsidy control regime fulfil very different purposes. The AoA is an international agreement aimed at reducing distortion of international trade in agriculture; the proposed domestic subsidy control regime facilitates compliance with our international commitments but goes beyond this by protecting UK competition and investment. The WTO provisions are no substitute for a domestic subsidy control regime. The EU is a case in point of a system that has both WTO subsidy commitments and its own internal regime, and this is the approach that we are taking for subsidies in all sectors in the UK.

I will write with any further responses that I need to make, having reviewed *Hansard* in the morning.

Baroness Randerson (LD): I thank the Minister for that. I fear that she makes my point for me in terms of Clause 41. My argument is that there needs to be transparency on this, and the amounts of money are set so high that there will not be that transparency. If this scheme is going to work on a farm-by-farm basis, which is what it will have to do, the Government will need to set separate, different and lower figures for agriculture. The Government really need to go away and look at this again.

Please could the Government consider applying some real-life worked examples of how this would apply in different parts of the UK—even within different parts of England? They need to be worked through, and public authorities need to have further information on how this would work. I urge the Government to discuss this issue with local authorities and the devolved Governments before the walls of our systems are bulldozed through in the latter stages of the Bill. I beg leave to withdraw the amendment.

Amendment 52 withdrawn.

Clause 52: Mandatory referral to CMA

Amendment 53 not moved.

Clauses 52 agreed.

Clauses 53 and 54 agreed.

Clause 55: Call-in direction

Amendment 54

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

54: Clause 55, page 30, line 40, after "State" insert ", the Scottish Ministers, the Welsh Ministers or the Department for the Economy in Northern Ireland"

Member's explanatory statement

This amendment extends the call-in powers under this section to the Devolved Administrations.

Baroness Blake of Leeds (Lab): My Lords, in moving the amendment in the name of my noble friend Lord McNicol, I am grateful to the noble and learned Lord, Lord Hope of Craighead, and the noble Lords, Lord Bruce and Lord Wigley, for signing some, and in some cases all, of the amendments in this group. The amendments would extend the call-in power afforded to the Secretary of State to the devolved Administrations in Wales, Scotland and Northern Ireland—I can see a theme developing in these amendments. I know from experience that consultation is a tough thing to do properly. We are seeing repeatedly a lack of appropriate and meaningful consultation and that really needs to be addressed, along with the sense of a lack of respect in dealing with other areas and other bodies that need to be included so that a fair and level playing field can be established.

To be clear, in the Bill at the moment the Secretary of State has the power to direct a public authority and request a report from the CMA in relation to a proposed subsidy or scheme. As currently drafted, that does not extend to the devolved authorities; they do not have the equivalent powers to call in or challenge subsidies. The question for all of us is why that should be the case. It is yet another example of the significant disparity of power under the proposed subsidy regime, even though the devolved authorities clearly have an interest in the application of the regime in their respective nations.

[Baroness Blake of Leeds]

The Government may not feel it is appropriate to give devolved authorities exactly the same power as the Secretary of State—for example, it may make sense to constrain their powers to decisions taken within their jurisdictions—but surely those authorities need some ability to refer matters to the CMA. Another aspect of this measure is that the Secretary of State can issue a call-in direction that requires granting authorities to respond outside of England in relation to subsidies within the CMA. Why does that not happen the other way round?

As we know, we have had a number of debates on devolved matters, but we remain to be convinced that Her Majesty's Government are moving in the right direction when it comes to matters of devolution. These amendments are an opportunity for the Minister to prove us wrong and illustrate that there has been some movement as a result of the very many representations in this area.

There is also the vexed area whereby a call-in by the Secretary of State could significantly slow down progress in granting financial support for inward investment. This could result in that investment being lost. There are also very sensitive cross-border issues, as we have discussed, which present further challenge and could result in a perceived conflict of interest where they are not appropriately addressed.

I leave it to the noble Lord, Lord Fox, to introduce his amendments, which seek to further extend these provisions. We will, as always, listen to the Minister's response with great interest. We must get away from the very real sense that Whitehall, unfortunately, is determined to hang on to power rather than really move forward on devolution, to which I believe this subsidy Bill could give great store. I beg to move.

Lord Bruce of Bennachie (LD): My Lords, I am very pleased to have added my name to this group of important amendments. We are pressing a real depth of concern about the UK Government's attitude to the devolution settlement altogether. With this Bill and the internal market Act, the Government are using the case for reserved powers to appear to be testing the devolution settlement, not quite to destruction, but to considerable tension.

These amendments ask why it is right that the Secretary of State has the right to instruct a public authority to seek a report from the CMA but the same Secretary of State—who is also the Secretary of State for England—is not susceptible to being challenged over any subsidy scheme that he or she has devised that may be perceived by any or all of the devolved Administrations as contrary to their interests or concerns. As the noble Baroness has said, it may not be the case that there should be absolute equality—we do not have a federal system yet—but we need recognition that it is simply not good enough that the Secretary of State can ignore, cast aside and overrule the devolved Administrations without them having any comparable right to challenge the English regime, never mind the UK regime. It is important that Ministers show some sensitivity and understanding on that.

This Committee does not need me to tell it that I have no sympathy with the SNP case for breaking up the United Kingdom or for independence. My view is that the SNP is a monumentally incompetent, obsessive political party that has no capacity to lead Scotland anywhere useful. However, the fact remains that it is in a mood to try to use every opportunity to stir up discontent and break the UK apart. The Government should not be helping it. They should be looking at how they can show, clearly, openly and honestly, that they are trying to set up a system based on mutual respect and understanding.

Even though the powers are reserved and the Secretary of State, in his capacity as Secretary of State for the United Kingdom, may be the decider of last resort, it should be as a last resort. Until you get to that position, it is important that the devolved Administrations have balanced and comparable powers. My simple question is this: why is it right that the Secretary of State can challenge Scotland, Wales and Northern Ireland on a scheme, but they have no right to challenge him or her on a scheme applied within England, which is what the Bill says?

Lord Fox (LD): My Lords, just as the noble Baroness, Lady Blake, suggested, I shall speak to Amendments 55, 57 and 59 in my name. We are back trying to break up the monolith again. In the Bill, the Government seek to centralise the power in the Secretary of State in Westminster and, as my noble friend Lord Bruce set out, that person is Secretary of State for both England and the United Kingdom.

7 pm

At the same time, we are relying on a set of individuals who can make judgments and try to report things to the CMA. Meanwhile, we are disintermediating a huge set of government. In other contexts, the Minister has been very fulsome in his praise of the ability of local authorities, local government and, indeed, the devolved authorities to understand their markets and needs of the businesses and enterprises in their area and act in this new, fabulous, flexible way. However, these knowledgeable and expert groups of local government and devolved authorities are not being given any role in potentially policing what may happen when a market breaks down. There is a dissonance in that process.

We have also seen of late a Government who publish a huge paper on the subject of an increasing role for local government and, indeed, unitary local government under mayors. It seems to me to be greatly remiss if mayors in this Government's brave new world were not given the sort of powers that the Secretary of State seeks to protect for himself or herself. Breaking this down to another level, the amendment is very much to probe what the Government have against local authorities having a role in policing the economies that the Minister has said they are so knowledgeable about, so I look forward to hearing what the Minister has to say in that regard.

Lord Wigley (PC): My Lords, I cannot allow this debate to go without intervening very briefly. We have had arguments about the consultation with devolved

authorities in previous deliberations of this Committee and I am not going to repeat those points. What I want to do, however, is to stress the need for equivalence, and for that equivalence to be perceived, between the role of the Secretary of State in the context of England and the devolved authorities in the context of Wales, Scotland and Northern Ireland because if we do not have that, we are building up a formula that is bound to cause problems.

I cannot possibly allow the comment about my friends in the SNP to go unchallenged, because they, of course, work very hard indeed in the interests of Scotland, as has been recognised by such a large majority of Scottish voters. However, the debate here is not about the relative strengths of the parties; it is about getting a system in this legislation that works. In the absence of a federal or confederal approach—and that, ultimately, will have to be the context in which these things are addressed—in the meantime, for goodness' sake, let us get a formula that at least appears to be fair and does not have built within it the contradictions which this Bill has at present.

Lord Callanan (Con): I was expecting more interventions before my reply—I offer my apologies.

These amendments relate to Clause 55, which provides, as has been stated, that the Secretary of State can direct a public authority to request a report from the subsidy advice unit for a proposed subsidy or subsidy scheme. This so-called call-in power will be used as a safety net where the Secretary of State considers that a subsidy or scheme is at risk of not complying with the subsidy control requirements or that it poses a risk of negative effects on competition or investment in the UK and therefore warrants further scrutiny.

In the majority of cases, the most potentially harmful subsidies will be those that meet the criteria for subsidies of particular interest. The Government's proposal for how these criteria should be defined has been set out in illustrative regulations that have been made available to this Committee. However, it is inevitable that there will be some subsidies or schemes that fall outside those boundaries but would still benefit from the additional scrutiny offered by the SAU. The call-in power is a safety net. It provides a mechanism to catch potentially concerning subsidies that are not caught within the "subsidies of particular interest" definition and have not otherwise been voluntarily referred to the subsidy advice unit. It is expected that such subsidies will be few and will reduce further as the regime settles in.

When the Secretary of State decides to exercise this call-in power, the direction must be published. In addition, the subsidy advice unit must provide annual reports on its caseload, including any subsidies or schemes called in by the Secretary of State. These annual reports will be laid before Parliament. This transparency will help to ensure that the power is being used appropriately and that Parliament has oversight of how and when the power is being used.

Amendments 54, 56, 58 and 60 would allow the devolved Administrations to refer a subsidy or subsidy scheme to the subsidy advice unit under the terms of Clause 55. Similarly, Amendments 55, 57 and 59 would extend the power to call in subsidies for review by the subsidy advice unit to all local authorities in the United Kingdom.

The Secretary of State's responsibilities and interests in the subsidy control regime are UK-wide. The subsidy control regime is a reserved matter. The UK Government are responsible for the compliance of the UK subsidy control regime in all parts of the United Kingdom with our international obligations, including the trade and co-operation agreement with the European Union. It is therefore right that the UK Government have responsibility for the referral mechanism that deals with any subsidies that fall outside of the established criteria for further mandatory scrutiny. It is also right that the UK Government oversee the functioning of the regime as a whole, including the caseload of the subsidy advice unit.

In response to the specific concerns raised by the noble Lords, Lord Bruce and Lord Purvis, I believe it is important that the positions of the devolved Administrations and other public authorities are taken into account in the exercise of this function. I assure noble Lords that the Secretary of State would take it extremely seriously if he received a request from another public authority to call in a particular subsidy or scheme. Of course, he would engage with the substance of that request and consider it on its merits, but I hope it goes without saying that officials and Ministers in my department would discuss the matter appropriately with the public authority that raised the concern; this would apply even if it were a subsidy given by the UK Government.

Baroness Randerson (LD): If the Secretary of State has acted as Minister for England and a devolved Government want to get the Secretary of State to call something in on the grounds that they are not happy with it perhaps being uneven or giving an unfair advantage to a company operating in England, what Chinese walls—that is, what process—will the UK Government put in place to ensure that the Secretary of State, who has just made a decision on England's behalf, will not then judge himself or herself when the issue is called into question by a devolved Government?

Lord Callanan (Con): The noble Baroness is approaching this issue in completely the wrong way. First, this is a UK-wide regime, so the Secretary of State is acting in his capacity as UK-wide Minister responsible for it. We have said that we will take it extremely seriously if a devolved Administration request a referral to the subsidy advice unit. We are currently in discussions with the devolved Administrations on how such a system could be codified. However, the key point is that this is just a referral to the subsidy advice unit. It is not rendering a subsidy illegal; it is not challenging it.

Directly relating to the point made earlier by the noble Lord, Lord Bruce, a devolved Administration have exactly the same rights as the Secretary of State or a local authority or anybody else to challenge the decision. The right for the Secretary of State to call in a proposal is just to refer it for advice from the subsidy advice unit; it is not to challenge the decision. The challenging of a decision takes place in the Competition Appeal Tribunal.

Lord Purvis of Tweed (LD): The case that the Minister makes is a case against what he took through in the internal market Act. Under that Act, the Secretary

[Lord Purvis of Tweed]
of State is responsible for the economic impact on the whole of the United Kingdom, but a national authority can refer a regulation made by the Secretary of State to the CMA—in fact, one or more of them can refer. Why can they do that in the internal market Act but not in this Bill?

Lord Callanan (Con): The internal market Act, which we debated at great length, reserved the application of a subsidy control regime to the UK Government. This is now the subsidy control regime that the United Kingdom Internal Market Act set up.

Lord Purvis of Tweed (LD): I do not think that is relevant, because no one had any doubt about the fact that the internal market is a reserved power. They are both reserved powers; in the internal market Act, the Secretary of State acts on a reserved basis for the whole of the internal market, but it allows a national authority to refer a decision of the Secretary of State to the CMA if it has doubts about that measure. Subsidy control is a reserved matter—there is no doubt about that—but the subsidy Bill prevents a national authority referring a decision by the Secretary of State to the CMA. Why?

Lord Callanan (Con): I think the noble Lord is getting confused between the subsidy advice unit and the Competition Appeal Tribunal. Exactly the same right exists for devolved Administrations, the Secretary of State or a local authority to challenge a decision in the Competition Appeal Tribunal. This call-in power is related strictly to the ability to request an opinion from the subsidy advice unit. That is where I think the noble Lord's confusion comes in. The same right exists for authorities to challenge a subsidy, but there is an overall policing function which belongs to the UK Government to look after the international obligations of the UK under agreements such as the TCA.

Lord Purvis of Tweed (LD): I am talking about a call-in that is exactly the same as in Section 36 of the internal market Act. I am not talking about tribunals; I am not talking about it being adjudicated. I am not confused; I am talking about referrals. The internal market Act allows referrals from a national authority; this Bill does not. All I am asking is why there is a difference between the two.

Lord Callanan (Con): It is because the responsibilities are different. They might all rest within different parts of the CMA, but the responsibilities under the internal market Act are different to those under the Subsidy Control Bill that we are debating today. The policing of the Act is of course the responsibility of the UK Government; it is a reserved responsibility, but the same right to challenge a decision exists for the Secretary of State as it does for the devolved Administrations. Using the ability to refer a decision to the subsidy advice unit, we are saying that we will take a request from a public authority or devolved Administration very seriously under the Secretary of State's call-in powers, but, in addition to that, we are currently in discussions with the devolved Administrations to see whether it is possible to reach an agreement on some sort of codifying mechanism to refer decisions to the subsidy advice unit.

We hope that no UK government subsidies would require referral, but I can tell the Committee that Ministers will be open-minded to calling in a UK government subsidy for SAU scrutiny where that is requested by another public authority or considered desirable for other reasons.

To respond to the concerns of the noble Baroness, Lady Blake, the Secretary of State would always take into account any urgent circumstances, whether in considering the use of the call-in powers or in the exemption from mandatory referral for subsidies of particular interest set out in Clause 64.

7.15 pm

To address the point raised by the noble Lord, Lord Bruce, I emphasise that the devolved Administrations—a point I made earlier—and other public authorities may indeed bring challenges against the UK Government in the Competition Appeal Tribunal where they feel the interests of people in the areas in which they exercise their responsibilities may have been adversely affected by the granting of a subsidy. I re-emphasise that we are continuing to work with the DAs as the Bill progresses through Parliament and beyond. This includes close co-operation on any ongoing subsidy cases. I reassure the noble Lord that we are trying to codify their ability to request the use of the call-in powers where appropriate. As always, this close working will continue as we move towards implementation and once the new regime is up and running.

A further reason for reserving the call-in power to the Secretary of State is to ensure that the subsidy advice unit is neither overstretched nor enlarged beyond the appropriate level for its role in this regime.

Lord Bruce of Bennachie (LD): I am glad that those conversations are taking place, but is not the danger that if the devolved Administrations do not have the opportunity to get that advice, they might as well move to a direct challenge? It makes the friction more extreme rather than less. I accept the point the Minister is making about not wanting lots of frivolous requests, but if the right to request at all is denied, the danger is that there will be more contentious challenges.

Lord Callanan (Con): We are not denying the right to request, which is why we are currently in discussions with the devolved Administrations to try to codify the system, but we have to accept the reality that they have a fundamental objection to subsidy control being reserved to the UK Government. They do not believe that it should be a UK-wide function. While we can agree and discuss many of the details, it is a black or white situation whether it is reserved to the UK Government. We feel it should be. That was Parliament's decision in the United Kingdom Internal Market Act. The devolved Administrations do not agree with that, but it is a fact, so while it is possible to agree with them on many of the details, and we have engaged extensively at ministerial and official levels, we cannot resolve the fundamental difference of opinion on the overall principle.

There is a risk that this amendment would overburden the subsidy advice unit with numerous and unnecessary directions for referrals. The noble Lord, Lord Bruce, talked about the ability of the current Scottish Administration to put friction in the relationship and to seek to cause division where there is perhaps no division at the moment, and that would require substantial and unpredictable additional resources. In contrast, given my department's responsibility for and its relationship with the Competition and Markets Authority, the Secretary of State will be able to take referral decisions that factor in the overall workload and capacity of the subsidy advice unit and will work with others in government to ensure the unit is appropriately resourced to deliver its functions over the medium and long term.

We appreciate that the new regime represents a significant shift from the requirements of the previous EU state aid regime and that public authorities will need to familiarise themselves with the new requirements and processes. Public authorities will already be used to the interim arrangements under our international obligations, including in the trade and co-operation agreement, which require an assessment of a prospective subsidy or scheme against six principles. As always, my department stands ready to support further through guidance and advice to help to ensure that public authorities in all parts of the United Kingdom are prepared and feel comfortable making their own assessments and giving out subsidies, hopefully without the need to seek advice from the subsidy advice unit. Therefore, for the reasons I have stated, I am unable to accept the amendment and hope that, given the explanations I have provided, the noble Baroness will feel able to withdraw the amendment.

Baroness Blake of Leeds (Lab): I am sure that it does not fall to me to remind the Minister that the Secretary of State might be a woman as well as a man.

I would be grateful if the clarification that the Minister gave to the noble Lord, Lord Purvis, could be given to all of us in writing, as it would be really helpful in trying to move this forward. I am slightly concerned that there is a bit of a patronising element creeping into this, and I think that we need to be very careful about that in terms of how we build the relationships going forward.

It really remains to be said now that we perhaps need to reserve our position on this as we move to the next stage, in the light of ongoing discussions and consultation as the Minister has outlined. I think that we would all like the opportunity to go back to base and to understand how these discussions are continuing. I am sure that we will then come together to make decisions on how to move this forward at the next stage. With those comments, I beg leave to withdraw the amendment.

Amendment 54 withdrawn.

Amendment 55 not moved.

Amendment 55A

Moved by ***Lord Lamont of Lerwick***

55A: Clause 55, page 30, line 40, after "State" insert "or the CMA"

Lord Lamont of Lerwick (Con): My Lords, I shall also speak to Amendments 57A, 57B and 60A. The purpose of this group of amendments is to give the CMA the right to call in subsidies quite separately from the mandatory referral process, not just those referred by the Secretary of State. The amendments would not give the power of veto to the CMA and would still leave the Competition Appeal Tribunal as the final arbiter. They are designed to introduce some independent enforcement of the rules into the process. In recent years, we have seen more independence given to bodies such as the Bank of England or the OBR. These amendments try to give the CMA, in its new role, a degree of independence for enforcement.

The noble Lord, Lord McNicol, earlier drew a contrast between the position under this Bill and how it was under the EU, namely that no subsidy was legal until it was approved. This is a much more permissive regime which relies heavily on being policed by competitors and citizens who, for the reasons that we discussed earlier in the series of amendments about the thresholds and the timing, may not always spot the need to draw attention to a subsidy that has been granted.

Let me say that I fully accept that subsidies are necessary for social purposes, for areas of deprivation and for remote communities, sometimes just to soften the blow of industrial change. But we also know the reality that subsidies distort competition; there is sometimes a temptation for Governments to throw good money after bad; one can have the politicisation of subsidies; and one can have pork barrelling. The provisions in these amendments are designed to prevent that happening.

This country needs to improve productivity. We need to strengthen the competitiveness of the UK economy and one way in which that can be done is by having a Government who are disciplined and subject to an independent discipline in their use of subsidies. The Government have been spending a lot of money recently on subsidies, some of which I accept are well justified, but we have a list of areas into which money has been injected—electricity, airlines, train operators, OneWeb, the steel industry. When we were discussing this earlier, the noble Lord, Lord McNicol, referred to the absence of a strategy. I am not personally an enthusiast for an industrial strategy, but I find it difficult to see the rationale for all the subsidies that the Government have given.

I have referred before to the Chancellor of the Exchequer's future fund. In fairness, the Chancellor said he thought people would have a lot of fun with the investments into which he had put taxpayers' money. More and more information has come out about it. It was recently revealed that millions have been ploughed into one online betting company. Large amounts of money have been deployed into a luxury Caribbean firm selling holidays on private islands, with some of the properties costing £400,000 a week to rent. There are also the cannabis producers, the dating agency—and Bolton Wanderers, which is also getting a direct injection from the Government.

I can understand that the Government want to help small businesses, but in that case help the generality of small businesses, not just one particular business.

[Lord Lamont of Lerwick]
There may be lots of small Caribbean holiday companies that need help; why should this one be singled out? No doubt Bolton Wanderers needs help, but what about Scunthorpe and Grimsby Town? Why should one dating agency be favoured over another? If you are going to help small businesses then do it by a grant scheme to which small businesses can apply, or by tax relief, which they can benefit from—schemes that can apply to a generality of businesses.

On top of all that, we have had, as has been mentioned several times in this debate, the mysterious investment of £400 million into OneWeb, which required a directive to the Permanent Secretary before he would approve it. The Government really have been extraordinarily reticent about the purpose of that investment, and the amount of information that has been given to Parliament has been very meagre indeed. There is a cause and a need for explanation and investigation of many of these investments.

The words "market failure" are often mentioned; they were mentioned today and in our debate the other day. Market failure can be used to justify almost anything that Governments want to do: a firm cannot find money; the Government want to give it a subsidy, so they just label it "market failure". But what exactly is market failure? The Minister referred to it the other day, and we have had it referred to several times. One might define market failure as barriers to entry or inadequate information being available to all market participants, but it is another reason why Governments can just slither off the hook and give money to someone for, perhaps, political reasons.

We need to have a careful look at what is called market failure. The British Business Bank was set up in order to cope with market failure but is itself now the subject of great criticism by the Public Accounts Committee for not overseeing the Covid loans properly. So much for its ability to correct market failure.

The whole point of my referring to these rather questionable subsidies, as I regard them, is that I do not think the Government ought to be able to mark their own homework on these issues. They need an enforcer and an independent view. I say that what is wrong with the Bill is that it is designed to give expression to the agreement that was struck with the European Union, the TCA; it is not really a rigorous enforcement of subsidy control at all. The regime is very permissive compared to what we had in Europe and relies far too much on individual citizens and competitors as enforcers. Those who are affected have to spot and know about the subsidies, and they have to do that within a very tight time limit. As I said earlier, what if the website is not working? All these things can make it very difficult for the competitor to take the action to control the subsidies being given to people with whom they are competing.

We need to have more independence in the process. We need the CMA to have the ability to investigate on its own initiative. We need a degree of independence, similar to that which is increasingly being given to government agencies. I hope the amendment will commend itself to Members of the Committee, and I beg to move.

Lord Thomas of Cwmgiedd (CB): My Lords, I warmly support the noble Lord, Lord Lamont, in this amendment. Earlier this afternoon, I spoke about the centrality of enforcement in the regime introduced under this Bill. I need not repeat what I said then, but it is important to look at the mechanism of enforcement.

7.30 pm

Without doubt, the CAT is completely independent —we will turn to that on Wednesday, I hope—but one must look at litigation as a means of enforcement with a degree of reality. I hope the Minister can say something then about the cost of proceedings before the CAT, whether matters such as third-party funding have been canvassed, as to whether the insurance industry will fund people for these challenges, and how the enormous cost, both in lawyers and economists, of proceedings before the CAT will make it a mechanism for effective enforcement. However, that is for Wednesday; today, we are dealing with the CMA.

It strikes me as very odd to think of the Minister being independent in respect of his colleagues' decisions as Ministers. I assume there is no decision yet to set this Minister up as a sort of Attorney-General, with his own responsibility directly to enforce, being accountable exactly for what he does. Otherwise, unless there is an independent aspect of the Minister completely separate from his political position, it seems unreal to expect him to refer the decision of another government department to grant a subsidy scheme or a subsidy. He accepts that all payments made by the Government in this respect will come within the principle.

Therefore, when looking at this, one must look at the reality that the CMA's report will be the most effective enforcement mechanism. I know that it is only advisory, but how many times have noble Lords read, "We did this on advice"? On a matter within the expertise of the CMA, I would be very doubtful that people would challenge it, unless they were advised that it was seriously wrong. The essence of this amendment is that the CMA is the obvious body to provide the real and effective enforcement in the real world in which we live.

There is one other point I want to ask the Minister about, and that is the scope of the Minister's ability to refer. He can obviously refer the question of whether the subsidy breaches the principles in the Act, but is it clear in the Bill that he can refer the question of whether some assistance that is being given is a subsidy? For example, we discussed earlier whether equity investments would be a subsidy. What happens if the local authority says, "Of course, any bank would have done this"? But that really is questionable. Can a reference be made on that by the Secretary of State? In a form of tax concession, is the CMA entitled under these provisions to express a view on these important matters which trying to deal with at some later stage—before the CAT, for example—will be very difficult? It is much better that things are dealt with now.

In view of the hour, that is all I wanted to say at this stage on this series of amendments, but I regard them as vital to the effective enforcement of the Bill. It has been a privilege to join the noble Lord, Lord Lamont, in speaking to these amendments.

Lord Purvis of Tweed (LD): My Lords, it is always a genuine pleasure to follow the noble and learned Lord in his analysis of these issues. I support the noble Lord, Lord Lamont, in seeking a degree of clarification on why the Government are reluctant for the CMA to have a more proactive role in offering advice.

The Government made the decision to bring forward what is in effect a framework Bill—as the noble Lord, Lord Lamont, highlighted, we have had a number of such Bills—and have said that a lot of it will be fleshed out in either regulation or guidance. The consistency of the application of that guidance is the critical aspect of this, however. We have seen the cost: it is potentially hundreds of millions, if not billions, of pounds, if we are to believe the noble Lord, Lord Agnew. He said that, with the flexibility that comes with not having specific rules, we see what can happen with the lack of consistency—and that was a Minister doing a 10-minute interview with an individual company and then making a decision at the end of it, as he said. He was a Minister who absolutely had decision-making power.

To link that with the previous issue, if the Secretary of State is also a Minister for England and, in addition, the area concerned is agriculture, but the Minister with responsibility will be the BEIS Minister, that highlights some of the areas of concern that there could be. Therefore, the ability of an independent body such as the CMA to have the power to call in and build up a caseload of how it is itself judging the principles and application of those principles will be very important. In the absence of that caseload being built up, we will continue to have a situation where each public body will itself define how it interprets the principles.

The Minister may argue that that is a good thing, but that may not necessarily be so. If you have a wealthy public body that defines market failure differently from a less wealthy public body, ultimately it will only have to go to challenge. Trying to avoid that situation is the intent behind these amendments. I looked at the Treasury's Green Book, which the Minister referred to. It is the defining body. It has four example of what market failure might be, in addition to what is in principle A within the Bill. There is no existing CMA set of defined markets or set of reports considering how the seven principles will operate; this is a brand-new territory, and it may be a number of years before we come to this situation. Some of the witnesses who gave evidence to the Commons processes said that there will be a major chill effect because of that uncertainty.

Avoiding that aspect, the desirability of an independent body such as the CMA having responsibility under this Bill for putting flesh on the bones of the principles and the definition of market failure is important. We will not be able simply to rely on the guidance from the Government, especially because we know that it might change very quickly. We are already on our second, if not third, set of guidance with regard to the subsidy control principles in Northern Ireland, and the Minister alluded to the fact that we may be on another set before this legislation comes into force. We cannot simply rely on guidance; therefore, there is real merit in these amendments. I am supportive of the noble Lord bringing them forward.

Lord McNicol of West Kilbride (Lab): My Lords, I think we will have a hard stop at 7.45 pm, so I will try to be brief. Even then, though, I am not sure that we will get through everything. Obviously I am grateful to the noble Lord, Lord Lamont, for tabling his amendments in this group; they sit very nicely with my amendment.

There are some general concerns over whether the CMA is the appropriate body to undertake all this work but, putting that to one side just now, it seems counterintuitive not to give the responsible regulator the ability to initiate its own investigations—especially because, as the noble Lord, Lord Lamont, rightly said, this is a very permissive regime in terms of how it has been pulled together. It is fundamentally different from the European state aid regime and we expect it to be policed by competitors and citizens, and that is only if they have checked the database and if the subsidy has been of a high enough level to make it on to the database—more than £315,000, I think. Even then, they will be able to make those challenges only within a tight timeframe.

On the amendments, although my Amendment 61 is quite detailed, again, we really are not precious about the wording in it or who has oversight, whether it is someone from our own Benches or those of the noble Lord, Lord Lamont—or even if the Government themselves wish to bring an amendment to look to give the CMA, as an independent body, more powers to follow through and ensure that transparency is actually there. My amendment would give the CMA the power to conduct post-award investigations in cases where it believes, God forbid, that a public authority has failed to comply with the requirement. With that, I end my remarks and look forward to the Minister's response.

Lord Callanan (Con): I am grateful to noble Lords. I know that time is getting on; hopefully I will have a chance to get through my remarks in the time we have available. This is an important debate and I recognise that, if it were not for the time, other noble Lords might also have wanted to intervene on the role of the Competition and Markets Authority in this new subsidy control regime.

I listened with particular interest to my noble friend Lord Lamont's reflections on subsidy. In response, I would say that it is important to emphasise that the Bill does not, of course, replace our gold-standard mechanisms—my noble friend may have been responsible for many of them—for managing public money and for the transparency and scrutiny accorded to the UK Government's spending decisions. I also note that we addressed the concept of market failure in the illustrative guidance we sent round; we believe that it is a fundamental part of the guidance that will be published before the regime comes into force.

Before I address the amendments, let me take this opportunity to lay out why we have taken the approach we have in the Bill as it stands; I hope that this will address the concerns of the noble Lord, Lord Purvis. We start from the knowledge that public authorities, in my view, take their statutory obligations seriously. The subsidy control principles and other requirements are straightforward and sensible, and we expect the vast majority of public authorities to comply with

[Lord Callanan]
these requirements in giving the overwhelming majority of their subsidies. This regime empowers public authorities to make subsidy control decisions without excessive bureaucracy or regulation of the kind that I think most people accept is found in the EU state aid system and nowhere else in the world.

With this in mind, we proposed the functions of the subsidy advice unit set out in the Bill for two closely related reasons: first, to support public authorities in giving the subsidies that are most likely to be distortive; and, secondly, to ensure that those subsidies are subject to additional scrutiny and transparency before they are given. As the noble and learned Lord, Lord Thomas, set out, we think that this is an extremely important role. Once a subsidy or scheme has been referred, the subsidy advice unit will not attempt to replicate the role of the public authority in giving that subsidy in the first place or deciding whether or not to give a subsidy. Of course, it will also not replicate the role of the Competition Appeal Tribunal in applying the law to every aspect of the case. The subsidy advice unit will not carry out its own independent evaluation of the impacts of the subsidy; nor will it come to a definitive judgment on the public authority's legal assessment of whether the measure is a subsidy, to answer the question from the noble and learned Lord, Lord Thomas.

7.45 pm

The guidance will be thorough on this point. It will be a legal matter rather than something for the advisory unit if it comes to a dispute. The unit will provide a thorough and proportionate evaluation of the public authority's own assessment of compliance, providing advice on both the methodology of the assessment and the design of the subsidy as it considers appropriate.

I do not believe there is a contradiction in saying that a full assessment of compliance is light-touch regulation for the public authority but could prove arduous to replicate for the subsidy advice unit. The SAU would be acting without the understanding and body of evidence that the public authority will have created in developing the subsidy in the first place. The SAU does not have the same margin of discretion that in my view a public authority ought to have over its own decision-making for its own functions, and for which it is both expertly and of course democratically accountable.

As I set out earlier today, most of the subsidies that are more potentially distortive can be identified in advance. That is why we will lay regulations to define those subsidies and schemes that either may or must be referred to the subsidy advice unit respectively.

I will defer again to the illustrative regulations and the policy statement that we published last month as an indication of our intentions here. However, as a safety net for unexpectedly concerning subsidies and schemes—we just had a debate on this in the previous round—we have provided for the Secretary of State to have the option to refer particularly concerning subsidies to the subsidy advice unit, either before or after they have been granted.

There is no intention to build up an extensive monitoring function within my department or the CMA to carry out this function. It is designed to catch a very small number of particularly worrying subsidies that could potentially cause undue harm to UK competition or to our international commitments where those come to the attention of the Secretary of State. As I have said, public authorities comply with their statutory obligations as a rule. This system therefore strikes the right balance. We will allow the public authority to make subsidy decisions quickly and with confidence to assist the development of their local economy.

Amendment 55A and so on would allow the call-in powers currently provided to the Secretary of State to be exercised by the SAU as well. I recognise noble Lords' concerns that the system gives too great a responsibility to the Secretary of State—

Lord McNicol of West Kilbride (Lab): My Lords, rather than rush through, let us finish here. I am sure there are some issues that we would go into if there were not one minute remaining.

Lord Callanan (Con): Do we have time to finish?

Lord Fox (LD): I think we are comfortable starting again on Wednesday and giving this proper time.

Lord McNicol of West Kilbride (Lab): The noble Lord, Lord Lamont, has yet to respond as well. It will not take long on Wednesday.

Lord Callanan (Con): So shall we finish at this point and start again on Wednesday. Is my noble friend Lord Lamont available for the next Committee session on Wednesday afternoon? We are talking about suspending at this point, because we have run out of time, and returning to this group of amendments then.

Lord Lamont of Lerwick (Con): Yes.

Debate on Amendment 55A adjourned.

Committee adjourned at 7.48 pm.